TO: Chair and Members  
Economic Development and Planning Committee  
WARD(S) AFFECTED: WARD 14  
COMMITEE DATE: August 9, 2010  
SUBJECT/REPORT NO:  
Application for Approval of a Draft Plan of Subdivision, Official Plan Amendment, and Rezoning, for Lands Located at 403 Old Brock Road (Flamborough) (PED10170) (Ward 14)  
SUBMITTED BY:  
Tim McCabe  
General Manager  
Planning and Economic Development Department  
PREPARED BY:  
Edward John  
(905) 546-2424, Ext. 5803  
SIGNATURE:  
RECOMMENDATION:  
(a) That approval be given to Subdivision Application 25T-200807, by N. Ramacieri, Owner, to establish a draft plan of subdivision on the property located at 403 Old Brock Road (Flamborough), as shown on Appendix “A” to Report PED10170, subject to the following conditions:  
(i) That this approval apply to the Draft Plan of Subdivision 25T-200807 - “Spencer Creek Estates - Phase II”, prepared by Barich Grenkie Surveying Ltd., and certified by E.J. Grenkie, O.L.S., dated April 1, 2009, showing 13 lots for single-detached dwellings, and the extension of 1 street (Shakespeare Road), attached as Appendix “B” to Report PED10170, subject to the owner entering into a Standard Form Subdivision Agreement, as approved by City Council, and with the special conditions attached as Appendix “F” to Report PED10170;
Acknowledgement that there will be no City share for any municipal works associated with this development;

That the dedication of Parkland will be required, pursuant to Section 42 of the Planning Act. The conveyance of the required lands will be concurrent with the registration of the Plan for the dedication of the lands prior to registration;

all in accordance with the Financial Policies for Development and the City's Parkland Dedication By-law, as approved by Council.

(b) That approval be given to **Official Plan Amendment Application OPA-08-017, by N. Ramacieri, Owner**, to amend Policy B.11.1.10.1 and Schedule B-16 of the Greensville Secondary Plan, in order to permit a subdivision comprising of 13 lots, as shown on Appendix “A” to Report PED10170, on the following basis:

(i) That the Draft Official Plan Amendment, attached as Appendix “B” to Report PED10170, be adopted by Council.

(ii) That the proposed Official Plan Amendment is consistent with the Provincial Policy Statement, and conforms to the Hamilton-Wentworth Official Plan, subject to the introduction of an ‘H’ Holding Symbol as detailed in Recommendation (c).

(c) That approval be given to **Zoning Application ZAC-08-075, by N. Ramacieri, Owner**, for changes in zoning from the Settlement Residential - Holding “R2-14(H)” Zone to the Settlement Residential “R2-32” Zone for Block 1, and from the Settlement Residential - Holding “R2-14(H)” Zone to the Settlement Residential - Holding “R2-32(H)” Zone for Block 2, as shown on Schedule “A” of Appendix “C” to Report PED10170, for lands located at 403 Old Brock Road, on the following basis:

(i) That the draft By-law, attached as Appendix “C” to Report PED10170, which has been prepared in a form satisfactory to the City Solicitor, be enacted by City Council.

(ii) That the amending By-law be added to Schedule “A-37” of Zoning By-law No. 90-145-Z.

(iii) That the proposed changes in zoning will be in conformity with the Town of Flamborough Official Plan upon finalization of Official Plan Amendment No. ___.
EXECUTIVE SUMMARY

The purpose of the applications is for approval of a Draft Plan of Subdivision, Official Plan Amendment, and a change in zoning in order to permit a residential subdivision comprising of 13 lots for single-detached dwellings, and the extension of an existing road (Shakespeare Road), on lands located at 403 Old Brock Road (see Appendix "A"). The property would be rezoned to the Settlement Residential “R2-32” Zone” and the Settlement Residential - Holding “R2-32(H)” Zone”. This designation would permit the development of the lands, as proposed, subject to the owner entering into a Standard Form Subdivision Agreement.

The proposal has merit and can be supported since the applications would be consistent with the Provincial Policy Statement, Greenbelt Legislation, Places to Grow Growth Plan, and would implement the intent of the Hamilton-Wentworth Official Plan. The proposal is compatible with surrounding uses, protects existing environmental features, and is an appropriate development consistent with the intent of the Greensville Secondary Plan.

Alternatives for Consideration - See Page 17.

FINANCIAL / STAFFING / LEGAL IMPLICATIONS (for Recommendation(s) only)

Financial - N/A.

Staffing - N/A.

Legal - As required by the Planning Act, Council shall hold at least one (1) Public Meeting to consider applications for a Draft Plan of Subdivision, Official Plan Amendment, and changes in zoning.

HISTORICAL BACKGROUND (Chronology of events)

The lands are currently located within the Greensville Rural Settlement Area. The subject property is located adjacent to the Christie Conservation Area Environmentally Significant Area (ESA #31) in the Hamilton-Wentworth Official Plan. The site also contains a portion of a Significant Woodland, and is adjacent to Key Natural Heritage Features in the Greenbelt Plan Natural Heritage System, as identified in the Rural Hamilton Official Plan.

Following a site visit by the City’s Natural Heritage staff, it was concluded that the proposed subdivision was adequately buffered from the ESA, and that no portion of the significant woodland would be affected by the development - as those trees within the...
subject lands were not considered significant. Consequently, the applicant was advised that an Environmental Impact Statement would not be required.

However, as detailed in the comments from the Hamilton Conservation Authority, the lands are located within the Middle Spencer Creek subwatershed area, which flows into Cootes Paradise, Hamilton Harbour, and then Lake Ontario. The drainage area has a Remedial Action Plan to restore the health of the harbour by reducing the amount of sediment entering the harbour and Lake Ontario, and by improving stormwater quality. Consequently, in order to achieve these goals, special draft plan conditions have been recommended concerning storm water management control (see Appendix “F” Conditions 2, 3, 14, 15, and 16.)

Development in the Greensville Rural Settlement Area is guided by the Greensville Secondary Plan policies of the Flamborough Official Plan. It is noted in the Secondary Plan that residential development will be predominately in the form of single-detached dwellings serviced by private water supply and private sewage disposal systems. It is further noted that in order to determine the extent and density of development that can be sustained without degradation of the ground and surface waters, a comprehensive servicing study will be undertaken. This study has been initiated in the form of ‘The Greenville Sub-watershed Study’, but is not due to be finalized until the end of the year.

As directed by the Secondary Plan, in the absence of a comprehensive study, interim development would be subject to the phasing policies of the plan. The intent of these policies is to ensure development proceeds cautiously, with the maximum of 12 lots per phase. The policies also require a monitoring program to be initiated following the occupation of 10 of the 12 units. In accordance with the Secondary Plan, the information gathered from the monitoring of the initial 12 lots has been used to provide guidelines for lot sizes and subdivision design for Phase 2.

The application currently being considered represents “Spencer Creek - Phase 2”, with “Spencer Creek - Phase 1” being approved under Subdivision Application 25T-87011 on January 5, 1994. In support of the application, the applicant submitted a number of studies, including but not limited to, a hydro-geological study and monitoring study of the units constructed under the first phase. This information has determined, in addition to other factors, the type and density of development currently proposed under Phase 2, and has provided the information necessary to compose a number of servicing and public health conditions recommended through the special conditions of Draft Plan Approval (see Appendix “F” - Conditions 18 - 28).

It is noted that contrary to the Phasing policies of the Secondary Plan, the owner has, however, proposed 13 lots, as opposed to the 12 lots detailed in Policy B.11.1.10.1. The merits of the proposed Official Plan Amendment to prevent 13 lots are, therefore, discussed in further detail in the Policy Implications section of this Report.
Finally, in terms of background, it should be noted that a parcel of the applicant’s land from “Spencer Creek - Phase 1” (to the immediate east of the Phase 2 lands) has already been zoned to Park Open Space Zone - O2. This parcel, which is located between Lots 27 and 15 of the first phase, will be dedicated to the City in accordance with the Financial Policies for Development and the City’s Parkland Dedication By-law, as approved by Council.

**Details of Submitted Application:**

**Location:** 403 Old Brock Road (Flamborough)

**Owner:** Nick Ramacieri

**Applicant:** Nick Ramacieri

**Property Description:**
- Frontage: Approximately 212 metres
- Depth: Approximately 97 metres
- Area: Approximately 9.245ha

**EXISTING LAND USE AND ZONING:**

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<th>Existing Land Uses</th>
<th>Existing Zoning</th>
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POLICY IMPLICATIONS

Greenbelt Plan

The subject lands are designated as “Protected Countryside - Hamlet” within the Greenbelt Plan. As such, Policy 3.4.3.1 is applicable and states that Hamlets, as identified in municipal Official Plans and within their approved boundaries as they existed on the date this Plan came into effect, continue to be governed by municipal Official Plans and related programs or initiatives, and are not subject to the policies of this Plan, save for the external connections policies of Section 3.2.5.

This Plan permits infill and intensification of Hamlets subject to appropriate water and sewage services. Staff notes that a hydro-geological investigation for potable water was submitted with the subject applications. The Report is titled “Private Water Supplies Preliminary Investigation Report”, dated November 19, 2008, and was conducted by Try Environmental Services Inc. Staff notes that the said Report has only addressed the potable water supply aspect of a Hydro-Geological Report, and has not addressed the septic system aspect of the investigation. As such, staff requires the inclusion of Draft Plan of Subdivision - Condition 11 (see Appendix “F”) requiring a revised hydro-geological study for both potable water and septic system. Staff from the Source Water Protection Section has also provided input with regard to the Hydro-Geological Report and has, in turn, recommended Draft Plan Conditions 18 - 28 (see Appendix “F”).

Provincial Policy Statement (PPS)

The application has been reviewed with respect to the Provincial Policy Statement (PPS). Staff recognizes that the application is consistent with the policies that govern Rural Areas, 1.1.4.

However, Policy 1.6.4.4 states that individual on-site sewage services and individual on-site water services shall be used for a new development of five or less lots, or private residences where municipal sewage services and municipal water services or private communal sewage services and private communal water services are not provided, and where site conditions are suitable for the long-term provision of such services.

Despite this, individual on-site sewage services and individual on-site water services may be used to service more than five lots or private residences in rural areas provided these services are solely for those uses permitted by Policy 1.1.4.1(a), and site conditions are suitable for the long-term provision of such services. As noted above, a partial hydro-geological investigation was submitted with the subject applications. The Report is titled “Private Water Supplies Preliminary Investigation Report”, dated November 19, 2008, and was conducted by Try Environmental Services Inc. Staff notes that the said Report has only addressed the potable water supply aspect of a
Hydro-Geological Report, and has not addressed the septic system aspect of the investigation. As such, staff requires the inclusion of Condition 11 as a condition of Draft Plan of Subdivision Approval (see Appendix “F”). Staff from the Source Water Protection Section has also provided input with regard to the Hydro-Geological Report and has, in turn, recommended Draft Plan Conditions 18 - 28 (see Appendix “F”). It should be further noted that the development of the Greensville Rural Settlement Area has been guided by the policies of the Greenville Secondary Plan, which supports use of Private systems for subdivisions of over five residential lots.

Policy 1.7.1 (e) outlines that long-term economic prosperity will be supported by planning so that major facilities (such as airports, transportation corridors, sewage treatment facilities, waste management systems, industries, and aggregate activities) and sensitive land uses are appropriately designed, buffered, and separated from each other to prevent adverse effects from odour, noise, and other contaminants, and minimize risk to public health and safety. Staff notes that the subject lands are in close proximity to road and stationary noise sources, namely Hwy. 5 to the north; the Rothsay Rendering Plant, north-west of the property; and the Lafarge Quarry to the east. Staff notes that a Noise Study, and two letters pertaining to noise, were submitted with the subject applications.

The Noise Study is titled “Noise Impact Study for the Spencer Creek Residential Development in Flamborough, Ontario, File No: 25T-87011(R)” dated August 15, 1996, and prepared by Vibron Limited. A letter prepared by Vibron Limited, was also included, dated August 30, 1997. In addition, a letter prepared by the MOE and dated January 12, 1998, was included. Finally, a further report titled "Environmental Noise Impact Study Spencer Creek Estates Subdivision Part of Lot 7, Concession 2 Geographic Township of West Flamborough Now in the City of Hamilton", dated March, 2009, and prepared by dBA Environmental Services, was submitted in support of the proposal.

The conclusions drawn from these reports and subsequent letters were that the subject lands do not require any special measures to address noise. Staff has reviewed the supporting information and reports, and is satisfied that no mitigation methods are necessary.

Staff also notes that the subject lands are within approximately 400 metres of the Rothsay Rendering Plant, which has the potential to cause an odour impact on the outdoor amenity areas of the proposed development. The Ministry of Environment’s D-6 “Guidelines for Compatibility Between Industrial Facilities and Sensitive Land Uses” provides a 300 metre minimum separation distance between a Class II industry and a sensitive land use, and a 1,000 metre potential influence area of a Class III industry. The principle of residential development on the lands has been established in the Official Plan. As a condition of the draft plan of subdivision, a warning clause is required regarding odour (Special Draft Plan Condition 12 - Appendix “F”).
In addition, Policy 2.1.6 outlines that development shall not be permitted on adjacent lands to the natural heritage feature identified (i.e. significant wetlands) unless the ecological function of the adjacent lands has been evaluated, and it has been demonstrated that there will be no negative impacts on the natural features or on their ecological functions. Staff notes that the subject property is located adjacent to the Christie Conservation Area Environmentally Significant Area (ESA # 31). Following review by the Hamilton Conservation Authority, and a site visit by Natural Heritage staff, it was concluded that an EIS would not be required given the distance of the development of the lands from the ESA and the understanding that the trees on-site did not form part of the significant woodlot.

Finally, Policy 2.6.2 outlines that development and site alteration may be permitted on lands containing archaeological resources or areas of archaeological potential if significant archaeological resources have been conserved by removal and documentation, or preservation on site. Where significant archaeological resources must be preserved on site, only development and site alteration, which maintains the heritage integrity of the site, may be permitted.

Staff notes that an archaeological assessment titled “Archaeological Assessment Final Report: Stage 2 Spencer Creek Estates 25T-87011 (Phase I) and Additional Lands (Phase II)”, dated June, 1997, was submitted with the subject application. In addition, a letter from staff, dated February 27, 2006, and a letter dated November 2, 2008, from Jacqueline Fisher of Fisher Archaeological Consulting, was submitted with the application. Staff notes that Pages 2 and 3 of the staff letter provides four archaeological conditions applicable to future planning approvals for the subject lands. These conditions have been placed as Special Conditions of Draft Approval (see Appendix “F” - Condition 13).

Hamilton-Wentworth Regional Official Plan

The subject property is designated “Rural Settlement Area - Greensville” within the Hamilton-Wentworth Regional Official Plan. Policy C-3.2.1.3 requires that Area Municipalities prepare secondary plans for those designated Rural Settlement Areas where growth other than infilling is anticipated. These secondary plans will include the type and location of land uses, rate and direction of growth, physical and geographical limits of planned development, as well as the size and location of lots to be created. In addition, Policy C-3.2.1.5 states that development within Rural Settlement Areas will conform to the secondary plan, and be consistent with the provisions of this plan. Finally, Policy C-3.2.1.6 states that residential development within Rural Settlement Areas may occur by means of plans of subdivision, land lease, or plans of condominium.
As the proposed development - subject to the conditions and Holding provision recommended - is considered to conform with the intent of the Greensville Secondary Plan, the above policies have been satisfied.

However, Policy C-1.2.2 of the Plan states that land use changes in or adjacent to Environmentally Significant Areas will only be permitted where such development:

i) Will not adversely affect, degrade, or destroy any of the qualities which are the basis for the area’s designation;

ii) Will not cause any significant impacts upon water quality and quantity; and,

iii) Will not adversely affect the implementation of any resource protection policies or plans.

As noted above, the subject property is located adjacent to the Christie Conservation Area Environmentally Significant Area (ESA # 31). Following review by the Hamilton Conservation Authority, and a site visit by Natural Heritage staff, it was concluded that an EIS would not be required given the distance of the development of the lands from the ESA and the understanding that the trees on-site did not form part of the significant woodlot.

In addition, Policy B-9.2 states that the City shall consider the protection and preservation of regionally significant historical and cultural resources, including recognized archaeological sites, in the review of proposals for development and redevelopment. Where possible, these attributes will be incorporated into the overall design in a manner which minimizes adverse impacts and encourages maintenance and protection. As noted above, an archaeological assessment titled “Archaeological Assessment Final Report: Stage 2 Spencer Creek Estates 25T-87011 (Phase I) and Additional Lands (Phase II)”, dated June, 1997, was submitted with the subject application. In addition, a letter from staff, dated February 27, 2006, and a letter dated November 2, 2008, from Jacqueline Fisher of Fisher Archaeological Consulting, was submitted with the application.

Staff notes that Pages 2 and 3 of the letter provides four archaeological conditions applicable to future planning approvals for the subject lands. These conditions, which include the requirement for a Heritage Easement to be established on title, have been placed as Special Condition of Draft Approval 13 (see Appendix “F”).

**Town of Flamborough Official Plan**

The subject property is designated “Greensville - Rural Settlement Area” within Schedule B of the Flamborough Official Plan. Within Schedule B-16: Greensville - Rural Settlement Area, the subject lands are designated 'Settlement Residential'. The
residential policies of the Secondary Plan support the type and form of units proposed, as noted in the following Policies:

**B.11.1.2.3** The predominant form of residential development shall continue to be the single-detached dwelling.

Furthermore, the proposed subdivision is the second phase of an existing subdivision to the east, and would provide units and lot sizes consistent with the adjacent dwellings in accordance with Policy B.11.1.2.7, which states:

**B.11.1.2.7** New residential development shall be integrated and compatible with the existing residential character. In this respect, when development occurs adjacent to or as infilling in existing areas, the bulk, mass, and height shall be similar to that of existing residential uses…

It is also noted that through the provision of parkland through the dedication of additional lands from Phase 1 of the previous Draft plan, secured through this subdivision application, the proposed subdivision would comply with the intent of the Secondary Plan policies to provide access to open space and trails, as detailed in Policy B.11.1.2.5, which states:

**B.11.1.2.4** Development of residential areas shall be integrated with parks, open space, and school sites…

Given that the subject lands are in close proximity to road and stationary noise sources, namely Hwy. 5 to the north, the Rothsay Rendering Plant north-west of the property, and the Lafarge Quarry to the east, which has the potential to cause an impact on the outdoor amenity areas of the proposed development in terms of noise and odour, staff has also given consideration to Policy B.11.1.2.10, which states:

**B.11.1.2.10** Where new residential development is proposed in proximity to industry including the existing aggregate heavy industrial use to the north, the proponent of the development shall consult with appropriate public agencies and carry out any necessary studies to determine the proximity to such industry that may be offensive to the enjoyment of property by existing and future residents ….

Staff notes that a Noise Study and two letters pertaining to noise were submitted with the subject applications. The Noise Study is titled “Noise Impact Study for the Spencer Creek Residential Development in Flamborough, Ontario, File No: 25T-87011(R)”, dated August 15, 1996, and prepared by Vibron Limited. A letter prepared by Vibron Limited was also included, dated August 30, 1997. In addition, a letter prepared by the MOE and dated January 12, 1998, was included. Finally, a further report titled "Environmental Noise Impact Study Spencer Creek Estates Subdivision Part of Lot 7,"
Concession 2 Geographic Township of West Flamborough Now in the City of Hamilton", dated March, 2009, and prepared by dBA Environmental Services, was submitted in support of the proposal.

The conclusions drawn from these reports and subsequent letters were that the subject lands do not require any special measures to address noise. Staff has reviewed the supporting information and reports, and is satisfied that no mitigation methods are necessary.

As the subject lands are within approximately 400 metres of the Rothsay Rendering Plant, which has the potential to cause an impact on the outdoor amenity areas of the proposed development in terms of odour, staff has recommended the inclusion of a warning clause, as detailed in Special Draft Plan Condition 12 (see Appendix “F”). Given the distance of the subject lands from the plant, the incorporation of a warning clause within the purchase and sale agreement of each unit is considered to satisfactorily deal with this potential issue.

As detailed in the Background section of this Report, the issue of appropriate residential density and the extent of the residential development are to be determined through a Comprehensive Servicing Study, as per Policy B.11.1.2.1.

This study has commenced, however, and will not be concluded until later this year. Interim development is, therefore, directed through Policy B.11.1.10.1, which states:

**B.11.1.10.1** In order to provide guidelines for the extent and density of residential development that can be sustained without unacceptable degradation of the ground and surface waters, development phasing is based on the need to proceed slowly and cautiously, and the need to monitor the impact of new development on existing wells in accordance with Sections B.11.1.9.4, B.11.1.9.5, B.11.1.9.6, and B.11.1.9.7. In this regard, a maximum of twelve (12) lots in plans of subdivision shall be draft approved and registered in each of the major development areas, as shown on Schedule 'B-16.3'…

In reference to this policy, it is noted that the applicant is proposing 13 lots and, as such, has applied for an Official Plan Amendment to amend the wording of this policy as they pertain to the subject lands. The density and sizing of the lots have been directed through technical studies and through the monitoring of the first phase. Consequently, given the balance of the remaining lands, and the fact the proposed lot sizes would provide sufficient area to accommodate private servicing, the applicant considers the proposed applications to represent the most efficient division of land.
The intent of the phasing policy is in order to ensure development takes place slowly and cautiously, thus ensuring ground and surface waters are protected. In order to ensure the intent of the above policy is satisfied staff considers it prudent to place one of the lots within an ‘H’ Holding provision until such time as staff is satisfied with the monitoring assessment, as required through Draft Plan Conditions 18 - 28 (see Appendix “F”). It is considered that as these lots would be subject to a rigorous monitoring program, the creation of the 13th lot, as requested in the Official Plan Amendment, can be supported, as the intent to cautiously proceed with development is maintained, and that sufficient investigation into the phasing of development will be satisfactorily completed.

It is also noted that this is the second phase of the development, and that the proposal is a logical, rounding out of the existing residentially developed area, and that staff is satisfied that the original units developed have not resulted in any detrimental impact on the ground and surface waters. It is, therefore, considered that the proposed development, on the basis of an “H” Holding provision being placed on the 13th lot, would conform with the intent and direction of the above policy.

Finally, it is noted that the applicant submitted a hydrological study in support of the application. The report is titled “Private Water Supplies Preliminary Investigation Report”, dated November 19, 2008, and was conducted by Try Environmental Services Inc. Staff notes that the report has only addressed the potable water supply aspect of a hydro-geological report, and has not addressed the septic system aspect of the investigation. As such, staff requires the inclusion of Condition 11 as a condition of Draft Plan of Subdivision Approval (see Appendix “F”). Staff from the Source Water Protection Section has also provided input with regard to the Hydro-Geological Report and has, in turn, recommended Draft Plan Conditions 18 - 28 (see Appendix “F”). Following satisfaction of these conditions, staff would be satisfied that the development would be in accordance with the balance of servicing conditions, as directed in the Greensville Secondary Plan.

**RELEVANT CONSULTATION**

**Agencies/Departments Having No Concern or Objections:**

- Public Works Department, Operations and Maintenance Division, Traffic Engineering and Operations Section.
- Urban Forestry.
- Horizon Utilities.
- Hydro One.
- Niagara Escarpment Commission.
- Bell Canada.
Hamilton Conservation Authority

The property does not contain any natural heritage or natural hazard lands and is not affected by Hamilton Conservation Authority’s (HCA) Development, Interference with Wetlands, and Alterations to Shorelines and Watercourse Regulation 97/04; it is located within the Middle Spencer Creek subwatershed area, which flows into Cootes Paradise, Hamilton Harbour, and then Lake Ontario. The drainage area has a Remedial Action Plan to restore the health of the Harbour by reducing the amount of sediment entering the Harbour and Lake Ontario, and by improving stormwater quality.

In accordance with the Remedial Action Plan, the new development must address stormwater quantity control with post-development flows meeting pre-development levels, as well as Enhanced (level1) quality control and sediment and erosion control. Consequently, the applicant has submitted a Stormwater Management (SWM) Report, and following discussion with staff, revised this report further. In response, the HCA, in their letter dated June 7, 2010, has outlined a number of outstanding issues and concerns that remain outstanding.

The HCA, however, notes that most of these concerns and issues, which relate to culvert design, erosion outlets, and swales, can be addressed at the detailed design stage and are, therefore, in a position to support the proposed development subject to a number of recommended Draft Plan Conditions. These conditions form part of Appendix “F” - Conditions 14 - 17).

Public Health Services, Health Protection Division:

The phasing of all residential development in the Greensville Rural Settlement Area allows for adequate ground water monitoring, which will demonstrate if new development will adversely affect the ground water quality/quantity on new and existing wells.

Based on the aforementioned, it would be a prudent approach to develop Phase 2 as a 12 lot subdivision, as per the Greensville Secondary Plan, and have the developer conduct a comprehensive ground water monitoring study to identify any adverse impacts on groundwater prior to any development on Lot 13.

Staff, therefore, has recommended the 13 lots be placed under an ‘H’ Holding provision, which will restrict development until the applicant has satisfactorily demonstrated to staff that there have been no adverse impacts associated with the first 12 lots. Refer to Recommendation (c) and Special Draft Conditions 18 - 28 (see Appendix “F”).
Public Works Department, Infrastructure and Source Water Planning Section:

Based upon a review of monitoring programs for new developments elsewhere in the Rural Settlement Area of Greensville, including *Spencer Creek Estates Phase I*, the Terraprobe Report, dated April 30, 2007, and the Hydroterra peer review letter, dated March 20, 2008, staff was able to address outstanding issues through conditions for groundwater monitoring of the Phase II development lands. These are recommended in Appendix “F” - Conditions 18 - 28.

Public Consultation

In accordance with the new provisions of the *Planning Act* and Council’s Public Participation Policy, Notice of Complete Application and Preliminary Circulation was sent to 53 property owners within 120 metres of the subject property on January 20, 2010. Two responses were received. Both responses requested to be kept informed of any decision made with regard to the application. One of the letters, from the Plant Manager of Rothsay Rendering Plant, noted that they have a direct interest in ensuring that a sufficient buffer be maintained between industrial and neighbouring residential uses.

A Public Notice sign was erected on the subject property in January 8 2008, and Notice of the Public Meeting was given in accordance with the *Planning Act*.

ANALYSIS / RATIONALE FOR RECOMMENDATION

(include Performance Measurement/Benchmarking Data, if applicable)

1. The proposal has merit and can be supported for the following reasons:

   (i) It would be consistent with the Provincial Policy Statement, Greenbelt Legislation, and would conform with the Places to Grow Plan and Hamilton-Wentworth Official Plan.

   (ii) It is an appropriate development that will protect existing environmental features, provide safe and sustainable private servicing, and is compatible with the existing and planned uses in the surrounding area, in accordance with the Flamborough Official Plan.

2. Engineering staff has reviewed the revised SWM Report and the Functional Site Grading Plan, submitted by AMEC Earth & Environmental and attached to their memo dated March 10, 2010, and has no objection to lifting the Holding provision from the subject lands.

Vision: To be the best place in Canada to raise a child, promote innovation, engage citizens and provide diverse economic opportunities.

Values: Honest, Accountability, Innovation, Leadership, Respect, Excellence, Teamwork
Staff notes, however, that additional information is required to the SWM Report, as recommended in Special Draft Plan Conditions 4 - 7 (see Appendix “F”). Staff also advises that at the detailed design stage a design brief, prepared by a qualified geotechnical consultant, will be required to address the impact of the proposed ponding within the roadside ditches on the long-term structural stability of the road sub grade. In addition, the said report should provide, if required, recommendation as to how to mitigate the negative impact of high water level along the roadside ditches on the road sub grade. Finally, the existing turning circle at the end of Shakespeare Road should be removed and all disturbed areas restored to the City’s satisfaction, at the owner’s expense. These issues have been addressed to the Standard Form Subdivision Agreement and Special Draft Plan Condition 4 (see Appendix “F”).

3. Staff from the City’s Traffic Section has reviewed the applications and confirm that they have no objection to the proposed development. As a condition of Draft Plan Approval, it is requested that all driveways be located to the satisfaction of the Manager of Traffic Engineering and Operations. This will be addressed in the Standard Form Subdivision Agreement.

4. As detailed in the Policy Direction Section of this Report, the type and form of the units have been principally directed by the need for satisfactory private servicing. The existing zoning requires a lot area of 8000m2 and a frontage of 35m. The intent of the existing zoning provisions is in order to ensure that sufficient space is available to accommodate the septic bed and private servicing of each lot.

The applicant is proposing 13 residential lots, with lot sizes ranging from 0.63ha to 0.67ha. While the reduction in area from 8000m2 to 6700m2 appears significant, it should be noted that the existing lots created under “Spencer Creek Estates - Phase 1” are of a similar lot size to that proposed under Phase 2 of the Draft Plan. As such, the proposed lot sizes would be in accordance with Policy B.11.1.2.7, which requires compatibility with existing residential development. Furthermore, the requirement for the 8000m2 lot sizes, as prescribed under the existing zoning, is to ensure sufficient space for private servicing. As discussed in the Policy Direction of this Report, the applicant has satisfactorily demonstrated to staff, through the provision of a Hydro-Geological Report and monitoring analysis, that the proposed lot sizes maintain the intent of this zoning provision and can, therefore, be supported.

Furthermore, as discussed in the Policy Implications Section of this Report, the Official Plan Amendment required in order to facilitate the development of a 13 lot subdivision can be supported given that the inclusion of a Holding provision on the 13th lot would ensure development proceeds cautiously, and that existing ground and surface waters are protected through the satisfaction of a rigorous
monitoring schedule, as required in Draft Plan Conditions 18 - 28 (see Appendix “F”).

5. The frontages would, in general, accord with the existing zone provisions, save and except the three corner lots which (Lots 8-9, 12-13 Appendix “D”), due to their location on the bend of the extended road, would need a reduction from 35m to 20m. Given that the lot areas would generally be consistent, and the size of the building envelope is consistent with the balance of the proposed building lots, it is not considered that the reduction in lot frontage would exert any significant impact on the function of the proposed subdivision nor the character of the existing residential development.

6. In accordance with the City’s Parkland Dedication By-law, and through discussion with staff from the Parks Division, the owner will be subject to a parkland dedication of 5% of the total land area of the subject site. It is noted that lands within Phase 1 of the Spencer Creek Estates had previously been dedicated to the City, and that arrangements had been made, at that time, to acquire the balance of the Phase II Parkland dedication immediately adjacent to the Phase I lands, between the existing Lots 27 and 15 on Spencer Creek Drive (see Appendix “A”). The intent was to ensure both a more appropriately sized community park, as well as to provide parkland in close proximity to the existing school site to the north. The dedicated lands lie outside of the subdivision currently being considered, but already have been zoned and graded for the purpose of Parkland.

7. The Hamilton Conservation Authority stated in their comments that although the property does not contain any natural heritage or natural hazard lands, and is not affected by HCA’s Development, Interference with Wetlands, and Alterations to Shorelines and Watercourse Regulation 97/04, it is located within the Middle Spencer Creek subwatershed area, which flows into Cootes Paradise, Hamilton Harbour, and then Lake Ontario. The drainage area has a Remedial Action Plan to restore the health of the Harbour by reducing the amount of sediment entering the Harbour and Lake Ontario, and by improving stormwater quality.

In accordance with the Remedial Action Plan, HCA advises that new development must address stormwater quantity control with post-development flows meeting pre-development levels, as well as Enhanced (level1) quality control and sediment and erosion control. Consequently, the applicant has submitted a SWM Report, and following discussion with staff, has revised this report further. In response, the HCA, in their letter dated June 7, 2010, has outlined a number of outstanding issues and concerns that remain outstanding.

The HCA, however, notes that most of these concerns and issues, which relate to culvert design, erosion outlets, and swales, can be addressed at the detailed design stage and are, therefore, in a position to support the proposed...
development subject to a number of recommended Draft Plan Conditions. These conditions form part of Appendix “F” - Conditions 14 - 17.

8. In conclusion, it is considered that the proposal has merit and can be supported since the applications would be consistent with the Provincial Policy Statement, Places to Grow Growth Plan, and would implement the intent of the Hamilton-Wentworth Official Plan. The proposal is compatible with surrounding uses, protects existing environmental features, and is an appropriate development consistent with the intent of the Greensville Secondary Plan.

**ALTERNATIVES FOR CONSIDERATION:**

(include Financial, Staffing, Legal and Policy Implications and pros and cons for each alternative)

Should the application be denied, the property would remain within “R2-14(H)” - Settlement Residential - Holding Zone. The current zoning permits the residential development of the lands subject to the lifting of a Holding provision for adequate servicing.

**CORPORATE STRATEGIC PLAN** (Linkage to Desired End Results)


**Environmental Stewardship**

- Natural resources are protected and enhanced.

**APPENDICES / SCHEDULES**

- Appendix “A”: Location Map
- Appendix “B”: Draft Official Plan Amendment
- Appendix “C”: Zoning By-law
- Appendix “D”: Draft Plan of Subdivision
- Appendix “E”: Public Comments
- Appendix “F”: Special Conditions of Draft Plan

:EJ
Attachs. (6)
Appendix “B” to Report PED10170  
(Page 1 of 3)

Schedule “1”

Amendment No. [Redacted] to the  
Official Plan for the former Town of Flamborough

The following text constitutes Official Plan Amendment No. [Redacted] to the Official Plan of the former Town of Flamborough.

Purpose:

The purpose of this amendment is to permit the development of a 13 lot subdivision, notwithstanding that the Development Phasing Policy of the Greensville Secondary Plan only permits 12 lots per phase.

Location:

The lands affected by this amendment are located at the east end of Shakespeare Road, known municipally as 403 Old Brock Road.

Basis:

The basis for permitting the proposal is as follows:

- The proposed amendment is consistent with the Provincial Policy Statement and Greenbelt Legislation.

- The proposed amendment is compatible with the existing and planned development in the immediate area, and represents an efficient use of land that protects existing environmental features.

- The proposed amendment maintains the intent of the Greensville Secondary Plan, as the recommended Holding provision would ensure development proceeds cautiously in order to avoid any degradation to ground and surface water.

Actual Changes:

1. That Schedule B-16 - Greensville Rural Settlement Area, be revised by illustrating the lands have been subject to OPA [Redacted], as shown on Schedule “B” attached to this amendment.

2. That a new Policy be added to the Development Phasing section of the Greensville Secondary Plan as Policy B.11.1.10.6, as detailed below:
Policy B.11.1.10.6. Notwithstanding Policy B.11.1.10.6, a maximum of thirteen (13) lots in a plan of subdivision shall be draft approved for the lands located at 403 Old Brock Road, on the basis that the thirteenth lot be subject to a Holding provision. The Holding provision shall preclude development of the thirteenth lot until such time as the City of Hamilton is satisfied that sufficient monitoring assessment of 10 of the 13 approved lots have been completed, and that it has been demonstrated that the remaining lots can be sustained without unacceptable degradation of the ground and surface waters.

Implementation:

A Zoning By-law Amendment and Plan of Subdivision will give effect to this Amendment.

This is Schedule "1" to By-law No. [number], passed on the [date] day of [date], 2010.

The City of Hamilton

__________________________________  ______________________________
Fred Eisenberger                        Rose Caterini
Mayor                                     Clerk
CITY OF HAMILTON

BY-LAW NO. 

To Amend Zoning By-law No. 90-145-Z (Flamborough), as amended
Respecting lands located at 403 Old Brock Road

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

AND WHEREAS the City of Hamilton is the successor to certain area municipalities, including the former area municipality known as "The Corporation of the Town of Flamborough" 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. 90-145-Z (Flamborough) was enacted on the 5th day of November 1990, and approved by the Ontario Municipal Board on the 21st day of December, 1992;

AND WHEREAS the Council of the City of Hamilton, in adopting Item of Report 10— of the Economic Development and Planning Committee, at its meeting held on the day of , 2010, recommended that Zoning By-law No. 90-145-Z (Flamborough) be amended as hereinafter provided;

AND WHEREAS the By-law will be in conformity with the Official Plan of the City of Hamilton (the Official Plan of the former Town of Flamborough) upon approval of Official Plan Amendment No. proposed by the City of Hamilton but not yet approved in accordance with the provisions of the Planning Act.
NOW THEREFORE the Council of the City of Hamilton enacts as follows:

1. That Schedule “A-37” of Zoning By-law No. 90-145-Z (Flamborough), as amended, is hereby further amended as follows:

   (a) by changing from the “R2-14(H)” - Settlement Residential - Holding Zone to the Residential “R2-32” - Settlement Residential Zone for Block 1; and,

   (b) “R2-14(H)” - Settlement Residential - Holding Zone to the “R2-32(H)” - Settlement Residential - Holding Zone for Block 2;

   the extent and boundaries of which are shown on Schedule “A” annexed hereto and forming part of this By-law.

2. That the amending By-law apply a Holding provision for those lands zoned Site-Specific “R2-32(H)” - Settlement Residential - Holding Zone (Block “2”) in Section 1 of this By-law by introducing the ‘H’ Holding symbol as a suffix to the proposed zone. The Holding provision shall not be removed until such time as the following condition has been completed:

   (i) The Holding provision shall preclude development of the thirteenth lot until such time that a sufficient monitoring assessment of 10 of the 13 approved lots has been completed, and that it has been demonstrated that the remaining lots can be sustained without unacceptable degradation of the ground and surface waters, to the satisfaction of the Director of Planning and Ministry of Health.

   City Council may remove the ‘H’ symbol, and thereby give effect to the “R2-32” - Settlement Residential Zone, by enactment of an amending By-law once the above condition has been satisfied.

3. That Section 7 - Settlement Residential Zone of Zoning By-law No. 90-145-Z (Flamborough), as amended, is hereby further amended by adding a new Subsection “7.3.32”, as follows:

   7.3.32 “R2-32” (See Schedule A-37)

   Permitted Uses

   (a) Subsection 7.1 shall apply.
Zone Provisions

(a) Lot Area (minimum) .................. 6,300 square metres.

(b) Lot Frontage (minimum) ............. 35 metres (except for corner lots which shall be 20 metres).

(c) All other zone provisions of Subsection 7.3.9 shall apply.

4. That 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 and ENACTED this [blank] day of [blank], 2010.

______________________________   ________________________________
Fred Eisenberger                   Rose Caterini
Mayor                             Clerk

OPA-08-017 / ZAC-08-075 / 25T200807
This is Schedule "A" to By-Law No. 10-
Passed the ........... day of ....................., 2010

Schedule "A"
Map Forming Part of By-Law No. 10-______
to Amend By-law No.90-145-Z

Subject Property
403 Old Brock Road

Block 1 - Change in zoning from the R2-14(H)
Settlement Residential - Holding Zone to the R2-32
Settlement Residential Zone

Block 2 - Change in zoning from the R2-14(H)
Settlement Residential - Holding zone to the R2-32(H)
Settlement Residential - Holding Zone
John, Edward

From: JayEmail [jmillerr@temtronic.ca]
Sent: Monday, July 27, 2009 5:31 PM
To: John, Edward
Subject: Re: Spencer Creek Estates expansion

Hello Mr. John

Thank you very much for the speedy reply.

Yes, I'd like to be notified when the meeting is to be held.

My address is

Jay Miller
380 Old Brock Road
Dundas, On L9H 6A8

Could you also please tell me if my property at 384 Old Brock Road could have a house built on it? It's roll number is 10300107. My company, Temtronic Designs Inc. actually owns it.

Seems everytime I talk to 'city hall' I get different answers( 1/2 acre, 2 acres, 1 acre, 4000 M). I know it's zoned R1, if that helps.

Your help is appreciated.

Sincerely

Jay Miller

7/5/2010
Fax to (905) 540-6142
January 28, 2009

Edward John
City of Hamilton
Planning and Economic Development and Department
Planning Division – Development Planning – West Section
77 James Street North, Suite 400
Hamilton, ON L8R 2K3

Dear Sir:

Re: Notice of Official Plan Amendment Application (File No. OPA-08-017), Proposed
Zoning By-law Amendment Application (File No. ZAH-08-075) and Draft Plan of
Subdivision (25T200807)

Thank you for the Notice advising that complete applications have been received by Hamilton’s
Planning and Economic Development Department to amend the Flamborough Official Plan and
Zoning By-law, and for Approval of a Draft Plan of Subdivision for lands at 403 Old Brock Road,
dated January 14, 2009, and received by Rothsay, A Division of Maple Leaf Foods Inc. on

Rothsay has a direct interest in ensuring that a sufficient buffer is maintained between its
industrial property and the neighbouring residential land uses, to prevent incompatible land
uses, especially within the range of the “actual influence area” for potential odour impact from
the Rothsay rendering plant located at 880 Hwy #5, West, Dundas, Ontario, L9H 5G1.

Rothsay respectively requests that the city take into account the following information when
evaluating this application for proposed Plan of Subdivision, respecting the need for maintaining
proper residential and industrial/agricultural interface.

1 CRITICAL CONSIDERATIONS FOR APPROVAL OF THIS APPLICATION

Rothsay requests that the Planning and Economic Development Department consider the
application(s) on the basis of the following criteria:

♦ is it consistent with the objectives of the 1996 (amended in 1997) or 2005
  Provincial Policy Statements (“1997 PPS or 2005 PPS”)?
♦ does it comply with the severance policies of the Town of Flamborough Official
  Plan, specifically Policy B.11.1.2.4, the Greensville Secondary Plan?
♦ does it comply with the Ministry of the Environment D-6 Guideline “Compatibility
  between Industrial Facilities and Sensitive Land Uses” (“MOE D-6 Guideline”)?
♦ is it compatible with the existing surrounding industrial land uses? and
♦ does it reflect proper planning and development principles for the area?
2  HISTORY OF RENDERING AT THE ROTHSAY PLANT

The Rothsay rendering plant has a long history at this location.

In the 1950s, a local farming family first used the Rothsay Plant for rendering. In the 1960s, the family named the plant Orenco and they continued to expand the plant. In the mid-1980s, Canada Packers bought Orenco. Orenco became a Rothsay company in about 1990. Subsequent amalgamations of Canada Packers resulted in the creation of Maple Leaf Foods Inc. and in about 1995, Rothsay became a member of Maple Leaf Foods Inc. The plant continues to operate under the ownership of Maple Leaf Foods Inc. and has been a member of the economic community in the area for over fifty years.

2.1  RENDERING PROCESS

Rendering is a process of removing water from inedible animal by-products (such as bone, fat, offal, mixed meat trimmings and other animal by-product wastes from in-house butcher shops and further processing plants, blood and recycled and used restaurant and cooking oil/grease) to produce valuable commodities for the chemical and agribusiness industries in the form of tallow, protein meals and grease.

The Rothsay Dundas plant operates three shifts per day and employs roughly 145 fulltime personnel.

Rendering of inedible material is accomplished by:

♦ reducing the size of the material to be processed through grinding
♦ evaporating the majority of the water content from the material
♦ separation of the liquid tallow or grease from the protein solid fraction
♦ capturing the tallow for sale as a finished product
♦ milling of the separated solid matter to produce protein meal for sale as a finished meal
♦ treating the evaporated water for plant recycled/reuse or discharging it after treatment

Rothsay provides an essential service for the agricultural industry and Ontario. Rothsay receives approximately 95% of the inedible animal by-products, blood and grease generated in Ontario and the Dundas plant processes approximately 50% of this material, including all restricted ruminant and mixed materials slaughtered and processed for human consumption. These otherwise waste materials are processed into valuable final product commodities critical to the agribusiness industry in Ontario.

Rothsay recycles the inedible materials into valuable products, including high protein meat and bone meal, blood meal, tallow and yellow grease. Protein meal and tallow are used in livestock feed as well as fertilizer. Tallow and yellow grease are critical input feed sources for the biofuels industry and for the oleochemical industry where their chemical components are separated and used in the manufacture of lubricants, detergents, paint, cosmetics, rubber and textiles.

2.2  ODOUR

A by-product of the rendering process is odour.

Odour from Rothsay's plant and/or material transportation and receipts can emanate from time-to-time notwithstanding Rothsay's significant and continued efforts to reduce odour through state-of-the-art odour control technologies and wastewater treatment systems.

Notwithstanding these odour mitigation steps, Rothsay can still occasionally generate odours that result in complaints from surrounding neighbours.
3 SUBMISSIONS

3.2 LEGAL TEST FOR SEVERANCE APPLICATIONS

The Planning Act requires consideration of land use compatibility issues on amendment applications. Accordingly, the Planning Act requires protection for major industrial facilities from incompatible land uses including residential uses.

Rothsay proposes the amendment application does not comply with the comprehensive planning regime adopted by the City of Hamilton for this area. The application does not meet the requirements of the Planning Act, is contrary to the 1997 and 2005 PPS, is not compatible with the Town of Flamborough Official Plan, namely, the Greensville Secondary Plan, and is contrary to the MOE D-6 Guideline. Further, the Ontario Municipal Board has repeatedly stated that land use compatibility must be considered when reviewing all new development proposals.

3.3 PLANNING REGIME

3.3.1 PLANNING ACT AND PROVINCIAL POLICY STATEMENTS

Section 3(5) of the Planning Act, as it existed on February 28, 2005, required that decisions of the Committee of Adjustment "shall have regard to" the 1997 PPS. The Planning Act, as of March 1, 2005 for new applications, requires that the Committee of Adjustment "shall be consistent with" the 2005 PPS on planning matters. Hamilton staff has been applying the "shall be consistent with" standard as a best practice even before the new standard became applicable.

This application must meet the requirements of both the 1997 and 2005 PPS.

Policy 1.1.1(f) of the 1997 PPS recommends planning authorities to promote cost effective development patterns by avoiding:

... land use patterns which may cause environmental or public health and safety concerns...

Policy 1.3.1(g) of the 1997 PPS recommends planning authorities support long-term economic prosperity by:

planning so that major facilities (such as ... industries ...) and sensitive land uses are appropriately designed, buffered and/or separated from each other to prevent adverse effects from odour, noise and other contaminants

Similarly, Policy 1.1.1(c) of the 2005 PPS requires planning authorities to sustain healthy, livable and safe communities by:

avoiding development and land use patterns which may cause environmental or public health and safety concerns

As well, Policy 1.7.1(e) of the 2005 PPS requires planning authorities to support long-term economic prosperity by:

planning so that major facilities (such as ... industries ...) and sensitive land uses are appropriately designed, buffered and/or separated from each other to prevent adverse effects from odour, noise and other contaminants, and minimize risk to public health and safety
3.3.2 GREENSVILLE SECONDARY PLAN

The Greensville Secondary Plan, Section 8.11.1.2.10, requires that proponents of new residential developments in proximity to industry shall:

... consult with appropriate public agencies and carry out any necessary studies to determine if the proximity to such industry may be offensive to the enjoyment of property by existing and future residents, or impact on the operations or expansions of existing industrial users, by reason of emission of odour... .

To Rothsay's knowledge, a study has not been conducted of odour impacts, from industry and agriculture in the area, in support of this amendment. Thus, there is a requirement to have documented evidence to show that the proposed residential use will not be negatively impacted by the existing industrial and agricultural use in the area.

3.3.3 MOE D-6 GUIDELINE - LAND USE COMPATIBILITY

The objective of the MOE D-6 Guideline is to prevent or minimize the encroachment of sensitive land use upon industrial land use and vice versa. These two types of land uses are normally incompatible due to possible adverse effects on sensitive land use created by industrial operations.

Residential uses are considered “sensitive” 24 hours per day.

“Adverse effects” are defined to include “harm or material discomfort to any person” and “loss of enjoyment of normal use of property”.

Measured in a direct line, the subject property in this application is approximately 250 metres from Rothsay's property line and approximately 500 metres away from where Rothsay's property is zoned Rural Industrial.

Under the MOE D-6 Guideline, the Rothsay facility is defined as a Class III facility:

Class III Industrial Facility

A place of business for large scale manufacturing or processing, characterized by: large physical size, outside storage of raw and finished products, large production volumes and continuous movement of products and employees during daily shift operations. It has frequent outputs of major annoyance and there is high probability of fugitive emissions. See Appendix A of this guideline for classification criteria and examples to categorize a specific industry.

Under the MOE D-6 Guideline, the MOE indicates that adverse effects may occur within 1000 m of Class III facilities.

As well the subject property in the application is within the range of the “actual influence area” for odour impact from the Rothsay Dundas rendering plant. Rothsay has received odour complaints from very nearby residential neighbours and from residential neighbours located further away than the location of the proposed severance.
Appendix “E” to Report PED10170 (Page 6 of 7)

Approval of this application may contravene the MOE D-6 Guidelines. The development of a subdivision for single family lots is incompatible with Rothsay’s nearby industrial use. In addition, it would potentially change the character of the neighbourhood and create pressure for the continued expansion of the residential area all of which would be in non-compliance with the Ministry of the Environment’s Guideline.

3.3.4 OMB HAS CONSISTENTLY DENIED APPLICATIONS THAT WOULD RESULT IN INCOMPATIBLE LAND USES

The Ontario Municipal Board (“OMB”) has refused to permit new residential development in proximity to food processing plants. The OMB has considered the negative impacts on residential uses that result from nearby industrial uses. In its decisions the OMB has stated that industrial land uses require planning protection from neighbours’ complaints

The OMB rejected a request for the approval of new residential development in proximity to a food processing plant from which there were noise emissions. Winess Developments Ltd. v. Mississauga, O.M.B.D. No. 1603, November 1994 is analogous to the application that is before the Planning Department in this case.

In Winess, the OMB rejected a proposal for a new residential development on a site with industrial neighbours. Nabisco owned Reid Mills, the northerly neighbour to Winess. Reid Mills had an extensive history of noise complaints from nearby residents. In particular, one resident spearheaded a campaign that resulted in Reid Mills agreeing to implement noise reduction measures for a cost of $255,000.00. The Board considered the history of complaints along with the nature, volume of and proximity to the noise in concluding that complaints by future residents would be foreseeable.

The Winess proposal was rejected because:

The Winess proposal cannot provide an acceptable noise environment for the future residents of the Site. Implementation of the proposal would place Reid Mills in a position of unacceptable risk and subject it to undue restriction in expanding its operations.

and further that,

Given the levels of noise projected by the experts and the likely and predictable effects on residents of the Site and on Reid Mills, we find that the Winess proposal is not compatible with its industrial neighbour.

In Etobicoke (City) Official Plan Amendment No. C-65-86 (Re), [1992] O.M.B.D. No. 656 the OMB addressed the issue of residential and industrial land compatibility and stated:

Not only do residential uses need protection from the noise, odour and truck traffic generated from an active industrial use, but the industrial use needs protection to carry on its manufacturing and shipping in an efficient and effective manner from complaints and with security of its existence.
I trust these comments will be useful in your review of these applications. Rothsay is committed to co-existing with its neighbours in a manner that minimizes its impact on the community. However, we believe it is important to highlight that there are important industrial and agricultural activities that take place in this area, and that suitable protections should be considered in all planning decisions to facilitate that co-existence between all sectors of the community.

Respectfully yours,

Duff Moore
Plant Manager, Rothsay Dundas

cc: Jim Long, VP and GM Core Rendering, Rothsay, A Member of Maple Leaf Foods
    Councillor Robert Pasuta, Ward 14
Special Conditions of Draft Plan Approval for 25T-200807, 403 Old Brock Road, Flamborough

That, prior to registration, the owner agrees, in writing, to:

1. That this approval apply to the Draft Plan of Subdivision 25T-200807 “Spencer Creek Estates - Phase II”, prepared by Barich Grenkie Surveying Ltd., and certified by E.J. Grenkie, O.L.S., dated April 1, 2009, showing 13 lots for single-detached dwellings, and the extension of 1 street (Shakespeare Road), attached as Appendix “B” to Report PED10170, subject to the owner entering into a Standard Form Subdivision Agreement, as approved by City Council, and with the special conditions:

   Engineering:

2. That, prior to registration, the owner establishes a stormwater management block at the south end of Midsummer’s Lane on the final plan and dedicates said block to the City of Hamilton, to the satisfaction of the director of Development Engineering.

3. That, prior to registration, the owner establishes drainage and stormwater facilities easements in favour of the City of Hamilton over the draft plan lands, to the satisfaction of the Director of Development Engineering.

4. That, prior to servicing, the owner includes in the engineering design and cost estimate schedules provision to remove the existing temporary turning circle at the end of Shakespeare Road, and to restore all disturbed areas, to the satisfaction of the Director of Development Engineering.

5. That, prior to servicing, the owner demonstrates that the pre-development water balance model and peak flow rates for subject lands are maintained for all storm events, to the satisfaction of the Director of Development Engineering.

6. That, prior to servicing, the owner includes in the engineering design details, backed-up with the sufficient calculations, to demonstrate that Level 1 quality control of surface runoff is provided on the site.
7. That, **prior to servicing**, the owner agrees to identify on the engineering plans, and to include in the cost estimate schedules, all necessary works that may include, but not be limited to, re-grading existing ditches, raising the existing centreline elevations, removal of existing culverts, etc., at the owner’s sole expense, to accommodate the proposed stormwater management concept for the subject lands, to the satisfaction of the Director of Development Engineering.

8. That, **prior to servicing**, the owner provides a design brief, prepared by a qualified geotechnical consultant, to address the impact of ponding within the roadside ditches on the long-term structural stability of road sub grade, and to implement the recommendations of the said brief, at his expense, to the satisfaction of the Director of Development Engineering.

9. That, **prior to servicing**, the owner agrees to install street lighting on Shakespeare Road, at his expense, to the satisfaction of the Director of Development Engineering.

10. That, **prior to registration**, the owner agrees to include the following warning clauses in the agreements for purchase/sale for all lots regarding the stormwater management features implemented within the draft plan lands:

   “Future owners/tenants are advised that source stormwater management features are located on the subject lands. Please refer to the fact sheets for the specific feature implemented on the particular lot. The owner/tenant is advised that it is their responsibility to ensure that the site-specific stormwater features are properly maintained and perform as designed to fulfill the stormwater management objectives for this development”.

   “Future owners/tenants of the lots within the draft plan lands are advised that the proposed swales/ditches are to be maintained in their natural state, and shall not be regularly cleaned by the City. Also, an intermittent ponding in the swales/ditches is to be expected”.

**Development Planning**

11. That, **prior to registration**, the owner/applicant shall prepare a hydro-geological investigation, to the satisfaction of the City of Hamilton, Infrastructure and Source Water Protection Division. This report, and any subsequent peer review costs, shall be borne by the owner/applicant, and shall illustrate how the proposed development will affect the existing lot and boundary lines in terms of septic, and ensure a sufficient potable water supply is available.
12. That, **prior to registration**, the following odour warning clause be included in the Subdivision Agreement and all purchase and sale and/or lease agreements advising prospective purchasers/tenants of the following:

“Purchasers/tenants are advised that at times odours emanating from neighbouring industries may impede the enjoyment of the outdoor amenity areas of the subject property. It has not yet been determined that emission could result in any health hazard.”

13. **That prior to registration:**

   (a) The location of the archaeological site (AhHa-175) be re-established on the subject property in order to accurately capture, define, and delineate the extent of the site. This should be undertaken by the archaeological consulting firm of record for this site or its successor, i.e., Material Culture Management Inc. or Fisher Archaeological Consulting. The site should be appropriately staked in order to accurately delineate the boundary of the archaeological site (AhHa-175). From this defined site, a 20 metre buffer will be demarcated by safety/snow/construction fencing around the perimeter of the entire buffer area, and under no circumstances will the area be disturbed or changed during development and construction activity.

   (b) Upon final grading of the site, and following completion of residential construction on the affected lot or lots, the 20 metre buffer area will be reduced to a permanent 15 metre buffer area and appropriately delineated by a method to be agreed upon by the City and the applicant.

   (c) The only cover on the 15 metre defined buffer area will be sod or other appropriate grass mix.

   (d) A Heritage Conservation Easement be registered on title with the City of Hamilton as the easement holder, and that disturbance of the site and buffer area shall not be permitted unless approved by the easement holder.”

The above conditions shall be carried out in consultation with and to the approval and satisfaction of City of Hamilton Heritage Planning staff. All related archaeological reports shall be submitted to the City of Hamilton concurrent with their submission to the Ministry of Culture.
Hamilton Conservation Authority

14. **That prior to preliminary grading:**
   
   (a) All erosion and sediment control measures shall be installed prior to development and maintained throughout the construction process, until all disturbed areas have been re-vegetated.
   
   (b) All erosion and sediment control measures shall be inspected after each rainfall, to the satisfaction of Authority staff.
   
   (c) Any disturbed area not scheduled for further construction within 45 days will be provided with suitable temporary mulch and seed cover within 7 days of the completion of that particular phase of construction.
   
   (d) All disturbed areas shall be re-vegetated with permanent cover immediately following completion of construction.

15. That, **prior to servicing**, the applicant prepares and implements a stormwater management plan for the subject property, to the satisfaction of the Hamilton Conservation Authority. The approved plan shall ensure that post development flows will equal pre-development levels, and that current Provincial drainage and stormwater quality guidelines are implemented.

16. That, **prior to servicing**, the applicant prepares a water balance in order that pre-development infiltration levels are being maintained, to the satisfaction of the Hamilton Conservation Authority and the Director of Development Engineering.

17. That, **prior to registration**, the applicant prepares and implements a lot grading plan, to the satisfaction of the Hamilton Conservation Authority.

Public Works

18. That the applicant shall commence a groundwater monitoring program following a confirmation of 80% occupancy (i.e. 10 of 12 lots) of the “Spencer Creek Estates - Phase II” development. The groundwater monitoring program will be for a period of 2 years, to the satisfaction of the Manager, Infrastructure and Source Water Planning, Environment and Sustainable Infrastructure, Public Works Department, and the Manager of Public Health.
19. That the owner agrees to the installation of four shallow monitoring wells to the top of the silt layer reported by Peto McCallum Study (~5m deep), screened in the overlying fine sand unit. The locations of the four shallow monitoring wells will not be installed until there is agreement regarding the location of these wells between the proponent and the Manager, Infrastructure and Source Water Planning, Environment and Sustainable Infrastructure, Public Works Department. These wells will not be installed until 80% of “Spencer Creek Estates - Phase II” homes are occupied.

20. That the owner agrees to twice annual sampling of raw (i.e. untreated) water from the four on-site shallow monitoring wells, in May and October of each year. Sampling will commence with the confirmation of 80% occupancy, and every 6-months thereafter, for 2 years, accordant with Section B.11.1.9.5 of the Greensville Secondary Plan and the following:

- The Developer will notify the Manager, Infrastructure and Source Water Planning, and the Manager, Health Protection, Public Health Services, when 80% of the “Spencer Creek Estates - Phase II” homes are occupied, and will substantiate the date upon which 80% occupancy occurred. Occupancy needs to be substantiated by means of an Occupancy Permit for each home;

- The groundwater monitoring plan will be deemed to have started on the day in October or May when the first set of water samples are collected from the monitoring wells after 80% occupancy of “Spencer Creek Estates - Phase II” is achieved;

- Groundwater monitoring may need to continue beyond two years, and monitoring locations may need to be changed, increased in frequency, etc., depending on the analysis of the initial phase of monitoring - to be determined jointly by the Manager, Infrastructure and Source Water Planning, and the Manager, Health Protection, Public Health Services;

- An Access Agreement (on behalf of both the proponent, or agent, and the City) for water sampling purposes, for the period of time that groundwater monitoring is being conducted, shall be entered into with residents/homeowners at each lot in “Spencer Creek Estates - Phase II”. This is to ensure that access to private property is available in the event groundwater monitoring locations need to change in the future to include the sampling and testing of water from privately owned wells.

All to the satisfaction of, the Manager, Infrastructure and Source Water Planning, Environment and Sustainable Infrastructure, Public Works Department, and the Manager of Public Health.
21. That the owner agrees that the sampling suite for the on-site shallow monitoring wells shall include nitrates, total organic carbon (TOC), and orthophosphate, to the satisfaction of the Manager, Infrastructure and Source Water Planning, Environment and Sustainable Infrastructure, Public Works Department, and the Manager of Public Health.

22. That the owner agrees that the water level monitoring of the on-site shallow monitoring wells will be taken during the quality sampling events, and subsequently tabulated, mapped, and discussed in terms of shallow groundwater flow and gradient, trends, and response to precipitation/climate conditions in each Annual Report, to the satisfaction of the Manager, Infrastructure and Source Water Planning, Environment and Sustainable Infrastructure, Public Works Department, and the Manager of Public Health.

23. That the owner agrees that the water supply wells for “Spencer Creek Estates - Phase II” should be completed in the dolostone bedrock in conformance with O. Reg. 903, particularly with regard to annulus sealing to ensure surface runoff and shallow depth groundwater/tile effluent cannot reach the water-bearing fractures of the dolostone, to the satisfaction of the Manager, Infrastructure and Source Water Planning, Environment and Sustainable Infrastructure, Public Works Department, and the Manager of Public Health.

24. That the owner agrees that as the wells are constructed, driller logs will be maintained for inclusion in the Annual Report. This will include all residential supply wells and monitoring wells for “Spencer Creek Estates - Phase II”, up to and including those drilled to service 80% occupancy, as well as those developed subsequently over the time frame of the monitoring program, to the satisfaction of the Manager, Infrastructure and Source Water Planning, Environment and Sustainable Infrastructure, Public Works Department, and the Manager of Public Health.

25. That the owner agrees to provide an Annual Report, prepared by a qualified person, with observations, discussion of any trends and recommendations, delivered to the Manager, Infrastructure and Source Water Planning, Environment and Sustainable Infrastructure, Public Works Department, no later than March 31 of each year commencing after the monitoring program is initiated, to the satisfaction of the Manager, Infrastructure and Source Water Planning, Environment and Sustainable Infrastructure, Public Works Department, and the Manager of Public Health.
26. That the owner agrees to provide a security representative of the amount of the cost of the monitoring sampling and reporting program, in the event that the owner is unable or unwilling to complete the program, and the City of Hamilton must assume its completion. The security will be held by the City and be returned to the owner upon completion of the program, to the satisfaction of the Manager, Infrastructure and Source Water Planning, Environment and Sustainable Infrastructure, Public Works Department, and the Manager of Public Health.

27. That the owner agrees that in accordance with the provisions of the Greensville Secondary Plan (Section B.11.1.9.6), if the well monitoring program reveals detrimental impacts on the water supply in the surrounding area, mitigation measures to address such impacts must be proposed by the developer. The mechanisms for implementing the mitigation measures will be identified and carried out, to the satisfaction of the Manager of Infrastructure and Source Water Planning, Environment and Sustainable Infrastructure, Public Works Department. The following will apply:

a) The developer will implement contingencies to remedy and/or stop the progress of any perceived negative impacts on the groundwater, as determined through the monitoring. The contingencies will include, at a minimum, a combination of the following:

i. Installation of sewage effluent treatment equipment on sewage systems within “Spencer Creek Estates - Phase II” that will treat the sewage to a to-be-determined criteria, to the satisfaction of the Manager, Infrastructure and Source Water Planning;

ii. Installation of drinking water treatment equipment that meets NSF Standards for the parameter(s) of concern, at locations to be determined, and to the satisfaction of the Manager, Health Protection, Public Health Services.

28. That the owner agrees that in accordance with the Greensville Secondary Plan Section B 11.1.10.5, the installation of underground lawn watering and irrigation systems, and the filling of swimming pools from well water supplies, shall not be permitted. This condition will be implemented through an appropriate Zoning By-law mechanism, through registration on the site plan and/or on property title. Subsequent property purchasers in perpetuity shall be advised of, and agree to, this caveat as a condition of purchase.
Development Planning

29. That, prior to registration, the owner agrees, in writing, to convey 0.462 ha of land to the City of Hamilton, as provided for under Section 51 of the Planning Act, and in accordance with the City’s Parkland Dedication By-law No. 09-124, as conveyance of the required land, to the satisfaction of the Director of Planning. In this instance, 0.462 ha of land is needed for the park, which is the total land area required to be dedicated.

Director of Planning

30. That, prior to the signing of the final plan, the Director of Planning must be satisfied that Conditions (1) to (29), inclusive, have been carried out, to his satisfaction, with a brief but complete statement indicating how each condition has been satisfied.

Notes:

Should deeply buried archaeological remains be found on the property during any of the above development activities, the Ontario Ministry of Culture (MCL) should be notified immediately (416.314.7143). In the event that human remains are encountered during construction, the applicant/landowner should immediately contact both MCL and the Registrar or Deputy Registrar of the Cemeteries Regulation Unit of the Ministry of Government Services (416.326.8392).

City Cost Sharing:

There is no City share for this development.

The submitted draft plan, prepared by Barich Grenkie Surveying Ltd., dated April 1, 2009, is satisfactory to the Director of Development Engineering, Engineering Division, subject to the above comments and recommendations.