

Reply to the Attention of Marc Kemerer
Direct Line 416.865.7222
Email Address marc.kemerer@mcmillan.ca
Our File No. 309898
Date November 1, 2024

DELIVERED BY E-MAIL AND OVERNIGHT COURIER (clerk@hamilton.ca)

City of Hamilton
Office of the City Clerk
71 Main Street West, 1st Floor
Hamilton, ON, L8P 4Y5

Attention: Matthew Trennum, City Clerk

Dear Mr. Trennum:

Re: Notice of Appeal pursuant to subsection 51(34) of the *Planning Act*, R.S.O. 1990, c. P. 13 (the “Act”), as amended, regarding an application by First Gulf Corporation for approval of a proposed Draft Plan of Subdivision regarding lands municipally known as 370, 378, 412 and 436 Garner Road East, in the City of Hamilton (the “Lands”) File No. 25T-2021002

McMillan LLP has been retained to represent First Gulf Corporation (the “Appellant”), the development manager and agent for the owners of the Lands, regarding the proposed development of the Lands for the “Ancaster Hamilton Industrial Park” or the “403/6 Industrial Park”.

Context of the Lands

The Lands are legally described as Part of Lots 46 & 47, Concession 4, Geographic Township of Ancaster in the City of Hamilton, and are located on the south side of Garner Road East, between Highway 6 to the east and Southcote Road to the west. They have an approximate area of 48.57 metres with approximately 280.65 metres of frontage alongside Garner Road East and 584.50 metres on Southcote Road. The Lands abut Highway 6, however this is not considered frontage as direct access to Highway 6 is not permitted. The Lands consist of five vacant agricultural and residential properties.

The Lands are designated “Employment Areas” under the Urban Hamilton Official Plan and dual-zoned as “Airport Prestige Business Holdings (M11:H37) Zone” and “Conservation/Hazard Land (P5) Zone” under the City of Hamilton Zoning By-Law 05-200. These designations permit the industrial development of the Lands.

The lands to the north of Garner Road East consist of low density residential uses, and commercial uses including a gas station and a restaurant. The lands to the south of the Lands consist of existing agricultural uses, single detached dwellings, as well as a hydro easement. The lands to the east include additional commercial and agricultural uses.

Proposed Development & History of Application

The Appellant proposes to develop the Lands as a multiblock industrial subdivision, comprised of industrial buildings, retention of the existing woodlot with a 15 metre woodlot setback, additional woodlot buffer, sanitary easement block, and a stormwater management pond. As part of the proposed development, two new streets will be provided with a 30 metre right of way, which was widened at the request of the City. This development will result in a high-quality industrial park with premium, long-term tenants, bringing quality employment to the City as envisioned by the City's Airport Employment Growth District Secondary Plan.

On December 18, 2020, the Appellant, through the land use planning firm of A.J. Clarke and Associates Ltd., submitted an application for approval of a Draft Plan of Subdivision. The application was deemed complete on January 22, 2021. Based on comments received on this initial submission, the Appellant amended its proposal and made its second submission in July of 2022. Similarly, to address further comments received from the City and other stakeholders, the Appellant provided the City with a third submission on December 22, 2023, and a further fourth submission on October 3, 2024.

As further described in the Appellant's letter to the City dated October 3, 2024 (copy attached), concurrently with the City's review and the Appellant's resubmissions, the Appellant and its consultant team have made continuous efforts to engage with, and respond to, City staff on this subdivision approval process. This includes meeting (in-person and virtually) on several occasions with various City Divisions including Development Engineering, Natural Heritage Planning, and Forestry & Horticultural Section, and Transportation Planning. The Appellant has also had opportunity to discuss the application with the Ministry of Transportation Ontario and Hamilton Conservation Authority.

Despite the Appellant's extensive engagement with City staff, this process of submission and resubmission has been subject to a lack of transparency on the part of, and very contradictory messaging from, staff. Moreover, no formal direction from City Transportation staff has been provided in 2 years, notwithstanding a meeting arranged by the Appellant. This lack of clear, consistent, direction has placed the Appellant in a position where it is difficult, if not impossible to move forward with the project.

Appeal

As City Council has failed to make a decision on the application within 120-days of receipt of the complete application we hereby appeal, on behalf of the Appellant, that failure to make a decision pursuant to subsection 51(34) of the Act

In support of this appeal, we enclose the following:

1. One (1) certified cheque in the amount of \$1,100.00 made payable to the Minister of Finance, representing the fee for the appeal;
2. A copy of the Appellant Form (A1) for the appeal;
3. A copy of the cover letter for the filing of the Draft Plan of Subdivision, from A.J. Clarke and Associates Ltd. on behalf of First Gulf Corporation., dated December 18, 2020; and,
4. A copy of the City of Hamilton's letter dated January 22, 2021 confirming that First Gulf Corporation's application for draft plan approval constitutes a complete application.
5. A copy of the fourth submission cover letter from First Gulf Corporation, dated October 3, 2024.

It remains our client's hope that this matter can be resolved without a contested OLT hearing. We remain willing to discuss resolution of all issues with the City.

Should you require any additional information or clarification with respect to this appeal, please do not hesitate to contact me or my co-counsel, Kailey Sutton (416-945-8008, kailey.sutton@mcmillan.ca).

Thank you for your attention to this matter.

Yours truly,

A handwritten signature in black ink, consisting of a vertical line on the left, a curved line that starts high and ends low, and a horizontal line extending to the right.

Marc Kemerer

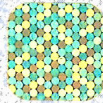
Encls.

Cc: Andrew Sgro, First Gulf Corporation.
Stephen Fraser, A.J. Clarke and Associates Ltd.
Anita Fabac, City of Hamilton, Director of Planning (anita.fabac@hamilton.ca)
Patrick MacDonald, City Legal (patrick.macdonald@hamilton.ca)

Invoice Date	Invoice Number	Comments	Amount
10/25/2024	184783	RE: 309898	1,100.00
Payee: Minister of Finance			Total: \$1,100.00

Royal Bank of Canada
 200 Bay Street
 Toronto, ON M5J 2J5
 Canada

McMillan LLP




No: 28539

DATE 10/28/2024
 mm dd yyyy

PAY EXACTLY *** One Thousand One Hundred and 00/100 CAD

\$ 1,100.00

TO THE ORDER OF ADDRESS
 Minister of Finance
 Minister of Finance - Ministry of Justice
 P.O Box 9280 STN PROV GOVT
 Victoria, BC -V8W 9J7

PER 
 PER _____
 AUTHORIZED SIGNATURES



Ontario Land Tribunal

655 Bay Street, Suite 1500, Toronto, ON M5G 1E5
Tel: 416-212-6349 | 1-866-448-2248
Web Site: olt.gov.on.ca

Appeal Form (A1)

Municipal/Approval Authority Date Stamp	Receipt Number (OLT Office Use Only)	Date Stamp – Appeal Received by OLT
	OLT Case Number (OLT Office Use Only)	

You may be able to submit your appeal online using our new e-file service if:

- the approval authority you are submitting your appeal to is registered on e-file; or
- you are appealing directly to the Ontario Land Tribunal

Please visit our [e-file page](#) to learn more.

Please complete this Appeal Form by following the instructions in the companion document titled "Appeal Form Instructions". Please read **both** documents carefully to ensure you submit the correct information and complete this form correctly.

There are guides available for review on the Tribunal's [website](#) for different appeal types to assist you in filing an appeal.

Please review the notice of the decision you are appealing to determine the appeal deadline and the specific official with whom the appeal should be filed (e.g. Secretary-Treasurer, Clerk, Minister, Ontario Land Tribunal) prior to completing this Appeal Form. Relevant portions of the applicable legislation should also be reviewed before submitting this form. Your appeal must be filed with the appropriate authority within the appeal period as set out in the notice of the decision and applicable legislation.

Section 1 – Contact Information (Mandatory)

Applicant/Appellant/Objector/Claimant Information

Last Name:		First Name:	
Sgro		Andrew	
Company Name or Association Name (Association must be incorporated – include copy of letter of incorporation):			
First Gulf Corporation			
Email Address:			
asgro@firstgulf.com			
Daytime Telephone Number:		Alternative Telephone Number:	
416.773.7140	ext.		
Mailing Address			
Unit Number:	Street Number:	Street Name:	P.O. Box:
13	351	King Street East	
City/Town:	Province:	Country:	Postal Code:
Toronto	Ontario	Canada	M5A 0L6

Representative Information				
<input checked="" type="checkbox"/> I hereby authorize the named company and/or individual(s) to represent me				
Last Name:			First Name:	
Kemerer			Marc	
Company Name or Association Name (Association must be incorporated – include copy of letter of incorporation):				
McMillan LLP				
Email Address:				
Marc.kemerer@mcmillan.ca				
Daytime Telephone Number:			Alternative Telephone Number:	
416-865-7222	ext.			
Mailing Address				
Unit Number:	Street Number:	Street Name:		P.O. Box:
4400	181	Bay Street		
City/Town:		Province:	Country:	Postal Code:
Toronto		Ontario	Canada	M5J 2T3
<p>Note: If your representative is not licensed under the <i>Law Society Act</i>, please confirm that they have your written authorization, as required by the <i>OLT Rules of Practice and Procedure</i>, to act on your behalf and that they are also exempt under the Law Society's by-laws to provide legal services. Please confirm this by checking the box below.</p>				
<p><input type="checkbox"/> I certify that I understand that my representative is not licensed under the <i>Law Society Act</i> and I have provided my written authorization to my representative to act on my behalf with respect to this matter. I understand that my representative may be asked to produce this authorization at any time along with confirmation of their exemption under the Law Society's by-laws to provide legal services.</p>				

Location Information
Are you the current owner of the subject property? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
Address and/or Legal Description of property subject to the appeal:
370, 378, 412 and 436 Garner Road East
Municipality:
City of Hamilton
Upper Tier (Example: county, district, region):

Language Requirements	
Do you require services in French?	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No

To file an appeal, please complete the section below. Complete one line for each appeal type		
Subject of Appeal	Type of Appeal (Act/Legislation Name)	Reference (Section Number)
Example	Minor Variance	<i>Planning Act</i>
		45(12)
1	Subdivision Appeal	<i>Planning Act</i>
		51(34)
2		
3		
4		
5		

Section 2 – Appeal Type (Mandatory)

Please select the applicable type of matter		
Select	Legislation associated with your matter	Complete Only the Section(s) Below
<input checked="" type="checkbox"/>	Appeal of <i>Planning Act</i> matters for Official Plans and amendments, Zoning By-Laws and amendments and Plans of Subdivision, Interim Control By-laws, Site Plans, Minor Variances, Consents and Severances	3A
<input type="checkbox"/>	Appeal of <i>Development Charges, Education Act, Aggregate Resources Act, Municipal Act</i> matters	3A
<input type="checkbox"/>	Appeal of or objection to <i>Ontario Heritage Act</i> matters under subsections 29, 30.1, 31, 32, 33, 40.1 and 41	3A
<input type="checkbox"/>	Appeal of <i>Planning Act</i> (subsections 33(4), 33(10), 33(15), 36(3)), <i>Municipal Act</i> (subsection 223(4)), <i>City of Toronto Act</i> (subsection 129(4)) and <i>Ontario Heritage Act</i> (subsections 34.1(1), 42(6)) matters	3A & 3B
<input type="checkbox"/>	Appeal of <i>Clean Water Act, Environmental Protection Act, Nutrient Management Act, Ontario Water Resources Act, Pesticides Act, Resource Recovery and Circular Economy Act, Safe Drinking Water Act, Toxics Reduction Act, and Waste Diversion Transition Act</i> matters	4A
<input type="checkbox"/>	Application for Leave to Appeal under the <i>Environmental Bill of Rights, 1993</i>	4B
<input type="checkbox"/>	Appeal under the <i>Niagara Escarpment Planning and Development Act (NEPDA)</i>	5

<input type="checkbox"/>	Appeal of <i>Conservation Authorities Act, Mining Act, Lakes and Rivers Improvement Act, Assessment Act, and Oil, Gas and Salt Resources Act</i> matters	6
<input type="checkbox"/>	Legislation not listed above	Contact OLT before filing your appeal

Section 3A – Planning Matters

Appeal Reasons and Specific Information

Number of new residential units proposed:

0

Municipal Reference Number(s):

25T-2021002

List the reasons for your appeal:

Please see attached correspondence of Marc Kemerer, McMillan LLP, dated November 1, 2024.

Has a public meeting been held by the municipality? Yes **No**

For appeals of Official Plans, Official Plan Amendments, Zoning By-laws and Zoning By-law Amendments, please indicate if you will rely on one or more of the following grounds:

A: A decision of a Council or Approval Authority is:

- Inconsistent with the Provincial Policy Statement issued under subsection 3(1) of the *Planning Act*
- Fails to conform with or conflicts with a provincial plan
- Fails to conform with an applicable Official Plan

And

B: For a non-decision or decision to refuse by council:

- Consistency with the provincial policy statement, issued under subsection 3(1) of the *Planning Act*
- Conformity with a provincial plan

Conformity with the upper-tier municipality's Official Plan or an applicable Official Plan

If it is your intention to argue one or more of the above grounds, please explain your reasons:

Oral/Written Submissions to Council

Did you make your opinions regarding this matter known to council?

Oral submissions at a public meeting of council

Written submissions to council

Not applicable

Related Matters

Are there other appeals not yet filed with the Municipality?

Yes **No**

Are there other matters related to this appeal? (For example: A consent application connected to a variance application).

Yes **No**

If yes, please provide the Ontario Land Tribunal Case Number(s) and/or Municipal File Number(s) for the related matters:

Section 3B – Other Planning Matters

Appeal Specific Information (Continued)

Date application submitted to municipality if known (yyyy/mm/dd):

2020/12/18

Date municipality deemed the application complete if known (yyyy/mm/dd):

2021/01/22

Please briefly explain the proposal and describe the lands under appeal:

Please see attached correspondence of Marc Kemerer, McMillan LLP, dated November 1, 2024.

There are required documents and materials to be submitted to the Ontario Land Tribunal (OLT) based on the type of legislation and section you are filing under. Please see the Section 3B Checklist(s) located here and submit all documents listed.

Section 4A – Appeals under Environmental Legislation

Appeal Specific Information

Outline the grounds for the appeal and the relief requested:

Reference Number of the decision under appeal:

Portions of the decision in dispute:

Date of receipt of Decision or Director's Order (yyyy/mm/dd):

Applying for Stay? Yes No

If Yes, outline the reasons for requesting a stay:

There are required documents and materials to be submitted to the Ontario Land Tribunal (OLT) based on the type of legislation and section you are filing under. Please see the [Section 4A Checklist\(s\)](#) located [here](#) and submit all documents listed on the checklist.

Section 4B – Environmental Application for Leave to Appeal

Are you filing an Application for Leave to Appeal under the *Environmental Bill of Rights, 1993*? Yes No

Identify the portions of the instrument you are seeking to appeal:
Identify the grounds you are relying on for leave to appeal. Your grounds should include reasons why there is good reason to believe that no reasonable person, having regard to the relevant law and to any government policies developed to guide decisions of that kind could have made the decision; and why the decision could result in significant harm to the environment:
Outline the relief requested:
There are required documents and materials to be submitted to the Ontario Land Tribunal (OLT) based on the type of legislation and section you are filing under. Please see the Section 4B Checklist(s) located here and submit all documents listed on the checklist.

Section 5 – Appeal regarding Development Permit Application under the *Niagara Escarpment Planning and Development Act*

Appeal Specific Information
Development Permit Application File No:
Address or legal description of the subject property:
Reasons for Appeal: Outline the nature and reasons for your appeal. Specific planning, environmental and/or other reasons are required. (The Niagara Escarpment Plan is available on the Niagara Escarpment Commission’s website (www.escarpment.org))

Section 6 – Mining Claim and Conservation Matters

Appeal Specific Information

List the subject Mining Claim Number(s) (for unpatented mining claims) and accompanying Townships, Areas and Mining Division(s) where mining claims are situated. List all "Filed Only" Mining Claims, if appropriate: (This is to be completed for *Mining Act* appeals only.)

List the Parcel and the Property Identifier Numbers (PIN), if rents or taxes apply to mining lands, if appropriate (mining claims only):

Provide the date of the Decision of the Conservation Authority or the Provincial Mining Recorder, as appropriate:

Provide a brief outline of the reasons for your application/appeal/review. If other lands/owners are affected, please include that information in the outline being provided below:

Respondent Information

Conservation Authority:

Contact Person:

Email Address:

Daytime Telephone Number:

Alternative Telephone Number:

ext.

Mailing Address or statement of last known address/general area they were living and name of local newspaper if address is not available

Unit Number:

Street Number:

Street Name:

P.O. Box:

City/Town:	Province:	Country:	Postal Code:

There are required documents and materials to be submitted to the Ontario Land Tribunal (OLT) based on the type of legislation and section you are filing under. Please see the [Section 6 Checklist\(s\)](#) located [here](#) and submit all documents listed on the checklist.

Section 7 – Filing Fee

Required Fee

Please see the attached link to view the [OLT Fee Chart](#).

Total Fee Submitted: \$1,100.00

Payment Method	<input type="checkbox"/>	Certified Cheque	<input type="checkbox"/>	Money Order	<input checked="" type="checkbox"/>	Lawyer's general or trust account cheque
	<input type="checkbox"/>	Credit Card				

If you wish to pay the appeal fee(s) by credit card, please check the box above and OLT staff will contact you by telephone to complete the payment process upon receipt of the appeal form. **DO NOT INCLUDE YOUR CREDIT CARD INFORMATION ON THIS FORM. YOU WILL BE CONTACTED TO COMPLETE YOUR PAYMENT OVER THE PHONE.**

If a request for a fee reduction is being requested, please pay the minimum filing fee for each appeal and complete/submit the [Fee Reduction request form](#).

Request for Fee Reduction form is attached (if applicable – see Appeal Form Guide for more information)

Section 8 – Declaration (Mandatory)

Declaration

I solemnly declare that all the statements and the information provided, as well as any supporting documents, are true, correct and complete.

By signing this appeal form below, I consent to the collection of my personal information.

Name of Appellant/Representative	Signature of Appellant/Representative	Date (yyyy/mm/dd)
Marc Kemerer		2024/11/01

Personal information or documentation requested on this form is collected under the authority of the *Ontario Land Tribunal Act* and the legislation under which the proceeding is commenced. All information collected is included in the Ontario Land Tribunal (OLT) case file and the public record in this proceeding. In accordance with the *Freedom of Information and Protection of Privacy Act* and section 9 of the *Statutory Powers Procedure Act*, all information collected is available to the public subject to limited exceptions.

We are committed to providing services as set out in the *Accessibility for Ontarians with Disabilities Act, 2005*. If you have any accessibility needs, please contact our Accessibility Coordinator at OLT.Coordinator@ontario.ca or toll free at 1-866-448-2248 as soon as possible.

Section 9 – Filing Checklists (Mandatory)

Filing/Submitting your form and documentation

You must file your Appeal Form with the appropriate authority(s) by the filing deadline.

If the completed Section is:	Refer to the relevant checklist and submit all documents listed on the checklist when filing your Appeal Form.
Section 3B	Review the Section 3B Checklist(s) and attach all listed documents.
Section 4A	Review the Section 4A Checklist(s) and attach all listed documents.
Section 4B	Review the Section 4B Checklist(s) and attach all listed documents.

If the completed Section is:	You must file with the following:	
Section 3A	<p>Municipality or the Approval Authority/School Board</p> <p>*If you are filing under the <i>Ontario Heritage Act</i>, including under s. 34.1(1), please carefully review the specific section of that legislation to determine if your appeal needs to be filed with the Tribunal in addition to the Municipality or Approval Authority.</p>	
Section 3A & 3B or Section 4A or Section 4B or Section 6	<p>Ontario Land Tribunal 655 Bay Street, Suite 1500 Toronto, ON M5G 1E5</p>	<p>Phone: 416-212-6349 1-866-448-2248 Website: www.olt.gov.on.ca</p>
Section 5	<p>For the Areas of: Dufferin County (Mono) Region of Halton Region of Peel Region of Niagara City of Hamilton</p> <p>File with: NIAGARA ESCARPMENT COMMISSION 232 Guelph Street, 3rd Floor Georgetown, ON L7G 4B1</p>	<p>For the Areas of: Bruce County Grey County Simcoe County Dufferin County (Mulmur, Melancthon)</p> <p>File with: NIAGARA ESCARPMENT COMMISSION 1450 7th Avenue Owen Sound, ON N4K 2Z1 Phone: 519-371-1001</p>

	<p>Phone: 905-877-5191</p> <p>Fax: 905-873-7452</p> <p>Website: www.escarpment.org</p> <p>Email: necgeorgetown@ontario.ca</p>	<p>Fax: 519-371-1009</p> <p>Website: www.escarpment.org</p> <p>Email: necowensound@ontario.ca</p>
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NOTE: Please review the notice of the decision you are appealing to determine the appeal deadline and the specific official with whom the appeal should be filed (e.g. Secretary-Treasurer, Clerk, Minister, Ontario Land Tribunal).

NOTE: Relevant portions of the applicable legislation should be reviewed before submitting this form. Please ensure that a copy of this Appeal Form is served in accordance with the requirements of the applicable legislation.

Tab 1



A. J. Clarke and Associates Ltd.

SURVEYORS • PLANNERS • ENGINEERS

The City of Hamilton
Planning and Economic Development Department
Development Planning
71 Main Street West, 5th Floor
Hamilton, Ontario L8P 4Y5

December 18, 2020

Delivered via e-mail: yvette.rybensky@hamilton.ca

Attn: Ms. Yvette Rybensky, MCIP, RPP
Senior Project Manager

**Re: 370, 378, 412, 436 Garner Road East, Hamilton (Ancaster)
Draft Plan of Subdivision Application**

Dear Madam:

A. J. Clarke and Associates Ltd. have been retained by First Gulf Real Estate Corporation to coordinate an application for Draft Plan of Subdivision to implement an industrial subdivision on the subject lands, identified as 370, 378, 412, 436 Garner Road East, Ancaster, in the City of Hamilton.

The proposal consists of a twelve (12) Block industrial Draft Plan of Subdivision. Of those Blocks, seven (7) Blocks are intended for future development. The remaining Blocks consist of conservation areas, road widenings, and dedications.

A Formal Consultation Meeting (FC-20-049) was held on June 17th, 2020 regarding the proposed development. As per the FC Document provided subsequent to that meeting, a number of technical studies and plans were identified as requirements for a complete submission under the *Planning Act*. Accordingly, we are pleased to provide you with the following materials in relation to the subject Draft Plan of Subdivision application:

1. One (1) cheque in the amount of \$59,290.79.00, made payable to the City of Hamilton, in payment of the requisite application fee;
2. One (1) cheque in the amount of \$10,400.00, made payable to the Hamilton Conservation Authority in payment of the requisite review fee;
3. One (1) digital copy of the signed and complete application form;
4. One (1) digital copy of Formal Consultation Document FC-20-049;
5. One (1) digital copy of the Freeland Letter of Authorization, dated April 14th, 2020;
6. One (1) digital copy of the First Gulf Letter to the City of Hamilton, dated December 17th, 2020;
7. One (1) digital copy of the Draft Plan of Subdivision, prepared by A.J. Clarke & Associates Ltd., dated December 10th, 2020;
8. One (1) digital copy of the Concept Plan, prepared by Baldassarra Architects Inc., dated September 17th, 2020;



9. One (1) digital copy of the Planning Justification Report, prepared by A.J. Clarke & Associates Ltd., dated December 2020;
10. One (1) digital copy of the Urban Design Brief, prepared by A.J. Clarke & Associates Ltd., dated December 2020;
11. One (1) digital copy of the Dust Mitigation Plan, prepared by SLR Consulting (Canada) Ltd., dated October 13th, 2020;
12. One (1) digital copy of the Environmental Impact Study, prepared by Dillon Consulting, dated December 11th, 2020;
13. One (1) digital copy of the Functional Servicing & Stormwater Management Report, prepared by Husson, dated December 2020;
14. One (1) digital copy of the Geomorphological & Erosion Mitigation Assessment, prepared by Geo Morphix Ltd., dated December 8th, 2020;
15. One (1) digital copy of the Landscape Plan, prepared by Hill Design Studios, dated December 9th, 2020;
16. One (1) digital copy of the Noise Feasibility Study, prepared by S.S. Wilson Associates, dated December 15th, 2020;
17. One (1) digital copy of the Pest Control Plan, prepared by Orkin Canada, dated August 31st, 2020;
18. One (1) digital copy of the Stage 1-2 Archaeological Assessment, prepared by Earthworks Archaeological Services Inc., dated December 8th, 2020;
19. One (1) digital copy of the Transportation Impact Study, prepared by Salvini Consulting, dated December 2020;
20. One (1) digital copy of the Preliminary Geotechnical Investigation, prepared by Pinchin Ltd., dated December 13th, 2019;
21. One (1) digital copy of the Preliminary Geotechnical Investigation, prepared by Pinchin Ltd., dated December 19th, 2019;
22. One (1) digital copy of the Geotechnical Investigation – Buildings D & E, prepared by GHD Limited, dated November 16th, 2020.

A new collector road (Street 'A'), having a right of way width of 26.0 metres, is planned to provide a new connection between Southcote Road and Garner Road East. However, it should be noted that the proposed daylight triangle at the southeast corner of the intersection (forming part of the future Street 'A' ROW) is located on the adjacent property to the east. It is understood that the Applicant is in the process of working with the adjacent landowner to reach a resolution regarding ownership of the daylighting triangle. Further details regarding the implementation of the daylight triangle will be determined in consultation with the City of Hamilton through the technical review process.

As per the concurrently submitted Functional Servicing and Stormwater Management Report, wastewater for the northern portion of the site is proposed to be drained to an existing 375 mm diameter trunk wastewater sewer located on Garner Road, draining north along John Frederick Drive. However, the sewer



Attn: Ms. Yvette Rybensky
Re: 370, 378, 412, 436 Garner Road East

on John Frederick Drive currently dead ends on Martineau Place, and has no connection to Mapleview Drive, it's ultimate destination. At this time, timing for that connection is not known. Accordingly, servicing to the site will be provided along a sanitary sewer to be constructed along Garner Road from the John Frederick Drive easterly to its current terminus west of barley Lane, approximately 2km to the east. Additionally, new 400mm watermain is proposed to be installed on Southcote Road to provide a secondary connection for the proposed subdivision, designed to municipal standards. Accordingly, the proposed development can adequately be serviced with the pressures and flows in the existing watermain system. Please refer to the Functional Servicing and Stormwater Management Report for further details.

I trust this is satisfactory and thank you for your cooperation in this matter. If you need additional information or clarification regarding the above, please do not hesitate to contact our office.

Sincerely,

Miles Weekes, MCIP, RPP
Planner

A. J. Clarke and Associates Ltd.

Encl.

Cc: First Gulf Real Estate Corporation (c/o Dana Roebuck)

Tab 2



Hamilton

Mailing Address:
71 Main Street West, 5th Floor
Hamilton, Ontario
Canada L8P 4Y5
www.hamilton.ca

Planning and Economic Development Department
Development Planning, Heritage and Design
71 Main Street West, 5th Floor, Hamilton ON L8P 4Y5
Phone: 905-546-2424 Fax: 905-546-4202

January 22, 2021

File(s): 25T-202102
Folder: 2021 100453 00 PLAN (1018123)

A J Clarke & Associates C/O Steve Fraser
25 MAIN St. W SUITE 300
HAMILTON ON
L8P 1H1
Sent via email steve.fraser@ajclarke.com

Dear Mr. Fraser:

Re: Notice of Complete Application by A J Clarke & Associates C/O Steve Fraser for Draft Plan of Subdivision for Lands Located at 370, 378, 412, and 436 Garner Road East and Concession 4, Part of Lot 47, Ancaster (Ward 12)

Thank you for choosing the City of Hamilton for your planning applications.

In accordance with the provisions of the *Planning Act*, all of the information and material required for this application has been provided and it is deemed complete.

It is our goal to provide you with efficient and timely processing of your applications so that you may receive a decision as soon as possible. Your application has been assigned to **James Van Rooi** for processing. This planner will soon be in contact with you regarding your applications.

Should you have any questions or require assistance at any time throughout the planning process, please feel free to contact either James Van Rooi at 905.546.2424 ext. 4283 or by email at James.Vanrooi@Hamilton.ca, or myself at ext. 5134.

Yours truly,

Yvette Rybensky, BES, MCIP, RPP
Senior Project Manager
Development Planning, Heritage and Design - Suburban Team

YR:jvr

cc: First Gulf Corporation
351 KING STREET EAST FLOOR 13
TORONTO ON
M5A 0L6
Sent via email droebuck@firstgulf.com

Tab 3

October 3, 2024

The City of Hamilton
Planning and Economic Development Department
Planning Division
71 Main Street West, 5th Floor
Hamilton, Ontario L8P 4Y5

Delivered via e-mail: Jennifer.Catarino@hamilton.ca

Attn: Jennifer Catarino, MCIP, RPP, Area Planning Manager, West Team

Dear Jennifer:

RE: 370, 378, 412, 436 Garner Road East, Hamilton (Ancaster)
Draft Plan of Subdivision Application (25T-202102)
4th Submission

Enclosed with this letter is the 4th submission by First Gulf Corporation ("**First Gulf**") regarding our application for draft plan of subdivision approval no. 25T-202102 (the "**Application**") for lands known municipally as 370, 378, 412 and 436 Garner Road East (the "**Site**"), located in the City of Hamilton (Ancaster) (the "**City**").

Submission History and Current State:

First Gulf made its 1st submission for draft plan of subdivision approval through A. J. Clarke and Associates Ltd. on December 18, 2020. The application was deemed complete on January 22, 2021. Based on comments received on this 1st submission, First Gulf amended its proposal and made its 2nd submission in July 2022. Similarly, to address further comments received from the City and other stakeholders, First Gulf provided the City with a 3rd submission on December 22, 2023. Our responses to the comments received on our 3rd submission are detailed further below in this letter, and we have provided a detailed response matrix enclosed with this package.

Concurrently with the City's review and First Gulf's resubmissions, we and our consultant team have made continuous efforts to engage with the various stakeholders at the City and neighbouring landowners. This includes meeting (in-person and virtually) on several occasions with various City Divisions including Development Engineering, Natural Heritage Planning, and Forestry & Horticultural Section. We have also had opportunity to discuss the application with the Ministry of Transportation Ontario and Hamilton Conservation Authority.

While we appreciate that the City has been willing to engage in the above noted reviews, this process, as we note below, has been marked (in writing and in meetings) by very contradictory messaging. Despite our efforts to work cooperatively to address the City's comments, this lack of clear, consistent direction has placed us in a position where it is difficult, if not impossible to move forward with the project.

We have noted in our response matrix a number of the concerns we have with how the Application is being processed by City staff. Primary among our concerns are:

1. The change in the scope of work over the sanitary sewers. First Gulf initially had an agreement with City staff to construct a new sanitary sewer, which the project was then assigned to a different landowner without the input of First Gulf. First Gulf should be provided with those plans and the timelines for the construction of same to understand the timelines for the First Gulf project.
2. Requiring cash payments for works that the City requires for future nearby developments, with no credit for same offered by the City. These works should instead be covered under the Development Charges regime, and it is unclear under what authority the City is permitted to require cash payment for such works.
3. The City's position that there can be no approval of the Application prior to:
 - a. lifting the "h" under the zoning for the Site. This is not supported by either the Planning Act or the City's Official Plan policies, both of which simply require that the plans show adequate services "to be available" (Planning Act, ss.51(17(k)) or "can be supplied" (OP policy 1.14.1.2(b)) to support the proposed subdivision; and
 - b. the conclusion of the 140 Garner Road East OLT hearing (OLT-21-001788). We understand that the current plans before the Tribunal in that hearing will accommodate all reasonable alternatives, it's final determination should not interfere with draft plan approval for this Site.
4. There is a significant disconnect between Transportation and Natural Heritage staff with respect to the location of the through road on the Site and the maintenance or relocation of the wetland, which is non provincially significant nor is it identified on Schedule B of the Official Plan or Map B.8-2 of the AEGD, as a result of this preferred location. First Gulf is put in an impossible position as a result.
5. A number of concerns raised and requests made by the City are premature and inappropriate for consideration as part of a plan of subdivision approval. These matters can be appropriately dealt with in due course as part of subsequent applications and approvals which will be required for the Site.
6. Requiring information with respect to other properties not related to the Application is inappropriate for failing to make a decision on this proposal.
7. First Gulf had spoken with to Development Engineering to discuss the opportunity of issuing a site alteration permit in advance of the subdivision approval and unfortunately, these discussions have not progressed. Given that the subject property is designated as an Employment Area, we understand under Bylaw 19-286, Section 9, subsection 3, there is an opportunity to obtain a site alteration permit in advance of receiving approval on the Plan of Subdivision. We are hopeful that we can continue to discuss advancing this permit with the City in anticipation of commencing earthworks in 2025 as we were unable to do so in 2024.

The approvals process for this Application has been characterized by a lack of consistency and transparency, and an overreaching by staff on a number of issues. This approach by the City leads to unnecessary delay of the First Gulf development, which is particularly puzzling as the lands are already designated for the proposed use, and such delays are resulting in real financial impact, including loss of opportunity for quality tenants.

First Gulf is willing to continue to work with the City towards approval; however, to facilitate productive and cooperative exchanges, we urge the City to provide more coordination amongst its own team and to reconsider the objectives and impacts of its requests in light of the Site’s existing permissions and the legislative tests for a plan of subdivision approval.

On this basis, and with hope that we have addressed the City’s comments on our 3rd submission to the extent required for a plan of subdivision approval, we provide the enclosed 4th submission revisions, and request that staff bring forward a report Fall 2024 recommending draft plan approval for the Site.

Comments on 3rd Submission:

First Gulf has reviewed the following comments issued by the City and commenting agencies on our 3rd submission:

City Department/Agency	Comment Date	Received On
Development Planning	January 26, 2024	February 9, 2024
Forestry & Horticulture Section	February 6, 2024	February 9, 2024
Transport Canada	January 24, 2024	February 9, 2024
Waste Management Division, Public Works	January 16, 2024	February 9, 2024
Hamilton International Airport	February 8, 2024	February 9, 2024
Hamilton Conservation Authority	February 14, 2024	June 7, 2024
Cultural Heritage	February 20, 2024	June 13, 2024
Development Engineering	April 8, 2024	April 9, 2024
Natural Heritage Planning	June 28, 2024	July 3, 2024
Legislative Approvals	Date not indicated	June 13, 2024
Urban Design	Date not indicated	June 13, 2024
Ministry of Transportation	July 28, 2024	July 28, 2024
Transportation (comments pertain to 2nd submission only)	September 19, 2022	October 19, 2022

First Gulf Responses to Comments:

The comments we have received to-date have led to the following high-level revisions:

- At the request of the MTO, the 14.0m setback has been corrected on the enclosed materials.
- At the request of Development Engineering, the following high-level revisions have been made. Please refer to the enclosed matrix and materials for greater details.
 - The cul-de-sac within Street A has been shortened in length and as a result, Block 3 and Block 6 have slightly decreased in size;
 - Block 9 has increased in size to accommodate a larger SWM pond. As a result, Block 2 has decreased in size and a revised building configuration on the said Block is being proposed and shown for conceptual purposes;

- Block 8 identifies the location of the pumping station as confirmed by Development Engineering and will be DC funded. This Block has slightly decreased in size as a result of increasing the size of Block 9;
 - The previously identified Block 10 was created as a separate Block to accommodate a drainage easement. Under the enclosed revised Draft Plan, the drainage easement is merged into Block 9 and therefore, a separate Block for the drainage easement is no longer required or provided for. The Block numbers have been adjusted accordingly;
 - A new Block 10 has been created to demonstrate a private driveway which will accommodate a future easement to service the lands (water) to the immediate south; and,
 - First Gulf is awaiting direction from Development Engineering regarding the ownership of the SWM pond.
- As per the conversations with the local Councillors office, First Gulf has agreed to convey Block 7 (woodlot) to the City which will assist in addressing the City’s concerns regarding long-term protection of the said area.

The enclosed response matrix further details how all comments have been addressed.

4th Submission Package:

In support of this 4th submission, please find enclosed the following materials:

Drawings			
Drawing # & Title	Prepared By	Rev #	Date
Preliminary Masterplan Site Study (with aerial)	Baldassarra Architects Inc.	-	August 1, 2024
Draft M-Plan	A.J. Clarke and Associated Ltd.	-	July 24, 2024
Drawing No. 100 Functional Grading Plan	Husson Engineering + Management	6	August 18, 2024
Drawing No. 200 Functional Storm Design	Husson Engineering + Management	6	August 18, 2024
Drawing No. 201 Functional SWM Pond Design	Husson Engineering + Management	6	August 18, 2024
Drawing No. 300A Functional Wastewater Drainage Plan	Husson Engineering + Management	6	August 18, 2024
Drawing No. 300B Functional Wastewater Drainage Plan	Husson Engineering + Management	6	August 18, 2024
Drawing No. 400 Functional Watermain Deign	Husson Engineering + Management	6	August 18, 2024
Drawing No. L1 Landscape – Buffer Restoration Concept	Hill Design Studio	4	August 13, 2024

Drawing No. L2 Landscape – SWM Pond Landscape Concept	Hill Design Studio	4	August 13, 2024
Drawing No. L3 Landscape – Landscape Details	Hill Design Studio	4	August 13, 2024
Sheet 1 of 2 Wetland Replacement Detailed Design Planform and Details	GeoMorphix	2	July 29, 2024
Sheet 2 of 2 Wetland Replacement Detailed Design Planform and Details	GeoMorphix	2	July 29, 2024
Supporting Materials			
Report Title	Prepared By	Rev #	Date
Functional Servicing and Stormwater Management Report	Husson Engineering + Management	-	August 2024
Environmental Impact Study	Dillon Consulting	-	August 2024
Arborist Report and Tree Preservation Plan (included within the EIS)	Dillon Consulting	-	August 2024
Environmental Monitoring Plan (included within the EIS)	Dillon Consulting	-	August 2024
Invasive Species Management Plan (included within the EIS)	Dillon Consulting	-	August 2024
Wildlife Mitigation Plan (included within the EIS)	Dillon Consulting	-	August 2024
Transportation Impact Study	Salvini Consulting		
Comments Matrix	First Gulf and listed Consultants	-	October 2, 2024
Erosion Mitigation Assessment (for reference purposes of this was previously provided with original submission)	GeoMorphix	-	December 8, 2024
Email for April 26, 2024 Meeting Minutes	First Gulf	-	May 31, 2024
Meeting Minutes from April 26, 2024 (for reference purposes)	First Gulf, Husson and City of Hamilton	-	April 26, 2024
Technical Brief for Wetland Compensation Design	GeoMorphix	-	July 26, 2024

The above application materials are in addition to relevant application materials which have previously submitted. The development of these lands will unlock significant prestige employment opportunities to the AEGD and can assist with Hamilton's ability to promote itself as an economic and goods movement gateway, as intended for per the AEDG Secondary Plan. We trust that the enclosed revisions are sufficient to have staff bring forward a staff report this Fall recommending draft plan approval for these lands.

Please confirm should you require any hardcopies of the enclosed materials. If you have any questions or wish to discuss further, please do not hesitate to contact the undersigned.

Respectfully,

A handwritten signature in black ink, appearing to read 'ASgro', is written over a horizontal line.

Andrew Sgro
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