

Ontario Municipal Board
Commission des affaires municipales
de l'Ontario



14-345 – Attachments
6 and 7

ISSUE DATE: December 3, 2014

CASE NO(S): PL110331
PL090779
PL101381
PL120574
PL131287

PROCEEDING COMMENCED UNDER subsection 17(36) of the *Planning Act*, R.S.O. 1990, C. P. 13, as amended

Appellants: See Schedule "1"
Subject: Official Plan Amendment No. 35 to the Region of Hamilton-Wentworth Official Plan
Municipality: City of Hamilton
OMB Case No.: PL090779
OMB File No.: PL090779 (See Schedule "1")

PROCEEDING COMMENCED UNDER subsection 17(36) of the *Planning Act*, R.S.O. 1990, C. P. 13, as amended

Appellants: See Schedule "1"
Subject: Official Plan Amendment No. 128 to the Town of Ancaster Official Plan (PL090780);
Official Plan Amendment No. 18 to the Town of Dundas Official Plan (PL090781);
Official Plan Amendment No. 118 to the Town of Flamborough Official Plan (PL090782);
Official Plan Amendment No. 75 to the Township of Glanbrook Official Plan (PL090783);
Official Plan Amendment No. 220 to the City of Hamilton Official Plan (PL090784);
Official Plan Amendment No. 149 to the City of Stoney Creek Official Plan (PL090785)
Municipality: City of Hamilton
OMB Case No.: PL090779
OMB File Nos.: PL090780-PL090785 (See Schedule "1")

PROCEEDING COMMENCED UNDER subsection 17(40) of the *Planning Act*, R.S.O. 1990, C. P. 13, as amended

Appellant: See Schedule "2"
 Subject: Failure of the Minister of Municipal Affairs and Housing to announce a decision respecting the City of Hamilton Urban Official Plan
 Municipality: City of Hamilton
 OMB Case No.: PL101381
 OMB File No.: PL101381 (See Schedule "2")

PROCEEDING COMMENCED UNDER subsection 17(36) of the *Planning Act*, R.S.O. 1990, C. P. 13, as amended

Appellants: See Schedule "3"
 Subject: The new City of Hamilton Urban Official Plan
 Municipality: City of Hamilton
 OMB Case No.: PL110331
 OMB File No.: PL110331 (See Schedule "3")

PROCEEDING COMMENCED UNDER subsection 34(11) of the *Planning Act*, R.S.O. 1990, c. P. 13, as amended

Applicant and Appellant: Auburn Developments Inc.
 Subject: Application to amend Zoning By-law 6593 – Refusal of application by the City of Hamilton
 Existing Zoning: "J" (Light and Limited Heavy Industrial, etc.) District
 Proposed Zoning: "E-3" (High Density Multiple Dwellings) District
 Purpose: To permit a 10 storey student residential building
 Property Address/Description: 17 Ewen Road
 Municipality: City of Hamilton
 Municipal File No.: ZAC-07-062
 OMB Case No.: PL120574
 OMB File No.: PL120574

PROCEEDING COMMENCED UNDER subsection 22(7) of the *Planning Act*, R.S.O. 1990, c. P. 13, as amended

Applicant and Appellant: Auburn Developments Inc.
 Subject: Request to amend the Official Plan – Refusal of request by the City of Hamilton
 Existing Designation: “Industrial”
 Proposed Designation: “High Density Residential”
 Purpose: To permit a 10 storey student residential building
 Property Address/Description: 17 Ewen Road
 Municipality: City of Hamilton
 Approval Authority File No.: OPA-07-016
 OMB Case No.: PL120574
 OMB File No.: PL120575

Schedule “1”

Appellants to the amendments to the in-force Official Plans of the former Region of Hamilton-Wentworth, Towns of Ancaster, Dundas and Flamborough, Township of Glanbrook and Cities of Hamilton and Stoney Creek (OMB Case No. PL090779)

OMB FILE NO.	APPELLANT NAME
PL090784	Shawcor Ltd.

Schedule “2”

Appellants to the failure of the Minister of Municipal Affairs and Housing to announce a decision respecting the City of Hamilton Urban Official Plan (OMB Case No. PL101381)

OMB FILE NO.	APPELLANT NAME
PL101381	A. DeSantis Developments Ltd.
	LIUNA Group Corp.
	St. Joseph’s Villa

Schedule “3”

Appellants to the new City of Hamilton Urban Official Plan (OMB Case No. PL110331)

OMB FILE NO.	APPELLANT NAME
PL110331	2000963 Ontario Inc.
	2051206 Ontario Inc.

	2084696 Ontario Inc.
	2188410 Ontario Inc.
	456941 Ontario Ltd., 1263339 Ontario Ltd., and Lea Silvestri
	909940 Ontario Inc.
	Artstone Holdings Limited
	Carmen Chiaravelle, 1694408 Ontario Ltd., John Edward Demik, Peter Demik, Demik Brothers Hamilton Ltd., and Elaine Vyn
	City of Hamilton
	Corpveil Holdings Limited
	Flamborough Power Centre Inc., Flamborough South Centre Inc., Clappison Five Six Properties Inc.
	Freeland Developments Limited
	Gino and Olindo DalBello
	Lynmount Developments Limited
	Mondelēz Canada Inc. (formerly Kraft Canada Inc.)
	Mud and First Inc.
	Multi-Area Developments Inc.
	Norman Vartanian
	Paletta International Corporation
	Paletta International Corporation (re: Elfrida)
	Spallacci & Sons Limited
	Sullstar Twenty Limited
	Twenty Road Developments Inc.
	Upper Centennial Developments Ltd.
	Waterdown Bay Ltd.

PROCEEDING COMMENCED UNDER subsection 17(40) of the *Planning Act*, R.S.O. 1990, c. P.13, as amended

Appellant: City of Hamilton
Subject: Failure of Ministry of Municipal Affairs and Housing to announce a decision respecting Proposed Official Plan Amendment No. 25-OP-2009

Municipality: City of Hamilton
OMB Case No.: PL131287
OMB File No.: PL131287

Heard: September 23, 2014 in Hamilton, Ontario

APPEARANCES:

<u>Parties</u>	<u>Counsel</u>
City of Hamilton	L. Magi M. Kovacevic
Paletta International Corporation	S. Snider
A. DeSantis Developments Ltd.	S. Snider
St. Joseph's Villa	S. Snider
DiCenzo Construction Company Limited and DiCenzo (Golf Club Road) Holdings Inc.	P. Harrington

MEMORANDUM OF ORAL DECISION DELIVERED BY SUSAN de AVELLAR SCHILLER ON SEPTEMBER 23, 2014 AND ORDER OF THE BOARD

INTRODUCTION

[1] The matters before the Board are appeals related to the new City of Hamilton ("City") Urban Hamilton Official Plan ("UHOP") adopted by the City on July 9, 2009, and approved by the Minister of Municipal Affairs and Housing ("MMAH") with modifications on March 16, 2011, appeals of the failure of the MMAH to make a decision regarding the UHOP, prior to March 16, 2011, and appeals related to amendments to the in-force official plans of the former Region of Hamilton-Wentworth, Towns of Ancaster, Dundas and Flamborough, Township of Glanbrook and Cities of Hamilton and Stoney Creek.

[2] Also before the Board are appeals by Auburn Developments Inc. ("Auburn") regarding a proposed official plan amendment and associated zoning by-law amendment to permit a 10-storey student residence on lands zoned and designated for

industrial use. These matters, previously scheduled for hearing, were adjourned to permit the parties to consider the implications of new noise guidelines issued by the former Ministry of the Environment, now Ministry of the Environment and Climate Change. No new hearing date has been set at this time.

[3] At the parties' request, the Board agreed to divide the hearing into several segments. Each hearing segment will deal with one or more specific topic areas. Pre-hearing conferences to deal with motions, settlements, procedural orders for various hearing segments, and so on, have been, and will continue to be, interspersed between hearing segments to move matters along in an efficient manner.

[4] There are five matters before the Board at this appearance:

1. Scheduling further appearances for:

- i. A. DeSantis Developments Ltd. ("DeSantis")
- ii. St. Joseph's Villa
- iii. DiCenzo Construction Company Limited and DiCenzo (Golf Club Road) Holdings Inc. ("DiCenzo").

2. A settlement hearing for Group 2 issues in PL110331, appeal by Paletta International Corporation ("Paletta") dealing with two separate site – specific matters

[5] In addition to the parties noted above, 1507565 Ontario Limited, represented by Counsel M. Paiva, was in attendance to observe the proceedings.

A. DESANTIS DEVELOPMENTS LTD.

[6] The DeSantis appeal is part of case PL101381, previously consolidated, and found in Issue Group 13 of these proceedings.

[7] The Board sets a teleconference settlement hearing to commence on **Monday, March 2, 2015 at 11 a.m.**

[8] Call-in details have been provided separately to the parties.

[9] No further notice is required.

[10] Affidavit evidence and exhibits to be relied upon at the teleconference are to be filed with the Board in hard copy and electronically by noon on Tuesday, February 17, 2015.

[11] The teleconference will deal with technical amendments necessary to reflect the Board's decision in PL131185, issued September 4, 2014.

ST. JOSEPH'S VILLA

[12] The St. Joseph's Villa appeal is part of case PL101381, previously consolidated, and found in Issue Group 11 of these proceedings.

[13] The Board sets **two days** for the hearing of this matter, to commence on **Thursday, May 7, 2015 at 10 a.m. at:**

**OMB Courtroom #6
McMaster Learning Centre
50 Main Street East
Hamilton, Ontario**

[14] No further notice is required.

DICENZO CONSTRUCTION COMPANY LIMITED AND DICENZO (GOLF CLUB ROAD) HOLDINGS INC.

[15] The Board sets a further pre-hearing to commence on **Tuesday, March 3, 2015, at 10 a.m. at:**

**OMB Courtroom #6
McMaster Learning Centre
50 Main Street East
Hamilton, Ontario**

[16] No further notice is required.

[17] This pre-hearing for the DiCenzo matters will deal with Issue Group 1 matters relating to certain specific sites on Stone Church Road West and Stone Church Road East. Issues relating to these sites were initially part of the Natural Heritage System hearing segment but were adjourned to permit further discussions between the parties.

PALETTA INTERNATIONAL CORPORATION

[18] Paletta has reached a settlement with the City.

[19] The settlement documents were circulated August 14, 2014 in accordance with the Board's earlier directions. No one appeared in opposition to the settlement.

[20] The settlement deals with two site-specific matters. One is 0 Rymal Road East and 212 Glover Road and the second is 272 First Road West.

[21] The Board heard from Paul Lowes, a full Member of the Canadian Institute of Planners and a Registered Professional Planner in Ontario. Mr. Lowes acknowledged the expert's duty to the Board orally and under oath *in lieu* of filing an executed copy of the Board's Acknowledgement of Expert's Duty form.

[22] The Board qualified Mr. Lowes to provide the Board with independent expert opinion evidence in land use planning matters. Mr. Lowes provided evidence with respect to both site-specific Paletta matters.

0 Rymal Road East and 212 Glover Road

[23] 0 Rymal Road East and 212 Glover Road are in the Glanbrook Business Park in the former Town of Glanbrook.

[24] 0 Rymal Road East is divided into two areas: A and A1. 212 Glover Road is shown as area B. The location of the lands is set out in Attachment 1, filed as Exhibit 62 in these proceedings.

[25] Studies underpinning the UHOP included a comprehensive review of employment lands. The settlement deals with the studies that are required to determine the developable area of the lands and the appropriate type and distribution of that development between these two properties. In addressing these matters, the studies will also inform a possible change of designation of a certain portion of the lands from Employment-Business Park to Arterial Commercial.

[26] The list of studies is found in Attachment 2, filed as Exhibit 63 in these proceedings. The list is not exhaustive and all studies are to be done to the satisfaction of the City.

[27] Attachment 3 to this decision shows the changes Schedule E – Urban Structure, filed as Exhibit 64 in these proceedings.

[28] Attachment 4 shows the changes to Schedule E-1, Land Use, filed as Exhibit 65 in these proceedings.

[29] Attachment 5 shows the changes to Volume 3 Map 1, filed as Exhibit 66 in these proceedings.

[30] A strong economic base with the identification of employment opportunities and the protection of employment lands are matters that are identified in as being of provincial interest in s. 2 of the *Planning Act*, R.S.O. 1990, c. P. 13 ("Act") and in both the Provincial Policy Statement ("PPS") and the Growth Plan for the Greater Golden Horseshoe ("GGH").

[31] Having reviewed the proposed modifications to the UHOP, and on the evidence of Mr. Lowes, the Board finds that the modifications to the UHOP as set out in Attachments 1- 5 have had appropriate regard for matters of provincial interest as set out in s. 2 of the Act, are consistent with the PPS and conform to the GGH.

[32] The parties have agreed that Paletta is to proceed with an application for a zoning by-law amendment for 212 Glover Road, within 12 months of the date of this decision, in order to implement the intention of these modifications to determine the appropriate amount, type and distribution of development on the 212 Glover Road lands and the consequent possibility of some development being redistributed to part of the 0 Rymal Road East lands.

[33] The parties have advised the Board that the settlement is contingent upon this further application by Paletta and ask that, if the Board is advised that no such application has been made within that time, the Board consider appropriate further steps to finalize this matter.

[34] The parties have asked the Board to withhold its order in this matter for 12 months to enable Paletta to make the agreed upon rezoning application and for the Board to be so advised.

[35] The Board's order respecting the modifications to the UHOP that are set out in Attachments 1-5 to this decision is withheld for 12 months or until the Board is advised that Paletta has made an application for a rezoning for 212 Glover Road, whichever is the earliest.

272 First Road West

[36] The UHOP designation of this site, as adopted, was Arterial Commercial.

[37] The MMAH modification changed the designation to District Commercial at the request of the City.

[38] This is a rather unique site.

[39] The District Commercial designation is intended for a site that is surrounded by residential development and is within easy walking distance of that residential development.

[40] This site has large areas that are designated as open space around it. In addition, the site is at the intersection of First Road West and Mud Street West. Mud Street West is a very busy street that is a higher order arterial. As such, some of the use in the Arterial Commercial designation would be appropriate in this location.

[41] The text changes to reflect the few additional uses are found in Attachment 6 to this decision, filed as Exhibit 68 in these proceedings.

[42] The mapping changes to the Nash Neighbourhood Secondary Plan Map B.7.5-1 are found in Attachment 7, filed as Exhibit 68 in these proceedings.

[43] The Board finds that the proposed modifications set out in Attachments 6 and 7 result in a more appropriate set of uses for this site, have had regard for the matters of

provincial interest as set out in s. 2 of the Act, are consistent with the PPS and conform to the GGH.

ORDER

[44] The Board orders that the appeal by Paletta International Corporation regarding 272 First Road West is allowed in part and the City of Hamilton Urban Hamilton Official Plan is modified in accordance with Attachment 6 and Attachment 7 to this decision.

"Susan de Avellar Schiller"

SUSAN de AVELLAR SCHILLER
VICE-CHAIR

Ontario Municipal Board

A constituent tribunal of Environment and Land Tribunals Ontario
Website: www.elfto.gov.on.ca Telephone: 416-212-6349 Toll Free: 1-866-448-2248

ATTACHMENT 1

Case No. PL110331



Legend

 UH-4

Urban Hamilton Official Plan
Volume 3 : Map H-8
Area Specific Policies



Not To Scale
Date: Sep. 23, 2014



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ATTACHMENT 2

Settlement
Paletta International Corporation
Urban Hamilton Official Plan (PL110331) – Group 2

0 Rymal Road and Part of 212 Glover Road

Volume 3, Chapter B – Area Specific Policies

“UH-4 Lands located on Part of 0 Rymal Road and 212 Glover Road, former City of Hamilton and Former Town of Glanbrook

1.0 Area Specific UH-4, shown on Map H-8 includes the lands located at 0 Rymal Road East identified as Parcels A and A1 and lands located on part of 212 Glover Road and identified as Parcel B. The following policies shall apply to UH-4:

Area A

- a) In addition to Policy E.4.8.2 of Volume 1, and notwithstanding Policy E.4.8.3 b) and d) of Volume 1, the following uses shall be permitted on Area A:
 - i) retail stores;
 - ii) hardware stores, beer stores, LCBO stores and drugstores;
 - iii) banks, financial institutions and personal services;
 - iv) offices;
 - v) food stores;
 - vi) stores primarily selling apparel, housewares, electronics, sporting goods, or general merchandise.
- b) The maximum total combined gross floor area of retail uses in a) i), v) and vi) above shall not exceed 10,000 square metres on Area A.
- c) Office uses on Area A permitted in a) iv) above shall not exceed a combined total of 2,000 square metres of gross floor area.

Area A1

- d) A zoning by-law amendment application for commercial uses for any portion of lands within Area A1 shall not be deemed complete, and no official plan amendment shall be undertaken, until the studies for Area B described in j) have been completed and approvals received in accordance with k) below. The purpose of these studies is for determining the total developable area on Area B (part of 212 Glover Road).

Settlement
Paletta International Corporation
Urban Hamilton Official Plan (PL110331) – Group 2

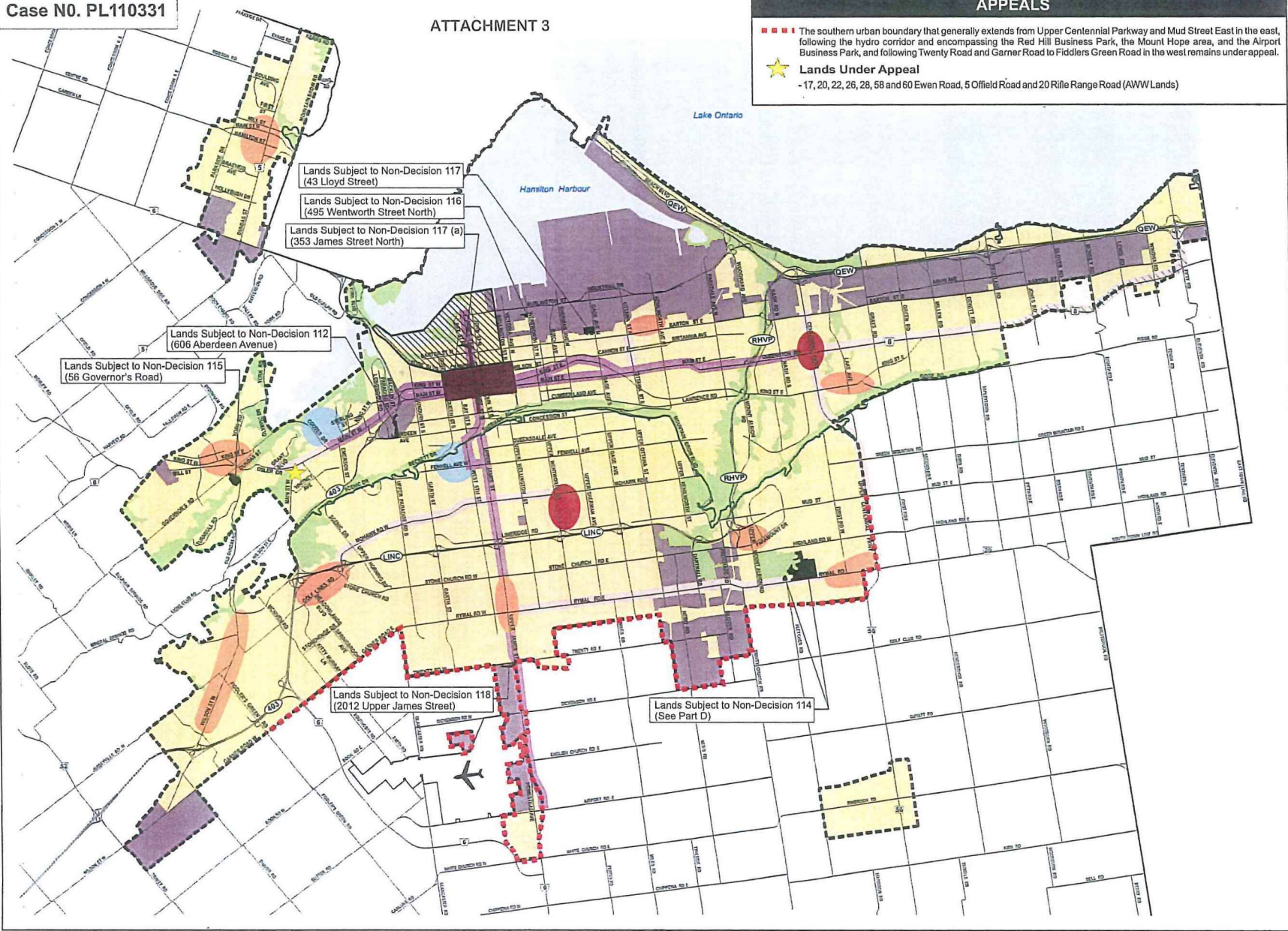
- e) In the event that the developable lands on Area B is in excess of the developable area of Area A, additional lands on Area A1 shall be re-designated to "Arterial Commercial" on Volume 1, Schedule E-1 – Urban Land Use Designations through an administrative amendment to create a developable Arterial Commercial designation equivalent to the developable area on Area B.
- f) Redesignation of lands on Area A1 from "Employment-Business Park" to "Arterial Commercial" shall not be considered conversion of employment lands and shall not require a *Municipally Initiated Comprehensive Review*.
- g) If the developable area on Area B is greater than the combined land area of Areas A and A1, the total area to be designated "Arterial Commercial" shall be no larger than the combined areas of Areas A and A1.
- h) The permitted uses on any lands designated "Arterial Commercial" on Area A1 shall be those uses listed in a) above.
- i) The cap on total combined retail area specified in b) above shall be applied across the combined lands designated "Arterial Commercial" on Areas A and A1.

Area B

- j) Studies on Area B are required to determine the total developable area for Area B. Prior to deeming any development application for Area A1 complete, studies, investigations and/or reports on Area B lands shall be required by the City. These studies may generally include but may not be limited to the following:
 - i) Floodplain mapping
 - ii) Mender belt assessment
 - iii) Headwater tributary assessment
 - iv) Environmentally Sensitive Areas buffer assessment
 - v) Karst assessment
 - vi) Stormwater management report
 - vii) Fisheries setback
 - viii) Species at Risk assessment
- k) The studies completed in j) above shall be to the satisfaction of the City."

■ ■ ■ ■ The southern urban boundary that generally extends from Upper Centennial Parkway and Mud Street East in the east, following the hydro corridor and encompassing the Red Hill Business Park, the Mount Hope area, and the Airport Business Park, and following Twenty Road and Garner Road to Fiddlers Green Road in the west remains under appeal.

★ **Lands Under Appeal**
 - 17, 20, 22, 26, 28, 58 and 60 Ewen Road, 5 Offield Road and 20 Rifle Range Road (AWW Lands)



Legend

Urban Structure Elements

- Neighbourhoods
- Employment Areas
- Major Activity Centres
- Major Open Space

Nodes

- Downtown Urban Growth Centre
- Sub Regional Service
- Community

Corridors

- Primary
- Secondary
- Potential Expansion of Secondary Corridor

Other Features

- Rural Area
- John C. Munro Hamilton International Airport
- Niagara Escarpment
- Urban Boundary
- Municipal Boundary
- Lands Subject to Non Decision 113 West Harbour Selling Site

Council Adoption: July 9, 2009
 Ministerial Approval: March 16, 2011
 Effective Date: August 16, 2013

Urban Hamilton Official Plan
Schedule E
Urban Structure

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 Hamilton
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Case No. PL110331

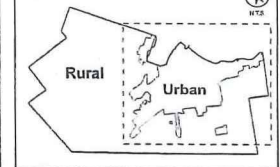
ATTACHMENT 4

APPEALS

***** The southern urban boundary that generally extends from Upper Centennial Parkway and Mud Street East in the east, following the hydro corridor and encompassing the Red Hill Business Park, the Mount Hope area, and the Airport Business Park, and following Twenty Road and Garner Road to Fiddlers Green Road in the west remains under appeal.

★ **Lands Under Appeal**
- 17, 20, 22, 26, 28, 58 and 60 Ewen Road, 5 Ofield Road and 20 Rille Range Road (AWW Lands)

Key Map



Note: For Rural Land Use Designations, refer to Schedule D of the Rural Hamilton Official Plan.

Legend

- Neighbourhoods
- Open Space
- Institutional
- Utility
- Commercial and Mixed Use Designations**
- Downtown Mixed Use Area
- Mixed Use - High Density
- Mixed Use - Medium Density
- District Commercial
- Arterial Commercial
- Employment Area Designations**
- Industrial Land
- Business Park
- Airport Business Park
- Shipping & Navigation
- Other Features**
- Rural Area
- John C. Munro Hamilton International Airport
- Niagara Escarpment
- Urban Boundary
- Municipal Boundary
- Lands Subject to Non Decision 113 West Harbour Setting Sail

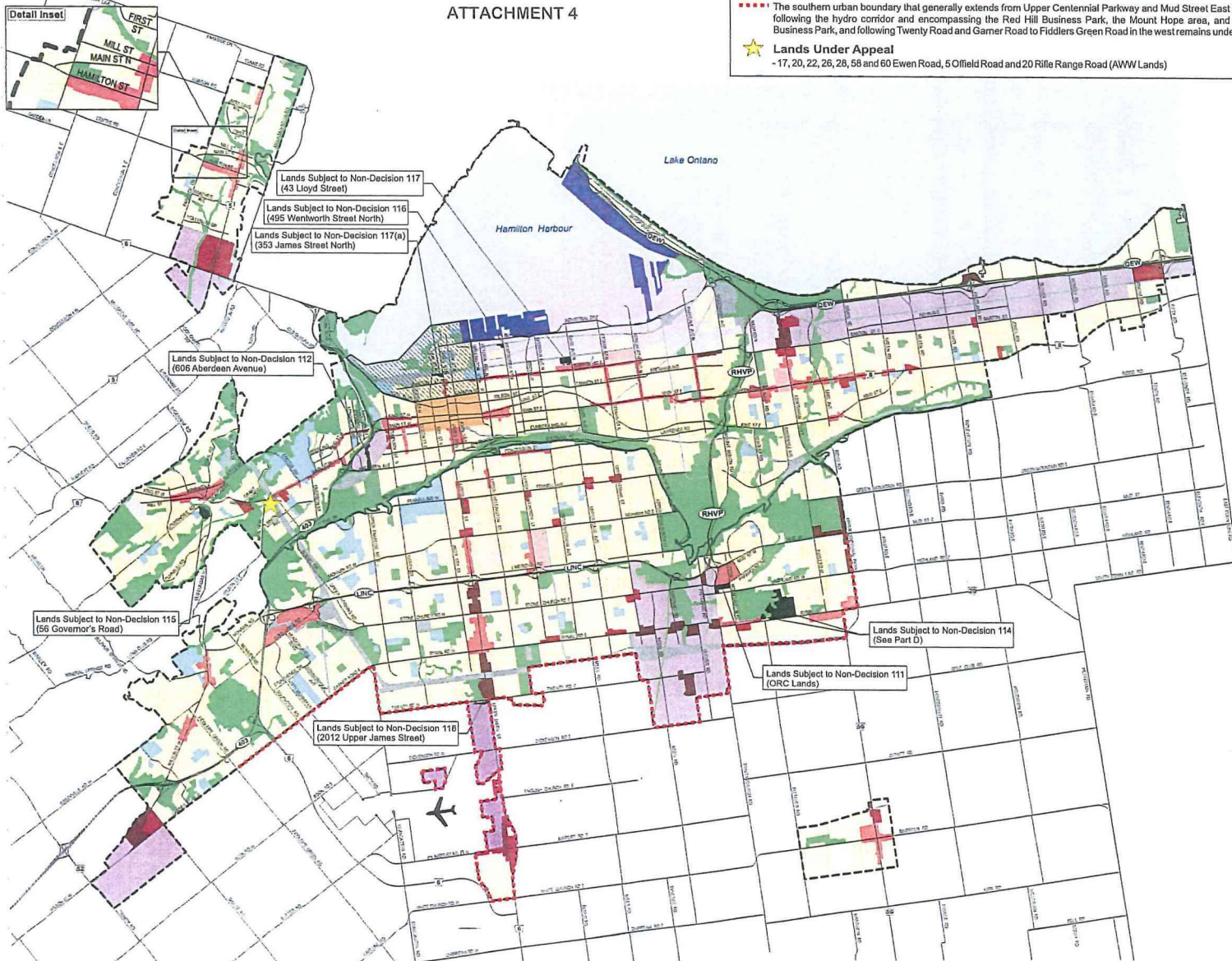
Council Adoption: July 9, 2009
Ministerial Approval: March 16, 2011
Effective Date: August 16, 2013

Urban Hamilton Official Plan Schedule E-1 Urban Land Use Designations

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Lands Subject to Non-Decision 117
(43 Lloyd Street)

Lands Subject to Non-Decision 116
(495 Wentworth Street North)

Lands Subject to Non-Decision 117(a)
(353 James Street North)

Lands Subject to Non-Decision 112
(606 Aberdeen Avenue)

Lands Subject to Non-Decision 115
(56 Governor's Road)

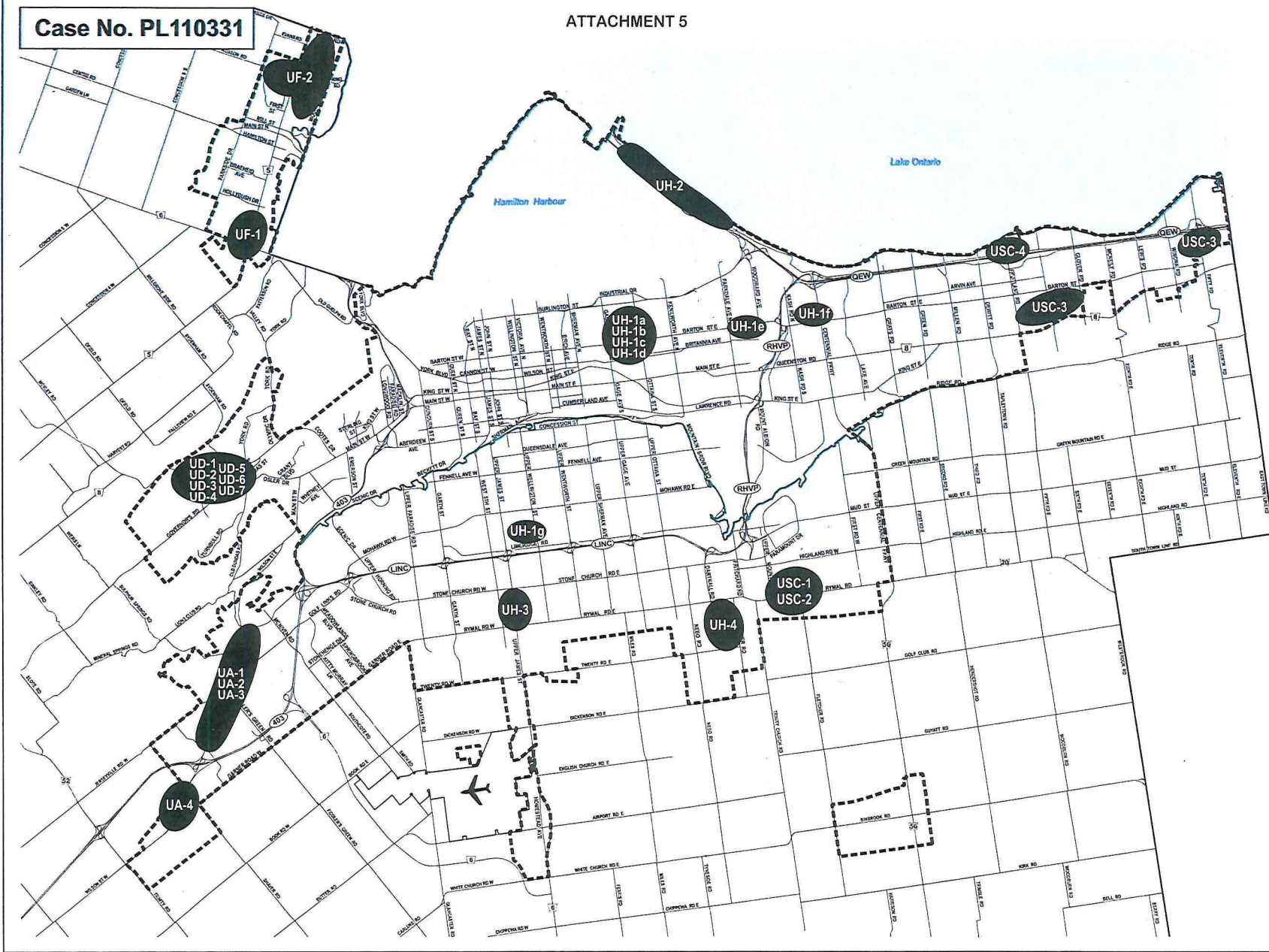
Lands Subject to Non-Decision 118
(2012 Upper James Street)

Lands Subject to Non-Decision 114
(See Part D)

Lands Subject to Non-Decision 111
(ORC Lands)

Case No. PL110331

ATTACHMENT 5



The southern urban boundary that generally extends from Upper Centennial Parkway and Mud Street East in the east, following the hydro corridor and encompassing the Red Hill Business Park, the Mount Hope area, and the Airport Business Park, and following Twenty Road and Garner Road to Fiddlers Green Road in the west remains under appeal – see illustration on Schedules E and E-1, Volume 1

Legend

- U- Refers to Urban Area Specific Policy Area #, Volume 3, Chapter B

Other Features

- Rural Area
- John C. Munro Hamilton International Airport
- Urban Boundary
- Municipal Boundary

Council Adoption: July 9, 2009
 Ministerial Approval: March 16, 2011
 Effective Date: August 16, 2013

Urban Hamilton Official Plan
 Volume 3: Map 1
 Area Specific Policies Key Map

Scale: 1:50,000
 Date: Sept. 15/14
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ATTACHMENT 6

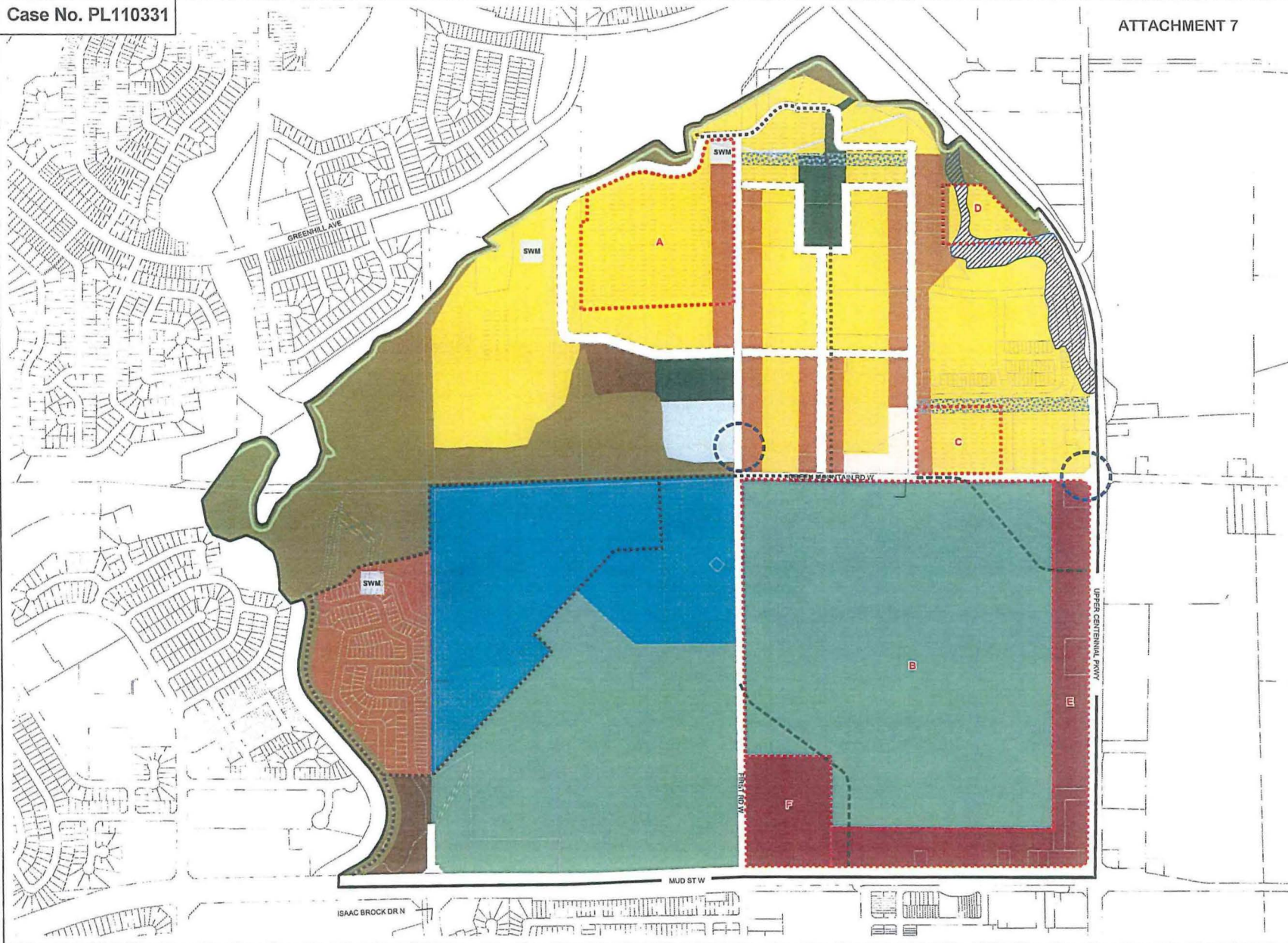
Settlement
Paletta International Corporation
Urban Hamilton Official Plan (PL110331) – Group 2

272 First Road West

Volume 2, Chapter B – Secondary Plans, Section B.7.5 – Nash Neighbourhood

“Site Specific Policy - Area F

- 7.5.14.6 For lands shown as Site Specific Policy - Area F on Map B.7.5-1 – Nash Neighbourhood – Land Use Plan, the following policies shall apply:
- a) In addition to the uses permitted in Section E.4.8 of Volume 1, District Commercial uses specified in Policy E.4.7.2 shall also be permitted.
 - b) In addition to a) above, libraries shall be permitted.
 - c) Notwithstanding Volume 1, Policy E.4.8.2 c), theatres shall be permitted.
 - d) The provisions of Volume 1, Section E.4.7 shall apply to District Commercial uses.
 - e) Volume 1, Policy E.4.7.2 b) shall not apply.”



Legend

Residential Designations

- Low Density Residential 2
- Low Density Residential 2h
- Medium Density Residential 2
- Medium Density Residential 3

Commercial and Mixed Use Designations

- Local Commercial
- Arterial Commercial

Parks and Open Space Designations

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

Other Designations

- Institutional
- Utility

SWM Storm Water Management

Other Features

- Area or Site Specific Policy
- Flood Plains
- Hedge Row
- Gateway
- Trail Links
- Proposed Road Realignment
- Escarpment
- Proposed Roads
- Secondary Plan Boundary

Council Adopted: July 9, 2009
 Ministerial Approval: March 16, 2011
 Effective Date: August 16, 2013

**Urban Hamilton Official Plan
 Nash Neighbourhood
 Secondary Plan
 Land Use Plan
 Map B.7.5-1**

Map To Scale
 Date: Dec. 23, 2014

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