



INFORMATION REPORT

TO: Chair and Members Planning Committee	WARD(S) AFFECTED: CITY WIDE
COMMITTEE DATE: August 14, 2012	
SUBJECT/REPORT NO: Ontario Municipal Board (OMB) Hearing Update - Airport Employment Growth District (AEGD) Secondary Plan and Zoning By-law (City Wide) (PED12143)	
SUBMITTED BY: Tim McCabe General Manager Planning and Economic Development Department	PREPARED BY: Ray Lee (905) 524-2424 Ext. 4196
SIGNATURE:	

Council Direction:

N/A.

Information:

Background:

On October 13, 2010, City Council adopted amendments to the Official Plans and Zoning By-law to implement the Airport Employment Growth District (AEGD) Secondary Plan. Twelve (12) appeals were received. To date, one (1) has been withdrawn, three (3) have been settled and one (1) has been dismissed by the Ontario Municipal Board (OMB). The remaining seven (7) will be adjudicated by the OMB.

On March 20, 2012, the City's legal representative, Nancy Smith, provided the Planning Committee with a copy of the Procedural Order issued by the OMB which sets out the appellants, parties and participants and the procedure upon which their issues and concerns will be dealt with by the Board. Ms. Smith provided an overview of the appellant's positions. To facilitate the variety of issues before the Board, the hearing was organized into three (3) distinct phases:

SUBJECT: Ontario Municipal Board (OMB) Hearing Update - Airport Employment Growth District (AEGD) Secondary Plan and Zoning By-law (City Wide) (PED12143) - Page 2 of 3

1. The Phase 1 hearing or “threshold issue” focused on whether a previous OMB Decision and Order from November 2, 2006, precludes the OMB from considering new residential and retail commercial uses within the AEGD;
2. The Phase 2 hearing will deal with the question of consistency and conformity with the Provincial policy framework and municipal official plans. It will also deal with the land budget for employment lands (i.e. how much land is required); and,
3. The Phase 3 hearing will define the boundary of the secondary plan area and the appropriateness of the land uses.

Information:

Phase 1 Hearing:

By Board Order dated June 1, 2012 (see Appendix “A” to Report PED12143), the OMB determined that the 2006 OMB Order (ROPA 25) precludes the designation of lands within the AEGD Study Area for new residential uses. This determination implements Council’s position (the proposed Secondary Plan) whereby no residential use designations are contemplated. This position was further supported by the Ministry of Municipal Affairs and Housing (MMAH) in a letter dated May 29, 2012 (see Appendix “B” to Report PED12143).

The issue of retail commercial designations will be determined in Phase 3. The evidentiary dispute among the parties was not appropriate for determination as a threshold issue. The City’s position in Phase 3 will be that no retail commercial designations are permitted in the Secondary Plan.

Phase 2 Pre-hearing Conference:

At the June 27, 2012 Pre-hearing Conference, the Board approved the Procedural Order for Phase 2 (see Appendix “C” to Report PED12143) and issued a Memorandum of Oral Decision on July 10, 2012 (see Appendix “D” to Report PED12143). Key features are:

- Land Need Issue - disputed by Twenty Road Landowners Group West, Environment Hamilton Incorporated and Hamiltonians for Progressive Development;
- Planning Policy Conformity/Consistency Issue - disputed by Environment Hamilton Incorporated and Hamiltonians for Progressive Development; and,
- Hearing Dates: January 14 - February 1, 2013.

SUBJECT: Ontario Municipal Board (OMB) Hearing Update - Airport Employment Growth District (AEGD) Secondary Plan and Zoning By-law (City Wide) (PED12143) - Page 3 of 3

A joint draft issues list was submitted to the OMB by Environment Hamilton and Hamiltonians for Progressive Development (see Appendix “E” to Report PED12143).

If the Board determines that there is no employment land need or that conformity/consistency with Planning Policy has not been achieved, the appeals will be allowed and the Secondary Plan will not be approved.

If the Board determines that there is employment land need and that conformity/consistency with Planning Policy has been achieved, the Board will settle a Procedural Order for Phase 3. That Phase will determine the boundary for the amount of land need as determined by the Board and the appropriate land use designations (no residential given Phase 1) within that boundary.

APPENDICES / SCHEDULES

- Appendix “A”: OMB Order, Dated June 1, 2012
- Appendix “B”: Letter from MMHA, Dated May 29, 2012
- Appendix “C”: OMB Procedural Order, Phase 2, Approved June 27, 2012
- Appendix “D”: OMB Memorandum of Oral Decision, Dated July 10, 2012
- Appendix “E”: Draft Joint Issues List, Submitted by Environment Hamilton and Hamiltonians for Progressive Development

RL/ra
Attachs. (5)

ISSUE DATE:

June 1, 2012



Ontario

Ontario Municipal Board

Commission des affaires municipales de l'Ontario

PL101300

RECEIVED

JUN 06 2012

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

Appellant: 2051205 Ontario Inc.
 Appellant: 456941 Ontario Ltd., 1263339 Ontario Ltd., Lea Silvestri, Lea Silvestri Investments Limited ("Silvestri Investments")
 Appellant: 909940 Ontario Inc. and Lynmount Developments Ltd.
 Appellant: Alex Milojevich; and others
 Subject: ROPA 41
 Municipality: City of Hamilton
 OMB Case No.: PL101300
 OMB File No.: PL101300

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

Appellant: 2051205 Ontario Inc.
 Appellant: 456941 Ontario Ltd., 1263339 Ontario Ltd., Lea Silvestri, Lea Silvestri Investments Limited ("Silvestri Investments")
 Appellant: 909940 Ontario Inc. and Lynmount Developments Ltd.
 Appellant: Alex Milojevich; and others
 Subject: OPA 135
 Municipality: City of Hamilton
 OMB Case No.: PL101300
 OMB File No.: PL101301

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

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 456941 Ontario Ltd., 1263339 Ontario Ltd., Lea Silvestri, Lea Silvestri Investments Limited ("Silvestri Investments")
 909940 Ontario Inc. and Lynmount Developments Ltd.
 Environment Hamilton; and others
 Subject: OPA 82
 Municipality: City of Hamilton
 OMB Case No.: PL101300
 OMB File No.: PL101302

IN THE MATTER OF subsection 34(19) of the *Planning Act*, R.S.O. 1990, c. P. 13, as amended

Appellant: 2051205 Ontario Inc.
Appellant: 456941 Ontario Ltd., 1263339 Ontario Ltd., Lea Silvestri, Lea Silvestri Investments Limited ("Silvestri Investments")
Appellant: 909940 Ontario Inc. and Lynmount Developments Ltd.
Appellant: Alex Milojevich; and others
Subject: By-law No. 10-288
Municipality: City of Hamilton
OMB Case No.: PL101300
OMB File No.: PL101303

APPEARANCES:

Parties

Counsel

City of Hamilton

N. Smith

Environment Hamilton Inc.

J. Croome

Hamiltonians for Progressive Development

J. Croome

Silvestri Investments

P. Pickfield

Twenty Road Landowners West

J. Farber

Ancaster Christian Reformed Church

P. Tice

Tradeport International Corporation

P. Tice

Book Road West Group

E. Davis

Craig Smith

Elfrida Landowners

J. Drake

1507565 Ontario Limited

D. Tang

20 Road landowners East

S. Rosenthal and T. Nayler

Dr. Tom Nugent

Freeland Developments Limited

F. Sperduti

**MEMORANDUM OF ORAL DECISION DELIVERED BY JASON CHEE-HING
ON MAY 30, 2012 AND ORDER OF THE BOARD**

By way of brief background, the City of Hamilton (City) adopted the following amendments:

1. Official Plan Amendment No. 41 to the former Regional Municipality of Hamilton-Wentworth Official Plan;
2. Official Plan Amendment No. 135 to the Town of Ancaster Official Plan;
3. Official Plan Amendment No. 82 to the former Township of Glanbrook Official Plan; and
4. Zoning By-Law No. 10-288

The purpose of these amendments is to add significant new employment lands to the City's urban boundary by creating an Airport Employment Growth District (AEGD) and creating a secondary plan for this planning area. This proposal represents the largest single urban boundary expansion in the City to date. Zoning By-Law No. 10-288 was adopted to create new Zones within the AEGD. These proposed amendments were appealed by a number of landowners and other entities. A number of pre-hearing conferences (PHC) were held to decide on how the hearing into these appeals would proceed and the issues to be adjudicated. Over the course of the PHCs, a large number of entities were made parties and participants to these proceedings. By way of a procedural order, the hearing was to follow a three phased process.

The purpose of Phase 1 of this hearing was for this Board to determine the following threshold issue:

"Does ROPA 25 (OMB Order 3080 – November 2, 2006) preclude the OMB from considering new residential and retail commercial uses within the Airport Employment Growth District (AEGD)?"

At the onset of the hearing, the parties advised the Board that they had reached a settlement on the threshold issue. Upon review of the settlement agreement, the Board had several concerns with respect to clarity, wording and purpose of the clauses contained in the agreement. Similar concerns were expressed by several parties and participants. The parties were directed to revise the agreement in light of the Board's concerns. This was done and a revised agreement was presented later during the hearing and for which expert planning evidence was given.

The revised settlement agreement is found in Exhibit 4. All the appellants and parties that took a position in Phase 1 of this hearing have executed this agreement. With the consent of the parties, the City called Ms. Joanne Hickey-Evans, manager of planning, to provide opinion evidence on the terms of the settlement as well as to provide a context to the evolution of the City's proposed AEGD. Planner Hickey-Evans testified that the intent of ROPA 25 (approved by Ontario Municipal Board (OMB) Decision No. 3080 in 2006) was to provide for the development of a future employment growth district within an identified study area for this proposed employment growth district.

The parties that signed the agreement have agreed that:

1. There will be no residential land use designations within the AEGD study area;
2. The discussion on residential uses would only be permitted in the context of determining suitability of lands for employment purposes within the proposed AEGD secondary plan area;
3. If the OMB chooses to designate lands for employment uses within the AEGD study area, then the parties will not argue these same lands should be residential in the context of the other OMB hearings respecting the Rural and Urban Official Plans which are under appeal;
4. The determination of retail commercial uses will be argued in subsequent phases of this hearing.

The settlement agreement in her opinion is consistent with the intent of ROPA 25 whereby no residential uses will be designated within the AEGD secondary plan area. The boundaries of the AEGD are still to be determined by the Board at this hearing in subsequent phases. It is her opinion that the agreement provides for a more focussed

and streamlined process by establishing the parties' positions with respect to residential uses. The agreement does not fetter the jurisdiction nor does it affect the jurisdiction of this Board.

Based on the planning evidence and submissions given, the Board is satisfied that the revised agreement satisfactorily addresses the threshold issue which was to be determined by this Board. The Board notes the concerns expressed by some participants and parties during the hearing and is satisfied with the subsequent revisions made to the agreement.

Therefore, the **BOARD ORDERS** that:

1. The Phase 1 threshold issue is determined in accordance with the settlement agreement provided as Attachment "1";
2. A pre-hearing conference for Phase 2 of this hearing is set for June 27, 2012 commencing at 10:30 a.m. The venue will be Albion Room B and C, Hamilton Convention Centre, 1 Summers Lane, Hamilton, Ontario. The City of Hamilton is to provide further notice to all parties and participants of this pre-hearing conference.

I am not seized of these matters.

So Orders the Board.

"J. Chee-Hing"

JASON CHEE-HING
MEMBER

Attachment "1"

PL101300

ONTARIO MUNICIPAL BOARD

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

Appellant: 2051205 Ontario Inc.
Appellant: 456941 Ontario Ltd., 1263339 Ontario Ltd., Lea Silvestri,
Lea Silvestri Investments Ltd ("Silvestri Investments")
Appellant: 909940 Ontario Inc. and Lynmount Developments Ltd.
Appellant: Alex Milojevich; and others
Subject: ROPA 41
Municipality: City of Hamilton
OMB Case No.: PL101300
OMB File No.: PL101300

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Lea Silvestri Investments Ltd ("Silvestri Investments")
Appellant: 909940 Ontario Inc. and Lynmount Developments Ltd.
Appellant: Alex Milojevich; and others
Subject: OPA135
Municipality: City of Hamilton
OMB Case No.: PL101300
OMB File No.: PL101301

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

Appellant: 2051205 Ontario Inc.
Appellant: 456941 Ontario Ltd., 1263339 Ontario Ltd., Lea Silvestri,
Lea Silvestri Investments Ltd ("Silvestri Investments")
Appellant: 909940 Ontario Inc. and Lynmount Developments Ltd.
Appellant: Environment Hamilton; and others
Subject: OPA 82
Municipality: City of Hamilton
OMB Case No.: PL101300
OMB File No.: PL101302

IN THE MATTER OF subsection 34(19) of the *Planning Act*, R.S.O. 1990, c. P. 13; as amended

Appellant: 2051205 Ontario Inc.
Appellant: 456941 Ontario Ltd., 1263339 Ontario Ltd., Lea Silvestri,
Lea Silvestri Investments Ltd ("Silvestri Investments")
Appellant: 909940 Ontario Inc. and Lynmount Developments Ltd.
Appellant: Alex Milojevich; and others
Subject: By-law No. 10-288
Municipality: City of Hamilton
OMB Case No.: PL101300
OMB File No.: PL101303

AGREEMENT – DETERMINATION OF PHASE I ISSUE

WHEREAS Ontario Municipal Board Order dated March 27, 2012 and the Procedural Order attached as Attachment #1 scheduled Phase 1 – Residential Land Use Hearing for May 23 – June 4, 2012;

AND WHEREAS the sole issue to be determined in the Phase 1 – Residential Land Use Hearing is:

Does ROPA 25 (OMB Order 3080 – November 2, 2006) ["ROPA 25" attached as Appendix 1] preclude the Ontario Municipal Board from considering new residential and retail commercial uses within the Airport Employment Growth District ["AEGD"]?

hereinafter, "the Phase 1 Issue;

AND WHEREAS ROPA 25, among other things, identified certain land around John C. Munro International Airport as a Special Policy Area to study for future employment land growth "AEGD Study Area";

AND WHEREAS the City of Hamilton Identified a portion of the AEGD Study Area as required to meet its employment land growth needs "the AEGD Secondary Plan Area";

AND WHEREAS some Appellants and Parties own lands within the AEGD Study Area that were not included in the AEGD Secondary Plan Area;

AND WHEREAS only some Appellants and Parties take a position on the Phase 1 issue, hereinafter "the Undersigned";

AND WHEREAS nothing in this Agreement fetters the discretion or affects the jurisdiction of the Ontario Municipal Board;

The Undersigned parties agree as follows:

1. ROPA 25 precludes the designation of lands within the AEGD Study Area for new residential uses in this hearing.
2. None of the Undersigned parties will adduce any evidence, make any submissions, or request any finding or determination from the Board with regard to whether or not any lands within the AEGD Study Area should be considered for urban boundary expansion for residential uses in this hearing.
3. For the specific purpose of determining the suitability of lands for employment uses within the AEGD Study Area in this hearing, the parties agree that ROPA 25 does not preclude the consideration of evidence on the suitability of lands for other urban uses, including residential uses, within the AEGD Secondary Plan Area.
4. In presenting evidence on the suitability of lands for residential uses within the AEGD Secondary Plan Area for the specific purpose stated in clause 3, the undersigned parties will not adduce any evidence or make any submissions to compare the suitability of those lands for residential uses to other lands outside the AEGD Secondary Plan Area.
5. In the event that the Board designates lands within the AEGD Study Area for employment uses, no attempt will be made to have those same lands designated for residential uses in the context of the Urban Hamilton Official Plan appeals (OMB Case No. 110331) or Rural Hamilton Official Plan appeals (OMB Case No. 090114).
6. The determination of the Phase 1 issue as it pertains to retail commercial uses should be determined at the hearing in subsequent Phases and not as a threshold issue in Phase 1.

Dated this ^{7th} day of May, 2012

City of Hamilton

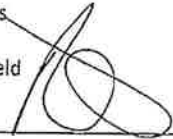
By its solicitors
Turkstra Mazza Associates
Per: Nancy Smith



Dated this day of May, 2012

456941 Ontario Ltd.
1263339 Ontario Ltd.
Lea Silvestri
Lea Silvestri Investments Limited

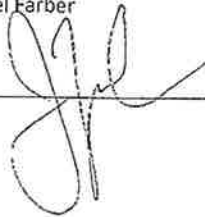
By their solicitors
Garrod Pickfield
Per: Peter Pickfield

A handwritten signature in black ink, appearing to be 'P. Pickfield', written over a horizontal line.

Dated this ²⁰ day of May, 2012

Sullstar Twenty Limited
909940 Ontario Inc.
Lynmount Development Ltd.
Twenty Road Development Inc.
Spallacci & Sons Limited
2051205 Ontario Inc.
Mr. Yehezkel Zahavy

By their solicitors
Fogler Rubinoff
Per: Joel Farber

A handwritten signature in black ink, appearing to be 'J. Farber', written over a horizontal line.

Dated this 30 day of May, 2012

Multi-Area Developments Inc.
Paletta International Corporation
2000963 Ontario Inc
Mud & First Inc.
2084696 Ontario Inc.
2188410 Ontario Inc.

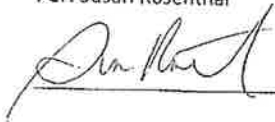
By their solicitors
Goodmans LLP
Per: Mark Noskiewicz Jennifer Drake



Dated this 2nd day of May, 2012

Carmen Chiaravalle
1694408 Ontario Inc.
John Edward Demik
Demik Brothers (Hamilton) Ltd.
Elanie Vyn
Peter Demik

By their solicitors
Davies Howe
Per: Susan Rosenthal



Dated this 30 day of May, 2012

Freeland Developments Limited

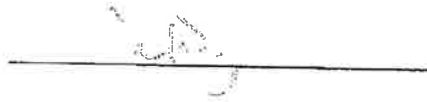
By its solicitors
Borden Ladner Gervais LLP
Per: Frank Sperduti



Dated this 20th day of May, 2012

1507565 Ontario Limited

By its solicitors
Gowlings Lafleur Henderson
Per: David Tang



**Ministry of
Municipal Affairs
and Housing**

Municipal Services Office
Central Ontario
777 Bay Street, 2nd Floor
Toronto ON M5G 2E5
Phone: 416 585-6226
Fax: 416 585-6882
Toll-Free: 1 800 668-0230

**Ministère des
Affaires municipales
et du Logement**

Bureau des services aux municipalités
du Centre de l'Ontario
777, rue Bay, 2^e étage
Toronto ON M5G 2E5
Téléphone : 416 585-6226
Télécopieur : 416 585-6882
Sans frais : 1 800-668-0230



May 29, 2012

Tim McCabe, MCIP, RPP
General Manager
Planning and Economic Development Department
City of Hamilton
71 Main Street West
Hamilton, ON L8P 4Y5

Dear Mr. McCabe:

Subject: Hamilton Airport Employment Growth District

I am writing to you on behalf of the Ministry of Municipal Affairs and Housing ("MMAH"). I understand the implementation of the Airport Employment Growth District ("AEGD") official plan amendments, secondary plan and zoning by-law are currently the subject of an Ontario Municipal Board ("OMB") hearing that commenced on May 23, 2012. I am writing to you to reiterate MMAH's continued support to the City of Hamilton for the proposed AEGD.

From the outset of the planning process for the AEGD, MMAH has stated, on record, its support for planning for an AEGD adjacent to the John C. Munro International Airport for employment purposes. The proposed AEGD would capitalize on the existing airport facility and associated infrastructure and accommodate the employment forecasts allocated to the City of Hamilton by the Growth Plan for the Greater Golden Horseshoe, 2006 ("Growth Plan").

I have been advised that at the OMB hearing on May 23, 2012, it was announced that an agreement-in-principle was reached between the City and certain parties to address the Phase 1 issue, in particular, no new residential land uses/designations would be permitted within the AEGD in accordance with ROPA 25. As you know, MMAH is not a party to this hearing nor has MMAH reviewed the agreement-in-principle.

While MMAH is not in a position to comment on the agreement-in-principle, or the threshold question, MMAH's opinion continues to be that no new residential uses should be permitted within the AEGD. This position is consistent with what has been proposed since the AEGD was established as a Special Policy Area for

a future employment growth district in ROPA 25, which was approved by the OMB in 2006. In addition, this area is the preferred location of a major "employment area" as defined in the Provincial Policy Statement, 2005 and Growth Plan.

If you have any questions, please do not hesitate to contact me at (416) 585-7264.

Yours truly,



Larry Clay
Regional Director
Municipal Services Office – Central

- c. Joanne Hickey-Evans, Manager, City of Hamilton
Tija Dirks, Director, Growth, Policy, Planning and Analysis, MOI

PL101300

ONTARIO MUNICIPAL BOARD

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OMB File No.: PL101303

List of Appellants

Appellant
456941 Ontario Ltd., 1263339 Ontario Ltd., Lea Silvestri and Lea Silvestri Investments Limited (“Silvestri Investments”)
Environment Hamilton Incorporated
Freeland Developments Limited
Hamiltonians for Progressive Development
Ontario Conference of the Seventh-Day Adventist Church
Sullstar Twenty Limited, 909940 Ontario Inc., Lynmount Development Ltd., Twenty Road Development Inc., Spallacci & Sons Limited, 2051205 Ontario Inc., Mr. Yehezkel Zahavy (“Twenty Road Landowners Group”)
Marvin Wasserman, Bernard Wasserman, 1315501 Ontario Inc., David Wasserman (“Wasserman et al”)

PROCEDURAL ORDER

1. The Board may vary or add to these rules at any time, either on request or as it sees fit. It may alter this Order by an oral ruling, or by another written Order.

Organization of the Hearing

2. The Parties and Participants are listed in Attachment 1 to this Order.
3. The Phase 2 Issues are set out in the Issues List in Attachment 2 to this Order. All Parties will call a case on all Issues unless otherwise indicated. The Order of Evidence is Attachment 3 to this Order.

Phase 2 – Employment Land Need, if any and Planning Policy Conformity/Consistency

4. The Phase 2 – will begin on January 14, 2013. The hearing will commence at 10:00 am and will be held at:

Albion Room B and C
Hamilton Convention Centre
1 Summers Lane
Hamilton, Ontario

5. The hearing is scheduled for January 14 – February 1, 2013.
6. Following the Board’s disposition of the Phase 2 Hearing, the Board shall convene a further Prehearing Conference to consider Phase 3. The Phase 3 Issues will be revisited and refined as a result of the Phase 2 Decision.

Requirements Before the Hearing

7. A Party who intends to call witnesses, whether by summons or not, shall provide to the Parties a list of their witnesses by October 19, 2012.
8. Only a Party may call or lead professional (expert) evidence and only a Party may cross-examine witnesses called by others. A Participant may lead lay evidence. A Party may be subject to an award of costs but a Participant is not subject to costs.
9. All expert witnesses shall prepare a Witness Statement which shall among other things, include an executed copy of the Acknowledgement of Expert’s Duty form, list any

**Appendix “C” to Report PED12143
(Page 4 of 22)**

reports prepared by the expert or any other reports or documents to be relied on at the hearing. Instead of a Witness Statement the expert may file his or her entire report if it contains the required information. If this is not done, the Board may refuse to hear the expert’s testimony.

10. On or before November 9, 2012, the Parties shall provide copies of their Witness Statements to the other Parties and Participants.
11. Expert witnesses who are under summons but not paid to produce a report do not have to file an Witness Statement; but the Party calling them must file a brief outline of the expert’s evidence on or before November 9, 2012.
12. Expert witnesses addressing Issue 1 – Employment Land Need – shall have a meeting after November 9, 2012 and before November 23, 2012 to try to resolve or reduce the issues before the hearing. The experts must prepare a list of agreed facts and the remaining issues to be addressed at the hearing, and provide this list to all Parties.
13. A Participant listed in Attachment 2 must provide to the Parties and Participants a Participant Statement on or before November 23, 2012 or the Participant may not give evidence at the hearing. All Participant Statements must include a statement as to whether the Participant supports the position of Hamiltonians for Progressive Development and/or Environment Hamilton. In the event of support, the Participant may not restate the same position.
14. Any Party or Participant may reply to a Witness Statement or Participant Statement provided such reply is provided to all Parties and Participants on or before December 14, 2012.
15. The Parties shall make copies of their visual evidence available to all of the other Parties on or before December 21, 2012. If a model or other large-scale exhibits will be used, all parties must have a reasonable opportunity to view it before the hearing.
16. A Party or Participant wishing to change written evidence, including witness statements, must make a written motion to the Board.
(See Rules 34 and 35 of the Board’s Rules, which require that the moving Party provide copies of the motion to all other Parties 10 days before the Board hears the motion.)
17. A Party who has filed a Witness Statement (or report) must have the witness attend the hearing to give oral evidence, unless the Party notifies the Board at least seven (7) days before the hearing that the written evidence is not part of their record.
18. Documents may be delivered by personal delivery, facsimile, e-mail, registered or certified mail, or otherwise as the Board may direct. The delivery of documents by fax shall be governed by the Board’s Rules 26 to 31 on this subject. Material delivered by mail shall be deemed to have been received five (5) business days after the date mailed.

19. No adjournments or delays will be granted before or during the hearing except in accordance with the Board’s Rules 61 to 65.

The Member is not seized.

So orders the Board.

Attachment 1

PARTIES AND PARTICIPANTS

	Appellant	Lawyer/Representative
1.	Environment Hamilton Incorporated	Julia Croome/Eric Gillespie Eric K. Gillespie Professional Corporation 10 King Street East Suite 600 Toronto ON M5C 1C3 jcroome@gillespielaw.ca Ph: 416 703 7034 Fax: 416 703 9111
2.	Freeland Developments Limited	Frank J. Sperduti Borden Ladner Gervais LLP Scotia Plaza 40 King Street West Toronto ON M5H 3Y4 fsperduti@blg.com Ph: 416 367 6000 Fax: 416 367 6749
3.	Hamiltonians for Progressive Development	Julia Croome/Eric Gillespie

**Appendix “C” to Report PED12143
(Page 7 of 22)**

	Appellant	Lawyer/Representative
		<p>Eric K. Gillespie Professional Corporation</p> <p>10 King Street East</p> <p>Suite 600</p> <p>Toronto ON M5C 1C3</p> <p>jcroome@gillespielaw.ca</p> <p>Ph: 416 703 7034</p> <p>Fax: 416 703 9111</p>
4.	<p>Silvestri Investments</p> <ul style="list-style-type: none"> • 456941 Ontario Ltd. • 1263339 Ontario Ltd., • Lea Silvestri • Lea Silvestri Investments Limited 	<p>Peter Pickfield</p> <p>Garrod Pickfield</p> <p>9 Norwich Street W.</p> <p>Guelph</p> <p>ON N1H 2G8</p> <p>pickfield@garrodpickfield.ca</p> <p>Ph: 519 837 0500</p> <p>Fax: 519 763 2204</p>

**Appendix “C” to Report PED12143
(Page 8 of 22)**

	Appellant	Lawyer/Representative
5.	<p>Twenty Road Landowners Group West</p> <ul style="list-style-type: none"> • Sullstar Twenty Limited • 909940 Ontario Inc. • Lynmount Development Ltd. • Twenty Road Development Inc. • Spallacci & Sons Limited • 2051205 Ontario Inc. • Mr. Yehezkel Zahavy 	<p>Joel Farber</p> <p>Fogler Rubinoff</p> <p>95 Wellington St W.</p> <p>Suite 1200</p> <p>TD Centre</p> <p>Toronto</p> <p>ON M5J 2Z9</p> <p>jfarber@foglers.com</p> <p>Ph: 416 365 3707</p> <p>Fax: 416 941 8852</p>
6.	<p>Ontario Conference of the Seventh-Day Adventist Church</p> <p>Parties added at PHC:</p> <ul style="list-style-type: none"> • The Living Word Christian Fellowship • Landmart Realty Corp 	<p>Russell Cheeseman</p> <p>Dundee Place</p> <p>1 Adelaide Street East</p> <p>Suite 2340</p> <p>PO Box 189</p> <p>Toronto ON M5C 2V9</p> <p>rdcheese@aol.com</p> <p>Ph: 416 955 9529</p> <p>Fax: 416 520 9854</p>
8	<p>Wasserman et al.</p> <ul style="list-style-type: none"> • Marvin Wasserman • Bernard Wasserman • 1315501 Ontario Inc. 	<p>Pitman Patterson</p> <p>Borden Ladner Gervais</p> <p>Scotia Plaza</p>

**Appendix “C” to Report PED12143
(Page 9 of 22)**

	Appellant	Lawyer/Representative
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	Party	Lawyer/Representative
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<p>3.</p>	<p>Craig Smith 1224 Smith Road Ancaster ON, L9G 3L1 cdsmith@ispnet.ca</p>	
<p>4.</p>	<p>Book Road West Group</p> <ul style="list-style-type: none"> • Domenico Bozzo, Carmine Bozzo, Frank Veltri & Giuseppe Gervasi • Stephen Carlo Morelli & Jessie May Morelli • 2021455 Ontario Inc. • Johan Voortman & Aledia Voortman • Herbert Fischer, Manfred Fischer & Eugenie Fischer • Bruce Allen Stam & Valerie Florence Stam • Ilona Skeba & Christopher Mario Skeba • Braun Nursery Ltd. • Braun Farm Properties Inc. • John Joseph Lindley & Ann Katherine Lindley • Jack Boers & Hilly Boers • Ingrid Elise Irene Bartels • Akke Lodewyks, Jan Lodewyks, Jack Lodewyks, Ronald John Lodewyks, Brian Edward Lodewyks & David Christopher Lodewyks • Vyn Flowers Inc. • Olive Clark • Charlotte Eleanor Powell, Frederick David Bristol & Marilyn Bristol 	<p>Eric Davis/Steve O’Melia</p> <p>Miller Thomson LLP</p> <p>Accelerator Building</p> <p>295 Hagey Blvd</p> <p>Suite 300</p> <p>Waterloo, ON, N2L 6R5</p> <p>edavis@millerthomson.com</p> <p>somelia@millerthomson.com</p> <p>Ph: 519 593 3282</p> <p>Fax: 519 743 2540</p>

**Appendix “C” to Report PED12143
(Page 11 of 22)**

	<ul style="list-style-type: none"> • Itala Silvestri-Trulli • Hendrik Wilhelm Holzel & Leonie Jacoba Holzel • Norma Gladys Chapman • Leah Rudolph • Ralph Vyn & Joyce Vyn • Charles Reginald James Pottruff & Dorothy Harriet Pottruff • People Players Inc. • Grasal Holdings Inc. • Marian Bick & Brian Bick • Adrian Kapteyn & Susan Patricia Scotland • Stanley Richard Jackson & Barbara Anne Smith • Phyllis Macaluso 	
5.	<p>Elfrida Landowners</p> <ul style="list-style-type: none"> • Multi-Area Developments Inc. • Paletta International Corporation • 2000963 Ontario Inc • Mud & First Inc. • 2084696 Ontario Inc. • 2188410 Ontario Inc. 	<p>Mark Noskiewicz & Jennifer Drake</p> <p>Goodmans LLP</p> <p>Bay Adelaide Centre</p> <p>333 Bay Street, Suite 3400</p> <p>Toronto, ON, M5H 2S7</p> <p>mnoskiewicz@goodmans.ca jdrake@goodmans.ca</p> <p>Ph: 416-597-4136</p> <p>Fax: 416-979-1234</p>
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**Appendix “C” to Report PED12143
(Page 12 of 22)**

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10.	20 Road Landowners East <ul style="list-style-type: none"> • Carmen Chiaravalle • 1694408 Ontario Inc. • John Edward Demik • Demik Brothers (Hamilton) Ltd. • Elanie Vyn • Peter Demik 	Susan Rosenthal/Tanya Nayler Davies Howe The Fifth Floor 99 Spadina Avenue Toronto, Ontario, M5V 3P8 susanr@davieshowe.com tanyan@davieshowe.com Ph: 416-977-7088 Fax: 416-977-8931

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21	<p>Kris Robinson 61 Valley Road Dundas, Ont. L9H 5S4 gkrobinson@cogeco.ca</p>
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23	<p>Keith Kwitz 7 Twenty Place Mount Hope, ON, L0R 1W0</p>
24	<p>Julie Breeden Red Hill Valley Neighbourhoods Association 98 Glencastle Drive Hamilton, ON, L8K 5Z5 therhvna@gmail.com</p>
25	<p>Terry Baker 418 John Steet North Hamilton, ON, L8L 4R3 terrybaker@sympatico.ca</p>
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28	<p>F. Ross Englefield 437 West 5th Street Hamilton, ON, L9C 3P5 Ross.Englefield@gmail.com</p>
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30	<p>Isabel Hart 9087 Twenty Road West Mount Hope, ON, L0R 1W0 Ph: 905-679-4231</p>
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32	<p>Cindy Mayor 7 Millerton Close Waterdown, ON, L0R 2H3 cindymayor@hotmail.com</p>
33	<p>Kathie Clark 1296 Trinity Road Ancaster, ON, L8G 3L1 kclark@interlynx.net</p>
34	<p>Malcolm Clark for Scotsraig Farm 1296 Trinity Road Ancaster. ON, L8G 3L1 malcolmclark@primus.ca</p>
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44	Jennifer Dawson Strathcona Community Council 38 New Street Hamilton, ON, L8P 4J4 Strathconacommunitycouncil@gmail.com
45	Jim Prince 9631 Dickenson Road Hamilton, ON, L0R 1W0 jimmybprince@gmail.com

Attachment 2

ISSUES LIST

The Parties agree that the fact that an issue has been identified on the issues list is not meant to imply acceptance of that issue as relevant or determinative.

The Parties agree that by including an issue on the issues list, the party undertakes to call a case on that issue unless otherwise indicated.

PHASE 1 – RESIDENTIAL LAND USE

1. Does ROPA 25 (OMB Order 3080 – November 2, 2006) preclude the Ontario Municipal Board from considering new residential and retail commercial uses within the Airport Employment Growth District?

Hearing Complete – Board Decision June 1, 2012.

PHASE 2 - EMPLOYMENT LAND NEED

Parties calling evidence: City of Hamilton, Twenty Road Landowners Group West (Sullstar Twenty Limited, 909940 Ontario Inc., Lynmount Development Ltd., Twenty Road Development Inc., Spallacci & Sons Limited, 2051205 Ontario Inc., Mr. Yehezkel

Zahavy), Environment Hamilton Incorporated and Hamiltonians for Progressive Development.

- 1. How much employment land is required to meet the employment forecasts to 2031?**

PHASE 2 - CONSISTENCY/CONFORMITY WITH PLANNING POLICY

Parties calling evidence: City of Hamilton, Hamiltonians for Progressive Development, Environment Hamilton Incorporated.

2. Does the decision on the need, and amount of lands required, for the proposed urban boundary expansion within the Airport Employment Growth District Study Area:

- a. conform to the Growth Plan for the Greater Golden Horseshoe (2006);
- b. is it consistent with Provincial Policy Statement (2005);
- c. does it give proper consideration to the former Region of Hamilton-Wentworth, former Town of Ancaster and former Township of Glanbrook Official Plan policies?

PHASE 3 ISSUES (to be revisited and refined as a result of the Phase 2 Board Decision)

- 1. Boundary Configuration**
- 2. Land Use Designation and Supporting Policies**
- 3. Implementation in relation to the Urban and Rural Official Plans**

- 4. Conformity to the Growth Plan, consistency with the PPS and appropriate regard/conformity to the relevant former Region of Hamilton-Wentworth, former Town of Ancaster and former Township of Glanbrook Official Plan policies as it pertains to the Phase 3 issues (issues 1 to three above).**

Attachment 3

ORDER OF EVIDENCE

Issue 1 – Land Need

1. City of Hamilton
2. Appellants/Parties supporting the City of Hamilton
3. Hamiltonians for Progressive Development/Environment Hamilton Incorporated
4. Twenty Road Group West
5. Appellants/Parties opposing the City of Hamilton
6. City of Hamilton – Reply

Issue 2 – Planning

1. City of Hamilton
2. Appellants/Parties supporting the City of Hamilton
3. Hamiltonians for Progressive Development/Environment Hamilton Incorporated
4. Appellants/Parties opposing the City of Hamilton
5. City of Hamilton – Reply

Participants Day/Evening to be determined by the Presiding Member.

ISSUE DATE:

July 10, 2012

Ontario

Ontario Municipal Board

Commission des affaires municipales de l'Ontario

PL101300

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

Appellant: 2051205 Ontario Inc.
 Appellant: 456941 Ontario Ltd., 1263339 Ontario Ltd., Lea Silvestri, Lea Silvestri Investments Limited ("Silvestri Investments")
 Appellant: 909940 Ontario Inc. and Lynmount Developments Ltd.
 Appellant: Alex Milojevich; and others
 Subject: ROPA 41
 Municipality: City of Hamilton
 OMB Case No.: PL101300
 OMB File No.: PL101300

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

Appellant: 2051205 Ontario Inc.
 Appellant: 456941 Ontario Ltd., 1263339 Ontario Ltd., Lea Silvestri, Lea Silvestri Investments Limited ("Silvestri Investments")
 Appellant: 909940 Ontario Inc. and Lynmount Developments Ltd.
 Appellant: Alex Milojevich; and others
 Subject: OPA 135
 Municipality: City of Hamilton
 OMB Case No.: PL101300
 OMB File No.: PL101301

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

Appellant: 2051205 Ontario Inc.
 Appellant: 456941 Ontario Ltd., 1263339 Ontario Ltd., Lea Silvestri, Lea Silvestri Investments Limited ("Silvestri Investments")
 Appellant: 909940 Ontario Inc. and Lynmount Developments Ltd.
 Appellant: Environment Hamilton; and others
 Subject: OPA 82
 Municipality: City of Hamilton
 OMB Case No.: PL101300
 OMB File No.: PL101302

IN THE MATTER OF subsection 34(19) of the *Planning Act*, R.S.O. 1990, c. P. 13, as amended

Appellant: 2051205 Ontario Inc.
Appellant: 456941 Ontario Ltd., 1263339 Ontario Ltd., Lea Silvestri, Lea Silvestri Investments Limited ("Silvestri Investments")
Appellant: 909940 Ontario Inc. and Lynmount Developments Ltd.
Appellant: Alex Milojevich; and others
Subject: By-law No. 10-288
Municipality: City of Hamilton
OMB Case No.: PL101300
OMB File No.: PL101303

APPEARANCES:

<u>Parties</u>	<u>Counsel</u>
City of Hamilton	N. Smith
Environment Hamilton Inc.	E. Gillespie
Hamiltonians for Progressive Development	E. Gillespie
Freeland Developments Limited	F. Sperduti
Wasserman et al.	F. Sperduti
Silvestri Investments	P. Pickfield
Ancaster Christian Reformed Church	P. Tice
Tradeport International Corporation	P. Tice
Elfrida Landowners	J. Drake
20 Road Landowners East	T. Nayler
Craig Smith	

**MEMORANDUM OF ORAL DECISION DELIVERED BY JASON CHEE-HING
ON JUNE 27, 2012 AND ORDER OF THE BOARD**

This pre-hearing conference (PHC) event deals with Phase 2 of these proceedings on the above noted appeals. The purpose of Phase 2 is to hear evidence and submissions on the question of determining the issue of employment land need within the Airport Employment Growth District (AEGD). Phase 1 of these proceedings has been resolved by way of a settlement among the parties. The Board approved the settlement in its decision issued on June 1, 2012.

By way of brief background, the City of Hamilton (City) adopted the following amendments:

1. Official Plan Amendment No. 41 to the former Regional Municipality of Hamilton-Wentworth Official Plan;
2. Official Plan Amendment No. 135 to the Town of Ancaster Official Plan;
3. Official Plan Amendment No. 82 to the former Township of Glanbrook Official Plan; and,
4. Zoning By-Law No. 10-288.

The purpose of these amendments is to add significant new employment lands to the City's urban boundary by creating an Airport Employment Growth District (AEGD) and creating a secondary plan for this planning area. This proposal represents the largest single urban boundary expansion in the City to date. Zoning By-Law No. 10-288 was adopted to create new Zones within the AEGD. These proposed amendments were appealed by a number of landowners and other entities. By way of a procedural order (PO), the hearing is to follow a three phased process.

At today's PHC, a PO with a scoped issues list for Phase 2 was submitted for the Board's review. This PO has the consent of all parties (Exhibit 2).

There was some discussion on the contents of the PO. Mr. Gillespie, counsel for Environment Hamilton Inc. and Hamiltonians for Progressive Development noted that even though it was agreed among the parties that there are now two central issues for Phase 2 as contained in the PO, he reserves the right to raise any of his clients' issues as required during the course of the hearing into Phase 2 (Exhibit 3). The City acknowledged this understanding. Mr. Pickfield, counsel for Silvestri Investments,

expressed some concern about a reference in the PO about parties that will be attending but not calling evidence. Mr. Pickfield notes that although it is not his intention to call evidence at the hearing, he would want the opportunity to call any supplementary evidence in support of his client's position should that become necessary. Ms. Nayler, counsel for 20 Road Landowners East, had similar concerns. The City agreed to remove this reference.

Four additional individuals/entities – J. Baker (Hamilton Naturalist Club), S. Gillespie, J. Dawson (Strathcona Community Council), and J. Prince were given participant status. Ms. N. Smith, counsel for the City, will revise the PO to update the list of participants, remove reference to parties that will be attending but not calling evidence and include the order of evidence. The parties have requested that the hearing into Phase 2 be set for January 14, 2013, for three weeks. The City will undertake to contact the participants as required if there are any changes to the PO that will affect them.

The **BOARD ORDERS** the following:

1. The hearing into Phase 2 is set for January 14, 2013, for approximately three weeks commencing at 10 a.m. The hearing will be held at Albion Room B and C, Hamilton Convention Centre, 1 Summers Lane, Hamilton.
2. The City will revise the procedural order in accordance with the revisions noted in this decision.
3. The parties may request a further PHC should it be necessary.

So Orders the Board.

"Jason Chee-Hing"

JASON CHEE-HING
MEMBER

OMB Case No. PL101300

ENVIRONMENT HAMILTON / HAMILTONIANS FOR PROGRESSIVE
DEVELOPMENT

JOINT DRAFT ISSUES LIST

1. With reference to Sections 1.2.2 and 2.2.3(7) of the Growth Plan for the Greater Golden Horseshoe and Sections 1.1.1, 1.1.2, 1.1.3.1, 1.1.3.3, 1.1.3.4, 1.6.2, 1.6.4 and 1.7.1 of the Provincial Policy Statement:
 - (a) Does the urban boundary expansion optimize the use of the existing land supply and avoid over-designating new land for future development?
 - (b) Does it accommodate employment growth by directing a significant portion of new growth to built-up areas?
 - (c) Does it support the goal of attracting a significant portion of growth to intensification areas?
 - (d) Does it optimize the use of existing infrastructure or require the construction of new infrastructure to service low density areas while existing infrastructure in the older parts of the community remains underutilized?
 - (e) Does it promote efficient development via land use patterns which sustain the financial well-being of the municipality, minimize land consumption and servicing costs, and accommodate an appropriate range and mix of land uses to meet long-term needs?
 - (f) Does it reinforce the promotion of intensification and redevelopment, including redevelopment of brownfield sites?
2. With reference to Sections 3.2.4.3 and 3.2.4.5 of the Growth Plan for the Greater Golden Horseshoe and Sections 1.6.5.4 and 1.8.1 of the Provincial Policy Statement:
 - (a) Does the urban boundary expansion support the building of compact, vibrant and complete communities?
 - (b) Does it accommodate employment growth in a way that reduces dependence on the automobile through promotion of a land use pattern that minimizes the length and number of vehicle trips and through the development of mixed use, compact form, transit-supportive, pedestrian-friendly urban environments?
3. With reference to Sections 2.2.7 of the Growth Plan for the Greater Golden Horseshoe and Sections 1.1.3.5 and 1.1.3.6 of the Provincial Policy Statement:
 - (a) Does the urban boundary expansion ensure the achievement of the minimum density targets for designated greenfield areas and reinforce the achievement of the intensification and density targets?

- (b) Does it reinforce the priority of utilization of lands through intensification and redevelopment to accommodate employment opportunities?
4. With reference to Sections 2.2.6.9 and 2.2.8 of the Growth Plan for the Greater Golden Horseshoe and Section 1.3.2 and 1.1.3.9 of the Provincial Policy Statement:
- (a) Does the urban boundary expansion conform with the requirements of settlement area boundary expansions including the preparation of a municipal comprehensive review?
 - (b) Does it reinforce efforts to direct development to settlement areas and, within settlement areas those areas that are adjacent to or in the vicinity of transportation facilities?
 - (c) Does it lead to an expansion that would make available lands in excess of the maximum 20 year land supply?
 - (d) Does it support the requirements that planning authorities must demonstrate that land within existing employment areas can only be converted to non-employment uses if it can be demonstrated that the land is not required for employment purposes over the long term and that there is a need for the conversion?
5. With reference to Sections the Growth Plan for the Greater Golden Horseshoe and Sections 2.3.1 and 2.3.5.1 of the Provincial Policy Statement and provisions of the Official Plans of the Township of Glanbrook and the Town of Ancaster and the Region of Hamilton-Wentworth and the new Rural Official Plans of the City of Hamilton:
- (a) Does the urban boundary expansion support the protection of agricultural lands and agricultural soils?
 - (b) Are there no reasonable alternatives to the use of prime agricultural lands for the expansion and does the expansion protect prime agricultural lands?
6. Did the enactment of the By-Law reinforce/uphold/conform with the public engagement requirements set out in Section 5.4.4 of the Growth Plan for the Greater Golden Horseshoe?
7. Does the urban boundary expansion rely on definitions of brownfields and intensification and comprehensive review which are contrary to those set out in the definition sections of the Growth Plan for the Greater Golden Horseshoe and the Provincial Policy Statement?
8. With respect to the Provincial Policy Statement and the Official Plan of the Regional Municipality of Hamilton-Wentworth and the Township of Glanbrook Official Plan does the urban boundary expansion appropriately protect wildlife resources and restrict development in or near sensitive surface water and groundwater features such that these features and their related hydrologic functions are protected and improved, and does it

support the policies regarding the identification and protection of natural areas and linkages?

9. Does the urban boundary expansion conform to the sustainability provisions set out in the Official Plan of the Regional Municipality of Hamilton Wentworth and Vision 2020 and the closely associated Growth Related Integrated Development Strategy and its 'Nine Directions for Development, including policies regarding firm urban boundaries and compact urban form, and those which require that all amendments to the Official Plan conform to the principles of sustainable development as set out in the plans and documents.
10. Does the urban boundary expansion comply with Policy A.2.6 and A.4.5 of the Township of Glanbrook Official Plan by directing industrial growth to the North Glanbrook Industrial-Business Park and the Airport Industrial-Business park in order to minimize land use conflicts and make efficient use of municipal services, and not create undue financial hardship to the municipality?
11. Does the urban boundary expansion comply with Policy A.7 in the Township of Glanbrook Official Plan regarding the correction of all existing and potential sources of pollution?

Plan 3 ?

We reserve the opportunity to add Issues should they arise or make modifications to these issues.