

ISSUE DATE:

January 20, 2012



PL090114

Ontario
Ontario Municipal Board
Commission des affaires municipales de l'Ontario

IN THE MATTER OF subsection 17(36) of the *Planning Act*, R.S.O. 1990, C. P. 13, as amended

Appellants: See below
Subject: Rural Hamilton Official Plan
Municipality: City of Hamilton
OMB Case No.: PL090114
OMB File No.: PL090114

RECEIVED
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LEGAL SERVICES

List of Appellants

No.	Appellant
1	Ontario Stone, Sand & Gravel Association (OSSGA)
2	Paletta International Corporation
3	P&L Livestock Limited
9	St. Marys Cement (Canada) Inc.
10	Demik Developments
11	1694408 Ontario Inc.
13	Artstone Holdings Limited
14	Artstone Holdings Limited
15	Weizer Investments Limited
16	Corpveil Holdings Limited
18	Ancaster Christian Reform Church
19	456941 Ontario Ltd., 1263339 Ontario Ltd. and Lea Silvestri ("Silvestri Investments")
20	Angelo Giacomelli and Mario Nesci
21	Earl Fransden and Kirsten Fransden
22	Keith Pickles and Brenda Pickles
23	John Paolini, Gino DalBello, Olindo DalBello, Luigi DeTina, Peter Djeneralovic, Jim Swick and Quinto Simone
24	New Country Investors Limited
25	1507565 Ontario Inc.
27	Lafarge Canada Inc.
28	Peter Cartwright
29	City of Hamilton
30	Dr. Tom Nugent
31	1478742 Ontario Inc. and 2157722 Ontario Inc.
32	DiCenzo (Golf Club Road) Holdings Inc.

33	Dufferin Aggregates (a division of Holcim (Canada) Inc.)
35	David E. Mercer
36	Multi-Area Developments Inc.
37	Paletta International Corporation (Elfrida Lands)
39	2101510 Ontario Inc. (subsumed by Paletta International Corporation)
40	2000963 Ontario Inc.
41	Mud & First Inc.
42	2084696 Ontario Inc.
43	2188410 Ontario Inc.

APPEARANCES:

Parties

Counsel

City of Hamilton

M. Minkowski; M. Kovacevic

Demik Developments, 1694408 Ontario Inc.

S. Rogers

Ministry of Municipal Affairs and Housing
(MMAH)

R. Boxma

1507565 Ontario Inc.

D. Tang

Multi-Area Developments Inc.

M. Noskiewicz

456941 Ontario Ltd. and
Lea Silvestri ("Silvestri Instruments")

P. Pickfield

Ancaster Christian Reformed Church

P. Tice

1800615 Ontario Inc. and 2157722 Ontario
Inc.

A. Buist (for R. Cheeseman)

DiCenzo (Golf Club Road) Holdings Inc.

Dr. Tom Nugent

Peter Cartwright

DECISION DELIVERED BY A. CHRISTOU AND ORDER OF THE BOARD

This Pre-hearing Conference (PHC) relating to the appeals to the Rural Hamilton Official Plan ("Rural OP") took place on December 12, 2011. It is one of a series of hearings to deal with procedural matters. It was specifically geared to Groups 4, 6, 8 and 10.

At the start of the hearing, Mr. Minkowski, Counsel for the City, advised the Board of the following:

1. A settlement has been reached between the City and the Ministry of Municipal Affairs and Housing (MMAH) with respect to Group 6, regarding Modification 33b. The Parties request approval of the Minutes of Settlement;
2. Groups 4, 8 and 10 request adjournment *sine die*; and
3. Ms Rogers, Counsel for Demik Developments and 1694408 Ontario Inc., requests a TCC pertaining to Groups 1, 3 and 9.

Mr. Kovacevic, Counsel for the City, advised the Board that the City had appealed the Minister's Modification. The Minutes of Settlement amend lands designated Rural and changes them to the Agricultural designation. The affected lands are outlined in red in Attachment "1a" and identified as 'A' to 'J' in Attachment "1b" to the Minutes. However, the City is withdrawing its appeal to the following parcels, and the Minister's Modification will remain: - Parcels A1 to A9; B; E1 to E5; G6 to G8; J1 and J2; H1 to H3; I9 to I11 will be designated Agricultural.

Joanne Hickey-Evans, the City's planner, gave planning opinion evidence with respect to Modification 33b. The City uses the Land Evaluation Area Review (LEAR) as a tool to determine Rural and Agricultural designations. She took the Board through Attachment "1b" in the Minutes, and identified the areas to be designated Rural. It was her opinion that the lands to remain Rural can be supported for the following reasons:

1. The City maintains Rural designated lands in different areas of the City and they generally serve the rural community;

2. Rural designated lands are contiguous to other 250 ha parcels, except for three small areas identified as B, C and F;
3. Rural designated lands generally have low LEAR score, poor soil (Areas D and I), land fragmentation and conflicting land uses (Areas A, C, F, G and J).

Further, the Parties have agreed to Site-specific Policies for:

- 432 Highland Road East, shown as Attachment "2" to the Minutes, to maintain the Agricultural designation, but the policy recognizes the existing retail use.
- The Super Sucker Hydro Vac Services Inc. property, shown as Attachment "3" to the Minutes and described on paragraph 5, is subject to a planning application before the City and will be dealt with when the application is processed.

It was Ms Hickey-Evans' opinion that the Rural land use designation represents good planning for the municipality, is consistent with the PPS and conforms to the Greenbelt Plan.

Mr. Kovacevic requested the Board approve the changes to Modification 33b as set out in Attachment 1b; confirm the City's partial withdrawal of its appeal to Modification 33b to the "hatched" lands outlined in red in Attachment 1b; approve the Site-specific policy in Attachment 2 of the Minutes of Settlement; and acknowledge that the Board, later will consider by way of Site-specific policy in the Rural OP, the results of *Planning Act* applications being processed for the land in Attachment 3 of the Minutes of Settlement.

Mr. Pickfield supported the Modification as per Minutes of Settlement, but pointed out that his clients' lands are in different situations and there are two other concurrent proceedings before the Board – the Airport Employment District Secondary Plan (AEDSP) and the City's Urban OP that may affect them. His client, Silvestri Investments, supports the Modifications without prejudice to the position it will be taking

and the evidence it will be calling with respect to the policies that will apply to their land under those proceedings.

Lengthy discussion ensued between the Parties on how the Board should address the issues at hand (the Hamilton Rural OP), as affected by the concurrent appeal proceedings for the Airport Employment District Secondary Plan and the City's Urban OP. Some of the issues include:

1. whether lands in the AEDSP ought to remain for employment purposes, or should portions be designated residential? If the Board determines the inclusion of residential designation, Groups 4 and 8 may be involved;
2. whether the urban expansion of the Elfrida lands ought to include residential; and
3. Group 10 also pertains to the AEDSP.

Mr. Noskiewicz argued that depending on how the Board rules on these issues at the Urban OP appeals (PHC on February 12, 2012) and addresses threshold issues in the AEDSP proceedings (Hearing May 22, 2012), it would be premature to deal with these Groups at this time. There are consolidation possibilities for Groups 4 and 8, or 4, 8 and 10, that would need to be explored further.

The Parties therefore requested that the proceedings for Groups 4, 8 and 10 be adjourned *sine die* to allow for the outcome of the AEDSP proceedings to evolve. However, the adjournment should be under the understanding that if any of the Parties feel that it is time to bring these matters forward, they should be permitted to do so on Notice of Motion or on consent of all the Parties.

Mr. Minkowski advised the Board that the City and Ms Rogers' clients – Groups 1, 3 and 9 (scheduled for 10-day Hearing to start on April 30, 2012), have been involved in positive discussion and have advanced to possible agreement. They would like to schedule a TCC in mid January 2012 to present a possible settlement.

Disposition

1. The Board hereby approves the changes to Modification 33b of the Rural Hamilton Official Plan as set out in Attachment 1b to the Minutes of Settlement;
2. The Board confirms the City's partial withdrawal of its appeal to Modification 33b with respect to the "hatched" lands outlined in red in Attachment 1b to the Minutes of Settlement.
3. The Board hereby approves the Site-specific policy as set out in Attachment 2 of the Minutes of Settlement, and acknowledges that if necessary, the Board will consider by way of Site-specific policy in the Rural Hamilton Official Plan, the results of *Planning Act* applications being processed for the land shown in Attachment 3 of the Minutes of Settlement.
4. The Board hereby adjourns the proceedings for Groups 4, 8 and 10 *sine die*, to allow for the outcome of the Airport Employment District Secondary Plan and the City's Urban OP appeal proceedings to evolve. Any Party may, by Notice of Motion or on consent of all the Parties, request the Board to bring these matters forward.
5. The Board sets a Teleconference Call (TCC) for **Tuesday, January 17, 2012, at 9:45 a.m.**, to deal with settlement proceedings for Groups 1, 3 and 9. The Parties are to call **416-212-8012 or 866-633-0848 and enter Code 4779847#**.

No further Notice is required for the above hearings.

This Member is not seized but will continue to case manage this matter subject to the requirements of the Board's calendar.

This is the Order of the Board.

"A. Christou"

A. CHRISTOU
MEMBER

PL090114

ONTARIO MUNICIPAL BOARD

IN THE MATTER of subsection 17(36) of the Planning Act, R.S.O. 1990, c. P.13, as amended:

Appellants: Parties to Group 6, identified in OMB Order issued May 21, 2010, PL090114.

Subject: Rural Hamilton Official Plan

Municipality: City of Hamilton

OMB Case No.: PL090114

OMB File No.: PL090114

**MINUTES OF SETTLEMENT
BETWEEN
THE CITY OF HAMILTON AND
THE MINISTRY OF MUNICIPAL AFFAIRS AND HOUSING**

WHEREAS the City of Hamilton ("City") adopted the new Rural Hamilton Official Plan ("Plan") on September 27, 2006, and the Ministry of Municipal Affairs and Housing ("Ministry") approved the Plan with modifications on December 24, 2008;

AND WHEREAS in its approval, the Ministry modified Schedule D of the Plan through modification 33(b), redesignating certain Rural-designated lands as Agriculture;

AND WHEREAS the City appealed this modification to the Ontario Municipal Board ("Board");

AND WHEREAS the City and the Ministry entered into mediation before the Board and have reached a settlement;

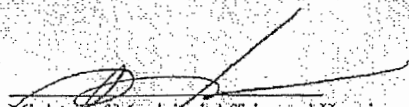
AND WHEREAS the City and the Ministry have agreed to enter into Minutes of Settlement to settle the City's modification 33(b) appeal;


NOW THEREFORE IN CONSIDERATION of the recitals and covenants herein, and such other good and valuable consideration as acknowledged by the parties, the parties hereby agree as follows:


1. The City and the Ministry agree that the appropriate designations for the lands subject to the modification 33(b) are as set out in Attachment "1a" to these minutes, and more specifically set out in Attachment "1b" to these minutes.
2. For those lands subject to modification 33(b) that are agreed to be designated Agricultural, the City will withdraw its appeal.

3. For those lands subject to modification 33(b) that are agreed to be designated Rural, the parties will jointly request of the Board to modify the Rural Plan in order to implement the aforesaid Rural designation on the subject lands, and the City will provide evidence to the Board supporting that position.
4. The City and the Ministry agree that the following site-specific use will be recognized within the Rural Official Plan notwithstanding an Agricultural designation, but the site specific use will be limited to the lands currently in such use, as set out in Attachment "2" to these minutes.
5. The City and the Ministry agree that as Super Sucker Hydro Vac Service Inc. currently has outstanding Planning Act applications before the City, that the result of those applications will be recognized and implemented in the Rural OP if necessary, as set out in Attachment "3" to these minutes. The boundaries for the site specific area are general and may undergo minor modifications through the course of the application process based on a review of specific information regarding details of development.

Dated at the City of Hamilton this 2nd day of November 2011


Ministry of Municipal Affairs and Housing
Represented by Bob Boxma 29/11/11


R. Bratina
Mayor, City of Hamilton
City Solicitor or his delegate

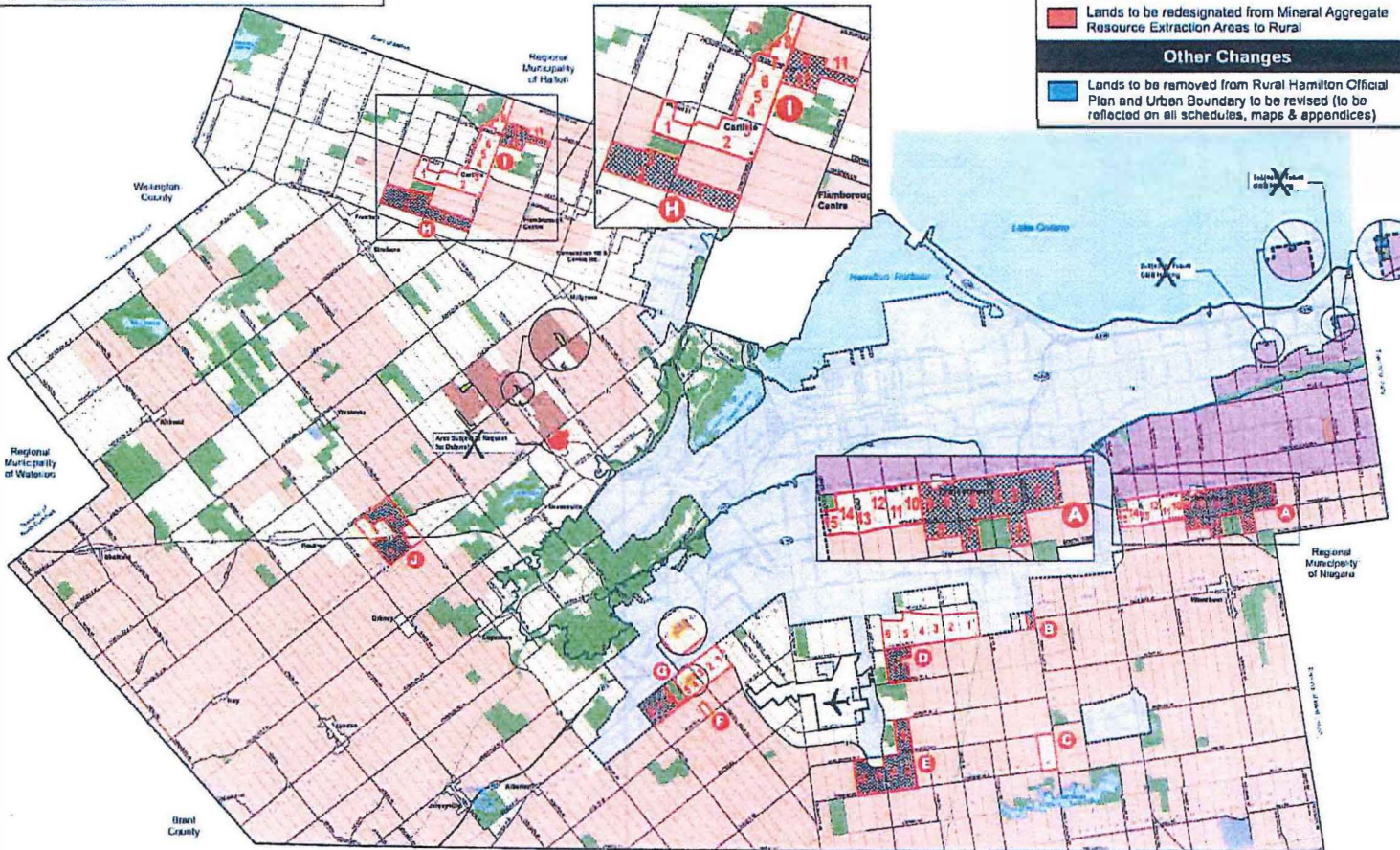

Rose Caterini
Clerk, City of Hamilton

Attachment "1a"
PL090114

Ontario Municipal Board Appeal
Rural Hamilton Official Plan - Case No. _PL090114
Exhibit : _____

Key Map for Detailed Analysis Chart
Without Prejudice

- Agreed Changes - Aggregate Planners**
- Lands to be redesignated from Rural to Mineral Aggregate Resource Extraction Areas
 - Lands to be redesignated from Mineral Aggregate Resource Extraction Areas to Rural
- Other Changes**
- Lands to be removed from Rural Hamilton Official Plan and Urban Boundary to be revised (to be reflected on all schedules, maps & appendices)



- MODIFICATION 31b**
- Areas subject to AOC Section 320
 - Lands to be removed from Rural Hamilton Official Plan
- MODIFICATION 31c**
- Lands to be redesignated from Mineral Aggregate Resource Extraction Area to Rural
- Part of 347 Piny Hoe (UNDER APPEAL)

Revised: November 2011

- Legend**
- Agriculture
 - Open Space
 - Rural
 - Mineral Aggregate Resource Extraction Areas
 - Open Space
 - Urban
 - Head of Stream Areas
 - Area Subject to Proposal for Expropriation
 - Subject to Future DMU Planning
 - John G. Horne Memorial Inter-district Airport
 - Municipal Boundary
 - Urban Boundary
 - Fringed Expropriation
 - Urban Area
 - Head of Stream Area

Approved Official Plan Amendment by Council on September 21, 2008 to July 2010
Council Resolution: September 21, 2008
Municipal Planning Department

Hamilton Official Plan
Schedule D
Rural Land Use Designations

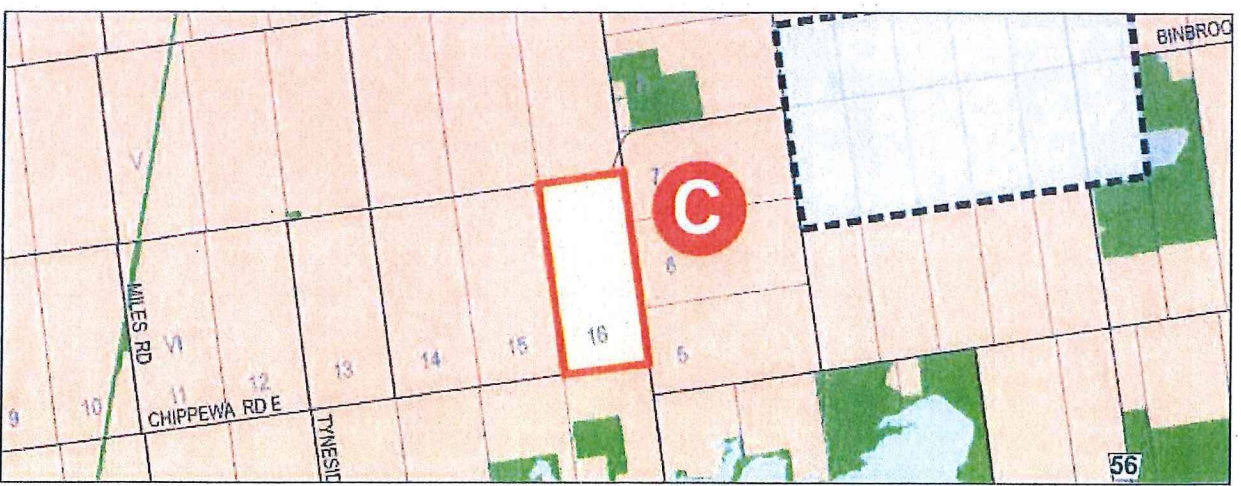
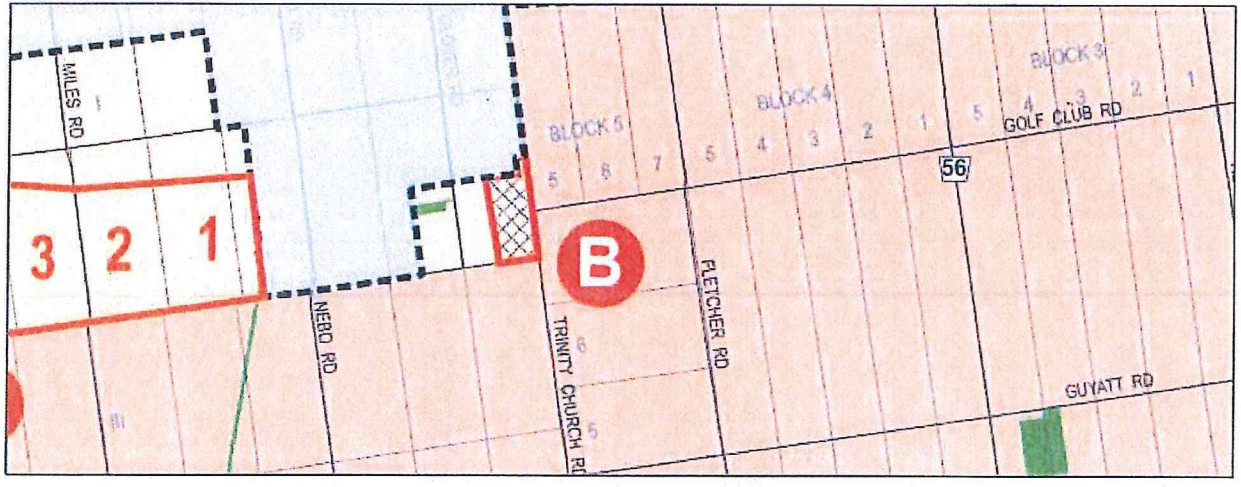
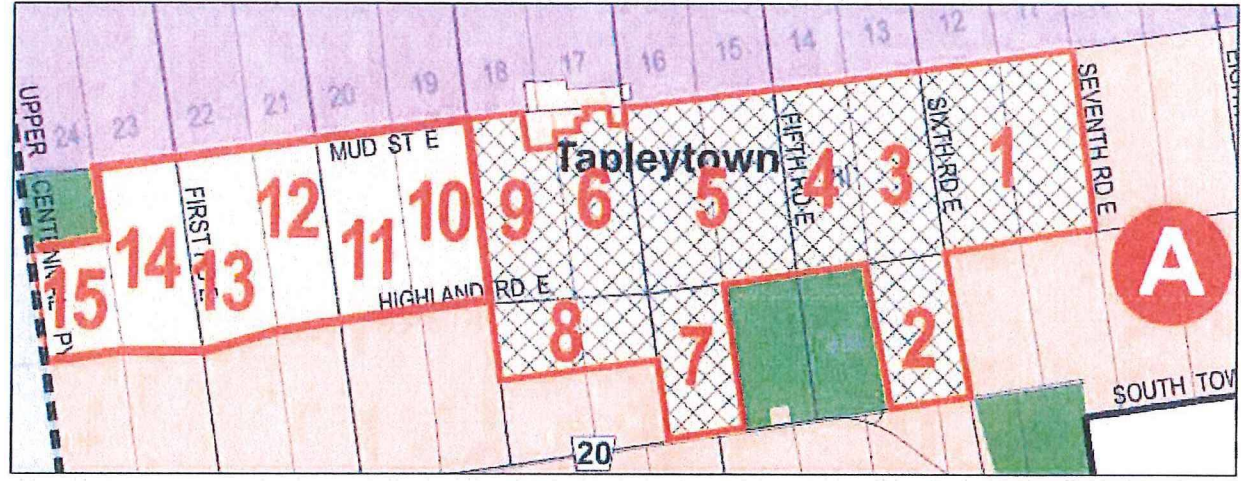


Note: The Agriculture designation of lands owned by Paletta International Corporation, P & L Livestock, Multi-Area Developments Inc., 637414 Ontario Inc., 2101510 Ontario Inc., 2000963 Ontario Inc., Mud & First Inc., 2084696 Ontario Inc., 2188410 Ontario Inc., Weizer Investments Limited, Artstone Holdings Limited, Corpwell Holdings Limited, 1507565 Ontario Inc. and DiCenzo (Golf Club Road) Holdings on the date of their appeals remains under appeal.

Attachment "1b"
PL090114

**Proposed Settlement between City of Hamilton and Ministry of
Municipal Affairs and Housing - MODIFICATION 33b**
Clip from Hamilton Official Plan Schedule D (Rural Land Use)
November 1, 2011

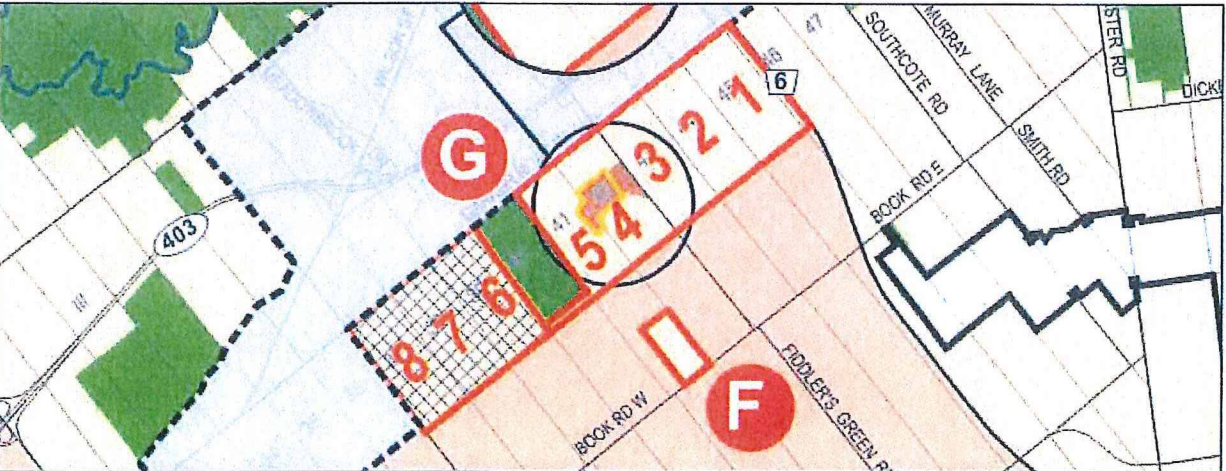
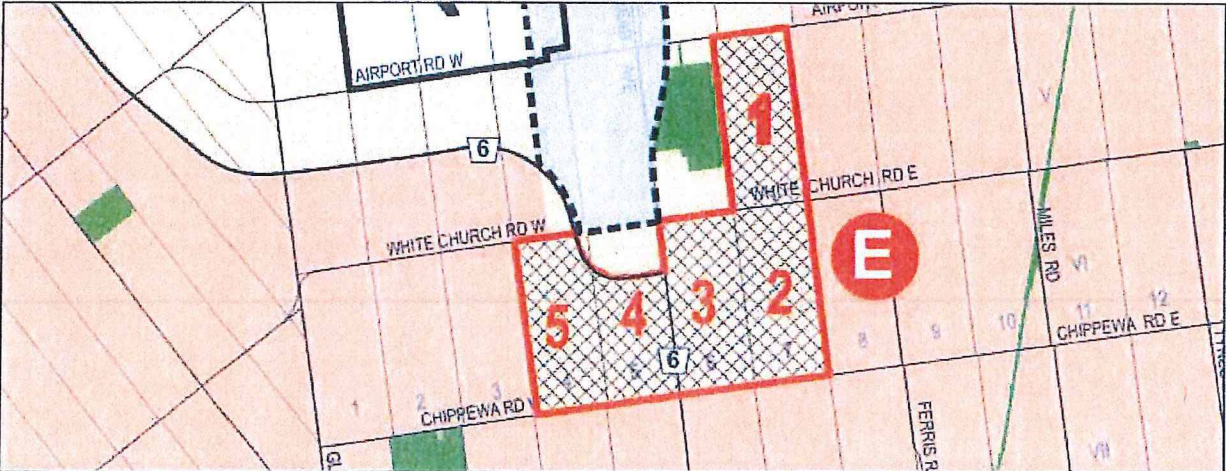
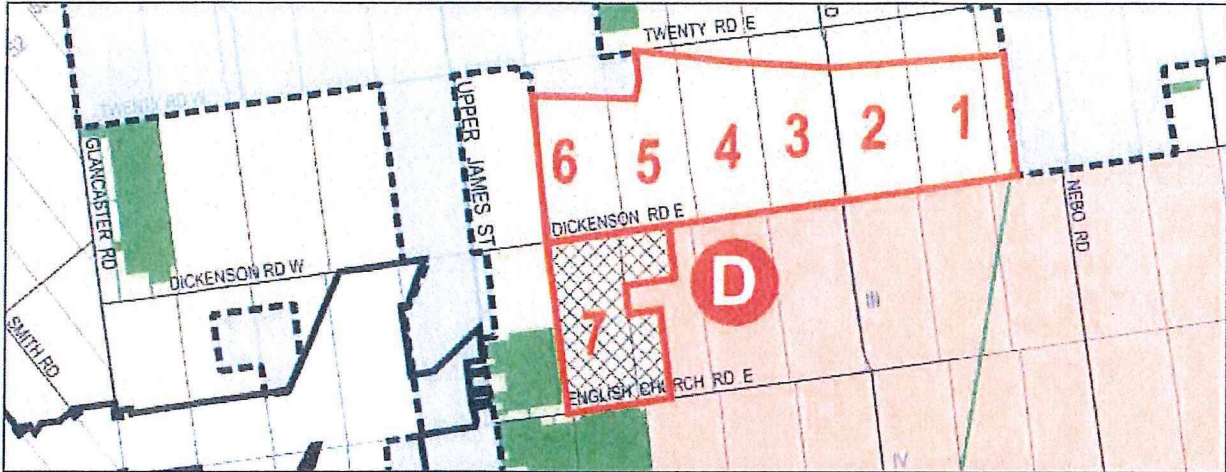
 Area subject to Modification 33b  Lands to be designated Agriculture



Attachment "1b"
PL090114

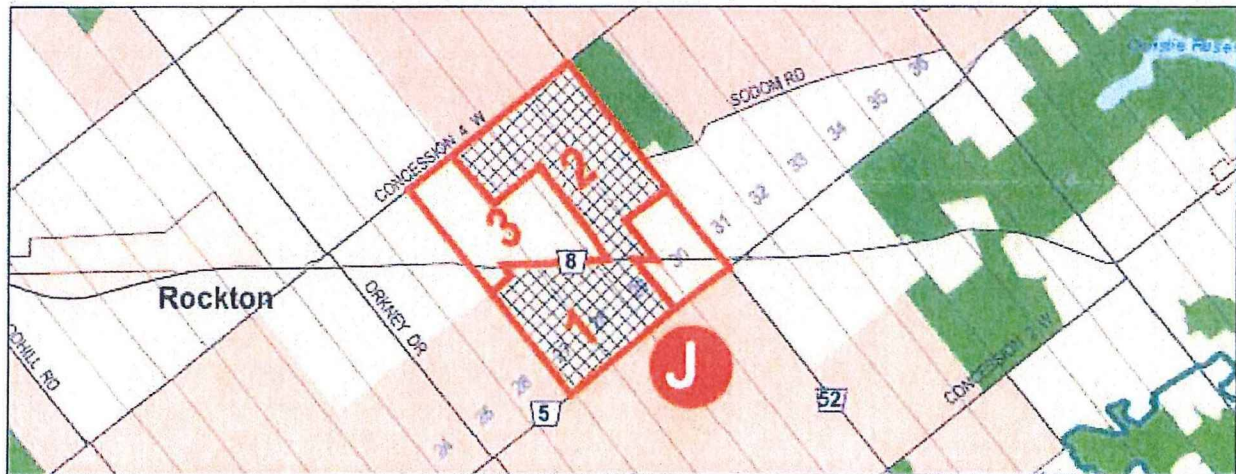
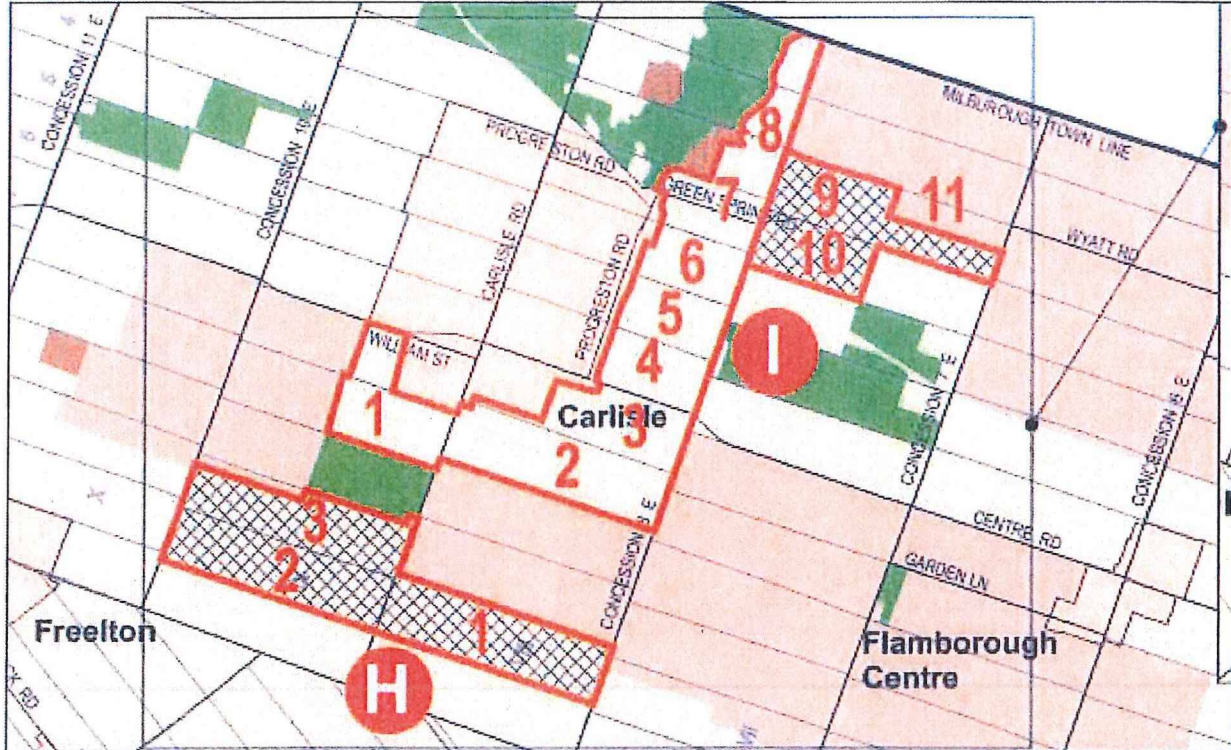
**Proposed Settlement between City of Hamilton and Ministry of
Municipal Affairs and Housing - MODIFICATION 33b**
Clip from Hamilton Official Plan Schedule D (Rural Land Use)
November 1, 2011

 Area subject to Modification 33b  Lands to be designated Agriculture



**Proposed Settlement between City of Hamilton and Ministry of
Municipal Affairs and Housing - MODIFICATION 33b**
Clip from Hamilton Official Plan Schedule D (Rural Land Use)
November 1, 2011

 Area subject to Modification 33b  Lands to be designated Agriculture



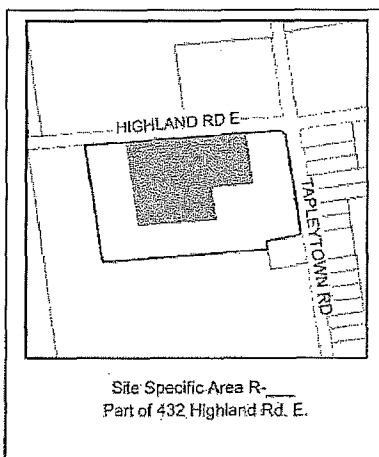
Attachment "2"
PL090114

**Proposed Settlement between the City of Hamilton and Ministry of Municipal
Affairs and Housing
November 1, 2011**

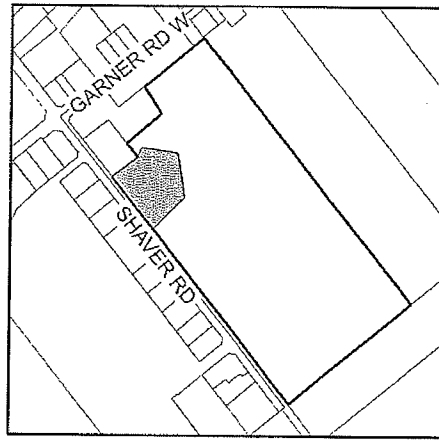
R-XX Lands known as part of 432 Highland Road East, former City of Stoney Creek.

1.0 In addition to the uses permitted in Section D.2.0, Agriculture Designation of this Plan and in accordance with the Zoning By-law, for the lands designated Agriculture, municipally known as part of 432 Highland Road East, and identified as Site Specific Area R-XX, consisting of approximately XX hectares (XX acres), the following uses may be permitted:

- a) an abattoir and meat packaging operation with an accessory retail outlet uses only within the existing buildings and structures.
- b) accessory uses to the principal use.



Attachment "3"
PL090114



Site Specific Area R-
Part of 623 Shaver Road