

ISSUE DATE:

January 21, 2013



Ontario

PL101121

By-law No. 13-050

Ontario Municipal Board
Commission des affaires municipales de l'Ontario

Parkside Hills Inc. has appealed to the Ontario Municipal Board under subsection 51(34) of the *Planning Act*, R.S.O. 1990, c. P.13, as amended, from the failure of the City of Hamilton to make a decision respecting a proposed plan of subdivision on lands composed of Part of Lot 8, Concession 4, municipally known as 619 Centre Road in the City of Hamilton

Approval Authority File No. 25T-201003

OMB File No. PL101121

Parkside Hills Inc. has appealed to the Ontario Municipal Board under subsection 34(11) of the *Planning Act*, R.S.O. 1990, c. P.13, as amended, from Council's refusal or neglect to enact a proposed amendment to Zoning By-law 90-145-Z (Flamborough), of the City of Hamilton, as amended to rezone lands respecting 619 Centre Road from Conservation Management "CM" Zone and Agriculture "A" Zone to Park Open Space "02" Zone, Urban Commercial "UC-X" Zone and Medium Density Residential "R6-16" Zone to permit the development of the proposed subdivision

OMB File No. PL101150

Parkside Hills Inc. has appealed to the Ontario Municipal Board under subsection 22(7) of the *Planning Act*, R.S.O. 1990, c. P.13, as amended, from Council's neglect to enact a proposed amendment to the Official Plan for the City of Hamilton to redesignate lands at 619 Centre Road from Urban Residential to Mixed-Use, Medium Density Residential 1 to permit the development of the proposed subdivision

Approval Authority File No. OPA-12-003

OMB File No. PL121013

APPEARANCES:

Parties

Counsel

City of Hamilton

B. Duxbury

Parkside Hills Inc.

M. McQuaid

**MEMORANDUM OF ORAL DECISION DELIVERED BY C. HEFFERON
ON DECEMBER 11, 2012 AND ORDER OF THE BOARD**

BACKGROUND

[1] Parkside Hills Inc. ("Parkside") proposes a phased development of approximately 36.72 ha in the former Township of East Flamborough of the City of Hamilton ("City")

with a mix and range of residential units. Blocks 1, 2, 3, 4, 8, 10, 11 and part of Block 7 ("subject lands") were before the Board for approval in these proceedings. The subject lands, comprising approximately 5.6 ha, are shown in the Block Plan, which was exhibited to the evidence as Exhibit 24.

[2] In order to develop the subject lands as proposed, Parkside was required to apply for amendments to the City of Hamilton (Flamborough) Zoning By-law No. 90-145-Z of the City of Hamilton, as amended ("By-law"), and the Waterdown North Secondary Plan, which amended the City of Hamilton Official Plan. As well, the Parkside applied for approval of its current draft Plan of Subdivision, which was entered to the evidence as Exhibit 24.

[3] The subject proceedings, which were conducted on December 11, 2012, constituted the second hearing event of the Ontario Municipal Board ("Board") into this matter.

MATTER BEFORE THE BOARD

[4] Two matters were before the Board in the subject proceedings:

1. At the commencement of the subject hearing, the Board was informed that, with the exception of one item of contention involving certain parts of the subject lands, a settlement between the Parties had been reached. That settlement has been endorsed by City Council.

The disputed lands are in Blocks 1 and 8. The Board was asked to determine the minimum required rear yard setback on certain lots within those Blocks.

With the exception of the minimum rear yard setback, none of the other dimensions of the lots in question was disputed. Parkside proposed that the lots with a reduced rear setback will be developed with townhouse units with a gross floor area of approximately 138 sq m. These units are similar in gross floor area to the units proposed for the lots with the standard 7 m rear yard setback.

2. The second matter before the Board was the draft Plan of Subdivision and the required amendment to the Waterdown North Secondary Plan.

EVIDENCE AND FINDINGS

[5] The Board first turned its attention to the requested amendment to s. 11.3 of the By-law, which provides for minimum rear yard setback requirements.

[6] Mr. Ted Cymbaly, who was retained by Parkside, was qualified by the Board to give opinion evidence on land use planning.

[7] Testifying on behalf of Parkside, Mr. Cymbaly contended that even with a 5.05 m rear yard setback, Parkside will have sufficient flexibility to build a large enough home on these compact lots that will better satisfy the needs and wants of the target market for these homes. Mr. Cymbaly advised the Board that a typical new home proposed here would have a gross floor area of about 138 sq m. The 7 m rear yard setback would require a reduction in floor area of approximately 10 sq m in each of the three floors in the typical home, which will result in more crowding for a family with children. He also contended that the smaller rear yard will allow more of these relatively modest-sized homes to be built on less land which is both a goal of the City of Hamilton Official Plan and a requirement of the 2005 Provincial Planning Statement ("PPS").

[8] Mr. Edward John, who is employed as an urban planner by the City, was qualified to give opinion evidence on land use planning.

[9] Testifying on behalf of the City, Mr. John contended that with the current design of the townhouse units proposed for these lots, a 7 m rear yard setback will result in a more functional rear outdoor amenity space. He maintained that a home can be designed for these lots that will satisfy the needs and wants of the contemporary homebuyer and yet still fit within the general minimum rear yard setback requirements of s. 11.3 of the By-law. He testified that the target homebuyer is better served by having a larger rear yard. Mr. Cymbaly, on the other hand, contended that a greater public good would be realized with the smaller dimensioned rear yard.

[10] On the evidence, the Board finds that the greater public good will be achieved by the slightly smaller rear yard. In this Panel's view, the public interest is better served in the instance having more affordable homes on less land. While a few metres of extra space for outdoor storage may be welcomed by some families, the cost of this space in terms of reduced numbers of units in the same area is, in this Panel's view, too high.

The Board was told that there is ample green space in the immediate area. There will be, for example, a neighbourhood park within a few minutes' walk of any lot in this phase of the development. The park is coloured dark green in Exhibit 3. On a question from the Board, Mr. Cymbaly confirmed that even with the 5.05 m setback, there will still be ample space for a backyard deck as well as sufficient grass-covered outdoor amenity space for small children and dogs to play. This opinion was not contradicted by Mr. Hall.

[11] With respect to the disputed lands, Mr. Cymbaly took the Board to Exhibit 21(d), which shows the dimensions of one of the proposed townhouse lots with a reduced rear yard setback to be 5.5 m frontage and 20.37 m depth, with an area of 112 sq m. He pointed out that with the additional 1.95 m depth of the two upper levels of the home as well as on the basement level (as shown in Exhibit 21(c)), many of the features demanded by today's first time or downsizing homebuyer can be accommodated. It was his professional opinion that with the space required for the integral garage and the utilities room, a home built on such a lot would have little if any useable living space left on the basement level. He contended that the second and third levels of the home would also be very cramped without the extra 1.95 m of depth.

[12] He maintained that the proposed reduced rear yard setback allows development that is more compact and more efficient. This is consistent, he testified, with the PPS, particularly with policies 1.4.1 and 1.4.2, which encourage intensification.

[13] He testified that the proposed reduced rear yard conforms to City policy as expressed in the Waterdown North Secondary Plan policies A.8.1(i), A.8.1(ii) and A.8.2.1(i)(ii) and (iii).

[14] In his evidence, Mr. John spoke mainly to the need today for a functional rear yard – one that can accommodate not only the ubiquitous rear deck, al fresco eating area and gas barbeque – but which can also provide green space for children and pets to play as well as sufficient space for a storage shed for garden tools. He did not address the policies of the PPS or the policies of the Official Plan in his evidence.

[15] The Board accepts Mr. Cymbaly's undisputed evidence that in order to restrain urban sprawl with its attendant waste of natural and human resources both provincial and local policy encourage more compact communities with higher densities. The Board

finds that the requested rear yard setback of 5.05 m is consistent with provincial policy and with local policy as expressed in the Waterdown North Secondary Plan.

[16] Mr. Cymbaly advised that the developer has clearly determined that there is a market demand for larger homes on smaller lots. This Panel is of the opinion that the developer should, where it has been demonstrated to be both practical and advisable, be allowed some flexibility in the way it addresses both the Provincial requirement to provide a range and mix of housing as well as changing market needs.

[17] The Board accepts Mr. Cymbaly's evidence and finds that the requested amendments to the Waterdown North Secondary Plan and Zoning By-law are consistent with provincial policy and represent good planning.

CONCLUSION

[18] On the evidence, the Board finds that the requested 5.05 m rear yard setback for certain of the proposed townhouse lots is consistent with Provincial policy and represents good planning.

PLANNING ACT SECTION 2(1)

[19] Section 2(1) of the *Planning Act* requires the Board to have regard to the decision of City Council where Council has made its decision based on similar evidence that was before the Board. Nevertheless, the Board retains discretion to come to its own conclusion regardless of the conclusion arrived at by Council. In this case, the Board considered the same evidence as had been before Council and has come to a different conclusion respecting the requested 5.05 m rear yard setback on certain of the townhouse lots.

DRAFT PLAN OF SUBDIVISION AND OFFICIAL PLAN AMENDMENT

[20] The Board then turned its attention to the second matter, which was the requested approval of the draft Plan of Subdivision and the requested amendment to the Waterdown North Official Plan.

[21] Mr. Cymbaly presented unopposed testimony that the requested amendment to the Waterdown North Official Plan is consistent with the PPS and represents good

planning. He also testified that the requested amendment to the Waterdown North Official Plan had been endorsed by City Council. This evidence was adopted and relied on by Mr. John.

[22] The Board accepts the evidence of these two professional planners and finds that the requested amendment to the Waterdown North Official Plan is consistent with the PPS and represents good planning.

[23] Mr. Cymbaly then testified that the draft Plan of Subdivision has regard to the criteria in s. 51(24) of the *Planning Act* and represents good planning. He also testified that the draft Plan of Subdivision had been endorsed by City Council. This evidence was adopted and relied on by Mr. John.

[24] The Board accepts the evidence of these two professional planners and finds that the draft Plan of Subdivision has adequate regard to the criteria listed in s. 51(24) of the *Planning Act* and represents good planning.

ORDER

[25] With respect to the requested amendment to the s. 11.3.27 (e) of the By-law, the Board orders the appeal respecting the request for reduced minimum rear yard setback is allowed and orders that s. 11.2.27 of Zoning By-law No. 90-145-Z, as amended (Flamborough) is further amended to reflect this change.

[26] The Board orders that the appeal by Parkside against Zoning By-law No. 90-145-Z (Flamborough) of the City of Hamilton, as amended, is allowed in part, and this By-law is amended as set out in Attachment "1" to this Order, save and except the approval of the zoning for the area on Schedule "A" to Attachment "1" identified as "Area Subject to Deferral" is hereby deferred (the "Deferred Lands"). In all other respects, the Board orders that Parkside's appeal is dismissed.

[27] The Board further orders that the appeal by Parkside with respect to draft Plan of Subdivision (25T-201003) is allowed, and the revised draft Plan prepared by Metropolitan Consulting and certified by Metropolitan Consulting OLS dated October 22, 2012 composed of Lot 8, Concession 4 (Geographic Township of Flamborough), City of Hamilton, as set out in Attachment "2" to this order, is approved save and except the

approval related to Blocks 6 and 7 (the "Deferred Lands"), which is hereby deferred, subject to the fulfillment of the conditions as set out in Attachment "3" to this order. In all other respects, the Board orders the appeal is dismissed.

[28] And the Board further orders that the appeal by Parkside, with respect to its request to City Council to amend the City of Hamilton Official Plan is allowed in part and the City of Hamilton Official Plan is amended as set out in Attachment "4" to this order, save and except the approval of the land use for an area on Schedule A-3 to the said Attachment "4" (being the Waterdown North Secondary Plan Area – Land Use Plan) is hereby deferred (the "Deferred Lands") to await the adjustment of the Urban Area boundary by the Panel of the Board dealing with OMB Case No. PL110331 (being the City of Hamilton Urban Official Plan appeals). In all other respects the Board orders that the appeal is dismissed.

[29] And the Board further orders that upon the adjustment of the Urban Area boundary, this Panel may be spoken to for final approval related to the Deferred Lands.

[30] And the Board further orders that pursuant to s. 51(56.1) of the *Planning Act*, R.S.O. 1990, c. P.13, as amended, the City shall have the authority to clear the conditions of draft approval and to administer the final approval of the draft Plan of Subdivision for the purposes of s. 51(58) of the *Planning Act*. In the event there are any difficulties in implementing any of the conditions of draft approval, or if any changes are required to be made to the draft Plan, the Board may be spoken to.

[31] And the Board further orders that in the event there are any issues arising in the implementation of its Decision and Order, this Board may be spoken to.

"C. Hefferon"

C. HEFFERON
MEMBER

EXHIBIT 25 - ATTACHMENT #4

Amendment No. 127

to the

Official Plan of the Former Town of Flamborough

The following text, together with Schedules "A", "B" and "C", attached hereto, constitutes Official Plan Amendment No. 127 to the Official Plan of the former Town of Flamborough.

Purpose:

The purpose of this Amendment is to realign the future East-West Corridor to change several land use designations to coincide with the realignment, reduce the size of the urban commercial designation, and increase the size of the Live/Work designation.

Location:

The lands affected by this Amendment are known as 619 Centre Road,

Basis:

The basis for permitting the proposal is as follows:

- The Amendment is consistent with the Provincial Policy Statement, and conforms with the Places to Grow Growth Plan and the Hamilton-Wentworth Official Plan.
- Re-designation allows for a range of commercial and residential uses that are consistent and complementary to the existing planned neighbourhood.
- The Amendment will permit the development of uses that will provide for a range of commercial and residential opportunities consistent with the goal of achieving 'complete communities'.
- The boundary of the Neighbourhood Park will be realigned for a more appropriate configuration.

Actual Changes:

1.0 Text Changes

- 1.1 Delete Objective A.8.2.3(i), and replace it with a modified objective as follows:

A.8.2.3 Urban Commercial

- (i) to provide for the development of a commercial centre of approximately 1.5 to 2.0 ha in size that serves the local and community needs;

- 1.2 Delete Policy A.8.4.7.5, and replace it with a new policy as follows:

A.8.4.7.5 Within the Live/Work Housing designation, the residential uses permitted in Policy A.8.4.7.1 may have grade-related commercial uses, as specified, provided that it can be suitably demonstrated, through the submission of an urban design brief, that in appropriate locations, the availability of on-street parking and individual design of units would support the proper functioning of these commercial uses.

For all units located on the north side of Nisbet Boulevard, the urban design brief noted above shall be required, in conjunction with a Site Plan application.

For all residential uses, except for those units adjacent to the north side of the collector road, the addition of commercial uses at grade shall require an Amendment to the Zoning By-law.

- 1.3 Add a new Policy A.8.6.8, as follows:

A.8.6.8 In addition to Policy A.8.6.4, residential uses in the form of stand-alone apartment buildings and other forms of multiple dwellings (including Stacked Townhouses), shall be permitted within the Urban Commercial designation; provided a minimum of 1,858m² of Commercial uses are developed, in accordance with Policy A.8.6.2.

2.0 Schedule Changes:

2.1 Schedule A-3, Waterdown North Secondary Plan-Land Use Plan, be amended by:

- a. Realigning the future East-West Corridor to the north;
- b. Designating lands "Medium Density Residential 1" and "Urban Commercial" to coincide with the new future East-West Corridor alignment;
- c. Re-designating the southern portion of the Urban Commercial designation to Live/Work Housing;
- d. Re-designating "Natural Open Space" to "Urban Commercial";
- e. Deleting the reference to the stormwater management (SWM) in the "Natural Open Space" designation;
- f. Re-designating lands north of the proposed Neighbourhood Park from "Neighbourhood Park" to "Medium Density Residential 1"; and,
- g. Re-designating lands north of the proposed Neighbourhood Park from "Medium Density Residential 1" to "Neighbourhood Park",

as shown on Schedule "A" to this Amendment.

2.2 Schedule A-4, Waterdown North Secondary Plan Transportation Plan, be amended by:

- a. realigning the future east west corridor to the north; and,
- b. extending the major collector road to the north;

as shown on Schedule "B" to this amendment.

2.3 Appendix "F" Community Structure Plan Waterdown North Secondary Plan, be amended by:

- a. Realigning the future East-West Corridor to the north;
- b. Designating lands "Medium Density 1" and "Urban Commercial" to coincide with the new future East-West Corridor alignment;
- c. Re-designating the southern portion of the Urban Commercial designation to Live/Work Housing;

- d. Re-designating "Natural Open Space" to "Urban Commercial";
 - e. Re-designating lands north of the proposed Neighbourhood Park from "Neighbourhood Park" to "Residential"; and,
 - f. Re-designating lands north of the proposed Neighbourhood Park from "Residential" to "Neighbourhood Park",
- as shown on Schedule "C" to this Amendment.

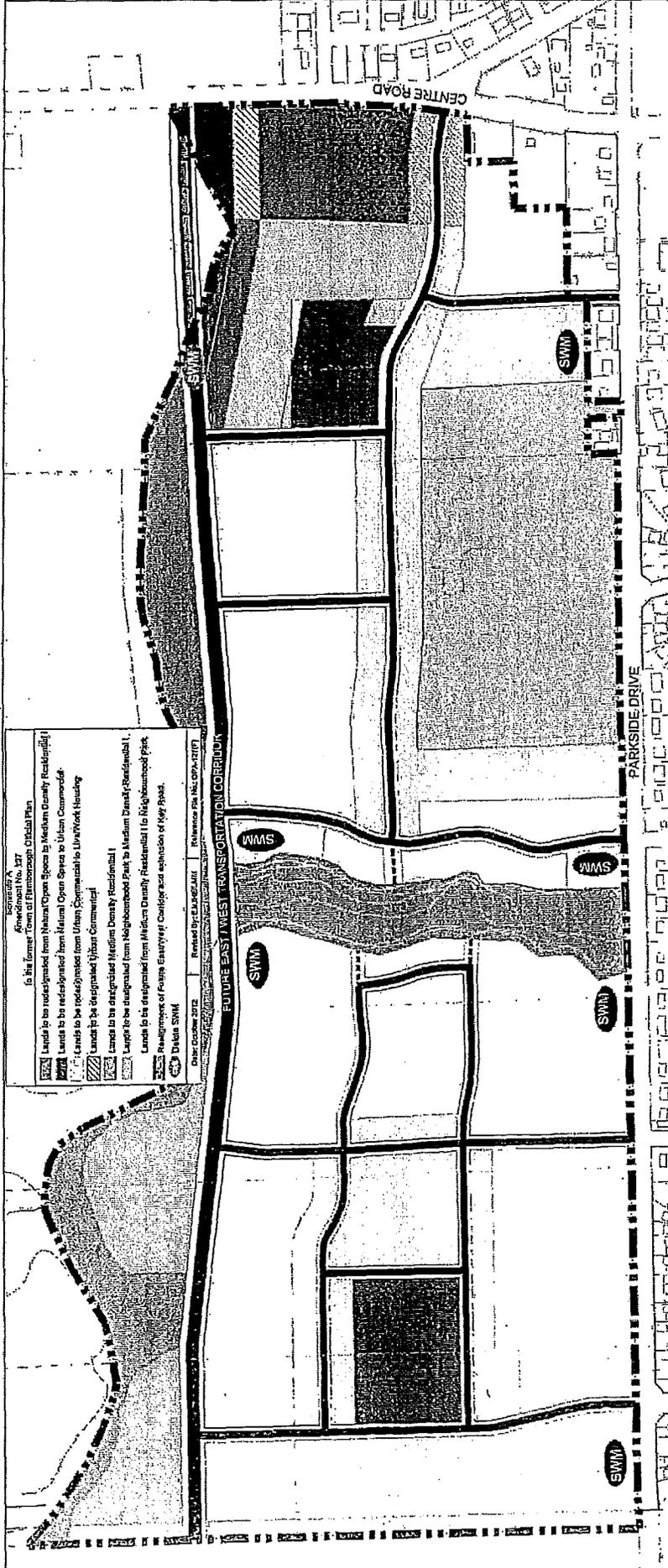
Implementation:

A Zoning By-law Amendment and a Plan of Subdivision will give effect to this Amendment.

The City of Hamilton

R. Bratina
Mayor

Rose Caterini
Clerk



Section A
 Amendment No. 127
 to the former Town of Falmouth Official Plan

Lands to be redesignated from Natural Open Space to Medium Density Residential I

Lands to be redesignated from Natural Open Space to Urban Commercial

Lands to be redesignated from Urban Commercial to Live/Work Housing

Lands to be designated Urban Commercial

Lands to be designated Medium Density Residential I

Lands to be designated from Neighbourhood Park to Medium Density Residential I

Lands to be designated from Medium Density Residential I to Neighbourhood Park

Reassignment of Future Elementary College and addition of High Road

DATE: October 2012
 DRAWN BY: CLARKE/CLARK
 REVISIONS: PW, NS, DP, A, J, CT

Schedule 'A-3'

LAND USE PLAN

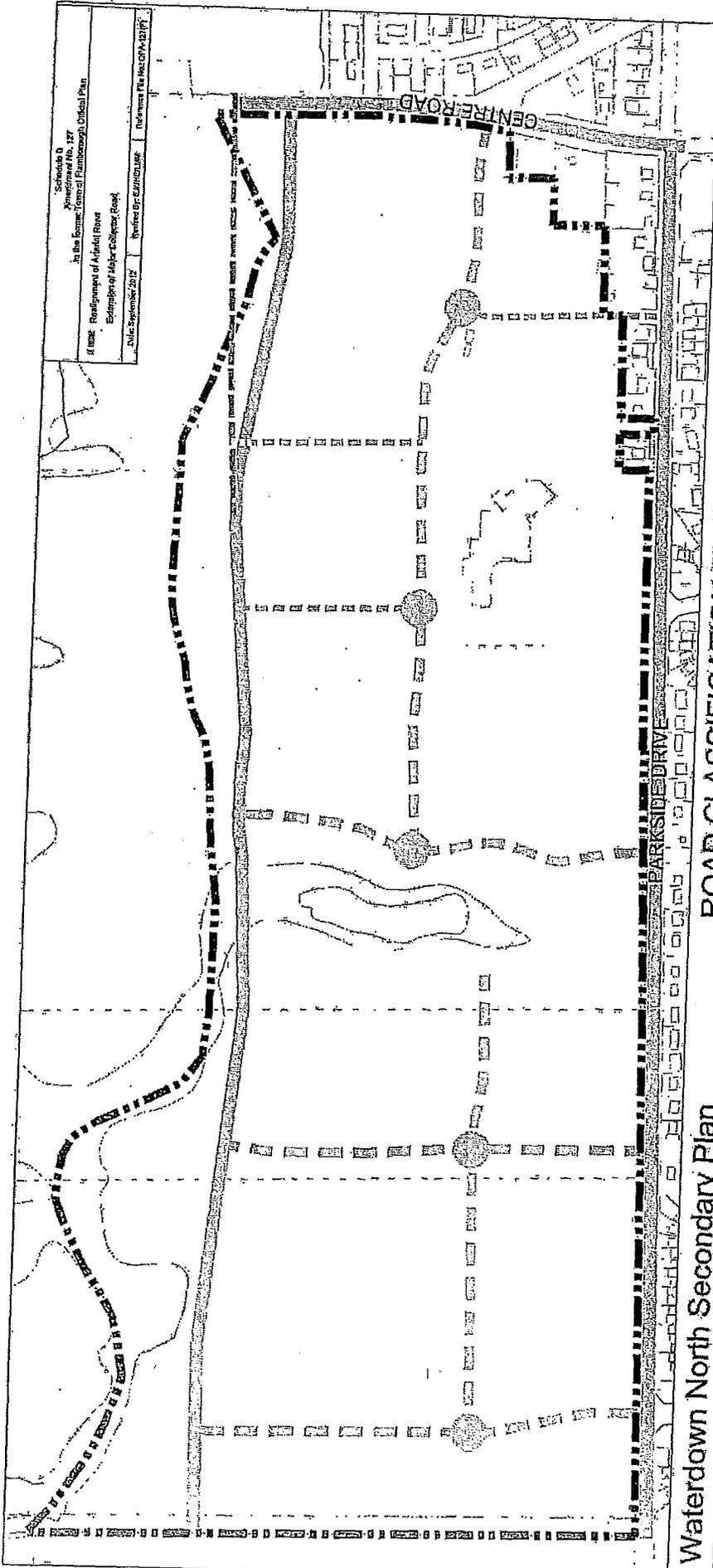
Waterdown North Secondary Plan

LEGEND

	LOW DENSITY RESIDENTIAL I		SPECIAL POLICY AREA II		STORMWATER MANAGEMENT FACILITIES
	SPECIAL POLICY AREA I		URBAN COMMERCIAL		KEY ROADS
	LOW DENSITY RESIDENTIAL II		LIVE/WORK HOUSING		WALKWAY
	MEDIUM DENSITY RESIDENTIAL I		NATURAL OPEN SPACE		SECONDARY PLAN BOUNDARY
	HIGH DENSITY RESIDENTIAL		NEIGHBOURHOOD PARK		
			MAJOR INSTITUTIONAL		
			UTILITIES		

DATE: December 2009
 SCALE: N.T.S.

Schedule D
 Amendment No. 127
 In the Town of Hamilton, Ontario
 Official Plan
 of the Roadway of a Major Collector Road
 Adopted September 2012
 Verified by: E.M.H./D.L.M.
 Reference File No. CP-4331/P



Waterdown North Secondary Plan

ROAD CLASSIFICATION PLAN

Schedule 'A-4'

DATE
September 2012

SCALE
1:12,500



LEGEND

- ARTERIAL ROADS
- MAJOR COLLECTOR ROADS
- MINOR COLLECTOR ROADS
- SECONDARY PLAN BOUNDARY
- ROUNDABOUT
- ROUNDABOUT

