

Ontario Land Tribunal
Tribunal ontarien de l'aménagement
du territoire



14-120-OLT-06 Attachment 1

ISSUE DATE: November 24, 2021

CASE NO(S): PL140601

PROCEEDING COMMENCED UNDER subsection 17(24) of the *Planning Act*, R.S.O. 1990, c. P.13, as amended

Appellant: 2261305 Ontario Inc.
Appellant: 549367 Ontario Ltd.
Appellant: 783878 Ontario Ltd.
Appellant: Nick and Anna DeFilippis; and others
Subject: Proposed Official Plan Amendment No. 17UHOP

Municipality: City of Hamilton
OLT Case No.: PL140601
OLT File No.: PL140601
OLT Case Name: DeFilippis v. Hamilton (City)

Heard: November 10, 2021 by video hearing

APPEARANCES:

Parties

Counsel*/Representative

Nick and Anna DeFilippis
2261305 Ontario Inc.

Nancy Smith

City of Hamilton

Michael Kovacevic

Petar Djeneralovic

No one appeared

Ray Bucci
783878 Ontario Ltd.
(Bucci Homes)

No one appeared

**MEMORANDUM OF ORAL DECISION DELIVERED BY T.F. NG ON NOVEMBER 10,
2021 AND ORDER OF THE TRIBUNAL**

[1] This matter relates to the Urban Hamilton Official Plan Amendment No. 17 ("OPA

17”) and the Fruitland-Winona Secondary Plan (“FWSP”).

[2] In the past, various appeals associated with OPA 17 were withdrawn, dismissed, settled or scoped and decisions arising from those hearing events have been issued.

[3] This particular matter involves one of the three remaining groups being Block 1 Appellants, Nick and Anna DeFilippis (“DeFilippis”) and 2261305 Ontario Inc. (2261305) (collectively the “Appellants”). The other appellants, Petar Djeneralovic (Block 2); and collectively “Bucci Homes” (Block 3) did not appear, though served with notice, as this hearing matter did not concern those appellants’ lands.

[4] The Block 1 lands are generally located east of Fruitland Road, north of Highway No. 8 in the former City of Stoney Creek which now forms part of the amalgamated City of Hamilton (“City”). The Block 1 lands consist of a large contiguous area of approximately 36.2 hectares proposed for development under the FWSP.

[5] The DeFilippis and 2261305 lands (“Subject Lands”) are shown as Exhibit “C” in Glenn Wellings Affidavit (Exhibit 1). The DeFilippis lands are located at 667 Highway No. 8. The 2261305 property is located at 212 Fruitland Road. The Subject Lands are situated within Block 1.

[6] The Subject Lands are presently used for residential purposes and contain existing single-detached dwellings. The basis for the appeals concerned the identification of natural heritage and hydrologic features and linkages on the Subject Lands. The appeals related to the proposed designation of the Subject Lands on Maps B.7.4-1 and B.7.4-2 of the FWSP.

[7] The Appellants and the City have settled the matter through Minutes of Settlement (“MOS”) dated August 11, 2021 (“Settlement Proposal”). The Settlement proposes specific modifications to the policies and land use designations in the FWSP. These modifications are contained in Appendix ‘B’ of the MOS. The proposed modifications are based on and supported by the environmental work conducted by

Colville Consulting Inc. (“Colville”).

[8] The Appellants’ Planner, Glenn Wellings, testified in support of the settlement and the Tribunal qualified him to provide opinion evidence in the area of land use planning matters. His Affidavit dated November 5, 2021 was marked as Exhibit 1. Ian Barrett, an Ecologist with Colville, engaged by the Appellants, was qualified by the Tribunal to give opinion evidence in his specialization. His Affidavit was marked as Exhibit 2.

[9] The Tribunal, having considered the uncontroverted testimony of Mr. Wellings and Mr. Barrett, the Settlement Proposal, the proposed modifications and having reviewed the materials filed with the Tribunal, allows the appeal in part for the reasons set out below.

EVIDENCE

[10] Mr. Barrett testified with respect to his report of 2019, “Natural Heritage Characterization Assessment Block 1 Lands – City of Hamilton”, prepared by Colville (“Colville Report”) dated February 2019.

[11] The purpose of the Colville Report was to assess and describe natural heritage features located on the Block 1 lands including the Subject Lands, and to determine the extent of potential Core Areas, Linkages and Restoration Areas.

[12] A summary of the findings of the Colville Report is as follows:

- No endangered species were documented.
- Threatened Species (i.e. Barn Swallows and Bobolink) were observed but not on the Subject Lands. None of the structures present appeared to be providing nesting habitat for Barn Swallows.

- No Special Concern Species were documented.
- No rare vegetation communities or specialized habitat for wildlife are present.
- Vegetation communities on the Subject Lands do not meet the criteria to be considered habitat for Species of Conservation Concern and the Subject Lands do not form part of a migration corridor.
- No Significant Woodlands are located on the Subject Lands. Emerald Ash Borer has impacted much of the tree cover.
- No portion of the Subject Lands qualifies as wetland.
- No Core Areas, with the exception of the watercourse (i.e. Watercourse 5) are located upstream or downstream of the Subject Lands.

[13] Mr. Barrett testified that the Colville Report recommended that a 15 metre (“m”) Vegetation Protection Zone (“VPZ”) be established from Watercourse 5 to maintain the movement of plant and animal species observed. Based on the findings of the Colville Report, there is no evidence to support the “Natural Open Space” designation on the Subject Lands in the FWSP.

[14] Mr. Wellings, relied on the Colville Report, took the Tribunal through the policy framework and concluded that the Settlement Proposal represents good planning.

FINDINGS

[15] The Tribunal agrees with the uncontradicted evidence of Mr. Barrett that there are no endangered species identified; no significant woodlands and that there is no heritage features related core area except for watercourse 5, which he recommended a

15 m VPZ to be established to maintain the movement of plant and animal species observed. The Tribunal finds agreement with the recommended modification to Policy 7.4.11.4, included as Exhibit “F” of Exhibit 1; and with the recommended modifications as set out in the MOS and illustrated on Map B.7.4-2 of the FWSP, included as Exhibit “D”, and agrees with the recommended changes in land use illustrated on Map B.7.4-1 of the FWSP, included as Exhibit “E”.

[16] The Tribunal accepts the uncontradicted planning opinion of Mr. Wellings that the proposed Settlement Proposal has proper regard for matters of Provincial Interest pursuant to s. 2 of the *Planning Act*, is consistent with the Provincial Policy Statement 2020 (“PPS”) and conforms with the Growth Plan for the Greater Golden Horseshoe 2020 (Growth Plan). Mr. Wellings stated that the Colville Report appropriately assessed the ecological systems, including natural areas, features and functions for the Subject Lands. Based on this assessment, Colville concluded that the “Natural Open Space” designation within the FWSP is not supported.

PPS and Growth Plan

[17] The Tribunal finds that the Settlement Proposal is consistent with the PPS and conforms to the Growth Plan.

[18] Section 2.1.1 of the PPS provides policies with respect to the protection of natural features and areas for the long term (2.1.1); the protection of fish habitat (2.1.6); and the protection and improvement of water quality and quantity (2.2.1).

[19] Section 4.2 (Policies for Protecting What is Valuable) of the Growth Plan contains policies addressing the Natural Heritage System. The Natural Heritage System for the Growth Plan excludes lands within settlement areas that were approved and in effect as of July 1, 2017 (Section 4.2.2.1). The FWSP lands were included within the City’s settlement area in 2005 well before July 1, 2017.

[20] The Tribunal acknowledges that the proposed refinement of the land use

designations on the Subject Lands through the Settlement Proposal supports many of the guiding principles and policy objectives of the Growth Plan including the efficient use of land and infrastructure and the optimization of land for development.

[21] The Tribunal notes that s. 7.4.11 of the FWSP contains policies addressing the Natural Heritage System. The Natural Heritage System consists of Core Areas, Linkages, Vegetation Protection Zones and Restoration Areas. These overlays are shown on Map B.7.4-2 (Natural Heritage System) of the FWSP.

[22] Map B.7.4-1 (Land Use) shows portions of the Subject Lands as “Natural Open Space”. Map B.7.4-2 (Natural Heritage System) shows “Core Area”, “Vegetation Protection Zone”, “Linkages” and “Restoration Area” designations on the Subject Lands.

[23] The Tribunal agrees with Mr. Wellings that based on the environmental review undertaken by Colville, the characteristics and features presently on the property do not justify nor support all of these natural heritage designations. The recommended mapping changes are illustrated in Appendix “B” of the MOS and which the Tribunal takes cognizance of.

[24] Also, based on the findings of the Colville Report, a “Restoration Area” has been added to Map B.7.4-2 of the FWSP (see Appendix “B” of MOS) in support of the recommendation by Colville to establish a 15 m VPZ to Watercourse 5.

Section 2 of the Planning Act

[25] Section 2 of the *Planning Act* sets out matters of Provincial Interest for which planning authorities shall have regard to. The Tribunal finds that the Settlement Proposal has regard for the applicable matters of Provincial Interest set out in s. 2 of the *Planning Act*, including subsections (a) the protection of ecological systems, including natural areas, features and functions; (h) the orderly development of safe and healthy communities; (n) the resolution of planning conflicts involving public and private interests; and (p) the appropriate location of growth and development.

[26] In summary, the Tribunal is satisfied that the Settlement Proposal has regard for relevant matters of Provincial interest, as set out in the *Planning Act*, is consistent with the PPS, conforms to the Growth Plan, maintains the general intent of the City Official Plan and represents good planning.

[27] Pursuant to s. 17(50) of the *Planning Act*, the Tribunal may, on an appeal make modifications to all or part of the plan and approve all or part of the plan as modified as an Official Plan. The modifications/amendments as presented and consented to by the parties will be attached to the Decision.

ORDER

[28] **The Tribunal Orders** that the Appeals are allowed in part and Amendment No. 17 to the Official Plan for the City of Hamilton is modified as set out in Attachment 1 to this Order and as modified is approved.

“T.F. Ng”

T.F. NG
MEMBER

Ontario Land Tribunal

Website: olt.gov.on.ca Telephone: 416-212-6349 Toll Free: 1-866-448-2248

The Conservation Review Board, the Environmental Review Tribunal, the Local Planning Appeal Tribunal and the Mining and Lands Tribunal are amalgamated and continued as the Ontario Land Tribunal (“Tribunal”). Any reference to the preceding tribunals or the former Ontario Municipal Board is deemed to be a reference to the Tribunal.

ATTACHMENT 1
14-120-OLT-06

APPENDIX 'B'

Modifications

- 7.4.11.4 The portions of Watercourse No. 5, located on the lands north of Sherwood Park Road or on the lands municipally known as 212 Fruitland Road may be considered for relocation and natural channel design reconstruction to the satisfaction of the City in consultation with the Hamilton Conservation Authority.

Appendix A
 DRAFT Amendment No. 17
 to the Urban Hamilton Official Plan

Lands to be redesignated from "Natural Open Space" to "Low Density Residential 2"

Lands to be redesignated from "Natural Open Space" to "Low Density Residential 3"

Date: Sept. 26, 2019
 Revised By: AMNB
 Reference File No.: OPAU17_(S)



APPEALS

Lands Under Appeal
 225-252 Jones Road
 150-152 Burton Street East
 227 Parkside Road
 228-244 Midway Road
 66-1362 Highway No. 8

Legend

Residential Designations

- Low Density Residential 1
- Low Density Residential 2
- Low Density Residential 3
- Medium Density Residential 2

Commercial and Mixed Use Designations

- Local Commercial
- District Commercial
- A-Retail Commercial

Parks and Open Space Designations

- Neighbourhood Park
- Community Park
- General Open Space
- Natural Open Space

Other Designations

- Employment Area - Business Park
- Institutional
- Elementary School
- Utility
- Storm Water Management

Other Features

- Area or Site Specific Policy
- Major Gateway
- Minor Gateway
- Proposed Roads
- Secondary Plan Boundary

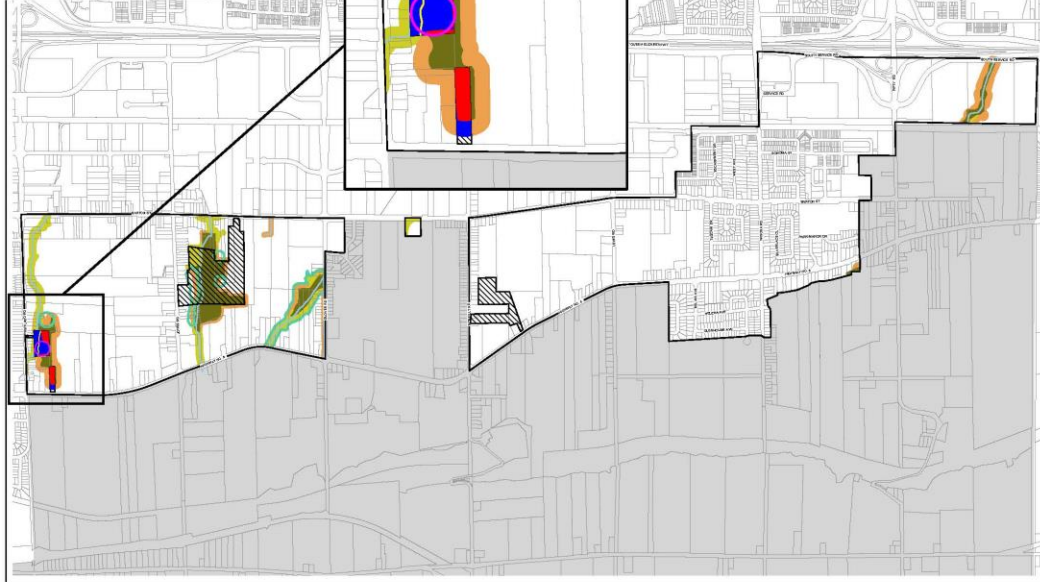
Urban Hamilton Official Plan
 Fruition-Mimona
 Secondary Plan
 Land Use Plan
 Map S17-4.1

City of Hamilton
 Planning & Economic Development Department
 100 King Street West, 5th Floor
 Hamilton, Ontario L8S 4K9

Appendix B
DRAFT Amendment No. 17
to the Urban Hamilton Official Plan

- Delete "Core Area"
- Delete "Vegetation Protection Zone"
- Delete "Restoration Area"
- Add "Restoration Area"

Date: Sept. 25, 2019 Revised By: AM/NB Reference File No.: OPA-U-____(S)



APPEALS

- Lands Under Appeal
 - 208, 202 Jones Road
 - 601, 622 Barton Street East
 - 212 Redford Road
 - 220, 244 McHenry Road
 - 887, 1000 Highway No. 8

- Legend**
- Core Areas
 - Linkages
 - Restoration Areas
 - Vegetation Protection Zone
 - Streams
- Other Features**
- Lands in the Rural Area
 - Secondary Plan Boundary

Urban Hamilton Official Plan
Fruittans-Winona
Secondary Plan
Natural Heritage System
Map B1-4.2

City of Hamilton
Planning & Community Development Department
2019