



**CITY OF HAMILTON**  
**PLANNING AND ECONOMIC DEVELOPMENT DEPARTMENT**  
**Planning Division**

<b>TO:</b>	Chair and Members Planning Committee
<b>COMMITTEE DATE:</b>	September 20, 2016
<b>SUBJECT/REPORT NO:</b>	Appeal for Non-decision Regarding Application for an Urban Hamilton Official Plan Amendment and Zoning By-law Amendment for Lands Located at 66 Innovation Drive, Flamborough (PED16182) (Ward 15)
<b>WARD(S) AFFECTED:</b>	Ward 15
<b>PREPARED BY:</b>	Madeleine Giroux Planner II (905) 546-2424 Ext. 2664  Steve Robichaud Director of Planning and Chief Planner
<b>SUBMITTED BY:</b>	Jason Thorne General Manager Planning and Economic Development Department
<b>SIGNATURE:</b>	

**RECOMMENDATION**

- (a) That the appeal of **Urban Hamilton Official Plan Amendment Application UHOPA-16-004 by Ramsay Planning Associates Inc.** to permit a dance / gymnastics / martial arts studio on a local road within the “Employment Area – Business Park” Designation for the lands located at 66 Innovation Drive, Flamborough, as shown on Appendix “A” to Report PED16182, **be OPPOSED** on the following basis:
- (i) That the proposed dance / gymnastics / martial arts studio is not considered to be an ancillary use which primarily supports businesses and employees of the Business Park and therefore is contrary to the Provincial Policy Statement (PPS 2014) and the Growth Plan for the Greater Golden Horseshoe, and therefore should not be located within the Employment Area designation;
- (b) That the appeal of **Zoning By-law Amendment Application ZAR-16-014 by Ramsay Planning Associates Inc.** for a modification to the Prestige Business Park (M3) Zone to permit a dance / gymnastics / martial arts studio as a permitted use, to establish a site specific parking ratio for the proposed use, and to recognize

**SUBJECT: Appeal for Non-decision Regarding Application for an Urban Hamilton Official Plan Amendment and Zoning By-law Amendment for Lands Located at 66 Innovation Drive, Flamborough (PED16182) (Ward 15) - Page 2 of 21**

---

an existing undersized planting strip for the lands located at 66 Innovation Drive, Flamborough, as shown on Appendix “A” to Report PED16182, **be OPPOSED** on the following basis:

- (i) That the application does not comply with the Urban Hamilton Official Plan in that the proposed dance / gymnastics / martial arts studio is not an ancillary use which primarily supports the businesses and employees of the Business Park;
- (ii) That the application does not meet the intent of the Prestige Industrial Park (M3) Zone in the City of Hamilton Zoning By-law No. 05-200;
- (iii) That the proposed dance / gymnastics / martial arts studio is not considered to be an ancillary use which primarily supports businesses and employees of the Business Park and therefore is contrary to the PPS 2014 and the Growth Plan for the Greater Golden Horseshoe, and therefore should not be located within the Employment Area designation.

## **EXECUTIVE SUMMARY**

The purpose of the application is to permit a dance / gymnastics / martial arts studio (The Dream Centre) within the existing industrial building on lands located at 66 Innovation Drive, Flamborough, as shown on Appendix “A” to Report PED16182. The proposal further seeks to establish site specific parking requirements for a dance / gymnastics / martial arts studio and to recognize an existing undersized planting strip that was established prior to the implementation of the City of Hamilton Zoning By-law No. 05-200.

The proposed Urban Hamilton Official Plan (UHOP) and Zoning By-law Amendments cannot be supported as they do not comply with the general intent of the UHOP, they do not meet the general intent of the Prestige Business Park (M3) Zone in the City of Hamilton Zoning By-law No. 05-200, and approval of the application would encourage other similar applications, that, if approved, would undermine the intent of the City of Hamilton Zoning By-law No. 05-200. Accordingly, the proposal does not represent good planning.

On August 10, 2016, the Applicant filed appeals for the Ontario Municipal Board regarding their applications based on the lack of decision.

An appeal for non-decision transfers jurisdiction over an application to the Board with the result that a statutory public meeting ceases to be a requirement and the Board proceeds to conduct a hearing irrespective of whether such a meeting has been held. Since no decision was made within the statutory timeframe, the Board becomes the

**SUBJECT: Appeal for Non-decision Regarding Application for an Urban Hamilton Official Plan Amendment and Zoning By-law Amendment for Lands Located at 66 Innovation Drive, Flamborough (PED16182) (Ward 15) - Page 3 of 21**

---

decision maker for the applications. As a result, Council's role becomes that of providing instructions to the City Solicitor on the position the City is to advance at the hearing on the merits of the appeals. By adopting this report's recommendations, Planning Committee and Council will be providing those instructions.

At the Planning Committee meeting of September 6, 2016, staff were directed to bring a position report forward for consideration at the Planning Committee meeting of September 20, 2016.

If Planning Committee and Council adopt the staff recommendations, Legal Service will attend the hearing with necessary City staff to oppose the appeals.

***Alternatives for Consideration – See Page 20***

**FINANCIAL – STAFFING – LEGAL IMPLICATIONS**

Financial: N/A

Staffing: N/A

Legal: Approval of the recommendations will direct the City Solicitor to attend the Ontario Municipal Board hearing in opposition to the appeals.

**HISTORICAL BACKGROUND**

**Proposal**

The subject lands are located south and west of the Highway 5 and Highway 6 intersection, within the Flamborough Business Park in Ward 15. Specifically, the property is located on the north side of the southerly leg of Innovation Drive. The subject lands are generally rectangular in shape, comprising an area of approximately 4,046 sq m, and are municipally known as 66 Innovation Drive, Flamborough (see Appendix "A" to Report PED16182).

The requested applications consist of a UHOP Amendment and a Zoning By-law Amendment which were received on January 20, 2016. Staff note that the applications submitted refer to the proposed use as a recreation / fitness centre which is an ancillary use to the Business Park; however, it is the opinion of staff that the proposed use is a dance / gymnastics / martial arts studio.

Staff's opinion was formed through review of the submitted Planning Justification Report and additional research from the company's website whereby the property address and information about the extent of programming are provided. The application indicates

that programming would be offered throughout the day on weekdays and weekends, commencing at 6:30 AM and concluding at 10:00 PM, and would include such programs as Zumba, Pilates, cardio-Dance, ballet, barre fitness, acro fitness, yoga, stretch and strengthening, various dance, kickboxing, martial arts, and gymnastics, among other programs.

In review of the programming offered on the website, staff note that the majority of programming is directed at children and youth and is offered outside of regular business hours. Both competitive and recreational programming is offered for children and youth, in addition to summer camps and birthday parties. Staff note that some programming is offered for adults during daytime hours.

Staff note that the dance / gymnastics / martial arts studio subject to this application is already in existence, and Municipal Law Enforcement (MLE) Officers have initiated an investigation with respect to the applicable land use permissions.

#### **Formal Consultation (FC-15-050)**

Formal Consultation FC-15-050 was submitted on May 7, 2015. The Development Review Team considered the proposal at a meeting held on July 8, 2015 and, through the Formal Consultation Document, Planning staff provided the requisite material to be submitted with a future Urban Hamilton Official Plan Amendment and Zoning By-law Amendment application. Staff also noted to the applicant the policies of Section E.5.4 of the UHOP as they relate to land use permissions within the “Employment Area – Business Park” designation on Schedule E-1 – Urban Land Use Designations of the UHOP.

#### **Urban Hamilton Official Plan Amendment (UHOPA-16-004)**

The applicants have requested an amendment to Policy E.5.4.4 to permit a recreation / fitness centre as an ancillary use on a local road, whereas Policy E.5.4.4 requires ancillary uses to be located fronting arterial roads or collector roads into Business Parks. As discussed above, staff are of the opinion that the proposal is for a dance / gymnastics / martial arts studio, and the UHOP Amendment will be reviewed on that basis.

#### **Zoning By-law Amendment Application (ZAR-16-014)**

Application ZAR-16-014 to amend the City of Hamilton Zoning By-law No. 05-200 on a site specific basis is required to establish a dance / gymnastics / martial arts studio as a primary use within the Prestige Business Park (M3) Zone, in addition to establishing a site specific parking ratio for the proposed use, and to recognize an existing undersized

**SUBJECT: Appeal for Non-decision Regarding Application for an Urban Hamilton Official Plan Amendment and Zoning By-law Amendment for Lands Located at 66 Innovation Drive, Flamborough (PED16182) (Ward 15) - Page 5 of 21**

---

landscape strip which was established prior to the implementation of Zoning By-law No. 05-200.

A generalized concept plan is attached as Appendix “B” to Report PED16182 and a proposed parking plan is attached as Appendix “C” to Report PED16182.

**Chronology:**

<u>July 8, 2015:</u>	Formal Consultation Application FC-15-050 was considered by the Development Review Team.
<u>January 20, 2016:</u>	Urban Hamilton Official Plan Amendment Application UHOPA-16-004 and Zoning By-law Amendment Application ZAR-16-014 were received.
<u>January 28, 2016:</u>	UHOPA-16-004 and ZAR-16-014 Applications were deemed complete.
<u>February 9, 2016:</u>	Circulation of Notice of Complete Application to 38 property owners within 120 m of the subject lands.
<u>February 16, 2016:</u>	Public Notice Sign was posted on the subject lands.
<u>June 6, 2016:</u>	Meeting with Staff and Applicant to discuss City position on proposal.
<u>June 26, 2016:</u>	Applicant was advised in writing that a September 2016 Planning Committee date is appropriate to consider the application.
<u>August 10, 2016:</u>	Deadline for applicant to update Public Notice Sign with September 6, 2016 Public Meeting Date.
August 10, 2016	Applicant filed Notices of Appeal with the City Clerk's office based on the lack of decision

**Details of Submitted Application**

<b><u>Owner:</u></b>	1592797 Ontario Ltd. Attn: Sarah Sordoni
<b><u>Agent:</u></b>	Allan Ramsay Planning and Associates Inc. Attn: Allan Ramsay

**SUBJECT: Appeal for Non-decision Regarding Application for an Urban Hamilton Official Plan Amendment and Zoning By-law Amendment for Lands Located at 66 Innovation Drive, Flamborough (PED16182) (Ward 15) - Page 6 of 21**

---

**Location:** 66 Innovation Drive, Flamborough

**Description:**                      Frontage:    44.874 m  
   Depth:       90.183 m  
  
   Lot Area:    4,046 sq m

**EXISTING LAND USE AND ZONING:**

	<b><u>Existing Land Use</u></b>	<b><u>Existing Zoning</u></b>
<b><u>Subject Lands:</u></b>	One and a half storey light industrial building containing “The Dream Centre” dance / gymnastics / martial arts studio	Prestige Business Park (M3) Zone
<b><u>Surrounding Lands:</u></b>		
<b>North</b>	Two-storey light industrial / office building	Prestige Business Park (M3, 427) Zone, Modified
<b>South</b>	Two-storey light industrial / office building	Prestige Business Park (M3) Zone
<b>East</b>	Two-storey light industrial / office building	Prestige Business Park (M3) Zone
<b>West</b>	Two-storey light industrial / office building	Prestige Business Park (M3, 44) Zone, Modified

**POLICY IMPLICATIONS AND LEGISLATED REQUIREMENTS**

**Provincial Policy Statement (2014)**

The proposal has been reviewed with respect to the Provincial Policy Statement, 2014 (PPS). The following policies apply:

- “1.3.1            Planning authorities shall promote economic development and competitiveness by:
- a) providing for an appropriate mix and range of employment and institutional uses to meet long-term needs;

- b) providing opportunities for a diversified economic base, including maintaining a range and choice of suitable sites for employment uses which support a wide range of economic activities and ancillary uses, and take into account the needs of existing and future businesses;
- c) encouraging compact, mixed-use development that incorporates compatible employment uses to support liveable and resilient communities; and
- d) ensuring the necessary *infrastructure* is provided to support current and projected needs.

1.3.2.1 Planning authorities shall plan for, protect and preserve *employment areas* for current and future uses and ensure that the necessary *infrastructure* is provided to support current and projected needs.”

Firstly, pursuant to Policy 1.3.1.b) above with respect to permitting ancillary uses, staff do not find that the proposed dance / gymnastics / martial arts studio which provides instructor-led classes to a wide range of age categories and at a wide range of times (including evenings and weekends) takes into account the needs of existing and future businesses. Accordingly, staff do not find the proposal to be ancillary to the Business Park because it does not directly serve the needs of the businesses or employees of the Business Park, but rather serves the larger market of Waterdown, Flamborough, and West Hamilton. The applicants have demonstrated that the facility is marketed as and functions as a dance / gymnastics / martial arts studio, with the majority of programs and activities oriented towards children.

The provisions for ancillary uses will be further discussed in the Analysis and Rationale for Recommendation Section of this Report.

With respect to Policy 1.3.2.1 above, staff note that the PPS 2014 defines *employment area* to mean:

“Those areas designated in an official plan for clusters of business and economic activities including, but not limited to, manufacturing, warehousing, offices, and associated retail and ancillary facilities.”

The property is designated “Employment Area – Business Park” on Schedule E-1 of the UHOP. Accordingly, the property falls within the ambit of an *employment area* as defined in the PPS because it is an employment area designated by the UHOP for clusters of businesses and economic activities.

The definition of *employment area* permits a range of traditional employment uses as well as ancillary uses. While the applicant has suggested that the use should be

considered an ancillary recreation use, as noted above, staff find that it is a dance / gymnastics / martial arts studio which is not considered an ancillary use.

As such, staff find that the proposal is not consistent with the definition of *employment area* in the PPS. Since Policy 1.3.2.1 of the PPS calls for the protection and preservation of *employment areas*, which by definition requires compliance with the municipal land use policies, the proposed use is not consistent with Policy 1.3.2.1 of the PPS.

### **Growth Plan for the Greater Golden Horseshoe (Places to Grow)**

The application has been reviewed with respect to the Provincial Growth Plan for the Greater Golden Horseshoe (Places to Grow). The following policies apply:

“2.2.6.2 Municipalities will promote economic development and competitiveness by:

- a. providing for an appropriate mix of employment uses including industrial, commercial and institutional uses to meet long-term needs;
- b. providing opportunities for a diversified economic base, including maintaining a range and choice of suitable sites for employment uses which support a wide range of economic activities and ancillary uses, and take into account the needs of existing and future businesses;
- c. planning for, protecting and preserving *employment areas* for current and future uses; and,
- d. ensuring the necessary infrastructure is provided to support current and forecasted employment needs.”

While staff note that ancillary uses are permitted within employment areas (pursuant to Policy 2.2.6.2.b)), staff do not find that the proposal can be considered an ancillary use as the applicant has not sufficiently demonstrated that the proposed use takes into account the needs of existing and future businesses, nor does it primarily serve the needs of employees within the Business Park. Conversely, the applicants have demonstrated that the facility is marketed as and functions as a dance / gymnastics / martial arts studio, serving the needs of the larger Waterdown, Flamborough, and West Hamilton market.

The Growth Plan for the Greater Golden Horseshoe reiterates the PPS definition of *employment area*, which includes:

“Areas designated in an official plan for clusters of business and economic activities including, but not limited to, manufacturing, warehousing, offices, and associated retail and ancillary facilities.”



Further to above, while the definition of *employment area* permits a range of traditional employment uses as well as ancillary uses, staff do not find that the proposal is for an ancillary use, but instead for a dance / gymnastics / martial arts studio.

As such, staff find that the proposal is not consistent with the definition of *employment area* in the Growth Plan. Since Policy 2.2.6.2.c) of the Growth Plan calls for the protection and preservation of *employment areas*, which by definition requires compliance with the municipal land use policies, and since staff are of the opinion that the proposal does not comply with the UHOP policy framework, the proposed use is not consistent with Policy 2.2.6.2.c).

As a result, the proposal does not conform to the intent of the *employment area* definition of the Growth Plan for the Greater Golden Horseshoe (Places to Grow).

### **Urban Hamilton Official Plan (UHOP)**

The subject property is identified as “Employment Area” on Schedule E – Urban Structure of the UHOP, and is designated “Employment Area – Business Park” on Schedule E-1 – Urban Land Use Designations of the UHOP. Accordingly, the following policies, amongst others, apply with respect to the urban structure:

- “E.2.7.2      Employment Areas shall provide employment through a broad range of uses, including traditional industrial uses, research and *development* uses, and other uses. Uses which support the businesses and employees of the employment area shall be permitted. Major retail uses or residential uses shall not be permitted. The permitted uses shall be described in more detail in Section E.5.0 – Employment Area Designations.
- E.2.7.3      Employment Areas shall provide for a diverse range of employment opportunities in proximity to the City’s major infrastructure including the Port, the Airport, and the highway and transit network. It is important to provide a range of opportunities in order to meet the varying locational and market requirements for businesses including regionally significant industries.
- E.2.7.4      To meet the long-term market demands and locational requirements of the various industrial sectors, existing Employment Areas shall be retained.”

Employment lands are limited within the municipality, and the intent of the Employment Area identification is to preserve and protect a broad range of employment uses and to not allow new ancillary non-employment uses, unless the uses support the businesses and employees of the employment area.

**SUBJECT: Appeal for Non-decision Regarding Application for an Urban Hamilton Official Plan Amendment and Zoning By-law Amendment for Lands Located at 66 Innovation Drive, Flamborough (PED16182) (Ward 15) - Page 10 of 21**

---

Staff find that the proposed dance / gymnastics / martial arts studio is not a permitted use pursuant to Policy E.2.7.2 as it is not a traditional industrial use or research and development use. Policy E.2.7.2 also states that uses which support the businesses and employees of the employment area shall be permitted.

However, staff do not find that the proposal can be considered an ancillary use because the applicant has not provided sufficient rationale that the proposed use primarily serves the businesses and employees within the Business Park. Conversely, through the marketing of the business, the applicants have demonstrated that the facility is a dance / gymnastics / martial arts studio which primarily provides programming for youth and children within the broader market of Waterdown, Flamborough, and West Hamilton rather than a facility that provides programming to support businesses and employees of the Business Park. Accordingly, the proposal does not satisfy Policy E.2.7.2.

The following policy goals regarding the Employment Area Designation, amongst others, apply to the subject proposal:

“E.5.1.4      Protect lands designated Employment Area from non-employment uses and to support the employment functions of the City’s Downtown, nodes and corridors. New *major retail* uses shall be prohibited and office uses shall be restricted in function and scale.”

A dance / gymnastics / martial arts studio is considered a non-employment use. Accordingly, the proposal to add this as a permitted use on the subject lands is in direct contravention of Policy E.5.1.4 which requires the protection of lands designated Employment Area from non-employment uses.

The following policies, amongst others, also apply.

“E.5.2.1      Employment Area designations include lands designated on Schedule E-1 – Urban Land Use Designations as follows:

- a) Employment Area – Industrial Land;
- b) Employment Area – Business Park;
- c) Employment Area – Airport Employment Growth District (OPA 35); and,
- d) Employment Area – Shipping and Navigation.

E.5.2.4      Uses permitted in the Employment Area designations shall include clusters of business and economic activities such as, manufacturing, research and development, transport terminal, *building or contracting*

*supply establishment, tradesperson's shop, warehousing, waste management facilities, private power generation, limited agricultural uses, office, and accessory uses. Ancillary uses which primarily support businesses and employees within the Employment Area shall also be permitted. Permitted uses specific to the four Employment Area designations are contained in Policies E.5.3.2, E.5.4.3, E.5.5.1, E.5.5.2 and E.5.6.1. (OPA 23)."*

The following policies, amongst others, apply specifically in relation to the Business Park designation.

- "E.5.4.1      The range of employment uses allows for a wide variety of industrial activity and accommodates employment support uses, such as offices, that will foster the development of a prestige employment area. The Employment Area – Business Park designation applies to the City's Business Parks, excluding the Airport Business Park, identified on Schedule E-1 – Urban Land Use Designations.
- E.5.4.3      The following uses shall be permitted on lands designated Employment Area – Business Park on Schedule E-1 – Urban Land Use Designations:
- a) manufacturing, warehousing, repair service, *building or contracting supply establishments*, building and lumber supply establishments, transportation terminals, research and development, office, communication establishment, and private power generation. Salvage yards and other uses which are unsightly or otherwise incompatible with the design policies and image for Business Parks shall be prohibited;
  - b) uses which primarily support industry, including labour association halls, conference and convention centres, trade schools, commercial motor vehicle and equipment sales, and commercial rental establishments;
  - c) *ancillary* uses which primarily support businesses and employees within Business Parks, including hotels, health and recreational facilities, financial establishments, restaurants, personal services, motor vehicle service stations and washing, retail establishments, and commercial parking facilities;
  - d) limited agricultural uses including only a medical marihuana growing and harvesting facility, a greenhouse and an aquaponics facility; (OPA 23)

e) *waste processing facilities and waste transfer facilities; and,*

f) *accessory uses, such as limited retail and office.*

E.5.4.4 *Ancillary uses which serve the businesses and employees of the Business Park as described in Policy E.5.4.3 c), shall only be permitted at locations fronting arterial roads or collector roads into the Business Parks.”*

With respect to Policy E.5.4.3, the proposed use is not an employment use as identified in a) above, nor is the use supporting industry as per b) above. The proposed use is also not identified in paragraphs d) to f) above.

With respect to Policy E.5.4.3.c), staff are of the opinion that the applicants have not sufficiently proven that the proposed facility is an ancillary use which primarily supports the businesses and employees within the Business Park.

According to the Planning Justification Report submitted by the applicants with the subject application, programming will be offered throughout the day, commencing at 6:30 AM and concluding at 10:00 PM, and shall include classes like Zumba, Pilates, cardio-dance, ballet, yoga, kick boxing, martial arts, various other types of dance, and gymnastics, among other programs. Additionally, the applicants have indicated that the facility will provide instructor-led programming for small groups of approximately six to ten participants, and will be studio-based in contrast to other conventional fitness centres that typically provide exercise equipment.

Staff are of the opinion that the health and recreational facility accessory uses envisioned by UHOP would take the form of conventional fitness centres which provide exercise equipment, and may include associated instructional classes accessory to the primary activity, whereby employees of the Business Park could access the facility before and after work, and during lunch. The applicants have also indicated in the submitted Planning Justification Report that classes will operate during weekday evenings, weekday daytime hours, and on weekends.

The facility's website provides additional information on the programming offered at the facility. The majority of programs offered are recreational dance, gymnastics, and / or martial arts classes for children and youth aged 4 to 15, as well as competitive dance classes for children and youth. These classes are offered on weekdays after 4:30 PM and on weekends. Staff estimate that greater than 75% of programming is directed at children and youth.

Based on the description submitted with the subject application, in addition to the information that is available on the facility's website, staff are of the opinion that the proposal is for a dance / gymnastics / martial arts studio.

The above UHOP policies (Policies E.2.7.2, E.5.4.1, and E.5.4.3.c)) are clear in their intent to only permit non-employment uses which primarily serve businesses and employees of the Business Parks. The test in the UHOP is the word 'primarily'. It is staff's opinion that due to the age range for which the majority of the classes are offered, the nature of the use (studio classes as opposed to a fitness centre / club) and the proposed hours of operation (evenings and weekends as opposed to weekday daytime hours that reflect the hours of the businesses within the Business Park), the facility is not primarily catering to the employees of the Business Park, and instead is catering to the broader Waterdown, Flamborough, and West Hamilton communities. Accordingly, it is the opinion of staff that the use is not ancillary, and the proposal is not meeting the test in the UHOP with respect to locating non-employment uses within a Business Park in order to primarily serve businesses and employees of the Business Park.

Based on the foregoing, the proposal does not comply with the policies of the UHOP, and staff are not supportive of the proposed UHOP Amendment.

### **City of Hamilton Zoning By-law No. 05-200**

The subject lands are currently zoned Prestige Business Park (M3) Zone in the City of Hamilton Zoning By-law No. 05-200, and modifications to the zone would be required to implement the proposed development, including, but not limited to, the addition of a dance / gymnastics / martial arts studio as a permitted use, the establishment of a site specific parking ratio for the use to allow 54 surface parking spaces, in addition to the recognition of an undersized planting strip. A discussion of the parking reduction is found in the Analysis and Rationale Section of this Report.

The Prestige Business Park (M3) Zone permits uses that support businesses and employees of the Business Park (for example, restaurants in restricted locations, offices, hotels, and labour association halls, etc.). Staff note that additional ancillary uses are permitted within the Business Park Support (M4) Zone, which was applied in strategic locations (i.e. major intersections of arterial roads). Therefore, the proposed dance / gymnastics / martial arts studio located in the interior of the Business Park is contrary to the general intent of the City of Hamilton Zoning By-law No. 05-200.

### **RELEVANT CONSULTATION**

Agencies / Departments Having no Comment or Objections:

- Corridor Management Division, Public Works Department;
- Business Programs, Operations Division, Public Works Department; and,
- Recreation Planning Division, Community and Emergency Services Department.

**Transportation Management, Public Works** staff offer the following:

Policy C.4.5.2.f) requires an ultimate municipal right of way width of 26.213 m for local roads in employment areas. Accordingly, a right of way widening is required. Planning staff note that the current right of way width is approximately 23 m, and that should the application be approved and the widening be taken, any required setbacks from the front lot line to the parking area may be affected, and a redesign of the parking area, or further approvals to recognize the condition would be required.

Transportation Management staff also require consideration of AODA regulations and barrier free designs. Staff require built environment standards to include sidewalks and paved shoulders along both sides of the right of way to be a minimum 1.5 m and a sidewalk to access the building to be 1.5 m wide. There should also be provisions for trees within the boulevard.

Planning staff note that if the subject application is approved, the required design details would be implemented at the future Site Plan Control stage.

**Forestry & Horticulture, Public Works Department** staff require that a detailed Landscape Planting Plan prepared by a Certified Landscape Architect, showing the placement of trees on internal / external City property be provided.

Staff note that the planting requirements would be included as conditions of any future Site Plan Control approval.

### **Public Consultation**

In accordance with the provisions of the *Planning Act* and the Council-approved Public Participation Policy, Notice of Complete Application and Preliminary Circulation was sent to 38 property owners within 120 m of the subject lands on February 9, 2016. In addition, a Public Notice sign was placed on the property on February 16, 2016. One verbal inquiry from the owner of a nearby dance studio was received in addition to two written pieces of correspondence which are attached as Appendix "D" to Report PED16182.

Although the applications have been appealed to the Ontario Municipal Board prior to a statutory public meeting being held, this public meeting has nonetheless been scheduled in order to give the public the opportunity to provide Planning Committee with their views on the proposal and allow the Planning Committee to take its position after having the opportunity to receive staff recommendation and public input. Nevertheless, given that the matter has been appealed, ultimately the Ontario Municipal Board will make the final decision in these matters.

The comments and concerns will be discussed in the Analysis and Rationale for Recommendation Section below.

## **ANALYSIS AND RATIONALE FOR RECOMMENDATION**

1. It is recommended that the applications be denied for the following reasons:
  - (i) That the proposed dance / gymnastics / martial arts studio is not considered to be an ancillary use which primarily supports businesses and employees of the Business Park and therefore is contrary to the PPS 2014 and the Growth Plan for the Greater Golden Horseshoe, and therefore should not be located within the Employment Area designation;
  - (ii) That the applications do not meet the general intent of the UHOP in that the proposed use is not considered an ancillary use supporting employees and is not permitted in the Employment Area – Business Park designation; and,
  - (iii) That the applications do not meet the intent of the Prestige Business Park (M3) Zone in the City of Hamilton Zoning By-law No. 05-200.
2. Prior to the adoption of the UHOP, the property was designated “Prestige Industrial – Business” on Schedule “A-1” – Land Use Plan in the Flamborough Business Park Secondary Plan within the Town of Flamborough Official Plan. Policy A.6.2.1.1.(viii) of this designation permitted public and private sports facilities to be located within the Business Park. An amendment to the Town of Flamborough Official Plan was approved by Council on May 12, 2010 in order to bring the Employment Area policies into conformity with the provincial policy framework (the PPS and the Growth Plan) as they relate to the requirement for municipalities to preserve employment areas for employment uses.

The Industrial Zones of Zoning By-law No. 05-200, which are compliant with the Town of Flamborough OP and UHOP policies as well as the provincial policy framework, were approved at the same time. Public and private sports facilities were not permitted within the amended policies of the Town of Flamborough OP, and the current policies of the UHOP, which became final and binding on August 16, 2013, also do not permit public and private sports facilities within Business Parks.
3. Prior to the Industrial Zones within the City of Hamilton Zoning By-law No. 05-200 coming into effect, the subject property was zoned Prestige Industrial “M1” Zone in the Town of Flamborough Zoning By-law No. 90-145-Z. The Prestige Industrial “M1” Zone permitted a ‘place of recreation’ as-of-right. The Industrial Zones of the

City of Hamilton Zoning By-law No. 05-200 were passed by Council on May 12, 2010, and were appealed to the OMB. The OMB approved By-law 10-128 with negotiated modifications on June 28, 2011. The intent of the new zones is to permit a wide range of employment-type uses throughout the employment areas, with some limited support commercial uses permitted at strategic locations within the Business Parks. The Prestige Industrial “M3” Zone in Zoning By-law No. 05-200 does not permit a Studio or Commercial Recreation as-of-right.

4. During the creation and implementation of the new Industrial Zones, there was discussion regarding commercial recreation / studio uses within the employment areas (as discussed in the 2010 Staff Report PED09260(a)). It is noted that in the past, employment areas have been a preferred location of studio, gymnasium and fitness centre owners for commercial recreation uses, due primarily to the size and scale of buildings constructed within an employment area (i.e. increased ceiling heights), but having no direct relationship to the businesses or employees of the employment area. During the consultation process for the new Industrial Zones, Municipal staff had discussions with the Ministry of Municipal Affairs and Housing related to these uses, outlining the building-specific reasons why these uses were generally accommodated within employment areas. However, Ministry staff had confirmed that these uses are not appropriate within an employment area. In the context of the Zoning By-law No. 05-200 Industrial Zones, some existing commercial recreation uses were recognized through a special exception. This site specific recognition was based on direct contact and discussions with the property owner, agent, and / or existing lessee, and recognized existing uses only. The property at 66 Innovation Drive did not form part of these discussions.
5. Staff note that Policy E.5.4.3(c) of the UHOP permits ancillary uses (including health and recreational facilities) in Business Parks. Staff note that the intent of allowing a health and recreational facility as per E.5.4.3.(c) is to permit a fitness centre to accommodate employees of the Business Park to exercise before and after work and during lunch. The intent is not to allow a wide range of commercial recreation uses which should locate on commercial lands. The UHOP policies (Policies E.2.7.2, E.5.4.1, and E.5.4.3.c)) require that ancillary uses primarily serve businesses and employees of the Business Park (further, Chapter G of the UHOP defines ancillary as a subordinate use that supports a principal use or a primary function of a site or area).

Staff note that the applicants have indicated (in the Planning Justification Report submitted with these applications) that there will be a range of instructor-led programming offered throughout the day, evenings, and weekends, commencing at 6:30 AM and concluding at 10:00 PM, and shall include classes like Zumba, Pilates, cardio-dance, ballet, yoga, kick boxing, martial arts, various other types of dance, and gymnastics, among other programs, and will be studio-based in



contrast to other conventional fitness centres that typically provide exercise equipment and classes.

The facility's website provides additional information on the programming offered at the facility. The majority of programs offered are recreational dance, gymnastics, and / or martial arts classes for children and youth aged 4 to 15, as well as competitive dance classes for children and youth. These classes are offered on weekdays after 4:30 PM and on weekends. Staff estimate that greater than 75% of programming is directed at children and youth.

Based on the rationale provided by the applicant and the information available on the facility's website, staff find that the proposed use is not a fitness centre as envisioned by the UHOP, but is instead a dance / gymnastics / martial arts studio and is therefore not an ancillary use permitted by Policy E.5.4.3.(c). Staff find that this is not a facility that is intended to serve primarily the businesses or employees of the Business Park. Pursuant to the Planning Justification Report, since the facility is intended to be commercial in nature and is intended to serve the residents of Waterdown or west Hamilton as a whole, the proposal does not meet the requirements of the UHOP with respect to being ancillary to the Business Park, and staff do not support the amendment.

6. Staff note that Policy E.5.4.4 of the UHOP requires that ancillary uses which serve the businesses and employees of the Business Park as described in Policy E.5.4.3 c), shall only be permitted at locations fronting arterial roads or collector roads into the Business Parks. The purpose of this policy is to ensure that ancillary uses do not cause undue traffic levels internally to the Business Park and disrupt delivery patterns / routes for goods within the park.

Staff note that the intent of the UHOP with respect to the location and scope of ancillary uses was reflected in the application of the Prestige Business Park (M3) Zone to the Flamborough Business Park. The (M3) Zone permits uses that support businesses and employees of the Business Park (restaurants in restricted locations, offices, hotels, and labour association halls, etc.), whereas additional ancillary uses are only permitted within the Business Park Support (M4) Zone, which was applied in strategic locations (i.e. major intersections of arterial roads). Therefore, the proposed dance / gymnastics / martial arts studio is contrary to the general intent of the City of Hamilton Zoning By-law No. 05-200, and as indicated above, staff do not find the proposed use to be an ancillary use as permitted by the UHOP. Accordingly, staff do not support the location of the use anywhere within the Flamborough Business Park, including on a local road internal to the Business Park.

7. As discussed in the Policy Implications and Legislated Requirements Section of this Report, the property is zoned Prestige Business Park (M3) Zone in the City of Hamilton Zoning By-law No. 05-200. The intent of the zone is to permit uses that are compatible and consistent with the Business Park function, including a range of employment uses and ancillary uses that primarily serve the businesses and employees of the Business Park. Staff note that it is not the intent to permit Studio or Commercial Recreation uses as-of-right in the Prestige Business Park (M3) Zone as demonstrated by site specific exceptions on Innovation Drive that were established to facilitate pre-existing facilities or facilities that were in-process at the time that the new Industrial Zones were implemented.

Staff note that the proposed use would be classified as a Studio in Zoning By-law 05-200. The introduction of a Studio as a permitted use within the Prestige Business Park (M3) Zone does not meet the general intent of the Zoning By-law and does not comply with the UHOP. Accordingly, staff are not supportive of the proposed Zoning By-law Amendment to permit a dance / gymnastics / martial arts studio.

8. The applicant submitted a parking study by W.B. O'Brien Services, which has shown that parking for this proposal is at or near capacity and parking has been shown to overflow onto adjacent properties and on-street.

Planning staff note that the current parking requirement for a Warehouse is one space for every 30 sq m of gross floor area which accommodates the office component of the use. Conversely, staff note that a Studio requires one space for every 30 sq m of GFA which accommodates the use. The applicants had originally contemplated the proposed use to be a fitness centre which would have required a parking rate of one space for every 15 sq m of GFA, which would have significantly increased the parking requirement on site. However, as staff have determined the proposed use to be a Studio, the proposal does not pose the same concern with respect to increase parking requirements. Staff note that with a GFA of 1,662 sq m, the parking requirement based on one space for 30 sq m of GFA would be 56 spaces. The applicant is proposing to provide 54 spaces plus two accessible spaces.

9. Staff note that there are two existing studio / recreation facilities on Innovation Drive. The first property is located at 12 Innovation Drive and is known as Dancemakerz. The property is zoned Prestige Industrial (M3, 427) Zone, Modified in the City of Hamilton Zoning By-law No. 05-200, where the site specific modification permits a dance studio. Staff note that the site specific modification was created in Zoning By-law No. 05-200 to recognize the dance studio that was legally established under the former Prestige Industrial "M1" Zone where the use was permitted. The modification included in Zoning By-law No. 05-200 was

approved with the remainder of the Zoning By-law by the Ontario Municipal Board (OMB) on June 28, 2011.

The second property is located at 70 Innovation Drive and was formerly known as Goals Indoor Sports Club but is now vacant. This property was reviewed under Zoning By-law Amendment ZAR-11-045, and a site specific modification was established (M3, 44) to permit an indoor sports facility. This site specific modification was established because there was an in-process change-of-use application at the time that the Zoning By-law No. 05-200 Industrial Zones were implemented, and the property was not recognized in the Zoning By-law No. 05-200 Industrial Zones. As noted above, this use would have been permitted as-of-right in the former Town of Flamborough Zoning By-law No. 90-145-Z. As such, the use was added to Zoning By-law No. 05-200 through a subsequent amendment in 2011.

10. A total of three comments were received from members of the public with respect to the subject proposal. One individual is the owner of a nearby dance studio (Rising Star Performing Arts in Flamborough) seeking further information about the proposal. The second individual is the owner of 60 Innovation Drive, Flamborough and expressed no inherent concern with the proposed use of the property, but had concerns with the traffic generated by the use on the property blocking access and inhibiting deliveries to his property. The third comment was with respect to seeking further information about the proposal.
11. Staff met with the applicant on June 6, 2016 to discuss the recommendation for denial of the proposal based on the proposed use not meeting the definition of *employment area* in the PPS and the Growth Plan. The applicant indicated to staff that the owners of the dance / gymnastics / martial arts studio were intending to develop a revised business model to orient the facility toward primarily serving the businesses and employees of the business park. At that meeting, and in subsequent emails to the agent, staff requested that the applicant provide further information to substantiate the revised business model, but at the time of preparation of the staff report (i.e. PED16182) the requested information was not received by the City. Accordingly, staff are maintaining the original recommendation of denial on the basis of proposed use and location.
12. The Ontario Municipal Board has not yet scheduled a hearing regarding this matter. The appeals were filed based on a lack of decision having been made by Council. An appeal for non-decision transfers jurisdiction over an application to the Board with the result that a statutory public meeting ceases to be a requirement and the Board proceeds to conduct a hearing irrespective of whether such a meeting has been held. Since no decision was made within the statutory timeframe, the Board becomes the decision maker for the applications. As a

result, Council's role becomes that of providing instructions to the City Solicitor on the position the City is to advance at the hearing on the merits of the appeals. By adopting this report's recommendations, Planning Committee and Council will be providing those instructions.

At the Planning Committee meeting of September 6, 2016, staff were directed to bring a position report forward for consideration at the Planning Committee meeting of September 20, 2016.

## **ALTERNATIVES FOR CONSIDERATION**

If the subject applications are denied, the property can be used in accordance with the Prestige Business Park (M3) Zone, which allows for a range of employment uses, light industrial uses, and office uses.

If Council supports the subject application, staff shall be directed to prepare a draft UHOP Amendment and draft Zoning By-law that implements the proposed Concept Plan, attached as Appendix "B" to Report PED16182, and the City Solicitor would be instructed to advance that position at the Ontario Municipal Board

## **ALIGNMENT TO THE 2012 – 2015 STRATEGIC PLAN**

### **Strategic Priority #1**

A Prosperous & Healthy Community

*WE enhance our image, economy and well-being by demonstrating that Hamilton is a great place to live, work, play and learn.*

### **Strategic Objective**

- 1.5 Support the development and implementation of neighbourhood and City wide strategies that will improve the health and well-being of residents.

### **Strategic Priority #2**

Valued & Sustainable Services

*WE deliver high quality services that meet citizen needs and expectations, in a cost effective and responsible manner.*

### **Strategic Objective**

- 2.2 Improve the City's approach to engaging and informing citizens and stakeholders.

**SUBJECT: Appeal for Non-decision Regarding Application for an Urban Hamilton  
Official Plan Amendment and Zoning By-law Amendment for Lands  
Located at 66 Innovation Drive, Flamborough (PED16182) (Ward 15) -  
Page 21 of 21**

---

**Strategic Priority #3**

Leadership & Governance

*WE work together to ensure we are a government that is respectful towards each other  
and that the community has confidence and trust in.*

**APPENDICES AND SCHEDULES ATTACHED**

- Appendix "A": Location Map
- Appendix "B": Generalized Concept Plan
- Appendix "C": Proposed Parking Plan
- Appendix "D": Written Comments from Members of the Public

MG:mo