

Ontario Municipal Board
Commission des affaires municipales
de l'Ontario



ISSUE DATE: May 25, 2015

CASE NO(S): PL110331
PL090779
PL101381
PL120574
PL131287

PROCEEDING COMMENCED UNDER subsection 17(36) of the *Planning Act*, R.S.O. 1990, C. P. 13, as amended

Appellants: See Schedule "1"
Subject: Official Plan Amendment No. 35 to the Region of Hamilton-Wentworth Official Plan
Municipality: City of Hamilton
OMB Case No.: PL090779
OMB File No.: PL090779 (See Schedule "1")

PROCEEDING COMMENCED UNDER subsection 17(36) of the *Planning Act*, R.S.O. 1990, C. P. 13, as amended

Appellants: See Schedule "1"
Subject: Official Plan Amendment No. 128 to the Town of Ancaster Official Plan (PL090780);
Official Plan Amendment No. 18 to the Town of Dundas Official Plan (PL090781);
Official Plan Amendment No. 118 to the Town of Flamborough Official Plan (PL090782);
Official Plan Amendment No. 75 to the Township of Glanbrook Official Plan (PL090783);
Official Plan Amendment No. 220 to the City of Hamilton Official Plan (PL090784);
Official Plan Amendment No. 149 to the City of Stoney Creek Official Plan (PL090785)
Municipality: City of Hamilton

OMB Case No.: PL090779
 OMB File Nos.: PL090780-PL090785 (See Schedule "1")

PROCEEDING COMMENCED UNDER subsection 17(40) of the *Planning Act*, R.S.O. 1990, C. P. 13, as amended

Appellant: See Schedule "2"
 Subject: Failure of the Minister of Municipal Affairs and Housing to announce a decision respecting the City of Hamilton Urban Official Plan
 Municipality: City of Hamilton
 OMB Case No.: PL101381
 OMB File No.: PL101381 (See Schedule "2")

PROCEEDING COMMENCED UNDER subsection 17(36) of the *Planning Act*, R.S.O. 1990, C. P. 13, as amended

Appellants: See Schedule "3"
 Subject: The new City of Hamilton Urban Official Plan
 Municipality: City of Hamilton
 OMB Case No.: PL110331
 OMB File No.: PL110331 (See Schedule "3")

PROCEEDING COMMENCED UNDER subsection 34(11) of the *Planning Act*, R.S.O. 1990, c. P. 13, as amended

Applicant and Appellant: Auburn Developments Inc.
 Subject: Application to amend Zoning By-law 6593 – Refusal of application by the City of Hamilton
 Existing Zoning: "J" (Light and Limited Heavy Industrial, etc.) District
 Proposed Zoning: "E-3" (High Density Multiple Dwellings) District
 Purpose: To permit a 10 storey student residential building
 Property Address/Description: 17 Ewen Road
 Municipality: City of Hamilton
 Municipal File No.: ZAC-07-062
 OMB Case No.: PL120574
 OMB File No.: PL120574

PROCEEDING COMMENCED UNDER subsection 22(7) of the *Planning Act*, R.S.O. 1990, c. P. 13, as amended

Applicant and Appellant:	Auburn Developments Inc.
Subject:	Request to amend the Official Plan – Refusal of request by the City of Hamilton
Existing Designation:	“Industrial”
Proposed Designation:	“High Density Residential”
Purpose:	To permit a 10 storey student residential building
Property Address/Description:	17 Ewen Road
Municipality:	City of Hamilton
Approval Authority File No.:	OPA-07-016
OMB Case No.:	PL120574
OMB File No.:	PL120575

Schedule “1”

Appellants to the amendments to the in-force Official Plans of the former Region of Hamilton-Wentworth, Towns of Ancaster, Dundas and Flamborough, Township of Glanbrook and Cities of Hamilton and Stoney Creek (OMB Case No. PL090779)

OMB FILE NO.	APPELLANT NAME
PL090784	Shawcor Ltd.

Schedule “2”

Appellants to the failure of the Minister of Municipal Affairs and Housing to announce a decision respecting the City of Hamilton Urban Official Plan (OMB Case No. PL101381)

OMB FILE NO.	APPELLANT NAME
PL101381	A. DeSantis Developments Ltd. LIUNA Group Corp. St. Joseph’s Villa

Schedule “3”

Appellants to the new City of Hamilton Urban Official Plan (OMB Case No. PL110331)

OMB FILE NO.	APPELLANT NAME
PL110331	2000963 Ontario Inc. 2051206 Ontario Inc.

2084696 Ontario Inc.
 2188410 Ontario Inc.
 456941 Ontario Ltd., 1263339 Ontario Ltd., and Lea
 Silvestri
 909940 Ontario Inc.
 Artstone Holdings Limited
 Carmen Chiaravelle, 1694408 Ontario Ltd., John
 Edward Demik, Peter Demik, Demik Brothers
 Hamilton Ltd., and Elaine Vyn
 City of Hamilton
 Corpveil Holdings Limited
 Flamborough Power Centre Inc., Flamborough South
 Centre Inc., Clappison Five Six Properties Inc.
 Freeland Developments Limited
 Gino and Olindo DalBello
 Lynmount Developments Limited
 Mondelēz Canada Inc. (formerly Kraft Canada Inc.)
 Mud and First Inc.
 Multi-Area Developments Inc.
 Norman Vartanian
 Paletta International Corporation
 Paletta International Corporation (re: Elfrida)
 Spallacci & Sons Limited
 Sullstar Twenty Limited
 Twenty Road Developments Inc.
 Upper Centennial Developments Ltd.
 Waterdown Bay Ltd.

PROCEEDING COMMENCED UNDER subsection 17(40) of the *Planning Act*, R.S.O. 1990, c. P.13, as amended

Appellant:	City of Hamilton
Subject:	Failure of Ministry of Municipal Affairs and Housing to announce a decision respecting Proposed Official Plan Amendment No. 25-OP-2009
Municipality:	City of Hamilton
OMB Case No.:	PL131287
OMB File No.:	PL131287
Heard:	Written Hearing

APPEARANCES:**Parties**

City of Hamilton

Flamborough Power Centre Inc.
Flamborough South Centre Inc.
Clappison Five and Six Properties Inc.**Counsel**

M. Minkowski

S. Mahadevan

DECISION DELIVERED BY SUSAN de AVELLAR SCHILLER AND ORDER OF THE BOARD

[1] The matters before the Board are appeals related to the new City of Hamilton (“City”) Urban Hamilton Official Plan (“UHOP”) adopted by the City on July 9, 2009, and approved by the Minister of Municipal Affairs and Housing (“MMAH”) with modifications on March 16, 2011, appeals of the failure of the MMAH to make a decision regarding the UHOP, prior to March 16, 2011, and appeals related to amendments to the in-force official plans of the former Region of Hamilton-Wentworth, Towns of Ancaster, Dundas and Flamborough, Township of Glanbrook and Cities of Hamilton and Stoney Creek.

[2] Also before the Board are appeals by Auburn Developments Inc. (“Auburn”) regarding a proposed official plan amendment and associated zoning by-law amendment to permit a 10-storey student residence on lands zoned and designated for industrial use.

[3] Several of these matters have already been disposed of by the Board and the reader is referred to earlier decisions in this case that deal with those matters already decided.

[4] This decision arises from a written hearing to deal with a settlement between the City and Flamborough Power Centre Inc., Flamborough South Centre Inc. and

Clappison Five and Six Properties Inc. (together known as “Flamborough Power Centre”).

[5] The settlement with the proposed modifications was circulated to parties in accordance with the Board’s directions. No other party indicated an interest in this matter. The Board proceeded by way of written submissions.

[6] The Board had affidavit evidence from Edward Fothergill. Mr. Fothergill is a full Member of the Canadian Institute of Planners and a Registered Professional Planner in Ontario. Mr. Fothergill executed the Acknowledgement of Expert’s Duty form pursuant to Board Rule 21.01. The Board finds that Mr. Fothergill is qualified to provide the Board with independent expert opinion evidence in land use planning.

[7] The settlement involves three proposed modifications to the site-specific provisions of the UHOP which affect the Flamborough Power Centre. The modifications add business, professional and administrative offices to stand alone buildings, require a market study and an official plan amendment (UHOPA) to increase the gross floor area cap above 71,000 square metres (“sq. m”) and increase the development cap for certain lands to 71,000 sq. m.

[8] The details of the proposed modifications are set out in Attachment 1 to this decision.

Modification to Policy 1.1(a)

[9] The modification to Policy 1.1(a) is to permit business, professional and administrative offices in stand-alone buildings. These uses were permitted previously under the Town of Flamborough Official Plan (“Flamborough OP”). They were included in the decision of MMAH for parts of the Flamborough Power Centre that had these

uses under the Flamborough OP but did not include all such parts. This proposed modification brings appropriate consistency to the uses permitted across the identified portions of the site.

Modification to Policy 1.3(b)

[10] The proposed modifications to this section that deal with the 71,000 sq. m cap arise from market studies done over time. The studies concluded that the increase in the cap would provide greater flexibility for the Flamborough Power Centre to respond to changing market needs that would improve the level of service and range of choices available both to existing and future residents of the area.

[11] In addition, studies confirmed the adequacy of municipal services to accommodate the increase.

[12] To ensure that any future increase beyond the cap of 71,000 sq. m continues to be both warranted and appropriate, any such increase requires a market study and a UHOPA.

[13] The proposed modifications result in the efficient use of land and infrastructure, promote economic activities, provide for an appropriate mix of land use within an urban setting and contribute to the further development of a complete community.

[14] As such, the Board finds that the proposed modifications have had appropriate regard for the matters of provincial interest as set out in s. 2 of the Act, are consistent with the Provincial Policy Statement, 2014 conform to the Growth Plan for the Greater Golden Horseshoe and conform to the policy regime of the UHOP.

[15] With regard to the requirements of s. 2.1 of the Act, the Board notes that these proposed modifications were reviewed by City planning staff and supported by City Council in its support of the settlement.

ORDER

[16] The Board Orders that the appeals by Flamborough Power Centre Inc., Flamborough South Centre Inc. and Clappison Five and Six Properties Inc. are allowed in part and the Urban Hamilton Official Plan is modified in accordance with Attachment 1 to this decision.

“Susan de Avellar Schiller”

SUSAN de AVELLAR SCHILLER
VICE-CHAIR

If there is an attachment referred to in this document,
please visit www.elto.gov.on.ca to view the attachment in PDF format.

Ontario Municipal Board

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Group 18 – Flamborough Power Centre, Flamborough South Centre and
Clappison Five six Properties Inc.

Volume 3, UF-1

Policy 1.1

- a) iv) Wholesale and/or retail warehouses;
- v) Home improvement, household furniture and/or appliance outlet and/or lawn and garden centre; and,
- vi) Business, professional and administrative offices in stand-alone buildings.

Policy 1.3

In addition to Policy E.4.7.2 but notwithstanding Policies E.4.7.3 and 4.7.7 - District Commercial of Volume 1, the land south of Borer's Creek, east of Highway 6, north of Highway 5 and west of the pipeline easement shown as Area C in Area Specific UF-1 on Map F-1, shall be subject to the following policies:

- b) i) Retail uses exceeding a combined gross floor area of 71,000 square metres shall require a market impact study, to the satisfaction of the City, to ensure that there are no significant detrimental impacts on other planned commercial functions within the City. An Official Plan Amendment shall be required to increase the gross floor area cap above 71,000 square metres;
- ii) The maximum gross floor area for all uses combined, excluding a hotel, motel, community centre and public uses, shall be 71,000 square metres;