

# LIST OF DOCUMENTS THAT DEMONSTRATES CITY OF HAMILTON'S DE FACTO CONSTRUCTIVE EXPROPRIATION (CONSTRUCTIVE TAKING) OF WHITE STAR LANDS AND BUSINESS

## THREE SEPARATE STADIUM PLANS PURSUED BY CITY OF HAMILTON

2003 | 2005  
*Commonwealth Games  
Stadium Plan*



2010  
*Pan Am Games  
Stadium Plan*



# CITY OF HAMILTON OFFICIAL INTENTION OF BIDDING ON COMMONWEALTH GAMES 2010

CITY WIDE  
IMPLICATIONS

## CITY OF HAMILTON

CITY MANAGER'S OFFICE

<b>Report to:</b> Mayor and Members Committee of the Whole	<b>Submitted by:</b> Robert W. Robertson, Ph. D., AICP, MCIP City Manager
<b>Date:</b> July 19, 2002	<b>Prepared by:</b> Greg Maychak, Supervisor Sport Development, Ext. 2000

**SUBJECT: Commonwealth Games Bid Proposal 2010 Update CM02-004a  
(City Wide)**

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### RECOMMENDATION:

- (a) That the City of Hamilton confirms its intent to bid to host the 2010 Commonwealth Games through a partnership and joint bid with the Hamilton Spectator;
- (b) That the Mayor on behalf of City Council and The Hamilton Spectator, submit a letter of Intent to Bid for the 2010 Commonwealth Games to Commonwealth Games Canada, by the August 14, 2002 deadline;
- (c) That the Letter of Intent be accompanied by a non-refundable deposit of \$5,000 to be taken out of Capital Account 2050258103;
- (d) That City Council approve the secondment of the Supervisor of Sport Development and Scheduling, Culture and Recreation Division, Community Services Department, to assist with the preparation of the bid; and that the cost for salary and benefits be attributed to the Commonwealth Games Bid budget.
- (e) That City Council receives an updated working budget and a progress report for the domestic bid phase.

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Robert W. Robertson, Ph. D., AICP, MCIP  
City Manager

# CITY OF HAMILTON OFFICIAL INTENTION OF BIDDING ON COMMONWEALTH GAMES 2014

CITY WIDE  
IMPLICATIONS

## CITY OF HAMILTON

*PLANNING AND ECONOMIC DEVELOPMENT DEPARTMENT  
Economic Development Division*

<b>Report to:</b> Mayor and Members Committee of the Whole	<b>Submitted by:</b> Lee Ann Coveyduck General Manager
<b>Date:</b> July 12, 2005	<b>Prepared by:</b> David Adames (905) 546-2424 Ext. 4132
<b>File:</b>	

**SUBJECT: City of Hamilton Support for the 2014 Commonwealth Games Bid  
(PED05070) (City Wide)**

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### RECOMMENDATION:

- a) That Council authorize a bid for the 2014 Commonwealth Games, including endorsement and support for the domestic bid phase.
- b) That the Mayor, on behalf of Council, submit a letter of intent for the domestic bid phase, to Commonwealth Games Canada by the July 22, 2005 deadline.
- c) That the letter of intent be accompanied by a non-refundable fee of \$5,000, to be paid from the Unallocated Capital Levy Reserve, Account 108020.
- d) That Council approve a domestic bid budget of up to \$400,000 for the domestic bid phase, including providing funding up to \$275,000, and that this amount be funded from the Unallocated Capital Levy Reserve, Account 108020.
- e) That Council assign the City's surplus from the 2010 Commonwealth Games Bid to the domestic bid phase for the 2014 Commonwealth Games.
- f) That staff be directed to establish a 2014 Commonwealth Games Bid Committee, that the City's team be led by Tourism Hamilton, and that Council authorize the bid committee to prepare the bid submission and all necessary work to comply with the bid specifications as presented by Commonwealth Games Canada.
- g) That Council receive a progress report for the domestic bid phase prior to the final bid submission.

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Lee Ann Coveyduck  
General Manager  
Planning and Economic Development Department

# **CITY OF HAMILTON OFFICIAL INTENTION OF BIDDING ON PAN AM GAMES 2015**

**SUBJECT: International Event Opportunities - 2015 Pan Am Games Update  
(CM09006(l) (City Wide) - Page 6 of 25**

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February 25, 2009: Through Report CM09006 "International Event Opportunities – 2015 Pan Am Games Bid Update" City Council approved Hamilton's participation in the bid and Games.

January 12, 2009: Through Report PED08091(b), City Council approved Hamilton's list of sport venues and sites to be investigated to locate the stadium and velodrome as part of the bid process.


November 12, 2008: Through Report PED08091(a), City Council approved the establishment of a Community Advisory Committee and staff secondments to work on the bid.

May 5, 2008: Staff provided City Council with an Information Update to report on activities related to Report PED08091 "International Event Opportunities".

April 7, 2008: Through Report PED08091 "International Event Opportunities", City Council authorized staff to participate in the Pan Am Games bid process.



# HAMILTON CITY SOLICITOR INDICATES CITY ADVANCING STADIUM PLANS TAKES PRECEDENT OVER WHITE STAR DEVELOPMENT PLANS AT OMB

ISSUE DATE:  
  
May 05, 2009



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PL050408

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

Harbour West Neighbours Inc., Shawn Selway and North End Neighbours have appealed to the Ontario Municipal Board under subsection 17(24) of the *Planning Act*, R.S.O. 1990, c. P.13, as amended, from a decision of the City of Hamilton to approve Proposed Amendment No. 23 to the (former) Regional Official Plan for the City of Hamilton  
Approval Authority File No. ROPA No. 23  
OMB File No. O050065

The TDL Group Corp, the Harbour West Neighbours Inc., the Canadian National Railway, 687224 Ontario Inc. et al. have appealed to the Ontario Municipal Board under subsection 17(24) of the *Planning Act*, R.S.O. 1990, c. P.13, as amended, from a decision of the City of Hamilton to approve Proposed Amendment No. 19C to the Official Plan for the City of Hamilton  
Approval Authority File No. OPA No. 198  
OMB File No. O050066

Rheem Canada Ltd., the Harbour West Neighbours Inc., the Canadian National Railway, 687224 Ontario Inc. et al. have appealed to the Ontario Municipal Board under subsection 34(19) of the *Planning Act*, R.S.O. 1990, c. P.13, as amended, against Zoning By-law 05-073 of the City of Hamilton  
OMB File No. R050077

## APPEARANCES:

### Parties

1255717 Ontario Ltd.  
City of Hamilton  
B & M Metal Recycling  
Canadian National Railway  
Rheem Canada Ltd.  
Harbour West Neighbours Inc., Shawn Selway, and North End Neighbours

### Counsel

Anthony Powell  
Art Zuidema  
Russell Cheeseman  
Michael Hackl  
Michael Bowman  
Herman Turkstra

**DECISION DELIVERED BY J. de P. SEABORN AND ORDER OF THE BOARD**

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(5)  
1255717

SETTING SAIL APPEALS

(34)

ZUIDEMA STATEMENT SET DOCUMENT

In March 2005 the City of Hamilton (City) enacted certain Official Plan Amendments (OPA 23 & 198) and a Zoning By-law Amendment (By-law) which cover lands in the waterfront area of Hamilton. These instruments, which have the effect of re-zoning these lands from industrial to residential (among other uses), have been appealed by a variety of landowners, all of whom are Parties to the matters before the Board. Since the appeals (known as the Setting Sail appeals) were launched, the Board has convened pre-hearing events and some issues have been resolved. However, there has been no procedural order issued nor has a hearing date been set. The City has been trying to resolve issues with the Parties and intervening initiatives have meant that neither the City, nor the Parties, are ready to proceed to a hearing.

1255717 Ontario Ltd (Applicant) has launched a motion seeking Party status in respect of the Setting Sail appeals. The OPAs and re-zoning are favourable to the Applicant as it proposes to re-develop its lands, currently used as a wrecking yard, to residential uses. The Applicants site-specific project is not before the Board. The City indicated that in order to develop the lands, the Applicant would need additional approvals including at least a site-specific Official Plan amendment, site-specific zoning, and site plan approval. The Applicant previously submitted a zoning application and Official Plan amendment, which have not been processed by the City. The Applicant has not appealed the inaction of the City. Nevertheless, Mr. Powell argued that his client should be added as a party to the appeals launched by neighbouring landowners for the simple reason that his client's lands form part of the lands that are the subject matter of the appeals before the Board. The Applicant has been working with the City. As a result of this alliance, the Applicant has determined it has not been necessary to move ahead and appeal its site-specific instruments. The Applicant does however wish to be included in the current appeals in the hope that the Board will determine within a predictable timeframe, the fate of the OPAs and By-law under appeal.

The City does not object to the Applicant receiving party status. However, Mr. Zuidema explained that in supporting the request, the City is not prepared to move ahead with an early pre-hearing to establish the organization and conduct of the hearing. An intervening issue has arisen. The Province has formed a corporation that is bidding for the 2015 Pan Am Games. In February 2009, the City endorsed a proposal to invest toward a stadium and a velodrome, with the preferred site in the West Harbour Precinct lands, covered by the Setting Sail appeals. It will not be known until November



2009 whether the bid is successful. Accordingly, Mr. Zuidema's instructions are to support the Applicant's request for party status, but delay any further pre-hearing until a decision concerning the location of facilities in Hamilton for the 2015 Pan Am Games has been made. That decision will materially affect the appeals that are before the Board and it makes little sense to move ahead with the Setting Sail appeals while the decision in respect of the Pan Am Games remains outstanding.

Mr. Turkstra's clients support the City in its quest to have the lands re-zoned for residential development and accordingly the request for party status was not opposed. However, concern was expressed that only one hearing should be convened and Mr. Turkstra would therefore oppose any attempt by Mr. Powell's client, having received party status, to have an early hearing in respect of its application. This would result in a duplicity of proceedings. Mr. Bowman argued that while his client, Rheem Canada, did not oppose party status, it should only be granted on the condition that there be no separate or early hearing. Mr. Bowman submitted that Mr. Powell should be required to appeal his site-specific applications, rather than seek to intervene in these proceedings. Mr. Bowman indicated that there is no evidence that the Applicant's project is consistent with the goals of the City. Similarly, Mr. Hackl, who represents Canadian National Railway (CN), is concerned about the prospect of more than one hearing on essentially the same issues. The issues involved at any hearing will be complex given the proximity of CN lands to the sites owned by the various appellants, requiring sophisticated expert evidence. Mr. Hackl also submitted that there was no planning evidence (merely a statement by Mr. Powell's client in the affidavit) before the Board upon which it could rely to conclude that the Applicant's project is indeed suited to the site and consistent with the City's vision for the area generally. Accordingly, while not opposing the request for party status *per se*, Mr. Hackl's submission was that such status should only be granted if it is made conditional on the Board determining that the Applicant cannot, subsequent to obtaining that status, be afforded a separate hearing. Mr. Hackl was candid that if Mr. Powell instead appealed the City's refusal to address the site-specific applications, CN likely would want that appeal heard with or following these proceedings. Again, the goal is to avoid two hearings covering largely the same issues.

Mr. Cheeseman was opposed to the Motion. In his submission, nothing can be gained by granting party status, as the issues surrounding the City's secondary plan



must be determined in any event prior to any consideration of site-specific applications. With the exception of Mr. Bowman's clients, all of the Appellants are appealing the secondary plan and the issue for the hearing will concentrate on the City's vision for the waterfront area. Mr. Cheeseman's clients take the position that the vision should not include residential. Mr. Powell's client is aligned with the City and therefore there is no reason, at this late date, to add the Applicant whose interest is site specific to these proceedings. The City will protect its vision and there is nothing Mr. Powell can add.

Other than Mr. Cheesemen's client, there is no opposition to the Applicant being made a party to these proceedings. The Applicant is a landowner that is affected by the Setting Sail appeals and has an interest in the outcome of these appeals. In this regard, the Board rejects Mr. Cheeseman's contention that the Applicant is not a proper party. While the Applicant may be aligned with the City and support its vision, that support should not bar the Applicant from party status. The decision of the Board is to grant party status on the basis proposed by the City, which is a sensible resolution. Party status is not conditional. It would be premature for the Board to make any finding or ruling on how the hearing will proceed in the absence of a substantive pre-hearing conference, the purpose of which will be to delineate the issue for the hearing. Accordingly, it is not appropriate for the Board to impose a formal condition to the party status granted to the Applicant. The Applicant is a landowner affected by the Setting Sail appeals and on this basis alone, party status is proper. However, the submissions of Counsel to the effect that more than one hearing should be avoided are accepted as valid concerns and shall be considered by the Board in the context of the way in which any hearing is structured. Separate hearings on the same or similar issues are always to be avoided.

The Motion is allowed and 1255717 Ontario Ltd. is added as a Party. The Board will convene a further pre-hearing conference in December 2009. Counsel should provide convenient dates to Mr. Norris, the planner responsible for the file, by May 31, 2009 and shortly thereafter the Board will provide notice of the pre-hearing to all Parties.

The purpose of the December, 2009 pre-hearing conference will be to establish dates for the conduct and organization of the hearing. The Parties should prepare a list of issues in preparation for the pre-hearing. As a housekeeping matter, Mr. Turkstra requested first, that the Appellants Michael Poworoznyk and John Mattinson be



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removed as Parties; and second that the North End Neighbours be added in place of Mr. Mattinson. These amendments were not opposed and are adopted by the Board.

I am seized of the next pre-hearing and will continue to case manage the appeals.

This is the Order of the Board.

"J. de P. Seaborn"

J. de P. SEABORN  
VICE CHAIR

# **SWORN AFFIDAVIT OF CITY OF HAMILTON REAL ESTATE CONSULTANT, DARLENE COLE, CONFIRMING CITY HAD AUTHORIZED EXPROPRIATIONS FOR CITY STADIUM DISTRICT PLAN**

## **TRIBUNALS ONTARIO LOCAL PLANNING APPEAL TRIBUNAL**

**PROCEEDING COMMENCED UNDER** subsection 26(b) of the *Expropriations Act*, R.S.O. 1990, c. E.26, as amended

Claimant:	White Star Group of Companies
Respondent:	City of Hamilton
Subject:	Land Compensation
Property Address/ Description:	271 Bay St. N, 107 Stuart St. & 34-36 Tiffany St.
Municipality:	City of Hamilton
LPAT Case No.:	LC200004
LPAT File No.:	LC200004
LPAT Case Name:	White Star Group of Companies v. Hamilton (City)

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### **AFFIDAVIT OF DARLENE COLE JUNE 18, 2020**

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I, Darlene Cole, of the City of Toronto, make oath and swear as follows:


#### ***Qualifications and Experience***

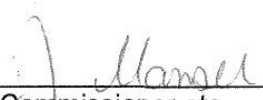
1. I am a Senior Real Estate Consultant in the Real Estate Section of the Planning and Economic Development Department for the City of Hamilton ("City"). I have held this position since 2003.
2. Attached as Exhibit "A" is a copy of my curriculum vitae.
3. By virtue of my position with the City, I have knowledge of these matters.
4. I understand and verily believe that the lands which are the subject of the claimant's claim in this matter are the lands known municipally as 271 Bay Street North, 107 Stuart Street, and 34-36 Tiffany Street, Hamilton (the "Subject Lands"). The Subject Lands are located within the West Harbour precinct of the City.



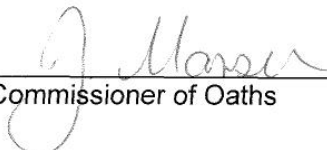
5. On February 24, 2010, City Council directed staff to start the process of acquiring lands necessary to construct a stadium in the West Harbour precinct of the City for the upcoming 2015 Pan Am Games. Where any required lands could not be acquired through negotiations, staff was directed to proceed with expropriation. A copy of the minutes of Council is attached as Exhibit "B".
6. I was actively involved in the subsequent negotiations with property owners, including with the claimant in this matter.
7. On October 11, 2011, City Council directed staff to cease active expropriations of lands for the proposed stadium as the stadium was no longer being pursued. A copy of the minutes of Council is attached as Exhibit "C".
8. The Subject Lands were not acquired by the City through negotiation with the owner, nor were they expropriated (either in whole or in part) during this time.
9. I am not aware of any action by the City to initiate expropriation of the Subject Lands (either in whole or in part) by serving the owner with a notice of intent to expropriate between February 2010 and October 2011 (or since). In fact, no expropriations were ever completed in the West Harbour precinct and all lands owned by the City in that area for the purpose of the proposed stadium were acquired through negotiation and purchase.
10. No construction of the proposed stadium was ever commenced at that time or since.
11. I make this affidavit in support of the City's motion and for no other or improper purpose.

SWORN BEFORE ME at )  
 the City of Hamilton in the )  
 Province of Ontario this )  
 18<sup>th</sup> day of June, 2020 )

  
 \_\_\_\_\_  
 Darlene Cole

  
 \_\_\_\_\_  
 A Commissioner etc.  
 Jillian Claire Manser, a Commissioner, etc.,  
 Province of Ontario, for the City of Hamilton.  
 Expires April 13, 2021.

This is Exhibit "A" referred to in  
the affidavit of Darlene Cole  
sworn before me, this 18<sup>th</sup> day of June, 2020

  
A Commissioner of Oaths

Jillian Claire Manser, a Commissioner, etc.,  
Province of Ontario, for the City of Hamilton.  
Expires April 13, 2021.



## **WORK HISTORY**

### **Senior Real Estate Consultant, City of Hamilton 2003-2020**

Acquired land, easements, rights of way, and licences in Hamilton for Red Hill Expressway, Pan Am Stadium, Waterdown East/West By-Pass and other public works projects;

Sold land and/or interests to school boards, religious organizations, local development community, utilities, railways, government agencies, investors in Hamilton real estate including local residents.

### **Real Estate Manager, Canadian Highways International Constructors 1994-1998**

Liaison between Ministry of Transportation, Ontario Realty Corporation and Canadian Highways International Constructors, overseeing entire land acquisitions/expropriations process for Hwy. 407 right of way.

Obtained severances/rezoning for estate lots to facilitate relocation of 23 heritage buildings in Vaughan, Markham and Brampton.

### **Project Planner, Proctor & Redfern Consulting Engineers 1989-1994**

Represented Proctor & Redfern Ltd., at public meetings for the Town of Fergus;

Participated in the development of Canada's first Blue Box Waste Collection program for the City of Mississauga;

Participated in the planning of the Victoria County Waste Management Master Plan for waste diversion;

For Pepsi-Cola Canada searched across Canada for suitable aquifers to supply future bottling plants for "new age" product line.

### **Negotiator, Ontario Realty Services, Province of Ontario 1983-1989**

Acquisitions/expropriations across GTA for Parkway Belt West Plan;  
Acquisitions across the Province to fulfill various Ministerial requirements (Housing, Transportation, Education, Natural Resources, Environment, Attorney General, and Health);

Acquisitions for development of linear facilities (Hydro, GO Transit, OPP, Union Gas, TransCanada Pipe Lines, York-Durham sewer);

*Appraiser, Ontario Realty Services, Province of Ontario 1977-1983*

Prepared valuations for the Province to serve the acquisition and disposition of its Capital Construction and Special Projects portfolio which included real estate in all categories .

Prepared appraisals for Parkway Belt West acquisitions/expropriations;

Carried out realty surveys and made recommendations to senior management for appropriate program uses.

## **EMPLOYMENT HISTORY**

2003-2020 City of Hamilton, Senior Real Estate Consultant  
1994-1998 Canadian Highways International Constructors, Real Estate Manager  
1989-1994 Proctor & Redfern, Project Planner  
1983-1989 Province of Ontario, Negotiator  
1977-1983 Province of Ontario, Appraiser

## **ACADEMICS**

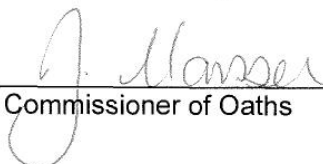
Appraisal Institute of Canada (1977 – 1980)  
Urban Land Institute (1989)  
Real Property Assessment (1995)  
Institute of Law Clerks (2001 – 2002)  
International Right of Way Association (2005)  
Real Estate Institute of Canada (2005)

## **PROFESSIONAL MEMBERSHIPS**

Ontario Expropriation Association  
International Right of Way Association  
Real Estate Institute of Canada



This is Exhibit "B" referred to in  
the affidavit of Darlene Cole  
sworn before me, this 18<sup>th</sup> day of June, 2020



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A Commissioner of Oaths

**Jillian Claire Manser, a Commissioner, etc.,**  
Province of Ontario, for the City of Hamilton.  
Expires April 13, 2021.



## CITY COUNCIL MINUTES

Wednesday, February 24, 2010

7:00 p.m.

Albion Rooms

Hamilton Convention Centre

One Summer's Lane

Hamilton, Ontario

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**Present:** Mayor F. Eisenberger

Councillors B. Bratina, B. Clark, C. Collins, S. Duvall,  
T. Jackson, M. McCarthy, B. McHattie, S. Merulla, B. Morelli,  
D. Mitchell, R. Pasuta, M. Pearson, R. Powers, T. Whitehead

**Absent with Regrets:** Councillor L. Ferguson – Vacation

Mayor Eisenberger called the meeting to order and called upon Reverend Ian McPhee, of Erskine Presbyterian Church, to lead Council in prayer.

<b>APPROVAL OF THE AGENDA</b>
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The Clerk advised of the following changes to the agenda:

**1. ADDED CORRESPONDENCE**

- 5.5 Correspondence from Dwayne Alexander Brown and Sandra Penner, Crown Point Community Planning Team respecting 1429 Main Street East – Homestead Christian Care

Recommendation: Be received

**2. ADDED MINUTES**

- 10.2 Minutes of the February 17, 2010 Closed Session Meeting



Nays: Bratina, Clark, McCarthy, Mitchell  
Total: 4

Absent: Ferguson  
Total: 1

- (m) That should the West Harbour Plan fail, that the City explore other options as potential sites including the East Harbour Front among others.

Yeas: Eisenberger, Collins, Duvall, Jackson, McHattie, Morelli, Pasuta,  
Pearson, Powers, Whitehead  
Total: 10

Nays: Bratina, Clark, McCarthy, Mitchell, Merulla  
Total: 5

Absent: Ferguson  
Total: 1

**2. International Event Opportunities – 2015 Pan Am Games Update (CM090006(c)) (Item 11.1)**

Item 2 was split for voting purposes and, on a Standing Recorded Vote, CARRIED, as follows:

- (a) That the Real Estate Section of the Economic Development and Real Estate Division be authorized and directed to commence the process of land acquisitions and negotiate and execute interim permission to enter access agreements for environmental testing within the West Harbour precinct pursuant to City Council's approved Real Estate Portfolio Strategy Plan and Council's approved Delegation of Authority for routine real estate matters, based on the following:
- (i) that the budget amount for the total acquisition costs including land access agreements for the lands identified in Appendix "A" as amended, be subject to the financial details and funding outlined in Report CM09006(b) and be funded from Project 3621054100;
  - (ii) that the funding source for the purposes of undertaking environmental audits be charged to Project 3621054100;
  - (iii) that the Director of Energy, Fleet and Facilities be authorized and directed to take all the necessary steps for the demolition of the subject buildings, and that the cost for the demolition and any additional ancillary expenses be charged to Project 3621054100;

Yeas: Eisenberger, Clark, Collins, Duvall, Jackson, McHattie, Morelli,  
Pasuta, Pearson, Powers, Whitehead

Total: 11

Nays: Bratina, McCarthy, Mitchell, Merulla

Total: 4

Absent: Ferguson

Total: 1

- (b) That In the event that an Option to Purchase can not be reached by all parties pursuant to Clause 3, that appropriate legal counsel be retained, authorized and directed, working with the assistance of appropriate City officials and staff, if available, and the City solicitor to:
- (i) Proceed with the necessary steps to expropriate the necessary lands, as per the mapping contained in Appendix "A" as amended;
  - (ii) Prepare an Application for the Approval to Expropriate by the City of Hamilton for the affected lands to be signed by the City Clerk;
  - (iii) Cause the necessary Notice of Application to be served on the registered owners of the lands affected and for the advertisement of the said Notice of Expropriation to be placed in the local newspaper for three (3) consecutive weeks;
  - (iv) Apply for an Order to dispense of any request for hearing pursuant to the Expropriations Act, chap. E.26, Section 6(3);
  - (v) Forward to the Chief Inquiry Officer any Request for Hearings received and to report to City Council of such information in the event subsection (iv) is not granted;
  - (vi) Introduce the appropriate Expropriation By-law to City Council in the event no requests for Hearing are received;
  - (vii) Direct the Manager of Real Estate, Planning and Economic Development Department to obtain external Appraisals for the affected lands, if and when necessary, to form the basis of compensation to be offered by the City and that the Manager of Real Estate, if and when necessary, be authorized and directed to negotiate compensation with the owner of the expropriated lands on the basis of the appraisal report;
  - (viii) Direct the Surveys/Technical Services Section of the Environment and Sustainable Infrastructure Division to prepare a Plan of Expropriation for registration in the Land registry Office;

Yeas: Eisenberger, Collins, Clark, Duvall, Jackson, McHattie, Morelli,  
Pasuta, Pearson, Powers, Whitehead  
Total: 10

Nays: Bratina, McCarthy, Mitchell, Merulla  
Total: 5

Absent: Ferguson  
Total: 1

(iv) Apply for an Order to dispense of any request for hearing pursuant to the Expropriations Act, chap. E.26, Section 6(3);

Yeas: Eisenberger, Collins, Duvall, Jackson, McHattie, Morelli, Pasuta,  
Pearson, Powers, Whitehead  
Total: 10

Nays: Bratina, Clark, McCarthy, Mitchell, Merulla  
Total: 5

Absent: Ferguson  
Total: 1

(c) That the Mayor and Clerk be authorized and directed to sign the Certificate of Approval affixed to the Plan of Expropriation and the City Clerk be authorized and directed to affix the Corporate Seal thereto;

Yeas: Eisenberger, Clark, Collins, Duvall, Jackson, McHattie, Morelli,  
Pasuta, Pearson, Powers, Whitehead  
Total: 11

Nays: Bratina, McCarthy, Mitchell, Merulla  
Total: 4

Absent: Ferguson  
Total: 1

(d) That the City Clerk be authorized and directed to sign, and the City Solicitor be authorized and directed to serve, any Notices required by the Expropriations Act and such Notices of Compensation and possession and any other action, as may be required, to obtain and authorize entry and possession of the expropriated lands at the earliest possible date, and to settle compensation before the Land Compensation Board, if necessary, for the City of Hamilton.

Yeas: Eisenberger, Clark, Collins, Duvall, Jackson, McHattie, Morelli,  
Pasuta, Pearson, Powers, Whitehead



Total: 11

Nays: Bratina, McCarthy, Mitchell, Merulla  
Total: 4

Absent: Ferguson  
Total: 1

- (e) That the cost of Expropriations be charged to Project 3621054100;

Yeas: Eisenberger, Clark, Collins, Duvall, Jackson, McHattie, Morelli,  
Pasuta, Pearson, Powers, Whitehead

Total: 11

Nays: Bratina, McCarthy, Mitchell, Merulla  
Total: 4

Absent: Ferguson  
Total: 1

- (f) That Public Works be authorized and directed to undertake the process to assemble and close all necessary road allowances within the West Harbour precinct and, that the cost be charged to Project 3621054100;

Yeas: Eisenberger, Clark, Collins, Duvall, Jackson, McHattie, Morelli,  
Pasuta, Pearson, Powers, Whitehead

Total: 11

Nays: Bratina, McCarthy, Mitchell, Merulla  
Total: 4

Absent: Ferguson  
Total: 1

- (g) That the Surveys/Technical Services Section of the Environment and Sustainable Infrastructure Division be authorized and directed to undertake all necessary surveys and, that the cost be charged to Project 3621054100;

Yeas: Eisenberger, Clark, Collins, Duvall, Jackson, McHattie, Morelli,  
Pasuta, Pearson, Powers, Whitehead

Total: 11

Nays: Bratina, McCarthy, Mitchell, Merulla  
Total: 4

Absent: Ferguson  
Total: 1

- (h) That Gowling, Lafleur Henderson (Gowlings) be retained as outside Counsel to the City and be authorized and directed, working with the assistance of such City officials and staff as may be available and other retained outside consultants, to advise on and obtain environmental and planning approvals for acquiring, environmental testing, preparation and use of the West Harbour lands for the Pan Am Games facilities;

Yeas: Eisenberger, Clark, Collins, Duvall, Jackson, McHattie, Morelli,  
Pasuta, Pearson, Powers, Whitehead  
Total: 11

Nays: Bratina, McCarthy, Mitchell, Merulla  
Total: 4

Absent: Ferguson  
Total: 1

- (i) That Gowlings further be authorized for these purposes, to retain Decommissioning Consulting Services Limited (DCS) to carry out the required environmental site investigations of the West Harbour lands, including City owned streets and property, for the purpose of carrying out a risk assessment and other actions necessary to prepare a Record of Site Condition (RSC) for the lands and file and obtain Ministry of Environment acceptance of the RSC, and to direct and supervise the actions required to environmentally prepare the West Harbour lands for Pan Am facility construction, including demolition of on-site buildings, as outlined in the DCS work plan to be provided by Gowlings to the City Solicitor;

Yeas: Eisenberger, Clark, Collins, Duvall, Jackson, McHattie, Morelli,  
Pasuta, Pearson, Powers, Whitehead  
Total: 11

Nays: Bratina, McCarthy, Mitchell, Merulla  
Total: 4

Absent: Ferguson  
Total: 1

- (j) That the cost of the work carried out under these retainers be charged to Project 3621054100;

Yeas: Eisenberger, Clark, Collins, Duvall, Jackson, McHattie, Morelli,  
Pasuta, Pearson, Powers, Whitehead  
Total: 11

Nays: Bratina, McCarthy, Mitchell, Merulla  
Total: 4

Absent: Ferguson  
Total: 1

- (k) That the Mayor and Clerk be authorized and directed to execute all necessary documents in a form satisfactory to the City Solicitor;

Yeas: Eisenberger, Clark, Collins, Duvall, Jackson, McHattie, Morelli, Pasuta, Pearson, Powers, Whitehead  
Total: 11

Nays: Bratina, McCarthy, Mitchell, Merulla  
Total: 4

Absent: Ferguson  
Total: 1

Information Section (g):

Councillor T. Whitehead to be recorded as being Opposed to moving into Closed Session.

**(Eisenberger/Whitehead)**

That the EIGHTH Report of the Committee of the Whole be adopted, and the information section received.

**CARRIED**

**BOARD OF HEALTH REPORT 10-002**

**(Eisenberger/Whitehead)**

That the SECOND Report of the Board of Health be adopted, and the information section received.

**CARRIED**

**(Merulla/McHattie)**

That the Committee of the Whole rise and report.

**CARRIED**

**MOTIONS**

**(Mitchell/Pearson)**

That the Rules of Order be waived in order to allow for the introduction of a motion with respect to GO Transit Stations – Preferred Locations.

**CARRIED**



This is Exhibit "C" referred to in  
the affidavit of Darlene Cole  
sworn before me, this 18<sup>th</sup> day of June, 2020

A handwritten signature in cursive script, reading "J. Manser". The signature is written in black ink and is positioned above a horizontal line.

A Commissioner of Oaths

Jillian Claire Manser, a Commissioner, etc.,  
Province of Ontario, for the City of Hamilton.  
Expires April 13, 2021.

<b>APPROVAL OF MINUTES</b>
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None

<b>COMMUNICATIONS</b>
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<b>STANDING COMMITTEE REPORTS</b>
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None

<b>MOTIONS</b>
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**4.1 International Event Opportunities – 2015 Pan Am Games Velodrome Business Plan (CM10005(b)) (City Wide)**

**(Ferguson/McHattie)**

- (a) That Item 1 of Committee of the Whole Report 10-008, approved by Council on February 24, 2010, respecting the location of a Warm up track and Velodrome at the West Harbour site, be rescinded;
- (b) That staff be directed to cease the active expropriations of land at the West Harbour site, as was directed by Council on February 24, 2010 by way of Item 2, subsection (b) of Committee of the Whole Report 10-008;
- (c) That Council:
  - (i) Confirms its participation in the Pan Am Velodrome project;
  - (ii) Selects Mohawk College as the site for the construction of a permanent velodrome and be forwarded to Toronto 2015 and Infrastructure Ontario for inclusion in the RFP process;
  - (iii) Reconfirms the commitment of the \$5 million grant funded from the Hamilton Future Fund;
  - (iv) Approves \$2 million funded from Mohawk College.
- (d) That the City of Hamilton's participation in the Pan Am Velodrome project be conditional on receiving an annual financial commitment from the Pan Am Legacy Fund of at least \$500,000 per year to be used to support ongoing operating, maintenance and capital rehabilitation costs;
- (e) That staff be directed to prepare any and all necessary agreements in a form satisfactory to the City Solicitor and that the Mayor and City Clerk be authorized to sign and execute all such agreements.

The Motion **CARRIED** on the following Standing Recorded Vote:

# **MOTION BY COUNCILLOR BRATINA TO DISCUSS POSSIBLE COMPENSATION FOR DELAYS TO WHITE STAR DUE TO CITY STADIUM PRECINCT EFFORTS**

*Excerpt from page 15 of Report 10-024 to the Committee of the Whole*

(ii) Councillor B. Bratina put forward the following Notice of Motion:

**Resolution of Matters Related to Lands in the West Harbour Stadium Precinct – The White Star Group (New Business – No Copy)**

That staff be directed to review and report back to Council by October 12, 2010 on the resolution of matters related to the lands in the West Harbour stadium precinct owned or controlled by The White Star Group, including possible compensation for losses sustained by the proponent as a result of City actions related to the Setting Sail Plan and the Pan Am Games opportunity.

The rules of order be waived in order to allow for the introduction of a motion respecting Resolution of Matters Related to Lands in the West Harbour Stadium Precinct – The White Star Group.

See Information Item (k) for the disposition of this item.

**Council – September 15, 2010**

**(k) Resolution of Matters Related to Lands in the West Harbour Stadium Precinct – The White Star Group (New Business – No Copy)**

Staff was directed to review and report back to Council by October 12, 2010 on the resolution of matters related to the lands in the West Harbour stadium precinct owned or controlled by The White Star Group, including possible compensation for losses sustained by the proponent as a result of City actions related to the Setting Sail Plan and the Pan Am Games opportunity.

**Council – September 15, 2010**



**20. Matters Related to Lands in the West Harbour Stadium Precinct – White Star Group (Ward 2) LS10017 (Added Item 11.3)**

(a) That Report LS10017 be received for information.

(b) That Report LS10017 remain confidential and not be publicly released as the content relates to potential land acquisition and litigation, and includes communications and advice of a solicitor and client nature.

**(i) Matters Related to Lands in the West Harbour Stadium Precinct – White Star Group (Ward 2) LS10017 (Requested by COW on September 14, 2010 – OB Item II) (Added Item 11.3)**

**(i) Request from Raquel Rakovac, White Star Auto Wreckers, to address personal issues regarding the Bay and Tiffany lands, unresolved issues. (Added Item 10.5)**

Rachel Rakovac addressed Committee and read from a prepared statement. Her family business is affected by the City's lack of action and she urged the City to resolve the situation.

**(ii) Request from Tony Powell, The White Star Group, to address resolution of the completion of the purchase of lands in the West Harbour (Copies distributed) (Added Item 10.4)**

Mr. Powell indicated that on September 14, 2010, Committee referred the matter to staff. He requested that Council deal with this issue before the new Term.

On a motion (Ferguson/Mitchell) Committee received both delegations.

Mayor Eisenberger relinquished the Chair to Councillor Collins and left the meeting.

# REPORT HIGHLIGHTING THE AGREEMENT TO REZONE LANDS AND PROVIDE ACCESS TO ERASE PROGRAM FOR REMEDIATION OF LANDS

CITY OF HAMILTON  
APPENDIX "A" RESULTS FROM BROWNFIELD INITIATIVES  
AS OF AUGUST 04, 2005

0) Failed at Tax Sale - Vested by City with Council Approval required for City Purposes  
1) Renewal of Uncollectible Accounts through Through Negotiations and Council Approval  
2) Renewal of Uncollectible Accounts through Tax Sales then Request for Offers and Council Approval

	Property Address	Process	Doubtful Accounts	Allowance for Municipal Tax Write-off	Taxes Recovered	Purchasers Required Actions	Result	New Purchasers / Former owners
17) 18)	12 Walnut 18 Walnut	1 Negotiation with new owner using Ontario Reg 138/04 to W.O Taxes. Council approval December 15, 2004	\$ 226,537.12	\$ 59,428.12	\$ 167,109.00	Former Dry cleaner plant. Would have been on the allowance for doubtful accounts for 2005. Suspected contamination from buried tanks which will be removed.	Outstanding taxes recovered. Penalty & Interest, water arrears and BIA charges written off. Property to be Auction House and Artisan studios. Building restored. Will lead to high assessments and taxes.	<b>Marino Rakovac</b> Former owner Langley-Parisian in receivership, property in disrepair. Would have been on 2005 allowance for doubtful accounts.
19-25)	Tiffany, Bay & Stuart 7 Properties 32 Tiffany, 107 Stuart, 263 / 269 / 271 / 275 / 279 Bay St. N	1 Negotiation with new owner using Ontario Reg 138/04 to W.O Taxes. Council approval December 15, 2004	\$ 594,625.38	\$ 301,000.00	\$ 293,625.38	7 Properties that make up a scrap yard. Scrap to be removed from site. Multi-townhouse development planned depending on city getting zoning changed. Remediation costs estimated at \$1.5 M. Property has been in limbo since 99 re zoning change since new owners took possession.	Deal pays all of the outstanding taxes in arrears since the early 80's. Scrap Yard is being cleaned up. If zoning gets changed then the soil will be remediated with the assistance of the Brownfield ERASE program and multi res development will take place	<b>Marino Rakovac</b> Former owners Bay Street Auto Wreckers.

Deal pays all of the outstanding taxes in arrears since the early 80's. Scrap Yard is being cleaned up. If zoning gets changed then the soil will be remediated with the assistance of the Brownfield ERASE program and multi res development will take place

# **CORRESPONDENCE HIGHLIGHTING THAT REZONING HASN'T HAPPENED BUT CITY INSISTING THAT THE BUSINESS ON THE PROPERTY REMAIN CLOSED**

**From:** Friday, Larry  
**Sent:** Wednesday, February 15, 2006 2:06 PM  
**To:** Tony Powell  
**Subject:** Tiffany Block concern - Councillor Collins

Councillor Collins who was on the committee who approved the deal to forgive taxes (Penalty and Interest) under the agreement that the scrap cars would be removed, the land cleaned and residential development done, has some concerns as to the site. He is aware that all the cars were removed to which he was quite glad to see but has apparently been advised that more cars are being dumped there. He is also well aware that the OMB hearing as to the zoning change is hampering efforts to re-develop. Please advise if anything has changed as the agreement will be in jeopardy should a scrap dealership continue to be run.

Larry Friday  
Director of Taxation  
Corporate Services Department  
City of Hamilton  
Phone 905 546-2424 ext 2425  
Fax 905 546-2449  
lfriday@hamilton.ca

# CORRESPONDENCE FROM JUDY LAM CONFIRMING DENIAL OF ACCESS TO ERASE PROGRAM

SONORAK - CITY INCLUDES REFUSAL LETTER JUNE 12 2015

2



Planning and Economic Development Department  
Urban Renewal Section  
71 Main Street West, 7<sup>th</sup> Floor, Hamilton ON L8P 4Y5  
Phone: 905-546-2424, Ext. 4178 Fax: 905-546-2693

June 12, 2015

Sonorak Corp.  
756 King Street East  
Hamilton, ON  
L8M 1A5

**Attention: Ms. Raquel Rakovac**

Dear Raquel:

**Re: 257, 259, 263, 269, 271, 275 and 279 Bay Street North (the "Property")**

I wish to acknowledge the receipt of your application, certified cheque in the amount of \$700.00, and the Site Remediation Proposal from Soil-Mat Engineers & Consultants Ltd for the ERASE Redevelopment Grant last week. The application was submitted by Sonorak Corp., as agent on behalf of the registered property owners who are 1255717 Ontario Ltd 1290976 Ontario Ltd., and 1255705 Ontario Ltd.

As discussed in a recent meeting with you, your father Marino Rakovac, and Hazel Milsome from our office, part of the due diligence for all applications is a corporate search as well as a litigation search. The due diligence has been completed and I have been advised that the property owners (1255717 Ontario Ltd, 1290976 Ontario Ltd., and 1255705 Ontario Ltd.) and Marino Rakovac (the sole shareholder of those three companies), are presently in litigation with the City of Hamilton. Therefore, we cannot process the application due to the ongoing litigation and we are returning your application and documentation as well as the certified cheque.

Yours truly,

A handwritten signature in black ink, appearing to be "Judy Lam".

Judy Lam, CPA, CMA, MBA  
Senior Business Development Consultant

Attachments



# EXAMPLE OF CITY REPORT HIGHLIGHTING CHALLENGES OF DEVELOPING BARTON-TIFFANY DUE TO PAST INDUSTRIAL HISTORY

Appendix E to Report CMO9006(f)  
Page 1 of 5

## SUMMARY OF WEST HARBOUR SITE DEVELOPMENT OPTIONS

The proposed development, as originally planned, included construction of a 20,000 seat multi-purpose stadium that is intended to replace Ivor Wynne Stadium, a velodrome, an outdoor warmup running track and associated greenspace, all to be located on a 9.5 ha site bounded by Barton Street West, Bay Street North, Stuart Street and Victoria Street North in Hamilton. The land proposed for the Pan Am Games venue, and now being assembled by the City through purchase or expropriation, is known as the West Harbour Site and comprises five moderately to large sized industrial properties, three of which have been vacated, several small commercial sites including a service station, some 45 residential properties, the majority of which are single family dwellings and three vacant lots. The industrial properties and the service station site have all been determined, as was expected, to exhibit varying degrees of soil and groundwater contamination associated with their past use and with industrial activity on other properties in the general vicinity of the site. Some degree of soil and/or groundwater contamination will also be expected to be encountered on all of the commercial sites and, to a lesser degree, on at least some of the residential properties.

A municipal master plan evaluation for redevelopment of the Hamilton West Harbour Planning Area had previously identified this area for high density private sector residential developments. Site preparation of the lands for construction for this purpose would thus have required full depth, boundary to boundary soil and groundwater cleanup meet MOE Table 3 residential site condition standards (SCS) from *Soil, Ground Water and Sediment Standards for Use Under Section XV.1 of the Environmental Protection Act*, (MOE 2004, as amended under O.Reg. 511/09) to meet generally accepted requirements imposed by most commercial lenders due to concerns relating to the value of the land as security against default. Based on initial estimates of approximately 220,000 m<sup>3</sup> of soil exceeding the applicable SCS, full scale cleanup costs for the site were estimated to be of the order of \$37,000,000, including \$31,000,000 for soil and groundwater cleanup and \$5,000,000 for shoring, in addition to investigation, assessment, engineering design, implementation management, testing and reporting services.

The advent of the Pan Am Games, ushering in a change from a market residential development by the private sector to community recreational use by a public body for the City, has provided the opportunity to consider other significantly less costly alternatives to full scale cleanup based on the use of risk assessment. Risk assessment permits contaminants in soil and groundwater to be left safely in place at concentrations that exceed the applicable generic SCS through the application of risk management measures to reduce exposure by site users. Although risk assessment permits safe use of the site, it does not result in the removal or treatment of contaminants and thus the environmental liabilities associated with the affected soil and groundwater remain. Thus while the utility of the site for its intended use is unimpaired and the cost of site preparation is minimized, the value of the land remains unimproved. Based on the

findings of a preliminary screening level risk assessment conducted using information on site conditions available at the commencement of the site evaluation program, the costs of implementing the risk management measures that would permit safe use of the site as a sports stadium, greenspace area and velodrome will be of the order of \$3,500,000 the majority of which covers the placement of a clean soil/composite protective cap to be carried out as part of the stadium construction. The principal cost saving that arises from the adoption of a risk assessment-based approach is the avoided cost of soil disposal. Little reduction in the overall cost of site preparation, therefore, would accrue if construction of the facility requires the removal of large volumes of contaminated soil.

Since the commencement of the West Harbour Site assessment program, a proposal has been made to relocate the stadium to an alternate site that better suits the interests of the Hamilton Tiger-Cats football team organization. The site suggested for the Stadium, known as the East Mountain Site, is situated on City-owned greenfields lands located at the junction of the Red Hill Valley Parkway and the Lincoln M. Alexander Parkway. The East Mountain proposal specifically excludes the velodrome which would thus either be left at the West Harbour site or relocated elsewhere in Hamilton. If the Stadium, and possibly the velodrome, were to be relocated, the City would have to find some alternative use for the land currently designated for the Pan Am Games track and field facilities in order to realize on its acquisition.

Although in theory any land use can be considered for the site if the owner or developer and the financial institution underwriting the development is prepared to accept the concept of risk assessment and the retention of soil or groundwater contamination at concentrations that exceed applicable generic SCS established by the MOE, in practice, unfortunately, this is not yet the case. Virtually all privately, as opposed to publically, financed residential developments and the vast majority of private commercial developments only proceed when a contaminated property has been, or is to be, cleaned up as part of site preparation by the vendor before sale of the property. A full site cleanup will result, therefore, in either:

- a reduction in the return realized by the vendor, in this case the City, during the transaction or
- an increase in the sale price or lease cost for the final product if the market can accommodate the environmental premium in the cost.

A second approach to site development revolves around soil management and the actual landuse to which all of the lands that make up the entire assembly will ultimately be put. In this soil management approach, the overall site is divided into separate:

- private development blocks for, say market residential purposes and
- public blocks that will be used for parkland, roadway, community/recreation centre and/or school construction purposes.



Any soil that underlies the market development parcels and that exceeds the applicable Generic SCS can then be excavated from the private lands and placed beneath the future public lands (subject to the provisions of a risk assessment with the acquiescence of the City and if an increase in grade across the assembly can be accommodated) at a fraction of the cost of full scale cleanup. This approach can be undertaken with the full concurrence of the Ministry of the Environment and can result in the provision of an acknowledged RSC for the property.

Assuming a decision was to be made not to locate the new stadium at the West Harbour site, using this soils management approach would allow a wide range of landuses to be accommodated, as summarized below.

- A. The most cost effective approach to site development will involve site preparation without the need to excavate soil for remedial or construction purposes, thus avoiding the need for shoring, significant soil or groundwater handling and treatment or offsite disposal. Examples include:
- i) installation of a park across the entire assembled property using a combination of clean fill cover and a composite geomembrane/fill cap to reduce exposure opportunities by receptors to chemical contaminants site. Based on data obtained to date, the majority of the site is underlain by low grade inorganic and petroleum hydrocarbon-based contaminants that pose little exposure risk at the concentrations encountered and that can be safely left in place under a 500 mm to 1.0 m thick clean fill cap. A small portion of the site encountered at the south end of the City-owned Rheem site at 285 Barton St. W. has been affected by coal tar wastes from a former coal gasification plant situated to the south and east of the site and a former roofing materials manufacturing concern situated to the south. Construction of supplementary measures including a composite clean soil and geomembrane or asphalt or concrete cap and possibly a vent stack system to exhaust vapours generated from within the coal tar contaminated zone underlying the south end of the Rheem site should provide all of the necessary protection required. The surface of the site could be raised by using it for the disposition of construction fill from other projects owned by the City;
  - ii) construction of the velodrome already proposed for the site and/or similar single or multi-storey slab-on grade recreational, sports, community or public agency buildings constructed at or above a median graded surface, using a combination of clean fill cover and a composite geomembrane/fill cap in exposed areas of the site, as per option A.i) and clean fill and the building floorslab as the protective cover and possibly a vent stack system to exhaust vapours generated from within the above referenced coal tar contaminated zone should provide all of the necessary protection required. Soil removed for caissons installation or excavated for grade beams and municipal and private utilities would be spread across the subgrade surface of the property before placement of the cover and overlying floor slabs. The surface of the site could be raised by using it for the disposition of construction fill from other projects owned by the City;

- iii) construction of lowrise townhouses or commercial development space on a single basement structure founded at or above a median graded surface, using clean fill and the building floorslab as the protective cover and possibly a vent stack system to exhaust vapours generated from within the above referenced coal tar contaminated zone should provide all of the necessary protection required. The access to the development and ornamental gardens at ground surface would be on a podium deck fronting onto Barton St. W. while garage access would be provided from the north off Stuart Street. At this time, it is considered that such a development would either have to comprise public housing, owned by a municipal or provincial agency or coop or market housing constructed on city-owned land under a long term lease. The surface of the site could be raised by using it for the disposition of construction fill from other projects owned by the City.

**B.** The next most cost effective approach to site development will involve site preparation for buildings that include below grade parking levels or basement space for other purposes, thus requiring soil excavation into underlying contaminated fill zones, soil handling and management and shoring for construction purposes, with building blocks separated by parkland that would be raised to match Barton St. W. using development block derived excavated soil. The amount of subgrade parking associated with the development would be sized to permit a cut and fill balance to be achieved. Extensive soil handling activities would be conducted however, since onsite management is contemplated, no significant offsite waste soil disposal activity would be involved. Examples include:

- i) construction of market residential or commercial high rise towers on multi level parking garages separated by open space to be used for parkland. Selection of the tower sites would be informed by the distribution of contamination across the site, leaving deeper zones of contamination such as that encountered under the south end of the former Rheem property beneath parkland zones. All fill underlying the development blocks that exceeds the applicable Table 3 SCS, and any additional fill required to reach design depth in the excavation, would be removed and placed across the parkland space, which will remain under City ownership, up to a subgrade elevation established by the thickness of the clean fill cover selected. A composite protective cover and possibly a vent stack system to exhaust vapours generated from within the above referenced coal tar contaminated zone may be required in addition to the general fill and clean soil cover to be placed across the parkland. Such a development could comprise market housing sold in fee simple;
- ii) construction of market residential or commercial high rise towers on multi level parking garages separated by open space to be used for parkland as per option B.i), but requiring the excavation of soil for construction purposes only, as opposed to the removal of all fill exceeding applicable SCS. Selection of the tower sites would also be informed by the distribution of contamination across the site, leaving deeper zones of contamination such as that encountered under the



south end of the former Rheem property beneath parkland zones. All fill underlying the development blocks would be removed down to design depth in the excavation, and placed across the parkland space, which will remain under City ownership, up to a subgrade elevation established by the thickness of the clean fill cover selected. A composite protective cover and possibly a vent stack system to exhaust vapours generated from within the above referenced coal tar contaminated zone may be required in addition to the general fill and clean soil cover to be placed across the parkland. The land would be leased on a long term basis to the user and owner of the building.

- C. The least cost effective approach will involve the application of conventional site preparation procedures involving the offsite disposal of any excess soil that exceeds the capacity of such parkland space as may be included in the development.

The decision to relocate the municipally-owned stadium, which can be safely and cost effectively constructed on a brownfield such as the West Harbour area without the need for a comprehensive cleanup, to a greenfield site that would be best reserved for a development that is sensitive to the presence of soil or groundwater contamination at concentrations that exceed applicable generic SCS, whether from a landuse or an economic point of view, is inconsistent with the concept of environmental sustainability.

# CITY SOLICITOR LETTER STATING THAT A REPORT ON ELIGIBILITY AND ACCESS TO ERASE PROGRAM WOULD BE PRODUCED. NO REPORT WAS EVER RECEIVED BY COUNCIL

**From:** Brailsford, Grant [mailto:Grant.Brailsford@hamilton.ca]  
**Sent:** February-09-18 3:56 PM  
**To:** 'Cathy Neal' <CNeal@folkeslaw.ca>; ronefolkes@folkeslaw.ca  
**Cc:** Orgera, Maria <Maria.Orgera@hamilton.ca>; Guest, Anita <Anita.Guest@hamilton.ca>  
**Subject:** RE: Rakovac v. City of Hamilton - various matters

Mr. Folkes,

In anticipation of your client's application under the Erase program, I have recommended to the program administrators that the application not be immediately rejected simply because it does not comply with the policy against extending grants to parties in litigation with the City. I informed the administrators of my intention to bring a report to Council for its consideration and asked that a final decision regarding eligibility be held in abeyance until Council has had an opportunity to consider the issue.

Thank you for confirming that the OMB proceeding regarding severance will be abandoned. Mr. Kovacevic has informed me that the City's consent is not required for the abandonment of the appeal, and I invite you to file the necessary paperwork to formally abandon the appeal on a without costs basis.

In an earlier email, you indicated that Miller Thomson might provide an opinion regarding the applicability of the *Dell* decision to the present circumstances. Do you anticipate that such an opinion might be available shortly so that it can be referred to in my report?

With respect to the timing of the report, the deadline for submission of the report to the Office of City Clerk for the next non-budget General Issues Committee is February 12<sup>th</sup>. The report cannot be submitted prior to that deadline. The next available GIC is March 21st. I anticipate that the report will be considered at the GIC meeting in March.

I understand that Mr. Rakovac spoke with Glen Norton, Director of Economic Development, in the second week of January at which time Mr. Norton advised Mr. Rakovac that he could and should submit an application for ERASE prior to doing the work, in the event that the lawsuit is settled. It would be useful for me to know, for the purposes of the report, which of the various ERASE programs the joint venture intends to apply for. For ease of reference, I have attached the Hamilton ERASE Community Improvement Plan which lists the programs beginning at page 43.

Sincerely,

Grant Brailsford

Lawyer, Legal Services Division

City of Hamilton

Tel: 905-546-2424 ext. 4642

Fax: 905-546-4370

**Finally, some clarity has been determined on situations such as this with the recent Supreme Court of Canada ruling *Annapolis Group Inc v Halifax Regional Municipality* providing direction on the common law of de facto expropriation, or constructive taking.**

**In the ruling, it was found that:**

- 1. an “acquisition” does not require an actual acquisition of the property; instead, the interest acquired can flow from the property as well as being an interest in property;*
- 2. the “beneficial interest” acquired can be an advantage in respect of the lands; and*
- 3. the intention of the government behind the exercise of its regulatory authority may be relevant to determining whether an owner has lost all reasonable uses of its property.*

**This ruling by the Supreme Court of Canada has confirmed in its ruling that a private land developer can take the regional municipality to court for its plan to expropriate its land.**

## SUPREME COURT OF CANADA

<a href="#">The Court</a>	<a href="#">Cases</a>	<a href="#">Judges</a>	<a href="#">Act and Rules</a>	<a href="#">Parties</a>	<a href="#">Media</a>	<a href="#">Visits</a>	<a href="#">Library</a>	<a href="#">Jobs</a>
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Home > Cases > Cases in Brief > Case in Brief: Annapolis Group Inc. v. Halifax Regional Municipality

### Cases

- SCC Case Information
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- Archived Webcasts
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- Cases in Brief for Community Newspapers
- Judgments in Leave Applications
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### Case in Brief

#### Annapolis Group Inc. v. Halifax Regional Municipality



**The Supreme Court rules that a private Halifax land developer can take the regional municipality to court for its plan to expropriate its land.**

Policy for Access to Supreme Court of Canada Court Records