

RECEIVED

AUG 21 2014

LEGAL

Ontario Municipal Board
Commission des affaires municipales
de l'Ontario



14-308

ISSUE DATE: August 19, 2014

CASE NO(S): PL131391

PROCEEDING COMMENCED UNDER subsection 17(24) of the *Planning Act*, R.S.O. 1990, c. P.13, as amended

Appellant:	Parkside Hills Inc. & Silverwood Homes Inc.
Subject:	Proposed Official Plan Amendment RHOP No.5
Municipality:	City of Hamilton
OMB Case No.:	PL131391
OMB File No.:	PL131391

Heard: August 7, 2014 in Toronto, Ontario

APPEARANCES:

Parties

Counsel

City of Hamilton

Lia Magi

Parkside Hills Inc. and Silverwood
Homes Inc.

Michael McQuaid

**MEMORANDUM OF ORAL DECISION DELIVERED BY C. HEFFERON AND
ORDER OF THE BOARD**

INTRODUCTION

[1] Parkside Hills Inc. and Silverwood Homes Inc. (together, "Parkside") own lands in the North Waterdown Secondary Plan Area in Hamilton for which site specific approval has been granted to develop these lands for urban residential purposes all within the identified Urban Area. As part of the approval, certain facilities and services have been located, designed and approved to be implemented on those lands owned by Parkside that lie abutting lands within the Rural Hamilton Official Plan area ("Rural Area"). In the

case of Silverwood Subdivision No. 25T-201306, the final location of storm water management ("SWM") facilities has not been approved by the City of Hamilton ("City") and the policy should consider the possibility that the optimum location is in the Rural Area adjacent to the Urban Area.

[2] Section 5.4.1 of Amendment No. 5 of the City of Hamilton Rural Official Plan ("RHOPA No. 5") which was adopted by the City on November 13, 2013, proposes to prohibit SWM facilities that are intended to service Urban Area lands being located in Rural Areas.

MATTER BEFORE THE BOARD

[3] Parkside has appealed RHOPA No. 5. In particular, the appeal concerns s. 5.4.1(c) of RHOPA No. 5.

SETTLEMENT PROPOSED

[4] Prior to the hearing event, the Board was informed that a settlement had been reached between the parties. The settlement involves a revision to s. 5.4.1 (c) of RHOPA NO. 5. in which s. 5.4.1 (c) the "notwithstanding" provision correctly references s. 5.4.1 (a) of RHOPA No. 5.

PARKSIDE'S POSITION

[5] Parkside advanced the following grounds for its appeal to the Board:

1. The location of services and facilities to serve the urban lands located within the Rural Area of the City has been determined through previous Board proceedings. RHOPA No. 5 should recognize and maintain those prior

- commitments;
2. As it relates to the Parkside lands, policy 5.4.1 (a) of RHOPA No. 5 is not necessary and is not in the public interest as it provides an impediment to the proper evaluation and analysis of the appropriate best location for such facilities to maximize ultimate land use resources and ensure prudent and financially responsible service implementation that best serve the municipality;
 3. Policy 5.4.1 (a) has created an inadvertent planning outcome, especially when viewed against the committed land uses on the Parkside lands, which include the ability to implement the required service facilities on abutting rural Lands;
 4. Policy 5.4.1 (c) was intended to represent a "notwithstanding" clause, which would have the effect of allowing the SWM facilities intended to service Silverwood Subdivision No. 25T-201306 to be located on lands located in the Rural Area.

EVIDENCE AND FINDINGS

[6] The Board qualified Ted Cymbaly, a registered professional planner retained by Parkside, to provide opinion evidence on land use planning.

[7] Mr. Cymbaly testified that the requested revision to s. 5.4.1 (c) of RHOPA No. 5 is, in fact, minor and just corrects a typographic error. His testimony was unopposed.

[8] Further, the Board accepts the uncontested evidence of Mr. Cymbaly and finds that the requested minor revision is consistent with Provincial policy and represents good planning.

CONCLUSION

[9] After consideration of the evidence of Mr. Cymbaly, the Board accepts the settlement proposed.

ORDER

[10] The Board orders that the appeal is allowed and s. 5.4.1 (c) of RHOPA No. 5 is amended to read:

“Notwithstanding s. 5.4.1 (a), a storm water management pond for the development of Parkside Hills subdivisions – Phase 2 (25T-201003) shall be permitted on lands located north of the future east west corridor, west of Centre Road, Waterdown North.”

“C. Hefferon”

C. HEFFERON
MEMBER