

**Ontario Land Tribunal**  
Tribunal ontarien de l'aménagement  
du territoire



**23-016-OLT-01 Attachment 1**

**ISSUE DATE:** October 17, 2024

**CASE NO(S):** OLT-23-000221

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

Applicant: 1426769 Ontario Limited  
Appellant: 1876427 Ontario Inc.  
Subject: Proposed Official Plan Amendment  
Description: To permit the development of 25 single detached dwellings, 29 street townhouse dwellings, 51 townhouse dwellings and the extension of a public road.  
Reference Number: OPA 180  
Property Address: 15 Ridgeview Drive  
Municipality/UT: Hamilton/Hamilton  
OLT Case No.: OLT-23-000221  
OLT Lead Case No.: OLT-23-000221  
OLT Case Name: 1876427 Ontario Inc. v. Hamilton (City)

**PROCEEDING COMMENCED UNDER** subsection 34(19) of the *Planning, R.S.O.* 1990, c. P.13, as amended

Applicant: 1426769 Ontario Limited  
Appellant: 1876427 Ontario Inc.  
Subject: Zoning By-law  
Reference Number: 23-017  
Property Address: 15 Ridgeview Drive  
Municipality/UT: Hamilton/Hamilton  
OLT Case No.: OLT-23-000222  
OLT Lead Case No.: OLT-23-000221

**PROCEEDING COMMENCED UNDER** subsection 34(19) of the *Planning*, R.S.O. 1990, c. P.13, as amended

Applicant:	1426769 Ontario Limited
Appellant:	1876427 Ontario Inc.
Subject:	Zoning By-law
Reference Number:	23-018
Property Address:	15 Ridgeview Drive
Municipality/UT:	Hamilton/Hamilton
OLT Case No.:	OLT-23-000223
OLT Lead Case No.:	OLT-23-000221

**Heard:** January 15 to 19, 2024 by Video Hearing

**Parties**

**Counsel**

187627 Ontario Inc.  
("Appellant")

Adrianna Pilkington

1426769 Ontario Limited  
("Applicant")

Raj Kehar

**DECISION DELIVERED BY S. BOBKA AND INTERIM ORDER OF THE TRIBUNAL**

**[Link to the Order](#)**

**INTRODUCTION**

[1] This was a Hearing of the Merits for appeals brought forward under s. 17(24) and s. 34(19) of the *Planning Act* ("Act") regarding the City of Hamilton's ("City") approval of the Applicant's Official Plan Amendment ("OPA") application and Zoning By-law Amendment ("ZBA") applications to permit the development of 25 single-detached dwellings, 29 street townhouse dwellings, and 51 townhouse dwellings on the property municipally known as 15 Ridgeview Drive ("Subject Lands"), in the City.

[2] The Tribunal was informed, in advance of the Hearing, that the City would not be participating in the appeal proceedings.

[3] At a Case Management Conference held prior to the Hearing, BV Realty, which owns lands to the west and adjacent to the Subject Lands was granted Participant Status, enabling it to provide a written statement regarding these appeals. The concerns expressed included the planned drainage pattern for Stage 2 of the proposed development involving the intended construction of a regional conveyance swale on the BV Realty lands.

[4] Following careful consideration of all the materials, evidence and submissions of the Parties, and for the reasons that follow, the Tribunal was persuaded by the evidence proffered by the Applicant.

## **LEGISLATIVE FRAMEWORK**

[5] The Tribunal must be satisfied that the proposed instruments represent good land use planning and are in the public interest. In making its Decision, regard must be had for matters of Provincial interest in s. 2 of the Act and for the decision of the City, as well as the information considered by it, in accordance with s. 2.1(1) of the Act. The instruments must be consistent with the Provincial Policy Statement 2020 (“PPS”) and the ZBAs must conform with A Place to Grow: Growth Plan for the Greater Golden Horseshoe (“GP”) and the Urban Hamilton Official Plan (“UHOP”).

## **BILL 150 DISCUSSION**

[6] At the Hearing, the Tribunal sought input from the Parties as to whether the passing of Bill 150, the *Planning Statute Law Amendment Act, 2023*, which enacts the *Official Plan Adjustments Act 2023* and which received Royal Assent on December 6, 2023, had any impacts on the potential outcome of this matter. In his testimony, Franz Kloibhofer opined that Bill 150 does not impact the matter that was heard and Edward

John did not dispute this position in his evidence. The Tribunal is satisfied that these matters are not impacted by Bill 150.

## **HISTORY OF THE APPLICATION**

[7] The Applicant made applications for an OPA, ZBAs and Draft Plan of Subdivision (“Draft Plan”), which were deemed complete by the City on December 16, 2016. The OPA and ZBAs (By-law Nos. 23-017 and 23-018) were reviewed and approved by Council on February 8, 2023. These were subsequently appealed to the OLT by the Appellant and are the subject of these appeals. The Draft Plan application was approved in principle by Council on May 9, 2023, with a number of conditions; however, the Draft Plan and associated conditions are not under appeal before the Tribunal.

[8] It is noted that the Appellant in this matter also submitted a previous separate appeal to the Tribunal (OLT File No.: OLT-23-000009) regarding the Niagara Escarpment Permit (“NEP”) granted to the Applicant by the Niagara Escarpment Commission (“NEC”). The matter was heard by a differently-constituted Panel of the Tribunal in September 2023, who approved a settlement, which confirmed the Development Permit with certain modified conditions (“NEP Settlement”).

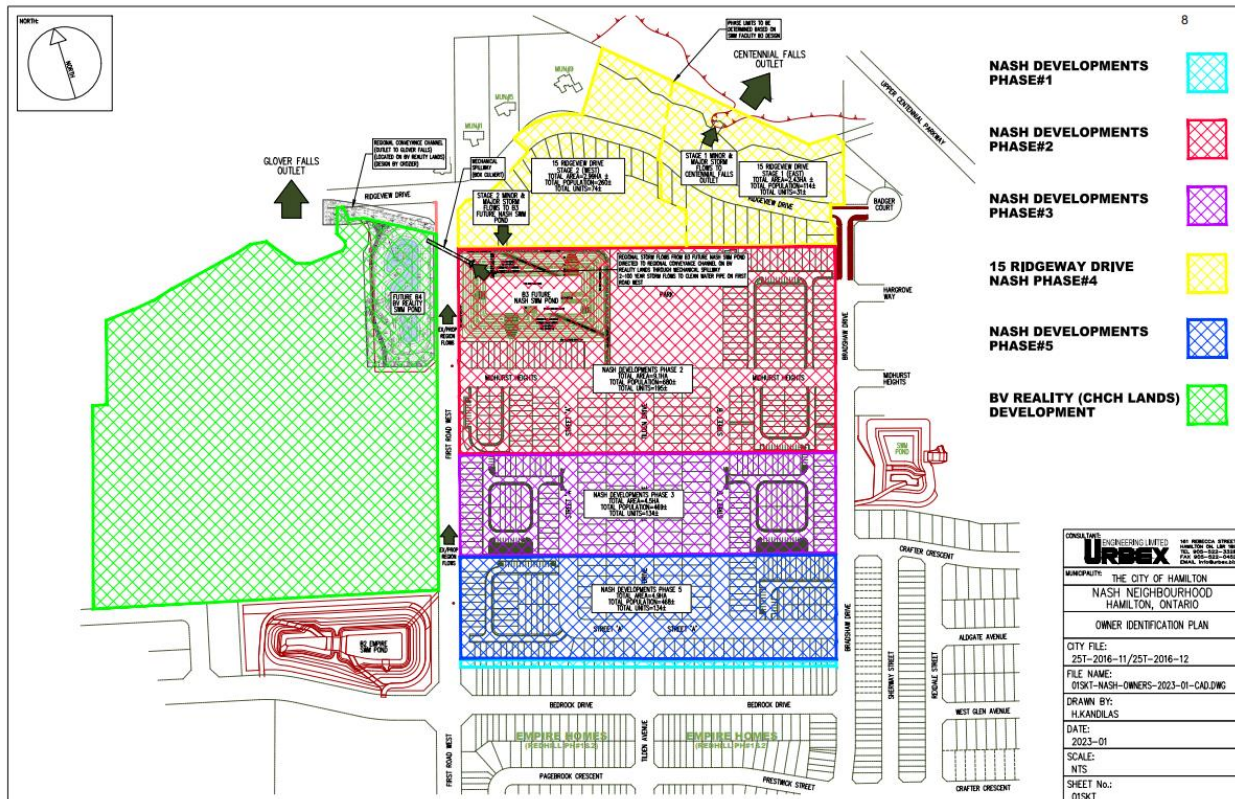
## **SUBJECT LANDS AND EFFECT OF PROPOSAL**

[9] The Subject Lands are legally described as Part of Lot 26, Concession 5, Geographic Township of Saltfleet and Part of Ridgeview Drive, in the City. They are currently vacant and are approximately 5.42 hectares (“ha”) in size.

[10] In the diagram below:

- i. the Subject Lands are shown in yellow and labelled ‘15 Ridgeway Drive Nash Phase #4’;

- ii. the Appellant’s lands are immediately to the south of, and adjacent to, the Subject Lands, shown in red and labelled ‘Nash Developments Phase #2’; and,
- iii. the Participant’s lands are to the west of and adjacent to the Subject Lands, shown in green and labelled ‘BV Realty (CHCH Lands) Development’.



(Exhibit 7, page 11)

[11] Also of note, on this diagram:

- i. the brow of the Niagara Escarpment is to the north of the Subject Lands;
- ii. the Centennial Falls Outlet is depicted by the arrow near the top center;
- iii. the Glover Falls Outlet is depicted by the arrow in the top left; and,

- iv. the stormwater management pond labelled 'B3 Future Nash SWM Pond' (hereafter, referred to as the "B3 Pond") is in the northwest corner of the Appellant's lands (which are shown in red).

[12] The Subject Lands are:

- i. bounded by the existing Ridgeview Drive and the escarpment brow to the north, Bradshaw Drive extension to the east, First Road West to the west, and as mentioned, the Appellant's lands to the south;
- ii. within the Delineated Built-Up Area (per s. 2 of the GP);
- iii. designated "Escarpment Urban Area" with a portion being within the "Escarpment Natural Area" designation on Map 2 of the Niagara Escarpment Plan;
- iv. identified as "Neighbourhoods" within the UHOP on Schedule E - Urban Structure and designated "Neighbourhoods", "Open Space" and "Utility" on Schedule E-1 - Urban Land Use Designations;
- v. designated "Low Density Residential 2", "Low Density Residential 2," "Low Density Residential 2h," "Neighbourhood Park," "Utility," and "Hedge Row" and abuts the Escarpment as shown on Map B.7.5-1 of the Nash Neighbourhood Secondary Plan – Land Use Plan; and,
- vi. zoned Neighbourhood Development Zone.

[13] The Subject Lands' pre-development flows discharge to two stormwater outlets:

- i. Centennial Falls:
  - a. is located immediately north of the Subject Lands;
  - b. drains to Battlefield Creek; and,

- c. is a stormwater outlet for approximately 24.2 ha of predominantly undeveloped lands over the Escarpment. These lands are made up largely of the Nash Neighbourhood Development Phases 1-5.
- ii. Glover Falls:
    - a. is located to the west of the Subject Lands;
    - b. drains to Davis Creek; and,
    - c. is a stormwater outlet for a portion of the lands comprising the Nash Neighbourhood Development Phases 1-5, including the Subject Lands and serves the surrounding area including both developed and undeveloped land.

[14] Post-development, the stormwater on the Subject Lands is proposed to be directed to two separate outlets:

- i. the eastern portion (Stage 1) is proposed to drain to Centennial Falls; and,
- ii. the western portion (Stage 2) is proposed to drain to the proposed B3 Pond located on the Appellant's lands, which ultimately outlets to Glover Falls.

## WITNESSES

[15] Upon review and consideration of their respective *Curricula Vitae* and Acknowledgment of Expert's Duty ("AED") forms, the Tribunal qualified the following five experts to provide opinion evidence:

Called by:	Witness:	Discipline:
Appellant	<b>Chris Ridd</b>	Civil engineering - functional servicing
	<b>Steven Frankovich</b>	Civil engineering - stormwater management

	<b>Edward John</b>	Land use planning
Applicant	<b>Jennifer Clarke</b>	Civil engineering - functional servicing & stormwater management
	<b>Franz Kloibhofer</b>	Land use planning

## TRIBUNAL MOTION RULING

[16] Following the lunch break on the first day of the Hearing, after a brief cross-examination of Mr. Ridd, Counsel for the Applicant, brought a motion to revoke Mr. Ridd's expert status as granted by the Tribunal and to strike Mr. Ridd's opinion evidence (as provided through his witness statements and oral testimony). Mr. Kehar stated that new information had been received through a text message during the break, which demonstrated that Mr. Ridd lacked the required independence to provide expert evidence.

[17] The Tribunal directed briefing on the matter, in accordance with Rule 10 of the OLT's *Rules of Practice and Procedure* ("Rules") and received written submissions from the Parties which put forward the following positions.

### A. Applicant's Position:

- i. The Applicant argued that Mr. Ridd was incapable of completing his duty to provide fair and unbiased opinion evidence as his company, Urbex Engineering Limited ("Urbex"), has officers in common with First Road West Development Inc. ("First Road"), which is a registered owner of the Appellant's lands.
- ii. The Applicant presented the Tribunal with supporting documents (including Corporate Profile Reports and Parcel Register for Property Identified ("PIN") documents, which showed that:



- a. the registered owners of the Appellant's lands are 1876427 Ontario Inc. (being the Appellant) and First Road, which each have a 50% share of ownership;
  - b. Urbex and First Road each have a head office located at 161 Rebecca Street, in the City;
  - c. Angelo Cameracci is the President of Urbex and the Secretary of First Road;
  - d. Laura Marie Di Silvestro is the Secretary of Urbex and the President of First Road;
  - e. The Urbex 2019 Preliminary Servicing Report is signed, on behalf of Urbex, by Mr. Cameracci and Mr. Ridd;
  - f. The Urbex 2016 Preliminary Servicing Report is signed, on behalf of Urbex, by Mr. Cameracci and Dalibor Ljubenkovic.
- iii. The Applicant argued that Mr. Ridd's evidence relied significantly on the above Urbex Reports, and that Mr. Cameracci has had a direct involvement in the opinions provided to the Tribunal. The Applicant further argued that Mr. Ridd is providing "an opinion on behalf of his employer that is not independent because his employer (or its officers/directors and/or shareholders) has a pecuniary interest in the results of the proceeding ....." Moreover, that as an officer of First Road, Mr. Cameracci would have a fiduciary duty to act in the company's best interest.
  - iv. The Applicant highlighted that "the test for whether a witness is independent is not only whether ... [they are] indeed independent, but

whether they can be seen to be independent” and argued that in this instance that was not the case.

- v. The Applicant also argued that if Mr. Ridd’s expert evidence is not excluded, the Tribunal should take into account the concerns raised regarding his independence and impartiality when determining the weight assigned to his evidence.

**B. Appellant’s Position:**

- i. The Appellant argued that there is a high threshold to meet and to determine that expert evidence is inadmissible, and that the threshold has not been met in this case.
- ii. The Appellant stated that Mr. Ridd’s client is the Appellant, not Urbex nor Mr. Cameracci, and as such, the only relationship “between Mr. Ridd and the appellant is that of a retained consulting engineer.”
- iii. The Appellant highlighted that Mr. Ridd executed an Acknowledgement of Expert’s Duty (“AED”) form, which has consistently been accepted by the courts as proof of independence.
- iv. The Appellant argued that the courts have repeatedly held that “employment status alone is not a basis upon which to disqualify a witness.”
- v. The Appellant raised concerns as to the timing of the unproduced text message and rumors relied on by Counsel for the Applicant.
- vi. The Appellant argued that this motion was brought too late as the documents that are relied on were publicly available well before the start

of the Hearing and should have been considered by the Applicant prior to the qualification of the witness.

- vii. The Appellant argued that there was no evidence of Mr. Cameracci's ownership, nor that he had any direct involvement in the opinions provided to the Tribunal.
- viii. Further, the Appellant highlighted that Mr. Cameracci was not an officer of First Road until August 17, 2021, which was after the production of the Urbex Reports (September 2016 and May 2019, respectively), and therefore, he had no fiduciary duty to that company when the reports were produced.
- ix. Finally, the Appellant argued that the Corporate Profile Reports relied on by the Applicant do not identify shareholders or owners, and as such, there is no evidence before the Tribunal as to who the owners of either company actually are.

### **Tribunal Determination**

[18] At the outset of the Hearing on Day 2, the Tribunal provided a brief explanation, which is expanded upon below, and ruled against the motion.

[19] The Tribunal determined that the Applicant's motion was an example of a motion that could have, and should have, been brought after Mr. Ridd's Witness Statement was filed in November 2023, as the underlying facts and issues were known, or could have been known, prior to the Hearing. Moreover, access to the information in the Corporate Registry referred to and relied upon was available long before the start of the Hearing. The Tribunal found that this was an untimely motion which affects the flow of the Hearing and creates a potential for great prejudice to the Appellant.

[20] In these circumstances, there is a balance of prejudice to be considered by the Tribunal. The Applicant is entitled to challenge opinion evidence; however, this type of effort, at the outset of the Hearing, creates enormous potential prejudice to the Appellant because it then has no opportunity to seek other opinion evidence. The Tribunal must be very cautious in considering whether to grant such an extraordinary remedy on an untimely basis.

[21] The Tribunal has broad latitude under the *Ontario Land Tribunal Act* and the Rules to create the best opportunity for a fair, expeditious and cost-effective resolution on the merits, and generally to control its own process, including procedure at Hearings.

[22] The Tribunal is commonly faced with the requirement to determine the credibility of all witnesses and to make findings in that regard. The Tribunal often has to wade through evidence that might be tinged with the air of partisanship. In this case, the Tribunal is of the belief that Mr. Ridd was aware of his duty to the Tribunal as acknowledged through his signature of the AED form and was capable of providing unbiased opinion evidence. As such, the Tribunal was not prepared to strike the opinion evidence of this witness and the motion was not granted.

## **ISSUES**

[23] It is the position of the Appellant that the Applicant has failed to demonstrate that the required stormwater management (“SWM”) services are feasible as proposed and the approvals should not be granted.

[24] It is the position of the Applicant that, at this preliminary design stage, it has demonstrated both coordination and a functional servicing plan with sufficient detail to warrant approval of the OPA and ZBAs. It is the view of the Applicant that all Parties and the Participant agree that a SWM pond (the B3 Pond) that will accept the western portion of the Applicant’s post development flow, will be built in the same defined

location on the Appellant's lands prior to the advancement of Phase 2 of the proposed development and that this entails coordination.

[25] The Issues List forming part of the Procedural Order governed the presentation of the evidence and the Hearing of these appeals. In brief, the issues before the Tribunal are whether the OPA and ZBAs:

- i. are premature due to a conflict with the *Niagara Escarpment Planning and Development Act* or are otherwise premature;
- ii. have appropriate regard to the matters of Provincial interest listed in s. 2 of the Act;
- iii. are consistent with the PPS;
- iv. conform to the GP;
- v. do not conflict with the Niagara Escarpment Plan;
- vi. conform to the UHOP; and,
- vii. are in the public interest and represent good planning.

## **APPELLANT'S EVIDENCE**

### **Chris Ridd**

[26] Mr. Ridd opined that the Functional Servicing and Stormwater Management and Report ("AJC FSR") prepared by A.J. Clarke and Associates Ltd. ("AJC") in 2021, indicates that the Applicant's development relies on a SWM pond (the B3 Pond) being built by the Appellant and a regional conveyance swale being built by BV Realty;

however, neither of these have been finally designed, funded, planned or constructed. He also pointed out that the AJC FSR incorporates Centennial Falls as an outlet, a new concept that had not been previously considered by the City and the Appellant.

[27] Mr. Ridd stated that the Applicant had not sufficiently considered or addressed issues and constraints raised in the reports that came before the AJC FSR, or after it, and that these reports need to be adequately considered and addressed by the Applicant prior to receiving approvals.

[28] Mr. Ridd highlighted that the work of the AJC FSR is preliminary and that the Applicant's proposed Stage 1 and 2 phasing are premature since the overall neighbourhood SWM servicing strategy and design requirements are not yet final. It was his opinion that appropriate regard for the adjacent lands was not accounted for in the AJC FSR.

[29] Mr. Ridd referred briefly to a December 2023 Report ("SLA Memo"), which was prepared by S. Llewellyn and Associates Limited ("SLA"). He stated that SLA did file a high level SWM coordination report, with ideas on how the Applicant's proposed SWM system could work with the B3 Pond to be constructed on the Appellant's lands.

[30] It was his opinion that the approvals of the OPA and ZBAs were premature, as the Applicant had not demonstrated its SWM strategy is feasible, technically or practically. He said the approvals were granted before the overall SWM strategy was finalized and didn't provide sufficient conditions to ensure it would incorporate adequately with the overall neighbourhood strategy. He stated that as a whole the conditions of Draft Plan were very general, were not sufficient or appropriate, and never require the Applicant to integrate their design into the existing studies.

[31] Mr. Ridd also said the approvals did not sufficiently require the Applicant to cost share their proportionate share of the projected construction costs and anticipated shortfalls in Development Charge ("DC") funding for the B3 Pond.

[32] Regarding the matters of Provincial interest, Mr. Ridd opined that the proposal approved by the City does not have appropriate regard for the matters identified in s. 2 of the Act, specifically items (h) regarding orderly development of safe and healthy communities, (m) regarding the coordination of planning activities of public bodies, and (n) regarding the resolution of planning conflicts involving public and private interests.

[33] It was his evidence that the City approved the Applicant's zoning "despite conflicting technical information on stormwater management in the Nash neighbourhood, and, before coordination of stormwater management facilities which the Applicant relies upon." Moreover, that the City's approvals of the Applicant's proposal have: i) created conflict with the Appellant who is required to coordinate with the Applicant before it's (Appellant's) applications can progress, and ii) left significant servicing issues unresolved.

[34] Regarding consistency with the PPS, Mr. Ridd stated that the proposal is not consistent as:

- i. the approvals do not ensure that projected SWM needs are met, and that SWM is efficient at a neighbourhood level. Moreover, planning for only one phase of the neighbourhood does not promote logical design since the neighbourhood strategy could impact the Applicant's strategy and vice versa;
- ii. the proposed design did not incorporate the regional storm conveyance design requirements and constraints as outlined in previous reports, nor did it incorporate the preliminary design of the B3 Pond and the proposed phasing drainage divide could pose a risk of flooding to private/public lands; and,
- iii. the proposed design has not adequately incorporated the design of the B3 Pond nor the regional storm design constraints of the overall

neighbourhood, and as such, the risk of flooding has not been sufficiently mitigated.

[35] Mr. Ridd opined that the approvals did not conform with the GP as an overall SWM strategy for the entire neighbourhood has not been finalized. He highlighted that while the previous Davis Creek Study presented high-level SWM design criteria and targets for the Nash neighbourhood, it did not include Centennial Falls as a post-development SWM outlet.

[36] Mr. Ridd stated that the NEP Settlement included an additional condition (No. 15), which required coordination between all the proponents. However, he highlighted that the Applicant did not agree to coordinate or participate in the compilation of the SLA Memo. He stated that the OPA and ZBA approvals allow land uses before ensuring an updated neighbourhood SWM servicing strategy which includes Centennial Falls and other parameters.

[37] Regarding the UHOP, Mr. Ridd stated that:

- i. an updated neighbourhood SWM strategy incorporating Centennial Falls as an outlet is necessary to ensure applicable targets, criteria, catchment limits and recommendations for the B3 Pond as well as the regional flow conveyance system to Glover Falls;
- ii. there will be a significant shortfall in DC funding for the land value and construction of the B3 Pond, which should be equally proportioned amongst the lands to be serviced by it; and,
- iii. regarding the holding policies, it is “appropriate to hold permitted land use to ensure servicing has been addressed ... [and] to ensure the servicing is cost shared.” In addition, the holding provisions should be applied to both Phase 1 & 2 of the proposed development.



[38] He stated that the Applicant's Approvals were premature, and that the proposed SWM strategy does not integrate with the broader plans as it lacks the conditions which ensure integration.

[39] It was Mr. Ridd's opinion that the Draft Plan conditions and the ZBA H-provisions do not ensure that the development can be integrated into the overall neighbourhood SWM servicing strategy, and thus, it has not been demonstrated that the proposal can be effectively and efficiently serviced.

### **Steven Frankovich**

[40] Mr. Frankovich opined that from a storm sewer servicing perspective, the AJC FSR did not demonstrate the development's feasibility as the report failed to show a feasible connection for the minor storm sewer conveyance system and the major overland flow route to the B3 Pond.

[41] He stated that based on the AJC FSR, the area proposed to drain to the pond will face challenges to reach the pond through the storm sewer system of major overland conveyance system as:

- i. the storm sewer inverts, proposed by AJC, are lower than the B3 Pond's inlet invert as specified in the Storm Water Management Report Nash Neighbourhood (Lamarre Consulting Group Inc., May 2019) ("Lamarre Report"); and,
- ii. the proposed emergency overland conveyance channel is lower than the emergency spill elevation from the B3 Pond to First Road West as proposed in the Lamarre Report.

[42] Mr. Frankovich explained that as part of the NEP Settlement, his firm, S. Llewellyn and Associates Limited (“SLA”) was to prepare a SWM brief (“SLA Memo”) considering the parameters and constraints of the SWM strategy for the Nash Neighbourhood Phases 2 and 3. Repeated requests were made asking Ms. Clarke to provide input on how the Applicant’s minor and major conveyance system could integrate with the B3 Pond; however, the SLA Memo was completed without any input from her or her firm.

[43] Speaking to the SLA Memo, Mr. Frankovich confirmed that his ‘Licenced Professional Engineer’ stamp was on that report; however, he stated that it did not resolve all of the issues with the proposed SWM plan put forward by AJC, but rather was a first attempt looking at the AJC design. He highlighted that SLA worked with the Participant’s SWM consultant but, he again emphasized, that there was no communication or coordination with AJC to see how their constraints could be alleviated.

[44] Mr. Frankovich stated that without the Applicant at the table to coordinate, design deviations, such as lowering the pond invert, had to be proposed in order to accommodate the Applicant’s proposed strategy. He stated that this resulted in deviations from City standards including pond depth, and that such changes to the pond have impacts on both time and cost, and can also pose erosion and flooding risks. It was his opinion that sufficient coordination has not occurred, and that coordination has to happen before the approvals.

[45] It was Mr. Frankovich’s position that the proposed SWM design is:

- i. preliminary;
- ii. has not been demonstrated to be “potentially feasible”; and,
- iii. does not accommodate the projected servicing needs of the development and does not demonstrate integration into the larger Nash Neighbourhood SWM system (including the B3 Pond).

[46] Mr. Frankovich opined that the Draft Plan Conditions and the proposed Holding provisions are not enough to guarantee integration into the broader SWM servicing strategies of the Nash Neighbourhood. He opined that the Draft Plan Condition proposing an H-provision on the westerly lands was insufficient. He highlighted that to address how the overland flow channel and storm sewer from the Subject Lands integrate with the B3 Pond, the Applicant must conduct a comprehensive review of the entire design of its development to identify potential impacts on neighbouring developments. As such, he opined that an H-provision encompassing the Applicant's entire development should be added until those issues are suitably addressed.

[47] Mr. Frankovich opined that the proposal was premature in establishing the drainage divide and phasing limits. He stated that the SWM strategy outlined in the AJC FSR and the preliminary engineering drawings prepared by A.J. Clarke should be refined by this stage of the development and that a comprehensive strategy for the neighbourhood that addresses all the issues is needed before the approvals are granted.

[48] Mr. Frankovich also highlighted that design of SWM systems usually uses a downstream to upstream approach and that there is usually collaboration between landowners to coordinate discharge levels until permits are approved. In this instance, he highlighted, there is a lack of participation and coordination from the Applicant.

[49] Mr. Frankovich identified concerns with the same matters of Provincial interest as Mr. Ridd. He again highlighted that from an engineering perspective, designing the SWM system from downstream upwards is essential and that upstream lands should not dictate the downstream design. He opined that determining SWM parameters from the upstream end of a neighbourhood SWM system is not feasible and is an uncommon practice.

[50] Mr. Frankovich highlighted several sections of the PPS, which the proposal was not consistent with. It was his overall opinion that the approvals were not consistent as

there was more work to be done. He reiterated that coordination was not happening in this case and that the proposed SWM design was not being developed in an efficient manner. He testified that using the AJC design could delay final approval for the Applicant and for other phases.

[51] Mr. Frankovich opined that completing SWM planning for one phase of the Nash Neighbourhood separately from the other phases is not best practice and does not ensure that the overall SWM design is functional. He stated that the infrastructure proposed by the Applicant does not sufficiently prioritize the protection of public health and safety. He highlighted that, according to the Preliminary Grading Plan included in the AJC FSR, the Applicant's proposed emergency overland flow route is to be directed to the B3 Pond. He stated that:

...the elevations proposed throughout this emergency overland flow route are lower than the emergency spill elevations from Nash Pond B3 to First Road West. This design will cause stormwater to backflow and flood the private properties within the proposed development and onto Ridgeview Drive.  
(Exhibit 2, page 70, paragraph 47)

[52] Mr. Frankovich stated that he did not have any technical objections to the creation of the post development Centennial Falls outlet; however, he opined that it had not been optimized and incorporated into the overall neighbourhood SWM strategy.

[53] Mr. Frankovich further explained how the approvals do not conform with the GP. He highlighted that the AJC FSR identifies Centennial Falls as the stormwater outlet for Phase 1 of the proposed development; however, the Davis Creek Subwatershed Study, which establishes high-level stormwater targets for the Nash Neighbourhood, does not identify Centennial Falls as an outlet. In his testimony, Mr. Frankovich opined that the Davis Creek Study should be updated, as presently there is not a coordinated master plan. He also stated that the proposal is not supported by a SWM plan or equivalent which is informed by a subwatershed plan or equivalent.

[54] Mr. Frankovich stated that stormwater discharge rates directed to Centennial Falls cannot be finalized, as there is not a coordinated master plan, which shows how the stormwater infrastructure from Phase 2 of the Applicant's development integrates into the B3 Pond. Given the absence of a comprehensive master plan, he opined that the approvals do not align with the Niagara Escarpment Plan.

[55] In terms of the UHOP, Mr. Frankovich opined that the proposal does not conform. He stated that, as previously indicated:

Until a comprehensive master plan is established, detailing how storm infrastructure can be integrated, it cannot be confirmed whether the 15 Ridgeview Drive Development can meet the standards and targets set out for Centennial Falls [and] the approvals do not align ..... (Exhibit 2, page 76, paragraph 63)

[56] Regarding the proposed by-laws, he went on to say that a holding provision should be applied to Phases 1 and 2 of the development until a coordinated master plan is prepared and accepted by the City. He opined that allowing Phase 1 to proceed poses a risk that the B3 Pond might not be able to accommodate the Phase 2 stormwater discharge.

[57] Mr. Frankovich opined that the approvals do not align with the Nash Neighbourhood Secondary Plan ("Secondary Plan"), as it is not certain whether the required infrastructure and services will be available to accommodate Phase 2 of the proposed development. In addition, he stated that it could be determined at a later date that "adjusting the phasing limits is the only viable solution to meet the City's pond design criteria."

[58] Mr. Frankovich concluded that, in this case, the SWM planning has not been coordinated according to best practices and as required by the relevant policies. Usually, developers coordinate the planning for SWM facilities, including technical

analysis, planning and costs, which has not occurred. He opined that in terms of SWM, the approvals are not in the public interest.

### **Edward John**

[59] Mr. John opined that the proposal was premature as the issues related to SWM integration, coordination, and cost sharing should be addressed before the approvals are granted. It was his opinion that the proposed by-laws should address the concerns regarding prematurity raised by Messrs. Ridd and Frankovich.

[60] Mr. John also highlighted sections (h), (m) and (n) from s. 2 of the Act regarding matters of Provincial interest. He explained that in terms of orderly development, to ensure proper arrangement and sequencing, SWM development usually goes from downstream to upstream and that if going the other way, a proven concept must be provided. He opined that, in this case, the SWM system is being developed from upstream to downstream and the AJC FSR does not contain sufficient detailed information to be considered a proven concept.

[61] He stated that orderly development must take the entire neighbourhood development into account to ensure servicing and SWM are efficiently and functionally coordinated. Relying on the evidence of Messrs. Ridd and Frankovich, he opined that the AJC FSR:

... did not conclusively establish the feasibility of the proposed development from a storm sewer servicing perspective... [and that until this is demonstrated] ...such that it does not impact the options of downstream landowners to secure their own approvals, the development ... is not orderly.  
(Exhibit 2, page 218, paragraph 2)

[62] Regarding the coordination of planning activities of public bodies, he stated that sufficient coordination has not occurred in this case. In terms of the resolution of planning conflicts involving public and private interests, Mr. John stated that the way the approval authorities granted the approvals wasn't equitable and could result in the

failure of the neighbourhood to proceed in a timely and efficient manner. He also stated that while the Draft Plan is not under appeal, the failure of the City to address SWM demonstrates that the approvals do not have regard to the matters of Provincial interest.

[63] Mr. John opined that the proposal was not consistent with the PPS, as it does not account for the orderly development of the entire Nash neighbourhood. He stated that planning SWM for one phase of a development, independently from all following phases is not best practice, nor does it ensure that the overall SWM design is logical, functional or efficient. Mr. John highlighted (based on the evidence of Messrs. Ridd and Frankovich) that the proposed phasing drainage divide could pose a risk of flooding. He stated that the SWM system has not been optimized, nor does it follow best practices.

[64] Mr. John was of the opinion that the proposal did not conform to the GP as:

- i. without a comprehensive approach, the proposed instruments lack provisions for full comprehensive municipal services to be available;
- ii. there should be additional technical review which recognizes the need for a comprehensive approach and is fully costed;
- iii. the proposal has not sufficiently addressed the cumulative impacts of stormwater, nor has it provided a comprehensive, coordinated solution that is both sustainable and appropriately costed; and,
- iv. the proposal does not align with other planned developments in the area with respect to stormwater and, therefore, does not demonstrate conformity with the policy intent.

[65] Regarding the NEC Permit, Mr. John stated that the concerns related to its issuance have been appropriately addressed through the conditions of the NEP Settlement.

[66] Regarding the UHOP, Mr. John opined that, based on the evidence of Messrs. Ridd and Frankovich, the proposal does not show a comprehensive approach which ensures a safe and secure system. He stated that appropriate development of the lands cannot occur until a technical solution is agreed to, addressing costs and concerns regarding maintenance and sustainability. He stated that the proposal requires a detailed SWM plan prior to development to address drainage and ensure there is no negative impact to off-site drainage. Mr. John opined that an integrated approach has not been used as required, nor have the appropriate standards and targets been satisfied, and, as such, this may limit the available SWM options and solutions for adjacent developments.

[67] Speaking to the policies regarding Holding provisions, it was Mr. John's position that the proposed H-provisions are not sufficient to ensure orderly development, nor do they secure the requisite financial agreements. He stated that the proposal does not comply with policies to ensure growth proceeds in an orderly and appropriate manner.

[68] Mr. John opined that approving the proposal could potentially mean that future developments are impacted. He stated that the proposal does not represent good planning and should not proceed until the SWM issues, as identified by Messrs. Ridd and Frankovich, are resolved. Finally, he stated that the proposal is not in the interest of the public and could impact the delivery of much-needed housing.

## **APPLICANT'S EVIDENCE**

### **Jennifer Clarke**

[69] Ms. Clarke identified that her firm, AJC, prepared the AJC FSR in support of the proposed OPA and ZBAs. She stated that the AJC FSR was prepared in keeping with good engineering practices and the City's guidelines and policies. She stated that it



demonstrated that the proposal was feasible from a servicing perspective and adopted it as part of her evidence.

[70] Ms. Clarke opined that the SLA Memo addresses the majority of the engineering issues raised by Messrs. Ridd and Frankovich, as it outlines how stormwater management can be addressed for all the lands in the Nash Neighbourhood Phases 2-5 draining to the B3 Pond. She stated that the SLA Memo provides a solution to concerns about the pond elevations, sewer depths and ultimate design constraints of the B3 pond by accommodating the constraints in the AJC FSR related to the existing homes on Ridgeview Drive and the limitations they pose to the ultimate design of the Applicant's lands. She highlighted that the drainage pattern presented in the SLA Memo is consistent with the AJC FSR.

[71] Ms. Clarke addressed the two main concerns raised by Messrs. Ridd and Frankovich that:

- i. the proposed stormwater sewer which outlets to the Nash B3 Pond is too low to accommodate the Appellant's engineer's inlet design; and,
- ii. the emergency spill elevation is too low to accommodate the pond design and, as such, will result in drainage overflowing from the pond to the residential units proposed on the Applicant's lands.

[72] In terms of the inlet pipe, Ms. Clarke stated that per the AJC FSR drawings the inlet into the pond at Headwall #1 is 180.35 metres ("m"). She highlighted that the SLA memo indicates a lowering of the inlet of the pond to 180.14 m, which, as it is lower, will be able to accommodate the 180.35 m inlet as originally put forward in the AJC FSR.

[73] Regarding the Emergency Overland Flow Route, Ms. Clarke notes that the SLA Memo notes a top of pond elevation of 183.50 m and highlights that the:

... AJC FSR indicates an emergency spill elevation (overland flow route) at the property line of 183.85m. This is higher than the lowest top of berm elevation along First Road West. Since the emergency spill elevation from the Applicant's lands is higher than the top of berm proposed in the SLA Memo, the concern regarding drainage from the pond flowing back onto the Applicant's lands is no longer a concern. Flow from the pond if it were to fill up will spill onto First Road West at the lower elevation of 183.50m. (Exhibit 3b, page 4, paragraph 10a).

[74] Contrary to the evidence proffered by the Appellant's witnesses, Ms. Clarke opined that the SLA Memo shows a feasible solution to the B3 Pond design, which accommodates the elevations and constraints as outlined in the AJC FSR and shows a feasible working solution that can be accommodated through detailed design with very minor adjustments. Ms. Clarke stated that any additional technical issues can be addressed as part of the detailed design.

[75] Regarding the NEC Permit, Ms. Clarke highlighted that the OLT's Decision, which approved the NEP Settlement, indicated that prior to the issuance of a Final Development Permit, the Applicant shall submit to the NEC an updated Functional Servicing and Stormwater Management Report, which is prepared to the satisfaction of the City and the Hamilton Conservation Authority ("HCA"). She disagreed with Mr. Ridd's assertion that the previous OLT Decision required an updated servicing report prior to the approval of the OPA and ZBAs, stating that standard practice requires a SWM Report be submitted to and approved by the NEC prior to construction, through the detailed design stage. She continued that the detailed design will consider the earlier reports completed by the neighbouring properties, as well as the more recent revised reports including the latest SLA Memo.

[76] In terms of Condition No. 6 of the NEC permit, Ms. Clarke stated that Mr. Ridd indicated that the Applicant's development must incorporate the results of the above noted updated SWM strategy; however, she opined that as:

the SLA Memo matches the AJC FSR's drainage pattern and accounts for the 3.33 ha of lands draining to the Nash Pond B3 [B3 Pond], no additional revisions to the phasing limits will be required. Details of this limit will be presented to the NEC for review and permit issuance following detailed design. (Exhibit 3b, page 5, paragraph 15)

[77] Regarding Mr. Frankovich's contention that uncoordinated SWM of the design will increase costs and pose erosion and flooding concerns, Ms. Clarke pointed out that the SLA Memo shows no significant changes to the B3 Pond design layout from previous versions; however, now the design can accommodate the constraints and restrictions noted in both the AJC FSR and the Lamarre Report. In addition, she highlighted that no erosion or flooding concerns were indicated in the new SLA Memo.

[78] As a result of the SLA Memo, Ms. Clarke opined that the engineering issues raised by Messrs. Ridd and Frankovich have been suitably addressed and that, as such, the proposal is not premature.

[79] Ms. Clarke highlighted that, as was agreed to in the NEP Settlement, no additional lands will be directed to Centennial Falls, and that the SLA Memo shows that the phasing limits identified in the AJC FSR can be accommodated in the B3 Pond design.

[80] She identified that Centennial Falls is a regulated feature and watercourse of the HCA. She highlighted that the NEC, City and HCA approved the concept of directing a portion of the stormwater flows from the Applicant's lands to Centennial Falls.

[81] Ms. Clarke highlighted that the outlet to Centennial Falls had been identified as part of the design since 2018, both in a letter from AJC to the City in July 2018 and in the Battlefield Creek Report, dated 2018. Through the previous NEP appeal and settlement, it was determined that "no further land will be directed to Centennial Falls and the drainage pattern illustrated in the AJC FSR will be implemented". She pointed out that the amount of drainage directed to the Falls was satisfactory to the City, HCA and NEC, and that the settlement demonstrates the Appellant's satisfaction with the proposed drainage scheme. Moreover, the drainage pattern as proposed in the AJC FSR is also shown in the SLA Memo.

[82] Ms. Clarke highlighted that as a result of the NEP Settlement:

“... it was agreed with the appellant that the design intention to direct drainage from a portion of the development to Centennial Falls was acceptable and no further coordination of additional lands or reduction in lands was required ... It was also agreed that the FSR submitted by AJC from 2021 [AJC FSR] would generally be followed and be taken into consideration when the appellant completes their design of the municipal stormwater management pond.”  
(Exhibit 3a, page 3, paragraph 7)

[83] She stated that from an engineering perspective, the NEC Permit, including conditions, aligns with the servicing solution presented in support of the proposed instruments currently before the Tribunal. She opined that the proposal does not conflict with the Niagara Escarpment Plan.

[84] Regarding Mr. Ridd’s contention that the approvals did not provide sufficient conditions to ensure that the Applicant pays their fair share of the anticipated construction expenses, Ms. Clarke highlighted that Draft Plan Condition No. 28 requires the Applicant to “pay its proportionate share of the operation and maintenance of the pond ... [and] Condition 26 also requires the Applicant to pay its share for the sewers installed within the municipal pond.” She continued that as part of the NEP Settlement, there was an agreement that the Applicant and the Appellant would enter in good faith, into negotiations for a cost share agreement. However, to her knowledge, despite a request by the Applicant and their Counsel for a draft of the cost share agreement from the Appellant, no such agreement had been provided as of this Hearing. It was her opinion that the Applicant was willing to enter into negotiations regarding an agreement in good faith related to the construction costs for the B3 Pond beyond what the City is responsible for.

[85] Ms. Clarke stated that during the detailed design stage, any proposal must show how the entire development will function as a whole. She highlighted that if a phased approach were proposed at the detailed design stage, it would have to demonstrate to the City how Stage 1 operates independently from the B3 Pond. However, ideally developments in the neighbourhood would proceed at the same time, and that a phased approach would not be necessary. She also highlighted that as required in the Draft

Plan Conditions, until the City is “satisfied that the Stage 1 lands can accommodate the interim and ultimate build out of the Stage 2 land, no construction can take place.”

[86] Ms. Clarke highlighted that the City, HCA and NEC, as well as AJC, have thoroughly vetted the proposal and found the proposed SWM strategy to be sufficient to proceed to the detailed design stage. She opined that she supported the preliminary design as it “represents one of many potential feasible solutions to service the proposed development ... [and that the proposal] is feasible and serviceable from a servicing perspective.”

[87] It was Ms. Clarke’s opinion that the Approvals were appropriate and were not premature as the approved Draft Plan Conditions address the coordination of services and ensure orderly development. She stated that the ZBAs will include an “H” hold on the Stage 2 lands that drain to the pond in recognition that the B3 Pond design has not been finalized. It was her opinion that the Holding Provisions for the Stage 2 lands are appropriate and they, along with the Draft Plan Conditions, will ensure a suitable outlet for the Stage 2 lands before construction. She reiterated that sufficient information had been provided in the City-approved AJC FSR to warrant approval and allow the proposal to proceed to the detailed design stage.

[88] Regarding the PPS, Ms. Clarke stated that the proposed development can be appropriately serviced, and that the Draft Plan Conditions, together with the “H” conditions address the coordination of services in several ways, including the hold on the westerly Stage 2 lands that will drain to the B3 Pond. She opined that the proposed SWM strategy is “well-integrated into the Nash Neighborhood, and ensures that systems are optimized, feasible, and viable over the long term.” She stated that in addition, the conditions of the NEC permit, the municipal conditions of Draft Plan approval as well as the future permit required by the HCA, ensure that the detailed design will satisfy the approval authorities and will be in keeping with the approved Draft Plan of Subdivision.

[89] Ms. Clarke highlighted that, in his Witness Statement, Mr. Ridd implied that the City inappropriately approved the Applicant's zoning prior to the issuance of a final NEC permit. It was Ms. Clarke's opinion that:

a conditional permit is the normal process by which the NEC issues such permits and outlines the tasks that need to be completed through detailed design, prior to the issuance of a final permit. A final NEC Permit is issued prior to construction and not prior to zoning approval or detailed design. Detailed design of the development must be completed and reviewed by the City ... HCA and NEC prior to construction. The conditions implemented as part of the settlement are to be addressed during detailed design as is standard practice and not prior to zoning approval. (Exhibit 3b, page 7, paragraph 22)

[90] In addition, Ms. Clarke disputed Mr. Frankovich's assertion that the lack of coordination in the SWM design would increase costs of the central SWM facility and pose erosion and flooding concerns. She opined that the:

... SLA Memo shows no significant changes to the pond design layout from previous iterations, however, now the design can accommodate the constraints and restrictions noted in the 2022 Lamar report [Lamarre Report] and the AJC FSR ... [The] SLA Memo shows that a feasible and functional design of the pond can be achieved utilizing the AJC FSR information, and further coordination of the pond will be completed as part of the detailed design process. (Exhibit 3b, page 7, paragraphs 24 and 25)

[91] Regarding consistency with the PPS, Ms. Clarke stated that:

... through appropriate preliminary engineering design, and utilizing engineering guidelines, standards and best practices as set out by the approval agencies, AJC has demonstrated that the proposed development can be appropriately serviced to meet the impacts of the changing climate while accommodating projected servicing needs. (Exhibit 3a, page 8, paragraph 34)

[92] In terms of the UHOP, Ms. Clarke opined that the proposal can be appropriately serviced and will integrate with the neighbouring lands and roadways. She reiterated that the proposed SWM strategy is feasible and any remaining technical matters can be addressed at the detailed design stage in keeping with the approved Draft Plan and Draft Plan Conditions.

[93] Ms. Clarke's overall opinion was that:

- i. the proposed SWM strategy takes into consideration the surrounding developments based on sound engineering principles;
- ii. the "H" provisions ensure that the appropriate infrastructure is in place prior to any construction on the westerly Stage 2 lands;
- iii. the Draft Plan conditions further ensure that detailed design work will occur and is coordinated with the surrounding developments;
- iv. if a phased approach is proposed at the detailed design stage, Stage 1 can operate independently and currently has appropriate outlets for sanitary, water, stormwater management; and,
- v. the "H" provisions on the Stage 2 lands reasonably restrict development and ensure a suitable outlet on the Appellant's lands is designed and constructed prior to construction on the Applicant's lands.

### **Franz Kloibhofer**

[94] Prior to Mr. Kloibhofer's testimony, Counsel for the Applicant provided the Tribunal with modified versions of the proposed ZBAs (Nos. 23-017 and 23-018). Mr. Kloibhofer explained that the modified versions corrected errors in the schedule of both ZBAs which the Appellant had used to make the argument of prematurity. Now the instruments provide the corrections that were being recommended by the Appellant's experts, and reflect the phase dividing line in the AJC FSR which Ms. Clarke discussed in her testimony.

[95] He highlighted that in both modified ZBAs, the H1 still applies to entire site and states that no development can proceed until the NEC Permit is final and binding with

all conditions cleared. In ZBA No. 23-107, the H2, which stated the development could not occur until the B3 Pond was built, had initially only applied to a portion of the Stage 2 westerly lands. With the modified version, the H2 now applies to all of the Stage 2 lands. Regarding the ZBA No. 23-018, Mr. Kloibhofer explained that the H2 now explicitly states that no development can occur until both the regional conveyance swale (on the Participant's lands) and the B3 Pond (on the Appellant's lands) have been constructed and approved by the requisite approval agencies.

[96] It was Mr. Kloibhofer's overall opinion that the proposal has regard for s. 2 of the Act, and that the OPA and ZBA are consistent with the PPS, conform to the GP and meet the relevant development criteria within the NEP. He opined that the proposed ZBAs will conform to the Official Plan once the OPA is approved. He concluded that the proposal has regard for the matters of Provincial interest, represents good planning and warrants approval.

[97] Relying on Ms. Clarke's expertise, Mr. Kloibhofer stated that the engineering matters relating to coordination of servicing and the provision of a SWM strategy have now been resolved. He stated that the SLA Memo shows that the proposed development is coordinated with the overall design of the future development to the south. He highlighted that the SLA Memo shows that the SWM Pond can be designed to accommodate the expected stormwater volume generated from the proposed development. Moreover, with the servicing issues resolved through the SLA Memo, he stated that the development is not premature.

[98] Mr. Kloibhofer opined that the proposal has regard for matters of Provincial interest. Regarding the concerns pertaining to ss. 2 (h), (m) and (n) of the Act, he reiterated that the issues related to stormwater management were resolved through the SLA memo as identified through Ms. Clarke's evidence. He also highlighted that the Draft Plan conditions, including Conditions No. 24 and 29, will ensure orderly development and confirm that the proposal is not premature. He stated that the proposal will be serviced by full municipal services (as discussed in ss.(f)) and will



provide an increase in housing stock in a neighbourhood planned for new development (as discussed in ss.(j)).

[99] Speaking specifically to orderly development, he stated that:

... the proposed development is planned for residential development and includes provisions to support the proposed uses such as the extension of Ridgeview Drive, a block for parkland and various blocks to manage stormwater drainage ... Overall, the development represents an orderly and logical extension of services. (Exhibit 4a, page 17, paragraph 55)

[100] Mr. Kloibhofer opined that the proposal is consistent with the PPS as it provides for an appropriate range and mix of housing units, is located in a settlement area, efficiently uses land resources and infrastructure and can support transit and active transportation. It represents an efficient development pattern, building upon the planned surrounding development and ensures appropriate measures are implemented to accommodate SWM and the extension of Ridgeview Drive. He opined that as it provides new housing units in a planned community, the proposal contributes to the City's minimum housing targets and will support a healthy and complete community.

[101] Mr. Kloibhofer stated that the proposal will be fully municipally-serviced and the extension of services is appropriate to service the number of proposed units. Based on Ms. Clarke's evidence, he stated that the proposed servicing plan will ensure that the overland flow is accommodated through the development and into Centennial Falls or the B3 Pond. Speaking to the policies on SWM, he opined that the proposed SWM concept incorporates all the relevant criteria (found in s. 1.6.6.7), has been integrated into the subject development and satisfies the NEC, HCA and the City.

[102] Regarding the PPS policies relating to Natural Heritage, Mr. Kloibhofer stated that the proposal features a vegetative protection zone and appropriate setbacks along the escarpment brow to mitigate any impacts on natural features, and that the proposed instruments will implement the findings of the Environmental Impact Study ("EIS"), which was required as part of the NEC Permit process. He highlighted that the policies

related to the protection, improvement and restoration of the quality and quantity of water are met by the proposed SWM concept. He stated that there would be a balance between the provision of adequate stormwater flows to the falls to ensure that it is maintained, while ensuring that flows are not of a volume such that it could create negative downstream flooding and erosion impacts.

[103] Mr. Kloibhofer opined that the proposal conforms to the GP. He stated that the proposal features a compact and efficient land use pattern which is in an appropriate location within the established settlement area boundary and will contribute to a complete community. He stated that the proposal is within a planned community which provides a range of housing types and access to recreation. He stated that the proposal respects the GP's intensification targets by introducing new residential units into the neighbourhood. In addition, the proposal contributes to a range of housing options, including both single detached and townhouses, and there will be adequate infrastructure in place to support the use.

[104] Regarding the Niagara Escarpment Plan, Mr. Kloibhofer identified that as the Subject Lands are within an Area of Development Control, an NEC Development Permit is required and any new development must conform to the Development Policies of the Niagara Escarpment Plan. He highlighted that the NEP Settlement reached between the Parties led to the OLT's approval of the NEC Development Permit, with conditions. He opined that the proposed development adequately protects natural features and their functions, as was demonstrated in the EIS which was presented to, and deemed satisfactory by, the NEC, HCA and City Staff. He stated that the proposal will protect the hydrological features of Centennial Falls by ensuring an appropriate volume of stormwater continues to flow over the falls. He opined that the proposed development does not conflict with the Niagara Escarpment Plan.

[105] Regarding the UHOP, Mr. Kloibhofer provided a detailed analysis regarding his opinion that the proposal is in conformity with same. He highlighted that the proposal:

- i. conforms to the Urban Housing Policies by adding additional housing stock within a planned neighbourhood development;
- ii. features a mix of single detached and townhouse dwellings and an appropriate density;
- iii. features appropriate building heights, setbacks and parking regulations which will create a well-designed neighbourhood that aligns with the vision of the Secondary Plan;
- iv. conforms to the Urban Design policies;
- v. features appropriate community facilities including a neighbourhood park block which provides parkland, acts as an overland flow route for stormwater and connects to another southerly park block; and
- vi. conforms to the Natural Heritage policies, as it does not present any environmental impacts and has addressed matters pertaining to species at risk.

[106] Mr. Kloibhofer specifically highlighted the policies in Chapter C.5 which speak to infrastructure to support development. As the proposal requires the expansion of municipal services, he referred to several reports (including the Functional Servicing, Preliminary Grading, Servicing and Stormwater reports) which demonstrate how the proposal can be serviced and were deemed to be satisfactory by City Engineering Staff for the purposes of the OPA and ZBA applications. He stated that detailed design will occur when the Draft Plan Conditions are ready to be cleared by the Applicant. Mr. Kloibhofer stated that the proposal conforms to the policies relating to Stormwater Management Facilities, as the SLA Memo resolves the issues of functional coordination and adequacy of the SWM concept. He highlighted again that the proposed SWM concept was deemed acceptable by the City and stated that there are sufficient Draft

Plan Conditions to ensure that the B3 Pond is online prior to any new development being constructed.

[107] Mr. Kloibhofer stated that Holding Provisions are an acceptable way to manage development. He spoke to the H2 Provision which prohibits any development and cannot be removed until “appropriate measures are taken through detailed design to lift the Holding Provision.” He stated that the Holding Provisions are appropriate, will permit orderly development and will implement the policies relating to infrastructure. He opined that the development is serviceable and the proposed instruments conform to the UHOP.

[108] Mr. Kloibhofer opined that the proposed instruments also conform to the Secondary Plan. He specified that the proposal aligns with the Financing Policies (in s. 7.5.2 (h)), the Urban Design Policies (in s. 7.5.9), and the Infrastructure Policies (in s. 7.5.12). He specifically highlighted s. 7.5.12.7 which speaks to final detailed design occurring at the Draft Plan of Subdivision stage of development. Accordingly, he opined that the Draft Plan contains relevant conditions to ensure that the final SWM scheme is vetted by the City.

[109] Regarding the matter of cost-sharing, Mr. Kloibhofer stated that a private agreement was not required or appropriate, as the pond is 100% growth-related, and would therefore be funded by DC policies. He stated that there were conditions (specifically Conditions No. 26 and 28) placed on the Draft Plan Approval to ensure that the Applicant will pay their share. Mr. Kloibhofer disagreed with the Appellant’s experts’ position that the development is premature and that costs relating to the SWM Pond have not been considered. It was his opinion that the appropriate costs regarding the SWM Pond have been considered and the development conforms to the UHOP.

[110] Mr. Kloibhofer concluded by stating that the OPA and corrected ZBAs are not premature. He opined that the proposed Holding provisions were appropriate and they, combined with the Draft Plan Conditions, create a robust framework that will ensure

orderly and appropriate development. He opined that the proposed instruments represent good planning that is in the public interest and should be approved.

## **APPELLANT'S REPLY EVIDENCE**

### **Edward John**

[111] Regarding the Appellant's introduction of the modified ZBAs, the Appellant called upon Mr. John to provide his evidence on same. He opined that the modified ZBAs did not address the work still required to develop an appropriate SWM solution and that the formalizing of a phasing design should not be occurring at this point. He stated that the modified ZBAs did not change his opinion that the proposal is premature. Moreover, he stated that he did not recommend that the Tribunal adopt the ZBAs as modified.

## **FINDINGS**

[112] Having considered the evidence and submissions before it, the Tribunal prefers the opinions of Ms. Clarke and Mr. Kloibhofer, and finds that sufficient work has occurred to allow the proposal to proceed to the detailed design stage.

[113] The Tribunal accepts Ms. Clarke's position that the SLA Memo provides a solution which resolves the engineering concerns raised by the Appellant's witnesses and that, in this case, the preliminary plans are sufficiently coordinated.

[114] The Tribunal concurs with the Applicant's position that it is reasonable to conclude that the B3 Pond will be developed on the Appellant's lands and that the location is fixed as the City has approved that location by approving the AJC FSR and the Draft Plan.

[115] The Tribunal is satisfied that the proposed development features orderly development, will be appropriately serviced by full municipal services, will increase the

number and types of housing stock in an appropriate area for growth. The Tribunal is satisfied that the proposal features an efficient use of land and infrastructure in a settlement area, will be transit-supportive, and will contribute to the City's minimum housing targets and to the creation of a healthy and complete community. The Tribunal is satisfied that the proposed development features appropriate density and will provide a mix of housing types in a well-designed, planned community.

[116] Given the prior OLT Decision approving the NEC permit, the Tribunal finds that it demonstrates the Appellant's general satisfaction with the plan to send the post-development flows for the Applicant's eastern Stage 1 lands to Centennial Falls, and to proceed with the proposal detailed in the AJC FSR. The Tribunal is satisfied that this issue has been settled and the proposal does not conflict with the Niagara Escarpment Plan.

[117] The Tribunal is satisfied that the H-provisions in the modified ZBAs, the conditions in the City-approved Draft Plan, and the conditions in the OLT-approved NEC Permit will ensure that sufficient SWM coordination will continue and that the Applicant will pay their proportionate share of the costs for construction and maintenance of the B3 Pond.

[118] The Tribunal is also satisfied that the proposal, including the modified ZBAs, address the Participant's (BV Realty) concerns regarding the construction of a regional conveyance swale and the associated cost-sharing. It is noted that it was confirmed by the Applicant, in both Mr. Kloibhofer's oral testimony and as indicated in Counsel's closing submissions, that it will enter into a private cost-share agreement with BV Realty.

[119] For the reasons outlined above, the Tribunal is satisfied that the proposal is not premature, represents good planning and is in the public interest.

[120] The Tribunal has had regard for the decision of the City Council, which initially approved the instruments, as well as for the information considered by it in coming to that decision. It is noted that the City's decision-making process included consultation with relevant commenting agencies, including the NEC and the HCA.

[121] The Tribunal notes that City Staff recommended approval of the proposed development in the 'Planning and Economic Development Department – Planning Division Report (PED23003)' to the Planning Committee, dated January 17, 2023. In this report, City Staff provided the following in support of their recommendation:

... The proposal has merit and can be supported as it is consistent with the PPS (2020), conforms to A Place to Grow: Growth Plan for the Greater Golden Horseshoe (2019, as amended), and complies with the general intent of the UHOP, in particular, the function, scale and design of the Low Density Residential policies as they relate to residential intensification and complete communities in the Neighbourhoods designation as well as the Nash Neighbourhood Secondary Plan, and represents good planning by, among other considerations, providing a compatible residential development that contributes to a complete community through the establishment of housing forms and densities that are in keeping with existing and planned development in the surrounding area.

[122] In conclusion, the Tribunal is persuaded by the evidence that the proposed instruments, including the modified ZBAs, have regard to the matters of Provincial interest set out in s. 2 of the Act, are consistent with the PPS, conform to both the GP and the UHOP and do not conflict with the Niagara Escarpment Plan. The Tribunal is further satisfied that the proposed instruments, as modified, represent good planning and are in the public interest.

## **ORDER**

[123] **THE TRIBUNAL ORDERS THAT** the appeal is allowed, in part, and the Official Plan Amendment set out in **Attachment 1** to this Order, is hereby approved and ordered into effect.

[124] **THE TRIBUNAL FURTHER ORDERS THAT** the appeal is allowed, in part, and the Zoning By-law Amendments set out in **Attachments 2 and 3** to this Order, are hereby approved in principle, with the Final Order withheld until the Tribunal has received, reviewed and approved the Zoning By-law Amendment instruments confirmed to be in a form satisfactory to the City of Hamilton (“City”) and 1426769 Ontario Limited (“Applicant”).

[125] If the Applicant and the City do not submit the final drafts of the Zoning By-law Amendments as set out in paragraph [124] above, within sixty (60) days from the date of the Tribunal’s Decision and Order in this proceeding, the Applicant shall provide a written status report to the Tribunal by that date, as to the timing of the expected confirmation and submission of the final form of the Zoning By-law Amendments for the Tribunal’s approval and issuance of its Final Order.

[126] The Tribunal may be spoken to should any difficulties arise with respect to the implementation of this Decision and Order.

*“S. Bobka”*

S. BOBKA  
MEMBER

### **Ontario Land Tribunal**

Website: [www.olt.gov.on.ca](http://www.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**

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**Authority:** Item 3, Planning Committee  
Report: 23-001 (PED23003)  
CM: January 25, 2023  
Ward: 9

**Bill No. 016****CITY OF HAMILTON****BY-LAW NO. 23-016-OLT-01****To Adopt:****Official Plan Amendment No. 180 to the  
Urban Hamilton Official Plan****Respecting:****15 Ridgeview Drive  
(Former City of Stoney Creek)**

**NOW THEREFORE** the Council of the City of Hamilton enacts as follows:

1. Amendment No. 180 to the Urban Hamilton Official Plan consisting of Schedule "1", hereto annexed and forming part of this by-law, is hereby adopted.

**PASSED** this 8<sup>th</sup> day of February, 2023.

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A. Horwath  
Mayor

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A. Holland  
City Clerk

## Urban Hamilton Official Plan Amendment No. 180

The following text, together with Appendix "A" – Volume 2: Map B.7.5-1 Nash Neighbourhood Secondary Plan – Land Use Plan, attached hereto, constitutes Official Plan Amendment No. 180 to the Urban Hamilton Official Plan.

### 1.0 **Purpose and Effect:**

The purpose of this Amendment is to amend the Nash Neighbourhood Secondary Plan to modify the boundaries of the Low Density Residential 2, Low Density Residential 2h, Neighbourhood Park, Natural Open Space, and Utility designations, as well as to realign the Proposed Road and remove the Hedgerow feature on the subject lands. A new Site Specific Policy will be added to allow a reduction in residential density for one block on the subject lands. The effect of this Amendment is to permit the development of a draft plan of subdivision consisting of 25 lots for single detached dwellings, 29 street townhouse dwellings and 51 townhouse dwellings and the extension of a public road.

### 2.0 **Location:**

The lands affected by this Amendment are known municipally as 15 Ridgeview Drive, in the former City of Stoney Creek.

### 3.0 **Basis:**

The basis for permitting this Amendment is:

- The proposed development is in keeping with the policies of the Urban Hamilton Official Plan and Nash Neighbourhood Secondary Plan to provide a diversity of housing opportunities in a low density form and scale to create complete communities.
- The proposed development is consistent with, and complimentary to, the planned and existing development in the immediate area and contextually appropriate and compatible with the built form of the adjacent natural heritage resources.
- The proposed Amendment is consistent with the Provincial Policy Statement, 2020 and conforms to the Growth Plan for the Greater Golden Horseshoe, 2019,

as amended.

**4.0 Actual Changes:**

**4.1 Volume 2 – Secondary Plans**

**Text**

4.1.1 Chapter B.7.0 – Stoney Creek Secondary Plans – Section B.7.5 – Nash Neighbourhood Secondary Plan

- a. That Volume 2, Chapter B.7.5 – Nash Neighbourhood Secondary Plan be amended by adding a new Site-Specific Policy, as follows:

“Site Specific Policy – Area “X”

B.7.5.14.X Notwithstanding Policy B.7.5.4.1 b) ii) of Volume 2, and Policy E.3.4.4 of Volume 1, the density shall be in the range of 28 to 49 units per net residential hectare.”

**Maps**

4.1.2 Map

- a. That Volume 2, Map B.7.5-1 – Nash Neighbourhood Secondary Plan – Land Use Plan be amended by:
- i) Redesignating certain lands from “Low Density Residential 2” to “Neighbourhood Park”;
  - ii) Redesignating certain lands from “Low Density Residential 2” to “Natural Open Space”;
  - iii) Redesignating certain lands from “Low Density Residential 2” to “Utility”;
  - iv) Redesignating certain lands from “Low Density Residential 2h” to “Low Density Residential 2”;
  - v) Redesignating certain lands from “Low Density Residential 2h” to “Utility”;

## Schedule '1'

579

- vi) Redesignating certain lands from "Neighbourhood Park" to "Low Density Residential 2";
  - vii) Redesignating certain lands from "Neighbourhood Park" to "Low Density Residential 2h";
  - viii) Redesignating certain lands from "Utility" to "Low Density Residential 2";
  - ix) Redesignating certain lands from "Utility" to "Low Density Residential 2h";
  - x) Redesignating certain lands from "Utility" to "Natural Open Space";
  - xi) Removing the "Proposed Roads" identification on certain lands and adding these lands to the "Neighbourhood Park" designation;
  - xii) Removing the "Proposed Roads" identification on certain lands and adding these lands to the "Low Density Residential 2" designation;
  - xiii) Removing the "Proposed Roads" identification on certain lands and adding these lands to the "Low Density Residential 2h" designation;
  - xiv) Redesignating certain lands to be designated from "Neighbourhood Park" to "Natural Open Space";
  - xv) Re-aligning the "Proposed Road";
  - xvi) Removing the "Hedge Row" identification on certain lands; and,
  - xvii) Identifying the subject lands as Site Specific Policy Area "X";
- as shown on Appendix "A", attached to this Amendment.

**5.0 Implementation:**

An implementing Zoning By-Law Amendment, Draft Plan of Subdivision and Site Plan will give effect to the intended uses on the subject lands.

**Schedule '1'**

This Official Plan Amendment is Schedule "1" to By-law No. 23-016- OLT-01 passed on the 8<sup>th</sup> day of February, 2023.

**The  
City of Hamilton**

\_\_\_\_\_  
A. Horwath  
Mayor

\_\_\_\_\_  
A. Holland  
City Clerk



**ATTACHMENT 2**

**Authority:** Item 3, Planning Committee  
Report 23-001 (PED23003)  
CM: January 25, 2023  
Ward: 9  
**Bill No. 017**

**CITY OF HAMILTON****BY-LAW NO. 23-017**

**To Amend Zoning By-law No. 3692-92  
Respecting Lands Located at 15 Ridgeview Drive, Stoney Creek**

**WHEREAS** the *City of Hamilton Act*, 1999, Statutes of Ontario, 1999 Chap. 14, Sch. C. did incorporate, as of January 1, 2001, the municipality “City of Hamilton”;

**AND WHEREAS** the City of Hamilton is the successor to certain area municipalities, including the former municipality known as the “The Corporation of the City of Hamilton” and is the successor to the former regional municipality, namely, “The Regional Municipality of Hamilton-Wentworth”;

**AND WHEREAS** the *City of Hamilton Act*, 1999 provides that the Zoning By-laws of the former area municipalities continue in force in the City of Hamilton until subsequently amended or repealed by the Council of the City of Hamilton;

**AND WHEREAS** Zoning By-law No. 3692-92 (Stoney Creek) was enacted on the 8<sup>th</sup> day of December, 1992, and approved by the Ontario Municipal Board on the 31<sup>st</sup> day of May, 1994;

**AND WHEREAS** the Council of the City of Hamilton, in adopting Item 3 of Report 23-001 of the Planning Committee at its meeting held on the 25<sup>th</sup> day of January, 2023, which recommended that Zoning By-law No. 3692-92 (Stoney Creek), be amended as hereinafter provided;

**AND WHEREAS** this By-law will be in conformity with the Urban Hamilton Official Plan, upon finalization of Official Plan Amendment No. 180.

**NOW THEREFORE** the Council of the City of Hamilton enacts as follows:

1. That Map No. 11 of Schedule “A”, appended to and forming part of By-law No. 3692-92 (Stoney Creek), is amended as follows:
  - (a) by changing the zoning from the Neighbourhood Development “ND” Zone to the Single Residential “R4(H1)” Zone, Holding (Block 1), the extent and boundaries of which are shown on a plan hereto annexed as Schedule “A”;
  - (b) by changing the zoning from the Neighbourhood Development “ND” Zone to the Single Residential “R4-39(H1)” Zone, Modified, Holding (Block 2), the extent and boundaries of which are shown on a plan hereto annexed as Schedule “A”;

To Amend Zoning By-law No. 3692-92  
Respecting Lands Located at 15 Ridgeview Drive, Stoney Creek

Page 2 of 9

- (c) by changing the zoning from the Neighbourhood Development "ND" Zone to the Multiple Residential "RM2-47(H1)" Zone, Modified, Holding (Block 3), the extent and boundaries of which are shown on a plan hereto annexed as Schedule "A"; and,
  - (d) by changing the zoning from the Neighbourhood Development "ND" Zone to the Multiple Residential "RM3-72(H1, H2)" Zone, Modified, Holding (Block 4), the extent and boundaries of which are shown on a plan hereto annexed as Schedule "A".
  - (e) by changing the zoning from the Neighbourhood Development "ND" Zone to the Multiple Residential "RM2-47 (H1, H2)" Zone, Modified, Holding (Block 5), the extent and boundaries of which are shown on a plan hereto annexed as Schedule "A".
  - (f) by changing the zoning from the Neighbourhood Development "ND" Zone to the Single Residential "R4(H1, H2)" Zone, Modified, Holding (Block 6), the extent and boundaries of which are shown on a plan hereto annexed as Schedule "A".
2. That Subsection 6.5.7, "Special Exemptions" of Section 6.5, Single Residential "R4" Zone, of Zoning By-law No. 3692-92, be amended by adding Special Exemption "R4(H1)", as follows:

**"R4(H1)" 15 Ridgeview Drive, Schedule "A", Map No. 11 (Block 1)**

On those lands zoned "R4(H1)" by this By-law, the Holding (H) symbol may be removed and thereby give effect to the "R4" Zone provisions, upon completion of the following:

- (H1) That Niagara Escarpment Commission (NEC) Development Permit W/R/2021-2022/203, become Final and Binding and all conditions are cleared to the satisfaction of the Niagara Escarpment Commission.

3. That Subsection 6.5.7, "Special Exemptions" of Section 6.5, Single Residential "R4" Zone, of Zoning By-law No. 3692-92, be amended by adding Special Exemption "R4-39(H1)", as follows:

**"R4-39(H1)" 15 Ridgeview Drive, Schedule "A", Map No. 11 (Block 2)**

Notwithstanding the provisions of Paragraph (b) Corner Lot of Subsection 6.5.3 of Section 6.5, Single Residential "R4" Zone, on those lands zoned "R4-39(H1)" by this By-law, the following shall apply:

- (b) Minimum Lot Frontage  
Corner Lot                    –                    12.5 metres



To Amend Zoning By-law No. 3692-92  
Respecting Lands Located at 15 Ridgeview Drive, Stoney Creek

Page 3 of 9

On those lands zoned "R4-39(H1)" by this By-law, the Holding (H) symbol may be removed and thereby give effect to the "R4-39" Zone provisions, upon completion of the following:

(H1) That Niagara Escarpment Commission (NEC) Development Permit W/R/2021-2022/203, become Final and Binding and all conditions are cleared to the satisfaction of the Niagara Escarpment Commission.

4. That Subsection 6.9.6, "Special Exemptions" of Section 6.9, Multiple Residential "RM2" Zone, of Zoning By-law No. 3692-92, be amended by adding Special Exemption "RM2-47(H1)", as follows:

**"RM2-47(H1)" 15 Ridgeview Drive, Schedule "A" Map No. 11 (Block 3)**

Notwithstanding the provisions of Paragraph (d) Corner Lot and (h) of Subsection 6.9.3 of Section 6.9, Multiple Residential "RM2" Zone, on those lands zoned "RM2-47(H1)" by this By-law, the following shall apply:

- |     |                               |   |  |
|-----|-------------------------------|---|--|
| (d) | Minimum Side Yard<br>End Unit | - | 1.5 metres   |
| (h) | Maximum Building Height -     |   | 11.0 metres and the elevation<br>of the peak of the roof shall be a<br>maximum of 198.30 masl. |

On those lands zoned "RM2-47(H1)" by this By-law, the Holding (H) symbol may be removed and thereby give effect to the "RM2-47" Zone provisions, upon completion of the following:

(H1) That Niagara Escarpment Commission (NEC) Development Permit W/R/2021-2022/203, become Final and Binding and all conditions are cleared to the satisfaction of the Niagara Escarpment Commission.

5. That Subsection 6.10.7, "Special Exemptions" of Section 6.10, Multiple Residential "RM3" Zone, of Zoning By-law No. 3692-92, be amended by adding Special Exemption "RM3-72(H1, H2)", as follows:

**"RM3-72(H1, H2)" 15 Ridgeview Drive, Schedule "A", Map No. 11 (Block 4)**

Notwithstanding Part 2 - Definitions, as it relates to the definition of Landscape Strip an Entry Feature Wall shall be permitted within the landscaped strip provided and thereafter maintained adjacent to every portion of any lot that abuts a street except for points of ingress and egress.

In addition to 6.10.4 and notwithstanding the provisions of Paragraphs (a), (b), (c), (d), (e), (g) and (i) of Section 6.9.3, on those lands zoned "RM3-72(H1, H2)" by this By-law, the following shall apply:

To Amend Zoning By-law No. 3692-92  
Respecting Lands Located at 15 Ridgeview Drive, Stoney Creek

Page 4 of 9

- |     |                                  |   |  |
|-----|----------------------------------|---|--|
| (a) | Minimum Lot Area                 |   |  |
|     | Interior Unit                    | – | 160 square metres End                    |
|     | Unit                             | – | 200 square metres                        |
|     | Corner Unit                      | – | 200 square metres                        |
|     |                                  |   |  |
| (b) | Minimum Lot Frontage             |   |  |
|     | Interior Unit                    | – | 6.5 metres                               |
|     | End Unit                         | – | 7.4 metres                               |
|     | Corner Unit                      | – | 7.4 metres                               |
|     |                                  |   |  |
| (c) | Minimum Front Yard               | – | 5 metres, except that a minimum          |
|     |                                  |   | setback of 6 metres shall be provided    |
|     |                                  |   | between the streetline and an attached   |
|     |                                  |   | garage.                                  |
|     | Corner Unit                      | – | 4.20 metres, except that a minimum       |
|     |                                  |   | setback of 6 metres shall be provided    |
|     |                                  |   | between the streetline and an attached   |
|     |                                  |   | garage.                                  |
|     |                                  |   |  |
| (d) | Minimum Side Yard                |   |  |
|     | End Unit                         | – | 1.25 metres for end units, except 1.5    |
|     |                                  |   | metres where an end wall abuts the wall  |
|     |                                  |   | of another townhouse.                    |
|     | Corner Unit                      | – | 1.25 metres                              |
|     |                                  |   |  |
| (e) | Minimum Rear Yard                | – | 6.0 metres, except 3.0 metres abutting a |
|     |                                  |   | zone which permits single detached       |
|     |                                  |   | dwelling                                 |
|     |                                  |   |  |
| (g) | Minimum Landscaped<br>Open Space | – | Not less than 35 percent of the lot area |
|     |                                  |   | for maisonettes townhouses and           |
|     |                                  |   | dwelling groups shall be landscaped,     |
|     |                                  |   | including privacy areas.                 |
|     |                                  |   |  |
| (i) | Maximum Lot Coverage             | – | 52%                                      |

In addition to the provisions of Section 6.9.4 “Regulations for Parking” of Zoning By-law No. 3692-92, on those lands zoned “RM3-72(H1, H2)” by this By-law, the following additional requirement shall apply:

- (c) That a minimum of 0.5 visitor parking spaces per unit shall be provided and maintained within the common element condominium.

To Amend Zoning By-law No. 3692-92  
Respecting Lands Located at 15 Ridgeview Drive, Stoney Creek

Page 5 of 9

On those lands zoned "RM3-72(H1, H2)" by this By-law, the Holding (H) symbol may be removed and thereby give effect to the "RM3-72" Zone provisions, upon completion of the following:

- (H1) That Niagara Escarpment Commission (NEC) Development Permit W/R/2021-2022/203, become Final and Binding and all conditions are cleared to the satisfaction of the Niagara Escarpment Commission.
- (H2) That the owner demonstrates the following:
- i. That the storm conveyance Block 37 has been adequately sized and designed to accommodate a storm sewer outlet and overland drainages from both Blocks 27 and 28 including Street 'A' in line with a low point on Street 'A' without having any impact on Block 27 and 28;
  - ii. That Blocks 27 and 28 top of grate (TOG) elevations for all rear yard catch basins (RYCB's) along the south limit on both Blocks 27 and 28 are set a minimum of 0.3 m above the maximum water elevation on the emergency spillway of the Stormwater Management (SWM) pond on the abutting land to the south. All RYCB's shall be designed considering 50% blockage conditions;
  - iii. That the 5-year hydraulic grade line (HGL) considering 5-year operating level in the abutting pond (Nash 3 pond) is below obvert of the proposed storm sewer on Street 'A' and Block 37; and,
  - iv. Blocks 27, 28, 29, 30, 37 and Lots 13-25, inclusive, shall remain undevelopable until such time as the regional conveyance swale at 481 First Road West has been constructed and approved and the ultimate storm water management pond facility is approved by all approval agencies with jurisdiction (City of Hamilton, Ministry of the Environment, Conservation and Parks, Niagara Escarpment Commission, Hamilton Conservation Authority),

all to the satisfaction of the satisfaction of Manager of Engineering Approvals, Growth Management Division.

6. That Subsection 6.9.6, "Special Exemptions" of Section 6.9, Multiple Residential "RM2" Zone, of Zoning By-law No. 3692-92, be amended by adding Special Exemption "RM2-47(H1, H2)", as follows:

**"RM2-47(H1, H2)" 15 Ridgeview Drive, Schedule "A" Map No. 11 (Block 5)**

Notwithstanding the provisions of Paragraph (d) Corner Lot and (h) of Subsection 6.9.3 of Section 6.9, Multiple Residential "RM2" Zone, on those lands zoned "RM2-47(H1, H2)" by this By-law, the following shall apply:

To Amend Zoning By-law No. 3692-92  
Respecting Lands Located at 15 Ridgeview Drive, Stoney Creek

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- (d) Minimum Side Yard  
End Unit – 1.5 metres
- (h) Maximum Building Height - 11.0 metres and the elevation  
of the peak of the roof shall be a  
maximum of 198.30 masl.

On those lands zoned “RM2-47(H1, H2)” by this By-law, the Holding (H) symbol may be removed and thereby give effect to the “RM2-47” Zone provisions, upon completion of the following:

- (H1) That Niagara Escarpment Commission (NEC) Development Permit W/R/2021-2022/203, become Final and Binding and all conditions are cleared to the satisfaction of the Niagara Escarpment Commission.
- (H2) That the owner demonstrates the following:
- i. That the storm conveyance Block 37 has been adequately sized and designed to accommodate a storm sewer outlet and overland drainages from both Blocks 27 and 28 including Street ‘A’ in line with a low point on Street ‘A’ without having any impact on Block 27 and 28;
  - ii. That Blocks 27 and 28 top of grate (TOG) elevations for all rear yard catch basins (RYCB’s) along the south limit on both Blocks 27 and 28 are set a minimum of 0.3 m above the maximum water elevation on the emergency spillway of the Stormwater Management (SWM) pond on the abutting land to the south. All RYCB’s shall be designed considering 50% blockage conditions;
  - iii. That the 5-year hydraulic grade line (HGL) considering 5-year operating level in the abutting pond (Nash 3 pond) is below obvert of the proposed storm sewer on Street ‘A’ and Block 37; and,
  - iv. Blocks 27, 28, 29, 30, 37 and Lots 13-25, inclusive, shall remain undevelopable until such time as the regional conveyance swale at 481 First Road West has been constructed and approved and the ultimate storm water management pond facility is approved by all approval agencies with jurisdiction (City of Hamilton, Ministry of the Environment, Conservation and Parks, Niagara Escarpment Commission, Hamilton Conservation Authority),
7. That Subsection 6.5.7, "Special Exemptions" of Section 6.5, Single Residential “R4” Zone, of Zoning By-law No. 3692-92, be amended by adding Special Exemption “R4(H1, H2)”, as follows:

To Amend Zoning By-law No. 3692-92  
Respecting Lands Located at 15 Ridgeview Drive, Stoney Creek

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**“R4(H1, H2)” 15 Ridgeview Drive, Schedule “A”, Map No. 11 (Block 6)**

On those lands zoned “R4(H1, H2)” by this By-law, the Holding (H) symbol may be removed and thereby give effect to the “R4” Zone provisions, upon completion of the following:

- (H1) That Niagara Escarpment Commission (NEC) Development Permit W/R/2021-2022/203, become Final and Binding and all conditions are cleared to the satisfaction of the Niagara Escarpment Commission.
- (H2) That the owner demonstrates the following:
  - i. That the storm conveyance Block 37 has been adequately sized and designed to accommodate a storm sewer outlet and overland drainages from both Blocks 27 and 28 including Street 'A' in line with a low point on Street 'A' without having any impact on Block 27 and 28;
  - ii. That Blocks 27 and 28 top of grate (TOG) elevations for all rear yard catch basins (RYCB's) along the south limit on both Blocks 27 and 28 are set a minimum of 0.3 m above the maximum water elevation on the emergency spillway of the Stormwater Management (SWM) pond on the abutting land to the south. All RYCB's shall be designed considering 50% blockage conditions;
  - iii. That the 5-year hydraulic grade line (HGL) considering 5-year operating level in the abutting pond (Nash 3 pond) is below obvert of the proposed storm sewer on Street 'A' and Block 37; and,
  - iv. Blocks 27, 28, 29, 30, 37 and Lots 13-25, inclusive, shall remain undevelopable until such time as the regional conveyance swale at 481 First Road West has been constructed and approved and the ultimate storm water management pond facility is approved by all approval agencies with jurisdiction (City of Hamilton, Ministry of the Environment, Conservation and Parks, Niagara Escarpment Commission, Hamilton Conservation Authority),

all to the satisfaction of the satisfaction of Manager of Engineering Approvals, Growth Management Division.

- 8. No building or structure shall be erected, altered, extended or enlarged, nor shall any building or structure or part thereof be used, nor shall any land be used, except in accordance with the Single Residential “R4” Zone and the Multiple Residential “RM2” and the Multiple Residential “RM3” Zone, subject to the special requirements referred to in Sections 2 through 5 of this By-law.

To Amend Zoning By-law No. 3692-92  
Respecting Lands Located at 15 Ridgeview Drive, Stoney Creek

Page 8 of 9

9. The Clerk is hereby authorized and directed to proceed with the giving of notice of the passing of this By-law, in accordance with the Planning Act.

**PASSED** this 8<sup>th</sup> day of February, 2023.

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A. Horwath  
Mayor

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A. Holland  
City Clerk

ZAC-17-001/25T-201701/UHOPA-17-001

To Amend Zoning By-law No. 3692-92  
 Respecting Lands Located at 15 Ridgeview Drive, Stoney Creek

					
<p style="text-align: center;">This is Schedule "A" to By-law No. 23-</p> <p style="text-align: center;">Passed the ..... day of ....., 2023</p>	<p style="text-align: center;">-----                  Mayor                  -----</p> <p style="text-align: center;">-----                  Clerk                  -----</p>				
<p><b>Schedule "A"</b></p> <p><b>Map forming Part of</b></p> <p><b>By-law No. 23-_____</b></p> <p><b>to Amend By-law No. 3692-92</b></p>					
<table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 50%; padding: 2px;">                     Scale: N.T.S.                 </td> <td style="width: 50%; padding: 2px;">                     File Name/Number: ZAG-17-001 &amp; 291-201701 &amp; UHOPA-17-001                 </td> </tr> <tr> <td style="padding: 2px;">                     Date: January 6, 2023                 </td> <td style="padding: 2px;">                     Planner/Technician: MF/V.S.                 </td> </tr> </table> <p style="text-align: center; font-size: small;">PLANNING AND ECONOMIC DEVELOPMENT DEPARTMENT</p>	Scale: N.T.S.	File Name/Number: ZAG-17-001 & 291-201701 & UHOPA-17-001	Date: January 6, 2023	Planner/Technician: MF/V.S.	<p><b>Subject Property</b></p> <p>15 Ridgeview Drive, Stoney Creek</p> <ul style="list-style-type: none"> <li> Block 1 – Change in zoning from the Neighbourhood Development "ND" Zone to the Single Residential "R4(H1)" Zone, Holding</li> <li> Block 2 – Change in zoning from the Neighbourhood Development "ND" Zone to the Single Residential "R4-39(H1)" Zone, Modified, Holding</li> <li> Block 3 – Change in zoning from the Neighbourhood Development "ND" Zone to the Multiple Residential "RM2-47(H1, H2)" Zone, Modified, Holding</li> <li> Block 4 – Change in zoning from the Neighbourhood Development "ND" Zone to the Multiple Residential "RM3-72(H1, H2)" Zone, Modified, Holding</li> <li> Block 5 – Change in zoning from the Neighbourhood Development "ND" Zone to the Multiple Residential "RM2-47(H1, H2)" Zone, Modified, Holding</li> <li> Block 6 – Change in zoning from the Neighbourhood Development "ND" Zone to the Single Residential "R4(H1, H2)" Zone, Modified, Holding</li> <li> Refer to By-law No. 05-200</li> </ul>
Scale: N.T.S.	File Name/Number: ZAG-17-001 & 291-201701 & UHOPA-17-001				
Date: January 6, 2023	Planner/Technician: MF/V.S.				
					

## ATTACHMENT 3

To Amend Zoning By-law No. 05-200 with Respect to Lands Located at  
15 Ridgeview Drive, Stoney Creek

Page 2 of 3

**Authority:** Item 3, Planning Committee  
Report 23-001 (PED23003)  
CM: January 25, 2023  
Ward: 9  
**Bill No. 018**

### CITY OF HAMILTON

#### BY-LAW NO. 23-018

#### To Amend Zoning By-law No. 05-200 with Respect to Lands Located at 15 Ridgeview Drive, Stoney Creek

**WHEREAS** Council approved Item 3 of Report 23-001 of the Planning Committee, at the meeting held on January 25, 2023;

**AND WHEREAS** this By-law will be in conformity with the Urban Hamilton Official Plan, upon finalization of Official Plan Amendment No. 180.

**NOW THEREFORE** Council of the City of Hamilton enacts Zoning By-law No. 05-200 as follows:

**NOW THEREFORE** the Council of the City of Hamilton enacts as follows:

1. That Map Nos. 1353 and 1354 of Schedule "A" – Zoning Maps are amended by adding the Conservation/Hazard Land (P5, H140) Zone, Neighbourhood Park (P1, H140) Zone, and Conservation/ Hazard Land (P5, H140, HXXX) to the lands identified in the Location Map attached as Schedule "A" to this By-law.
2. That Schedule "D" – Holding Provisions be amended by adding the additional Holding Provision as follows:
 

"140. Notwithstanding Sections 7.1 and 7.5 of this By-law, on those lands zoned Neighbourhood Park (P1, H140) Zone and Conservation/Hazard Land (P5, H140, HXXX), identified on Map Nos. 1353 and 1354 of Schedule "A" – Zoning Maps and described as 15 Ridgeview Drive, no development shall be permitted until such time as:

  - (a) That Niagara Escarpment Commission (NEC) Development Permit W/R/2021-2022/203, become Final and Binding and all conditions are cleared to the satisfaction of the Niagara Escarpment Commission."
3. That Schedule "D" – Holding Provisions be amended by adding the additional Holding Provision as follows:
 

"XXX. Notwithstanding Sections 7.1 and 7.5 of this By-law, on those lands zoned Conservation/ Hazard Land (P5, H140, HXXX), identified on Map Nos. 1353 and 1354 of Schedule "A" – Zoning Maps and described as 15 Ridgeview Drive, no development shall be permitted until such time as:



To Amend Zoning By-law No. 05-200 with Respect to Lands Located at  
15 Ridgeview Drive, Stoney Creek

Page 3 of 3

- (a) That the owner demonstrates the following:
- i. That the storm conveyance Block 37 has been adequately sized and designed to accommodate a storm sewer outlet and overland drainages from both Blocks 27 and 28 including Street 'A' in line with a low point on Street 'A' without having any impact on Block 27 and 28;
  - ii. That Blocks 27 and 28 top of grate (TOG) elevations for all rear yard catch basins (RYCB's) along the south limit on both Blocks 27 and 28 are set a minimum of 0.3 m above the maximum water elevation on the emergency spillway of the Stormwater Management (SWM) pond on the abutting land to the south. All RYCB's shall be designed considering 50% blockage conditions;
  - iii. That the 5-year hydraulic grade line (HGL) considering 5-year operating level in the abutting pond (Nash 3 pond) is below obvert of the proposed storm sewer on Street 'A' and Block 37; and,
  - iv. Blocks 27, 28, 29, 30, 37 and Lots 13-25, inclusive, shall remain undevelopable until such time as the regional conveyance swale at 481 First Road West has been constructed and approved and the ultimate storm water management pond facility is approved by all approval agencies with jurisdiction (City of Hamilton, Ministry of the Environment, Conservation and Parks, Niagara Escarpment Commission, Hamilton Conservation Authority),

all to the satisfaction of the satisfaction of Manager of Engineering Approvals, Growth Management Division."

4. The Clerk is hereby authorized and directed to proceed with the giving of notice of the passing of this By-law, in accordance with the Planning Act.

**PASSED** this 8<sup>th</sup> day of February, 2023.

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A. Horwath  
Mayor

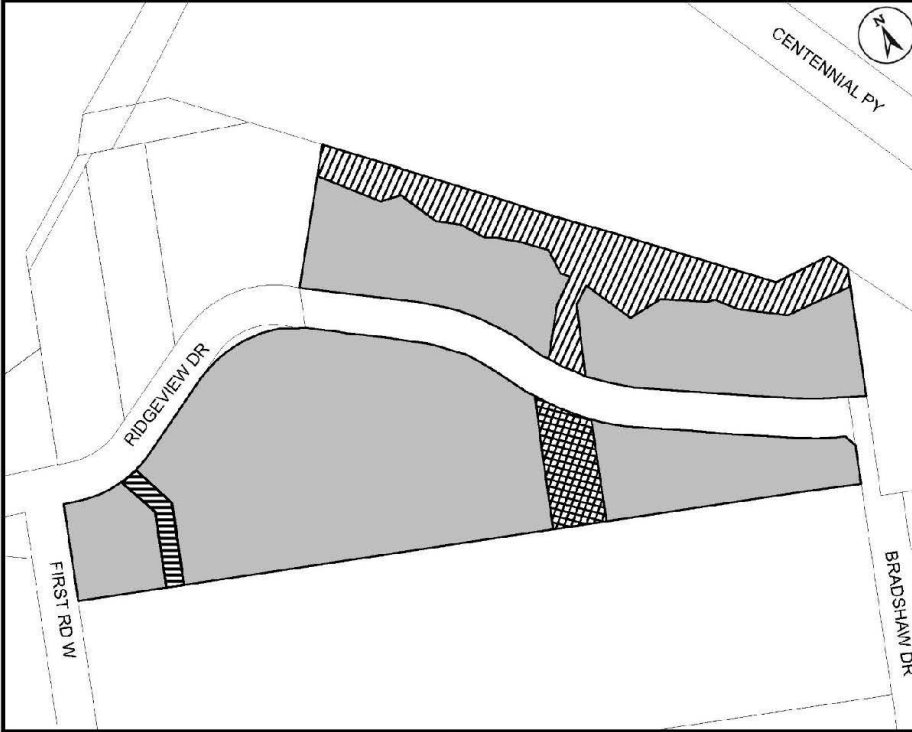

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A. Holland  
City Clerk

ZAC-17-001/25T-201701/UHOPA-17-001

To Amend Zoning By-law No. 05-200 with Respect to Lands Located at  
15 Ridgeview Drive, Stoney Creek

Page 4 of 3

			
<p style="text-align: center;">This is Schedule "A" to By-law No. 23-</p> <p style="text-align: center;">Passed the ..... day of ....., 2023</p>	<p style="text-align: center;">----- Mayor</p> <p style="text-align: center;">----- Clerk</p>		
<div style="display: flex; justify-content: space-between;"> <div style="width: 60%;"> <p style="text-align: center;"><b>Schedule "A"</b></p> <p style="text-align: center;">Map forming Part of By-law No. 23-_____</p> <p style="text-align: center;">to Amend By-law No. 05-200 Maps 1353 &amp; 1354</p> </div> <div style="width: 35%;"> <p><b>Subject Property</b> 15 Ridgeview Drive, Stoney Creek</p> <ul style="list-style-type: none"> <li> Lands to be zoned Conservation/ Hazard Land (P5, H140) Zone</li> <li> Lands to be zoned Conservation / Hazard Land (P5, H140, HXXX) Zone</li> <li> Lands to be zoned Neighbourhood Park (P1, H140) Zone</li> <li> Refer to By-law No. 3692-92</li> </ul> </div> </div>			
<p>Scale: N.T.S</p>	<p>File Name/Number ZAC-1-001 &amp; 201-21701 &amp; HOPA-17-011</p>		
<p>Date: January 6, 2023</p>		<p>Planner/Technician: MF/VS</p>	
<p>PLANNING AND ECONOMIC DEVELOPMENT DEPARTMENT</p>			