CITY OF HAMILTON

PLANNING AND ECONOMIC DEVELOPMENT DEPARTMENT
Planning Division

TO: Chair and Members Planning Committee  WARD(S) AFFECTED: WARD 8

COMMITTEE DATE: April 19, 2011

SUBJECT/REPORT NO:
Application for Approval of a Zoning By-law Amendment to Hamilton Zoning By-law No. 6593 for Lands Located at 830-836 and 840 Upper James Street (Hamilton) (PED09232(a)) (Ward 8)

SUBMITTED BY:
Tim McCabe
General Manager
Planning and Economic Development Department

PREPARED BY:
Timothy Lee
(905) 546-2424, Ext. 1249

RECOMMENDATION

That approval be given to Zoning By-law Application ZAR-08-066, by J. Beume Real Estate Limited, Owner, for changes in zoning from the “HH/S-509a” (Restricted Community Shopping and Commercial) District, Modified, (Block 3) and the “HH” (Restricted Community Shopping and Commercial) District (Block 4) to the “HH-‘H’/S-509b” (Restricted Community Shopping and Commercial - Holding) District, with a Special Exception, to expand the range of permitted commercial uses to include a restaurant, reduce the required parking space dimension, and prohibit drive-thrus; and from the “H/S-542” (Community Shopping and Commercial, etc.) District, Modified, (Block 2) and the “H” (Community Shopping and Commercial, etc.) District (Block 1) to the “H/S-542a” (Commercial Shopping and Commercial, etc.) District, with a Special Exception, to reduce the required parking space dimension and prohibit drive-thrus, for lands located at 830-836, and 840 Upper James Street (Hamilton), as shown in Appendix “A” to Report PED09232(a) on the following basis:
(a) That the Draft By-law, attached as Appendix “B” to Report PED09232(a), which has been prepared in a form satisfactory to the City Solicitor, be enacted by Council.

(b) That the proposed changes in zoning are in conformity with the Places To Grow Plan, the Hamilton-Wentworth Official Plan, and the City of Hamilton Official Plan.

**EXECUTIVE SUMMARY**

Staff Report PED09232 (see Appendix “C”) was originally brought forward to the Economic Development and Planning Committee on August 10, 2009, in order to consider the application to expand a range of commercial uses, including restaurants, to reduce parking space dimensions, and exclude drive-thrus.

The application was approved and held in abeyance by Committee to allow the applicant to complete and submit a Record of Site Condition (RSC) for Block 4 of the subject property (see Appendix “A”).

RSC documentation was submitted to staff on January 19, 2011 (see Appendix “D”), and the administration fee on January 31, 2011. Based on the review of the RSC, the Ministry of the Environment has restricted the use of the property to the proposed use of a paved parking lot. In this regard, no buildings or subsurface building spaces are permitted until further site remediation is done and a RSC is submitted demonstrating the suitability of these lands for development. Based on this new information, staff is now in a position to present a revised recommendation that will place a Holding Provision on Block 4 of the subject property, where it will be removed pending the submission of a Record of Site Condition (see Appendix “B”).

*Alternatives for Consideration - See Page 4.*

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

Financial: None.

Staffing: N/A.

Legal: As required by the Planning Act, Council shall hold at least one (1) Public Meeting to consider an application for a Zoning By-law Amendment. The requisite Public Meeting was held on August 10, 2009.
HISTORICAL BACKGROUND (Chronology of events)

Council Direction

The Economic Development and Planning Committee, at its meeting of August 10, 2009, passed the following motion:

(a) That the Draft By-law, attached as Appendix “B” to Report PED09232, which has been prepared in a form satisfactory to the City Solicitor, and as amended by Committee on August 10, 2009, to prohibit drive-thrus for any land use on the site, be held in abeyance until such time that the owner submits a signed Record of Site Condition (RSC). The RSC must be to the satisfaction of the Director of Planning, including an acknowledgement of receipt of the RSC by the MOE, and submission of the City of Hamilton’s current RSC administrative fee.

(b) That the proposed changes in zoning are in conformity with the Places To Grow Plan, the Hamilton-Wentworth Official Plan, and the City of Hamilton Official Plan.

ANALYSIS / RATIONALE FOR RECOMMENDATION

(include Performance Measurement/Benchmarking Data, if applicable)

The applicant filed the RSC to the Ministry of the Environment (MOE) for review and approval. In November, 2009, the MOE issued a Certificate of Property Use for Block 4 of the subject property. Sections 4.2 and 4.4 of the Certificate restrict the use of the property to a paved parking lot, and no buildings or any subsurface building spaces are permitted to be constructed on the property (see Appendix “D” - Pages 18-19). In addition, Section 4.3 of the Certificate prohibits Block 4 from agricultural, parkland, institutional, or residential uses. The applicant submitted the RSC to staff on January 19, 2011, and the RSC Administrative Fee on January 31, 2011. As the required document has been submitted, staff is now in the position to bring forward a revised Draft By-law to implement the Certificate of Property Use to Committee for approval.

As a result of use restrictions, as identified in the Certificate of Property Use, the revised draft By-law reflects the requirement of a Holding Provision for Block 4 of the subject property only (see Appendix “B”), which will be removed upon the submission of an RSC to the City. For any future development that would be proposed, the owner will be required to undertake a Phase 1 and 2 Environmental Assessment to identify additional site remediation, and possibly a Risk Assessment. Notwithstanding the Holding Provision on Block 4 of the subject property, a parking lot associated with the existing plaza on the subject property would be a permitted use.
ALTERNATIVES FOR CONSIDERATION
(include Financial, Staffing, Legal and Policy Implications and pros and cons for each alternative)

The subject lands are currently zoned to permit a limited range of commercial uses, including but not limited to, financial institutions, general offices, retail stores, and beauty parlours. However, fast foods and restaurants are currently not permitted. Should the revised draft By-law not be approved, existing commercial uses will continue to be permitted.

CORPORATE STRATEGIC PLAN (Linkage to Desired End Results)


Growing Our Economy

• Newly created or revitalized employment sites.
• Competitive business environment.

Social Development

• Hamilton residents are optimally employed earning a living wage.

APPENDICES / SCHEDULES

• Appendix “A”: Location Map
• Appendix “B”: Revised Draft By-law
• Appendix “C”: Staff Report PED09232
• Appendix “D”: Record of Site Condition and Certificate of Property Use for 840 Upper James Street

TL
Attachs. (4)
CITY OF HAMILTON

BY-LAW NO. 

To Amend Zoning By-law 6593 (Hamilton), respecting lands located at 830-836, and 840 Upper James Street (Hamilton)

WHEREAS the City of Hamilton Act, 1999, Statutes of Ontario 1999 Chap. 14, Schedule C did incorporate, as of January 1\textsuperscript{st}, 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 City of Hamilton” and is the successor of 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 and Official Plans of the former area municipalities and the Official Plan of the former regional municipality continue in force in the City of Hamilton until subsequently amended or repealed by the Council or the City of Hamilton;

AND WHEREAS Zoning By-law No. 6593 (Hamilton) was enacted on the 25\textsuperscript{th} day of July 1950, which was approved by the Ontario Municipal Board by Order dated the 7\textsuperscript{th} day of December 1951 (File No. P.F.C. 3821);

AND WHEREAS the Council of the City of Hamilton, in adopting Item \textbf{[illegible]} of Report 11-\textbf{[illegible]} of Planning Committee, at its meeting held on the \textbf{[illegible]} day of \textbf{[illegible]}, 2011, recommended that Zoning By-law No. 6593 (Hamilton) be amended as hereinafter provided;

AND WHEREAS this By-law is in conformity with the Official Plan of the City of Hamilton (the Official Plan of the former City of Hamilton) in accordance with the provisions of the Planning Act.
NOW THEREFORE the Council of the City of Hamilton enacts as follows:

1. That Sheet No. W-9 of the District Maps, appended to and forming part of By-law No. 6593 (Hamilton), as amended, is further amended as follows:

   (a) That Block 1 be re-zoned from the “H” (Community Shopping and Commercial, etc.) District to the “H/S-542a” (Community Shopping and Commercial, etc.) District, Modified;

   (b) That Block 2 be re-zoned from the “H/S-542” (Community Shopping and Commercial, etc.) District, Modified, to the “H/S-542a” (Community Shopping and Commercial, etc.) District, Modified;

   (c) That Block 3 be re-zoned from the “HH/S-509a” (Restricted Community Shopping and Commercial) District, Modified, to the “HH/S509b” (Restricted Community Shopping and Commercial) District, Modified; and,

   (d) That Block 4 be re-zoned from the “HH” (Restricted Community Shopping and Commercial) District to the “HH-'H'/S-509b” (Restricted Community Shopping and Commercial-Holding) District, Modified;

   on the lands, the extent and boundaries of which are shown on a plan hereto annexed as Schedule “A”.

2. That the “H” (Community Shopping and Commercial, etc.) District regulations, as contained in Section 14 of Zoning By-law No. 6593, as amended by By-law No. 77-240, is further modified to include the following special requirements:

   (i) Notwithstanding Section 18A(7) of Zoning By-law No. 6593, that every required parking space, other than a parallel parking space, shall have dimensions not less than 2.6 metres wide and 5.5 metres long.

   (ii) Notwithstanding Section 14(1) of Zoning By-law No. 6593, drive-thru facilities are prohibited.

3. That 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 “H” (Community Shopping and Commercial, etc.) District, Modified, provisions, subject to the special requirements referred to in Section 2.
4. That the “HH” (Restricted Community Shopping and Commercial) District regulations, as contained in Section 14A of Zoning By-law 6593, as amended by By-law No. 81-329, be further modified to include the following special requirements:

(i) Notwithstanding Section 1 of By-law 81-329, restaurants shall also be permitted.

(ii) Notwithstanding Section 18A(7) of Zoning By-law No. 6593, every required parking space, other than a parallel parking space, shall have dimensions not less than 2.6 metres wide and 5.5 metres long.

(iii) Notwithstanding Section 14(1) of Zoning By-law No. 6593, drive-thru facilities are prohibited.

5. That 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 “HH/S-509” (Restricted Commercial Shopping and Commercial) District, Modified, provisions, subject to the special requirements referred to in Section 4.

6. That the ‘H’ symbol applicable to the lands referred to in Section 1(d) of this By-law shall be removed conditional upon:

(a) The owner/applicant submitting a signed Record of Site Condition (RSC) to the City of Hamilton and the Ministry of the Environment (MOE). The RSC must be to the satisfaction of the Director of Planning, including an acknowledgement of receipt of the RSC by the MOE, and submission of the City of Hamilton’s current RSC administrative fee.

City Council may remove the ‘H’ symbol and thereby give effect to the “HH/S-509b” (Restricted Commercial Shopping and Commercial) District, Modified, by enactment of an amending By-law once the above condition has been fulfilled.

The requirement for the removal of the ‘H’ Holding symbol shall not apply to the development of a Commercial Parking Lot on the subject lands.

7. That Zoning By-law No. 6593 is amended by adding this By-law to Section 19B as Schedules S-542a and S-509b.

8. That Sheet W-9b of the District Maps is amended by marking the lands referred to in Section 1 of this By-law as S-542a and S-509b.
9. That the Clerk is hereby authorized and directed to proceed with the giving of notice of passing of this By-law, in accordance with the Planning Act.

PASSED and ENACTED this [_____] day of [_____], 2011.

R. Bratina
Mayor

Rose Caterini
Clerk

ZAR-08-066
Appendix "B" to Report PED09232(a) (Page 5 of 5)

This is Schedule "A" to By-Law No. 11-
Passed the .......... day of ..................., 2011

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Clerk
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Mayor

Schedule "A"

Map Forming Part of By-Law No. 11-______
to Amend By-law No. 6593

Subject Property
830-836 & 840 Upper James Street

- Block 1 - Change in Zoning from the "H" (Community Shopping and Commercial, etc.) District, Modified to the "HS-542a" (Community Shopping and Commercial, etc.) District, Modified.
- Block 2 - Change in Zoning from the "HS-542" (Community Shopping and Commercial, etc.) District, Modified to the "HS-542a" (Community Shopping and Commercial, etc.) District, Modified.
- Block 3 - Change in Zoning from the "HH/S-569a" (Restricted Community Shopping and Commercial) District to the "HH/S-569b" (Restricted Community Shopping and Commercial) District, Modified.
- Block 4 - Change in Zoning from the "HH" (Restricted Community Shopping and Commercial-Holding) District to the "HH/S-569a" (Restricted Community Shopping and Commercial-Holding) District, Modified.
That approval be given to amended Zoning By-law Application ZAR-08-066, by J. Beume Real Estate Limited, Owner, for changes in zoning from the “HH/S-509a” (Restricted Community Shopping and Commercial) District, Modified, (Block 3) and the “HH” (Restricted Community Shopping and Commercial) District (Block 4) to the “HH/S-509b” (Restricted Community Shopping and Commercial) District, with a Special Exception, to expand the range of permitted commercial uses to include restaurants without drive-thrus and reduce the required parking space dimension; and from the “H/S-542” (Community Shopping and Commercial, etc.) District, Modified, (Block 2) and the “H” (Community Shopping and Commercial, etc.) District (Block 1) to the “H/S-542a” (Commercial Shopping and Commercial, etc.) District, with a Special Exception, to reduce the required parking space dimension for lands located at 830 - 836, and 840 Upper James Street (Hamilton), as shown in Appendix “A” to Report PED09232 on the following basis:

(a) That the Draft By-law, attached as Appendix “B” to Report PED09232, which has been prepared in a form satisfactory to the City Solicitor, be held in abeyance until such time that the Owner submits a signed Record of Site Condition (RSC). The RSC must be to the satisfaction of the Director of Planning, including an acknowledgement of receipt of the RSC by the MOE, and submission of the City of Hamilton’s current RSC administrative fee.

(b) That the proposed changes in zoning are in conformity with the Places To Grow Plan, the Hamilton-Wentworth Official Plan, and the City of Hamilton Official Plan.

Tim McCabe
General Manager
Planning and Economic Development Department
SUBJECT: Application for Changes in Zoning for Lands Located at 830 - 836, 840 Upper James Street (Hamilton) (PED09232) (Ward 8) - Page 2 of 9

EXECUTIVE SUMMARY:

The purpose of the Zoning By-law Amendment is to further modify the current zoning in order to permit a restaurant as an additional use and reduce the minimum parking space dimensions for the existing commercial plaza. The proposed By-law also prohibits drive-thru facilities on the subject lands.

A Holding Provision will be placed on the portion of the property that is currently zoned “HH” (Restricted Community Shopping and Commercial) District (Block 4 - Appendix “A”) of the commercial plaza, where the current use is the existing parking lot and landscaping. The southerly portion of the subject lands (Block 4) was previously used as a gas station. Future development of Block 4 will require the removal of the Holding Provision, and will be removed upon the submission of a signed Record of Site Condition to the City and the Ministry of Environment.

The proposal has merit and can be supported as it is consistent with the Provincial Policy Statement and Places To Grow, and conforms to the Hamilton-Wentworth Official Plan, and the City of Hamilton Official Plan. The proposal is compatible with similar commercial uses along Upper James Street, and is not anticipated to affect the surrounding residential neighbourhood to the west of the subject lands.

BACKGROUND:

Proposal:

The subject land is located on the southwest corner of Upper James Street and Mohawk Road West. Caledon Avenue is located directly to the west of the property (see Appendix “A”). The property is approximately 7,668 square metres in size and includes 830-836 and 840 Upper James Street, which were merged on title as a result of a recent acquisition of the site. There are multiple site-specific zoning regulations on the subject property. The northern portion (Block 1) is zoned “H” (Community Shopping and Commercial, etc.). The middle portion (Block 2) is zoned “H/S-542” (Community Shopping and Commercial, etc.) District, Modified, and the lower portion of the property (Block 3) is zoned “HH/S-509a” (Restricted Community Shopping and Commercial) District, Modified. Finally, 840 Upper James Street (Block 4) is currently zoned “HH” (Restricted Community Shopping and Commercial) District (see Appendix “A”).

The approval of the Zoning By-law Amendment application will result in the further modification of the established site-specific zoning on the subject lands by adding restaurants as an additional use, and excluding drive-thrus.

In addition, the amendment will reduce the parking space dimensions for all of the subject lands from 2.7 metres by 6.0 metres to 2.6 metres by 5.5 metres. This reduced parking dimension is consistent with the parking standards under the new City of Hamilton Zoning By-law No. 05-200.
SUBJECT: Application for Changes in Zoning for Lands Located at 830 - 836, 840 Upper James Street (Hamilton) (PED09232) (Ward 8) - Page 3 of 9

Details of Submitted Application

Location: 830-836, and 840 Upper James Street

Owner/Applicant: Jack Beume Real Estate Limited

Property Description:

- **Frontage:** 125 metres (approx.)
- **Lot Depth:** 59 metres
- **Area:** 0.7668 ha

EXISTING LAND USE AND ZONING:

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<th>Existing Land Use</th>
<th>Existing Zoning</th>
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Surrounding Lands:

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<th>Existing Zoning</th>
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</thead>
<tbody>
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<td>Commercial Retail</td>
<td>“G-1” (Designed Shopping Centre District)</td>
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<tr>
<td>West</td>
<td>Single Detached Dwellings</td>
<td>“C” (Urban Protected Residential, etc) District</td>
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<td>South</td>
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SUBJECT: Application for Changes in Zoning for Lands Located at 830 - 836, 840 Upper James Street (Hamilton) (PED09232) (Ward 8) - Page 4 of 9

ANALYSIS/RATIONALE:

1. The proposal has merit and can be supported for the following reasons:
   
   (i) It is consistent with Places To Grow as it relates to accommodating local services within intensification corridors.
   
   (ii) It is consistent with the Provincial Policy Statement and conforms with the Hamilton-Wentworth Official Plan.
   
   (iii) It conforms to the “Commercial” designation of the City of Hamilton Official Plan and conforms to the “Commercial” Designation of the Yeoville Neighbourhood Plan.
   
   (iv) The proposal is compatible with similar commercial uses along Upper James Street, and is not anticipated to affect the surrounding residential neighbourhood.

2. This Zoning By-law Amendment application was originally submitted to modify the current zoning to permit a drive-thru restaurant for the southerly portion of the property, and to reduce the minimum required parking space dimensions throughout the entire commercial plaza.

   In response to the circulation of the original application, traffic staff advised that the proposed restaurant, with a drive-thru facility, would result in an increase in vehicular traffic entering the commercial plaza creating vehicular safety along Upper James Street. In addition, the drive-thru would require a stacking lane of 17 vehicles, which would compromise internal traffic circulation. The applicant has since amended the application to change the requested proposal for a stand-alone restaurant with a drive-thru facility, and, instead to permit only the restaurant use throughout the entire plaza with changes to the parking space dimensions.

3. The proposed modification to the “HH/S-509a” (Restricted Community Shopping and Commercial, etc.) District to permit a restaurant will allow for a more uniform list of permitted commercial uses throughout the entire commercial plaza. Currently, restaurant uses are only permitted in the other zoning districts on the property (i.e. Blocks 1, 2 and 4). Adding restaurants to the permitted range of commercial uses in the “HH/S-509a” (Restricted Community Shopping and Commercial, etc.) District (Block 3) is compatible with other commercial uses along Upper James Street. Prohibiting drive-thru facilities in the plaza will reduce the number of vehicles entering and exiting the plaza, and potential collisions along Upper James Street. Currently, the Upper James Street and Mohawk Road intersection has one of the highest collision incidences in the City of Hamilton, and prohibiting drive-thru facilities will reduce the number of vehicles from turning left into the plaza from Upper James Street.
SUBJECT: Application for Changes in Zoning for Lands Located at 830 - 836, 840 Upper James Street (Hamilton) (PED09232) (Ward 8) - Page 5 of 9

4. The Zoning By-law Amendment will also permit the modification of Subsection 18A(7) of the City of Hamilton Zoning By-law 6593 to reduce the minimum parking dimensions from the required 2.7 metres by 6.0 metres to the new standard of 2.6 metres by 5.5 metres. This proposed dimension is consistent with the dimensions in Subsection 5.2(b) of the new City of Hamilton Zoning By-law 05-200, and will be the new parking dimension standard for other zoning districts in the future.

5. Part of the subject lands (840 Upper James Street) was formerly used as a gas station. Policy B-2.3 of the Hamilton-Wentworth Official Plan states that the identification of contaminated sites is essential. Redevelopment for Block 4 of the subject property (see Appendix “A”) must not occur until it has been demonstrated that a proposal will not put people at significant risk. As such, a Holding Provision has been included in the proposed Zoning By-law Amendment, and can only be lifted when the following requisite condition has been satisfied:

   That the owner/applicant submits a signed Record of Site Condition (RSC) to the City of Hamilton and the Ministry of the Environment (MOE). The RSC must be to the satisfaction of the Director of Planning, including an acknowledgement of receipt of the RSC by the MOE, and submission of the City of Hamilton’s current RSC administration fee.

6. The applicant submitted an application to the ERASE Study Grant Program (SGP) for the former gas station at 840 Upper James Street. Grants are available to applicants where the City pays up to half of the cost of a Phase II and/or a Phase III Environmental Site Assessment, for a total of $15,000.00 per study, or $20,000.00 per property. As of the time of preparation of this report, the applicant has not submitted the Phase II ESA Report and, as a result, the grant is outstanding.

ALTERNATIVES FOR CONSIDERATION:

If the application is denied, the proposed restaurant use will continue to be prohibited on the portion of the subject land that is zoned “HH/S-509a” (Restricted Community Shopping and Commercial) District (Block 3 - Appendix “B”), but will continue to be a permitted use on the rest of the subject property (Blocks 1, 2 and 4). In addition, current parking dimensions, as identified in Section 18A (7) of the City of Hamilton Zoning By-law No. 6593, will continue to apply.
SUBJECT: Application for Changes in Zoning for Lands Located at 830 - 836, 840 Upper James Street (Hamilton) (PED09232) (Ward 8) - Page 6 of 9

FINANCIAL/STAFFING/LEGAL IMPLICATIONS:

Financial: No financial implications.

Staffing: No staffing implications.

Legal: As required by the Planning Act, Council shall hold at least one (1) Public Meeting to consider an application for a Zoning By-law Amendment.

POLICIES AFFECTING PROPOSAL:

Provincial Policy Statement (PPS)

The application is consistent with the policies that focus growth on settlement areas (Policy 1.1.3.1). In addition, the proposal conforms to policies with regards to densities and efficient use of land and resources (Policy 1.1.3.2). Finally, the proposal conforms to policies with regards to new development in existing built-up areas, and shall have a mix of uses and densities that allow for the efficient use of land (Policy 1.1.3.7).

As the nature of the application is for a modification in zoning to expand the range of commercial uses to include restaurants and to reduce the minimum required parking space dimensions, the application is consistent with the Provincial Policy Statement.

Places To Grow

The application has been reviewed with respect to the Places To Grow Plan. The application is consistent with the policy that encourages a range and mix of employment types within complete communities (Section 2.2.2.h). As a result, the proposal conforms to the Places To Grow Plan.

Hamilton-Wentworth Official Plan

The subject property is designated “Urban Area” in the Hamilton-Wentworth Official Plan. Policy C.3.1 outlines that a wide range of urban uses, as defined through Area Municipal Official Plans and based on full municipal services, will be concentrated in the Urban Areas.

However, Policy B-2.3 requires that redevelopment must not occur until it has been demonstrated that a proposal will not put people at significant risk. As a result, staff has requested a RSC be submitted before Block 4 of the subject lands can be developed because it is the site of a former gas station.

As the application is to expand the range of commercial uses to include restaurants where full municipal services are available, and to reduce the minimum required parking space dimensions, the proposal conforms to the policies of the Hamilton-Wentworth Official Plan.
SUBJECT: Application for Changes in Zoning for Lands Located at 830 - 836, 840 Upper James Street (Hamilton) (PED09232) (Ward 8) - Page 7 of 9

City of Hamilton Official Plan

The subject property is designated “Commercial” on Schedule “A”, Land Use Concept Plan in the City of Hamilton Official Plan. The commercial plaza on the subject property falls under the “Extended Commercial” designation, and its policies apply to the subject property. The following policies apply, among others:

2.2.19 Development within Extended Commercial areas will be through infilling and redevelopment in order to consolidate the viability of these areas and to restrict their indiscriminate extension into stable areas of non-commercial uses. Such development will only be permitted where: traffic and/or parking problems will not be created; and, on Arterial Roads identified on Schedule “F” of the City of Hamilton Official Plan.

2.2.22.i) Encourage the restoration, rehabilitation, or repair of existing storefronts and facades to complement the scale, design, and character of other Commercial developments in the area.

2.2.35.i) Access drive, parking, and service areas will be screened and/or buffered such that noise, light, or undesirable visual impacts emanating from the commercial use are mitigated.”

The proposal to expand the list of permitted commercial uses to include a restaurant, and the reduction in the parking space dimensions, conforms to the policies of the City of Hamilton Official Plan as the proposed development has frontage on Upper James Street, which is an arterial road, as identified in Schedule “F” of the City of Hamilton Official Plan. In addition, staff is of the opinion that expanding the list of permitted uses will not cause additional traffic and/or parking problems, as additional parking spaces are proposed for the commercial plaza, and that the existing buildings will buffer the adjacent residential uses from the parking and manoeuvring areas.

Urban Hamilton Official Plan

The New Urban Hamilton Official Plan was adopted by Council on July 9, 2009. The Plan has been forwarded to the Province for approval, and is not yet in effect. The subject lands are designated as “Primary Corridors” on Schedule “E” Urban Structure and “Mixed Use - Medium Density” on Schedule “E-1” Urban Land Use Designations.

As the application is to expand the range of permitted commercial uses to include restaurants, the proposal conforms to the policies of the Urban Hamilton Official Plan.

Yeoville Neighbourhood Plan

The subject lands are designated “Commercial”, and permit the proposal to expand the list of permitted commercial uses to include restaurants.
SUBJECT: Application for Changes in Zoning for Lands Located at 830 - 836, 840 Upper James Street (Hamilton) (PED09232) (Ward 8) - Page 8 of 9

RELEVANT CONSULTATION:

Agencies/Departments Having no Comment or Objections

• Taxation Division, Corporate Services Department.

• Environmental Planning Section, Capital Planning and Implementation Division, Public Works Department.

• Bell Canada.

Traffic and Engineering and Operations Section, Public Works Department, has indicated that Upper James Street is a major arterial road. In addition, it has been identified as a future corridor for rapid transit initiatives.

Economic Development and Real Estate Division has indicated that the applicant has submitted an ERASE Study Grant Program (SGP) for 840 Upper James Street, and has submitted the Phase II Site Assessment. The City will provide up to 50% of the cost of Phase II and/or Phase III Site Assessment studies, for a total of $15,000.00 per study, and $20,000.00 per property.

Urban Forestry Section, Public Works Department has indicated that there are no Urban Forestry conflicts and does not object to the Zoning By-law Amendment. However, there are Municipal Tree Assets located on the road allowance of Caledon Avenue, but they are outside of the development, and a Tree Management Plan will not be a requested condition.

Horizon Utilities has indicated that any relocation, modification, or removal of any existing hydro facilities shall be at the owner’s expense. In addition, the following has been stipulated:

• Do not excavate within two metres of hydro poles and anchors.

• Excavation within one metre of underground hydro plant is not permitted unless approval is granted by a Horizon Utilities representative, and a representative is present to provide direct supervision. Costs associated with this task shall be at the owner’s expense.

• Horizon Utilities must be contacted if the removal, isolation, or relocation of existing plant is required, and all costs associated with this work will be at the owner’s expense.

Hamilton Municipal Parking System has advised that all existing and future parking requirements are to be met on-site.
SUBJECT: Application for Changes in Zoning for Lands Located at 830 - 836, 840 Upper James Street (Hamilton) (PED09232) (Ward 8) - Page 9 of 9

PUBLIC CONSULTATION

In accordance with the Public Participation Policy approved by Council, this application was pre-circulated to all property owners within 120 metres of the subject property, and a sign was posted in late-November, 2008. A total of 380 notices were circulated, and no letters have been received for this proposal. One resident called and inquired about the Zoning By-law Amendment application process.

Notice of Public Meeting was given in accordance with the requirements of the Planning Act through the circulation to property owners within 120 metres of the subject lands and through the posting of a sign on the property.

CITY STRATEGIC COMMITMENT:

By evaluating the "Triple Bottom Line", (community, environment, economic implications) we can make choices that create value across all three bottom lines, moving us closer to our vision for a sustainable community, and Provincial interests.

Community Well-Being is enhanced. ☑ Yes ☐ No
Employment opportunities are created within the community, and the proposed development is within walking distance to a residential community.

Environmental Well-Being is enhanced. ☑ Yes ☐ No
The proposed rezoning will maintain ecological function and maintain development in the settlement areas.

Economic Well-Being is enhanced. ☑ Yes ☐ No
Employment opportunities are created within the community.

Does the option you are recommending create value across all three bottom lines? ☑ Yes ☐ No

Do the options you are recommending make Hamilton a City of choice for high performance public servants? ☐ Yes ☑ No

:TL
Attachs. (2)
CITY OF HAMILTON

BY-LAW NO.

To Amend Zoning By-law 6593 (Hamilton), respecting lands located at 830-836, and 840 Upper James Street (Hamilton)

WHEREAS the City of Hamilton Act, 1999, Statutes of Ontario 1999 Chap. 14, Schedule 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 City of Hamilton” and is the successor of 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 and Official Plans of the former area municipalities and the Official Plan of the former regional municipality continue in force in the City of Hamilton until subsequently amended or repealed by the Council or the City of Hamilton;

AND WHEREAS Zoning By-law No. 6593 (Hamilton) was enacted on the 25th day of July 1950, which was approved by the Ontario Municipal Board by Order dated the 7th day of December 1951 (File No. P.F.C. 3821);

AND WHEREAS the Council of the City of Hamilton, in adopting Item C of Report 09-11 of the Economic Development and Planning Committee, at its meeting held on the 1st day of December, 2009, recommended that Zoning By-law No. 6593 (Hamilton) be amended as hereinafter provided;

AND WHEREAS this By-law is in conformity with the Official Plan of the City of Hamilton (the Official Plan of the former City of Hamilton) in accordance with the provisions of the Planning Act.
NOW THEREFORE the Council of the City of Hamilton enacts as follows:

1. That Sheet No. W-9 of the District Maps, appended to and forming part of By-law No. 6593 (Hamilton), as amended, is further amended as follows:

   a) That Block 1 be rezoned from the “H” (Community Shopping and Commercial, etc.) District to the “H/S-542a” (Community Shopping and Commercial, etc.) District, Modified;

   b) That Block 2 be rezoned from the “H/S-542” (Community Shopping and Commercial, etc.) District, Modified, to the “H/S-542a” (Community Shopping and Commercial, etc.) District, Modified;

   c) That Block 3 be rezoned from the “HH/S-509a” (Restricted Community Shopping and Commercial) District, Modified, to the “HH/S509b” (Restricted Community Shopping and Commercial) District, Modified; and,

   d) That Block 4 be rezoned from the “HH” (Restricted Community Shopping and Commercial) District to the “HH-H’/S-509b” (Restricted Community Shopping and Commercial - Holding) District, Modified;

   on the lands, the extent and boundaries of which are shown on a plan hereto annexed as Schedule “A”.

2. That the “H” (Community Shopping and Commercial, etc.) District regulations, as contained in Section 14 of Zoning By-law No. 6593, as amended by By-law No. 77-240, is further modified to include the following special requirements:

   (i) Notwithstanding Section 18A(7) of Zoning By-law No. 6593, that every required parking space, other than a parallel parking space, shall have dimensions not less than 2.6 metres wide and 5.5 metres long.

   (ii) Notwithstanding Section 14(1) of Zoning By-law No. 6593, drive-thrus shall not be permitted.

3. That 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 “H” (Community Shopping and Commercial, etc.) District, Modified, provisions, subject to the special requirements referred to in Section 2.
4. That the “HH” (Restricted Community Shopping and Commercial) District regulations, as contained in Section 14A of Zoning By-law 6593, as amended by By-law No. 81-329, be further modified to include the following special requirements:

(i) Notwithstanding Section 1 of By-law 81-329, a restaurant shall also be permitted, and drive-thrus shall be prohibited.

(ii) Notwithstanding Section 18A(7) of Zoning By-law No. 6593, every required parking space, other than a parallel parking space, shall have dimensions not less than 2.6 metres wide and 5.5 metres long.

5. That the ‘H’ symbol applicable to the lands referred to in Section 1(d) of this By-law shall be removed conditional upon:

(a) The owner/applicant submitting a signed Record of Site Condition (RSC) to the City of Hamilton and the Ministry of the Environment (MOE). The RSC must be to the satisfaction of the Director of Planning, including an acknowledgement of receipt of the RSC by the MOE, and submission of the City of Hamilton’s current RSC administrative fee.

City Council may remove the ‘H’ symbol and thereby give effect to the “HH/S-509b” (Restricted Commercial Shopping and Commercial) District, Modified, by enactment of an amending By-law once the above condition has been fulfilled.

6. That 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 “HH/S-509” (Restricted Commercial Shopping and Commercial) District, Modified, provisions, subject to the special requirements referred to in Section 4.

7. That Zoning By-law No. 6593 is amended by adding this By-law to Section 19B as Schedule S-542a and S-509b.

8. That Sheet W-9b of the District Maps is amended by marking the lands referred to in Section 1 of this By-law as S-542a and S-509b.

9. That the Clerk is hereby authorized and directed to proceed with the giving of notice of passing of this By-law, in accordance with the Planning Act.
PASSED and ENACTED this [ ] day of [ ], 2009.

Fred Eisenberger
Mayor

Kevin C. Christenson
Clerk

ZAR-08-066
Schedule "A"

Map Forming Part of By-Law No. 09-____
to Amend By-law No. 6593

Subject Property
830-836 & 840 Upper James Street

Block 1 - Change in Zoning from the "H" (Community Shopping and Commercial, etc.) District to the "HIS-542b" (Community Shopping and Commercial, etc.) District, Modified
Block 2 - Change in Zoning from the "HIS-542" (Community Shopping and Commercial, etc.) District, Modified to the "HIS-543a" (Community Shopping and Commercial, etc.) District, Modified
Block 3 - Change in Zoning from the "HHS-540ka" (Restricted Community Shopping and Commercial) District, Modified to the "HHS-545b" (Restricted Community Shopping and Commercial) District, Modified
Block 4 - Change in Zoning from the "HH" (Restricted Commercial Community) District to the "HHS-509b" (Restricted Community Shopping and Commercial) District, Modified

This is Schedule "A" to By-Law No. 09-
Passed the __________ day of ______________, 2009

Clerk

Mayor
Record of Site Condition

For Part XV.1 of the Environmental Protection Act

Summary

<table>
<thead>
<tr>
<th>Registration Number</th>
<th>68556</th>
</tr>
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<tbody>
<tr>
<td>Status</td>
<td>Filed</td>
</tr>
<tr>
<td>Filing Date</td>
<td>2009/12/23</td>
</tr>
<tr>
<td>Certification Date</td>
<td>2009/05/12</td>
</tr>
<tr>
<td>Current Property Use</td>
<td>Commercial</td>
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<tr>
<td>Intended Property Use</td>
<td>Commercial</td>
</tr>
<tr>
<td>Certificate of Property Use Number</td>
<td>3845-7USQRC</td>
</tr>
<tr>
<td>Applicable Standards</td>
<td>Full Depth Site Conditions Standard, with Nonpotable Ground Water, Medium/Fine Textured Soil, for Industrial/Commercial/Community property use with Risk Assessment</td>
</tr>
<tr>
<td>Property Municipal Address</td>
<td>840 Upper James Street, Hamilton, ON L9C 3A4</td>
</tr>
</tbody>
</table>

Notice to Readers Concerning Due Diligence

This record of site condition has been filed on the Environment Site Registry to which the public has access and which contains a notice advising users of the Registry who have dealings with any property to consider conducting their own due diligence with respect to the environmental condition of the property, in addition to reviewing information in the Registry.

Contents of this Record of Site Condition

This record of site condition consists of this document which is available to be printed directly from the Environmental Site Registry as well as all documentation indicated in this document to have been submitted in paper format to the Ministry of the Environment.

Definitions

The following definitions are taken from the Environmental Protection Act or Regulation 153/04 under that Act and are included for ease of reference. The Act and Regulation should be referenced for other applicable definitions.

In this Record of Site Condition:

"Act" means the Environmental Protection Act, as amended;

"Cleanup Guideline 1996" means the Ministry publication entitled "Guideline for Use at Contaminated Sites in Ontario" originally dated June 1996 and later revised;

"Intended property use", in relation to a record of site condition, means the type of property use in respect of which the record of site condition is filed;

"phase one environmental site assessment" has the same meaning as defined in the Act at s. 168.1;

"phase two environmental site assessment" has the same meaning as defined in the Act at s. 168.1;

"Regulation" means Ontario Regulation 153/04, Records of Site Condition Part XV.1 of the Act, as amended;

"risk assessment" has the same meaning as defined in the Act at s. 168.1;

"RSC" means a record of site condition under Part XV.1 of the Act;

"RSC property", in relation to a record of site condition, means the property in respect of which the record of site condition is filed;

"SSRA" means a site specific risk assessment conducted in accordance with the Cleanup Guideline 1996.
Part 1: Property Ownership, Property Information and Owner’s Certifications

Information about the owner who is filing or authorizing the filing of the RSC

<table>
<thead>
<tr>
<th>Owner Name</th>
<th>J. Beume Real Estate Limited</th>
</tr>
</thead>
<tbody>
<tr>
<td>Corporate Contact</td>
<td>Jack Beume</td>
</tr>
<tr>
<td>(Authorized Officer)</td>
<td></td>
</tr>
<tr>
<td>Mailing Address</td>
<td>Suite 105 100 JAMES ST S HAMILTON, ON, L8P 2Z2</td>
</tr>
<tr>
<td>Phone</td>
<td>905-5255991x2</td>
</tr>
<tr>
<td>Fax</td>
<td>905-5218981</td>
</tr>
<tr>
<td>Email</td>
<td><a href="mailto:jackb@chambers-commercial.com">jackb@chambers-commercial.com</a></td>
</tr>
</tbody>
</table>

RSC Property Location Information

<table>
<thead>
<tr>
<th>Municipal Address</th>
<th>840 Upper James Street, Hamilton, ON L9C 3A4</th>
</tr>
</thead>
<tbody>
<tr>
<td>Municipality</td>
<td>HAMILTON CITY</td>
</tr>
<tr>
<td>Legal Description</td>
<td>Parts of Lots 7, 8, 9, 10, &amp; 11, Plan No. 694, as in AB303124</td>
</tr>
<tr>
<td>Assessment Roll Number</td>
<td>0809310839000000</td>
</tr>
<tr>
<td>Property Identification Number (PIN)</td>
<td>16968-0296</td>
</tr>
<tr>
<td>RSC applies to entire legal property</td>
<td>YES</td>
</tr>
</tbody>
</table>

RSC Property Geo Reference

<table>
<thead>
<tr>
<th>UTM Coordinates</th>
<th>NAD83 17-590752-4786726</th>
</tr>
</thead>
<tbody>
<tr>
<td>Latitude &amp; Longitude</td>
<td>43.22786920N 79.88245850W (converted from UTM)</td>
</tr>
<tr>
<td>Accuracy Estimate</td>
<td>2 to 5 meters</td>
</tr>
<tr>
<td>Measurement Method</td>
<td>Digitized from a map</td>
</tr>
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</table>

RSC Property Use Information

The following types of property uses are defined by the Regulation: Agricultural or other use, Commercial use, Community use, Industrial use, Institutional use, Parkland use, and Residential use.

<table>
<thead>
<tr>
<th>Current Property Use</th>
<th>Commercial</th>
</tr>
</thead>
<tbody>
<tr>
<td>Intended Property Use</td>
<td>Commercial</td>
</tr>
<tr>
<td>Certificate of Property Use has been issued under section 168.6 of the Act</td>
<td>YES</td>
</tr>
<tr>
<td>CPU Number</td>
<td>3845-7USQRC</td>
</tr>
</tbody>
</table>

Additional Documentation Provided by Property Owner or Agent

The following documents have been submitted to the Ministry of the Environment as part of the record of site condition:

1. Deed or Transfer for the property
2. Certificate of Status
Signature and Statements of Property Owner or Agent

As an authorized officer acting on behalf of the owner of the RSC property:

1. I acknowledge that the RSC will be filed in the Environmental Site Registry, that records of site condition that are filed in the Registry are available for examination by the public and that the Registry contains a notice advising users of the Registry who have dealings with any property to consider conducting their own due diligence with respect to the environmental condition of the property, in addition to reviewing information in the Registry.

2. I have conducted reasonable inquiries to obtain all information relevant to this RSC, including information from the other current owners of the RSC property named in this part of the RSC.

3. I have disclosed all information referred to in paragraph 2 to any qualified person named in this RSC.

4. To my knowledge, the statements made in this part of the RSC are true as of ________________.

As an authorized officer making the certifications on behalf of the owner:

1. I certify that I have been authorized by the owner of the RSC property to make the statements prescribed by this section on their behalf and that the owner of the RSC property has read and understands the statements being made on their behalf.

Name of Authorized Officer: ____________________ Signature: ____________________ Date: ________________

A signed and dated copy of this Part of the record of site condition has been received by the Ministry of the Environment prior to the filing of this record of site condition in the Environmental Site Registry.
Part 2 List of Reports, Summary of Site Conditions, Qualified Person’s Certifications

Qualified Person Information

<table>
<thead>
<tr>
<th>Name</th>
<th>Ralph Di Cienzo</th>
</tr>
</thead>
<tbody>
<tr>
<td>Company</td>
<td>Landtek Limited</td>
</tr>
<tr>
<td>Job Title</td>
<td></td>
</tr>
<tr>
<td>Business Address</td>
<td>Suite 3 205 NEBO RD HAMILTON, ON, L8W 2E1</td>
</tr>
<tr>
<td>Phone</td>
<td>905-3833733</td>
</tr>
<tr>
<td>Fax</td>
<td>905-3838433</td>
</tr>
<tr>
<td>Email</td>
<td><a href="mailto:ralph@landteklimited.com">ralph@landteklimited.com</a></td>
</tr>
</tbody>
</table>

Additional Documentation Provided by the Qualified Person

The following documents have been submitted to the Ministry of the Environment as part of the record of site condition:

1. Certificate of Status in relation to the employer of the qualified person

Municipal Information

Local or Single-Tier Municipality

<table>
<thead>
<tr>
<th>Municipality</th>
<th>HAMILTON CITY</th>
</tr>
</thead>
<tbody>
<tr>
<td>Municipal Clerk</td>
<td>Mr. Kevin Christenson</td>
</tr>
<tr>
<td>Address</td>
<td>Suite 220 77 JAMES ST N HAMILTON, ON, L8P 4Y5</td>
</tr>
<tr>
<td>Phone</td>
<td>905-5464408</td>
</tr>
<tr>
<td>Fax</td>
<td>905-5462095</td>
</tr>
<tr>
<td>Email</td>
<td><a href="mailto:clerk@hamilton.ca">clerk@hamilton.ca</a></td>
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</tbody>
</table>

Ministry of the Environment District Office

<table>
<thead>
<tr>
<th>District Office</th>
<th>HAMILTON</th>
</tr>
</thead>
<tbody>
<tr>
<td>District Office Address</td>
<td>9th Floor 119 King ST W Hamilton, ON, L8N 4Y7</td>
</tr>
</tbody>
</table>

Reports Supporting Record of Site Condition

The following types of assessments have been conducted in support of this record of site condition:

- A phase one environmental site assessment
- A phase two environmental site assessment
- A risk assessment that has been accepted by the Ministry of the Environment

Previous RSCs applying to any part of the RSC property

Previous risk assessments or SSRA applying to any part of the RSC property

Assessments or other reports have been relied upon in certifying the information set out in this Part
### Site Condition Information

<table>
<thead>
<tr>
<th>Description</th>
<th>Value</th>
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<tbody>
<tr>
<td>Total area of the RSC property (in hectares)</td>
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<tr>
<td>Phase Two Environmental Site Assessment applies to the entire RSC property</td>
<td>YES</td>
</tr>
<tr>
<td>A Risk Assessment has been prepared and accepted by the Director in support of this RSC</td>
<td>YES</td>
</tr>
<tr>
<td>Risk Assessment Number</td>
<td>RA1018-08b</td>
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<tr>
<td>Environmentally Sensitive Area</td>
<td>No</td>
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<tr>
<td>Sediment Present</td>
<td>N</td>
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<tr>
<td>Soil Texture</td>
<td>Medium/Fine</td>
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<tr>
<td>Assessment/Restoration Approach</td>
<td>Full Depth</td>
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<tr>
<td>Property Use for Site Condition Standards Determination</td>
<td>Industrial/Commercial/Community</td>
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<tr>
<td>Ground Water Condition</td>
<td>Nonpotable</td>
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<tr>
<td>Contaminant testing on the Ground Water</td>
<td>Y</td>
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<tr>
<td>Local Municipality Non-Potable Water Notification Date</td>
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<tr>
<td>Certification Date</td>
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The applicable site condition standards applied for the purpose of this record of site condition are: Full Depth Site Conditions Standard, with Nonpotable Ground Water, Medium/Fine Textured Soil, for Industrial/Commercial/Community property use with Risk Assessment.

### Final RSC Property Profile - Site Condition Standards

**Soil**

---

Filed Record of Site Condition #68556 on 2009/12/23
## Appendix “D” to Report PED09232(a) (Page 6 of 23)

### Ontario Ministry of the Environment - Record of Site Condition #68556

<table>
<thead>
<tr>
<th>Contaminant Name</th>
<th>Maximum Concentration</th>
<th>Applicable Standard</th>
<th>Unit of Measure</th>
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<tbody>
<tr>
<td>ACETONE</td>
<td>&lt; 0.13</td>
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<tr>
<td>ANTIMONY</td>
<td>&lt; 1.6</td>
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<td>ug/g</td>
</tr>
<tr>
<td>ARSENIC</td>
<td>3.9</td>
<td>50</td>
<td>ug/g</td>
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<tr>
<td>BARIUM</td>
<td>64.2</td>
<td>2000</td>
<td>ug/g</td>
</tr>
<tr>
<td>BENZENE</td>
<td>&lt; 0.1</td>
<td>25</td>
<td>ug/g</td>
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<td>BERYLLIUM</td>
<td>0.4</td>
<td>1.2</td>
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<td>BROMODICHLOROMETHANE</td>
<td>&lt; 0.003</td>
<td>25</td>
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<tr>
<td>BROMOFORM</td>
<td>&lt; 0.002</td>
<td>14</td>
<td>ug/g</td>
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<td>CADMIUM</td>
<td>1.3</td>
<td>12</td>
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<tr>
<td>CARBON TETRACHLORIDE</td>
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<td>0.64</td>
<td>ug/g</td>
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<td>CHLOROBENZENE</td>
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<tr>
<td>CHLOROFORM</td>
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<td>CHROMIUM (TOTAL)</td>
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<tr>
<td>COPPER</td>
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<td>DIBROMOCHLOROMETHANE</td>
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<td>ug/g</td>
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<td>&lt; 0.002</td>
<td>18</td>
<td>ug/g</td>
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<tr>
<td>DICHLOOROBENZENE, 1,3- (M-DCB)</td>
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<td>ug/g</td>
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<td>0.14</td>
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<td>ETHYLBENZENE</td>
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<td>0.14</td>
<td>ug/g</td>
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<td>ETHYLENE DIBROMIDE</td>
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<td>0.14</td>
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<tr>
<td>LEAD</td>
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<td>1000</td>
<td>ug/g</td>
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<tr>
<td>METHYL ETHYL KETONE</td>
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<td>ug/g</td>
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<td>METHYL ISOBUTYL KETONE</td>
<td>&lt; 0.041</td>
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<td>ug/g</td>
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<tr>
<td>METHYL TERT BUTYL ETHER</td>
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<td>ug/g</td>
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<td>METHYLENE CHLORIDE</td>
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<td>MOLYBDENUM</td>
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<tr>
<td>NICKEL</td>
<td>18.1</td>
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<td>ug/g</td>
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<tr>
<td>PETROLEUM HYDROCARBONS F1 (C6-C10)</td>
<td>&lt; 5</td>
<td>660</td>
<td>ug/g</td>
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</table>
## Ontario Ministry of the Environment - Record of Site Condition #68556

<table>
<thead>
<tr>
<th>Contaminant Name</th>
<th>Maximum Concentration</th>
<th>Applicable Standard</th>
<th>Unit of Measure</th>
</tr>
</thead>
<tbody>
<tr>
<td>PETROLEUM HYDROCARBONS F2 (C10-C16)</td>
<td>&lt;</td>
<td>10</td>
<td>15600</td>
</tr>
<tr>
<td>PETROLEUM HYDROCARBONS F3 (C16-C34)</td>
<td>&lt;</td>
<td>50</td>
<td>25600</td>
</tr>
<tr>
<td>PETROLEUM HYDROCARBONS F4 (C34)</td>
<td>&lt;</td>
<td>50</td>
<td>66600</td>
</tr>
<tr>
<td>SELENIUM</td>
<td>&lt;</td>
<td>0.8</td>
<td>10</td>
</tr>
<tr>
<td>SILVER</td>
<td>&lt;</td>
<td>0.4</td>
<td>50</td>
</tr>
<tr>
<td>STYRENE</td>
<td>&lt;</td>
<td>0.002</td>
<td>7.7</td>
</tr>
<tr>
<td>TETRACHLOROETHANE, 1,1,1,2-</td>
<td>&lt;</td>
<td>0.002</td>
<td>0.12</td>
</tr>
<tr>
<td>TETRACHLOROETHANE, 1,1,2,2-</td>
<td>&lt;</td>
<td>0.004</td>
<td>0.23</td>
</tr>
<tr>
<td>TETRACHLOROETHYLENE</td>
<td>&lt;</td>
<td>0.002</td>
<td>0.45</td>
</tr>
<tr>
<td>THALLIUM</td>
<td>&lt;</td>
<td>0.4</td>
<td>32</td>
</tr>
<tr>
<td>TOluene</td>
<td>&lt;</td>
<td>0.08</td>
<td>150</td>
</tr>
<tr>
<td>TRICHLOROBENZENE, 1,2,4-</td>
<td>&lt;</td>
<td>0.007</td>
<td>30</td>
</tr>
<tr>
<td>TRICHLOROETHANE, 1,1,1-</td>
<td>&lt;</td>
<td>0.002</td>
<td>34</td>
</tr>
<tr>
<td>TRICHLOROETHANE, 1,1,2-</td>
<td>&lt;</td>
<td>0.002</td>
<td>3.1</td>
</tr>
<tr>
<td>TRICHLOROETHYLENE</td>
<td>&lt;</td>
<td>0.004</td>
<td>3.9</td>
</tr>
<tr>
<td>VANADIUM</td>
<td>22.5</td>
<td>250</td>
<td>μg/g</td>
</tr>
<tr>
<td>VINYL CHLORIDE</td>
<td>&lt;</td>
<td>0.002</td>
<td>0.0075</td>
</tr>
<tr>
<td>XYLENES</td>
<td>&lt;</td>
<td>0.07</td>
<td>210</td>
</tr>
<tr>
<td>ZINC</td>
<td>342</td>
<td>800</td>
<td>μg/g</td>
</tr>
</tbody>
</table>

### Sediment

<table>
<thead>
<tr>
<th>Contaminant Name</th>
<th>Maximum Concentration</th>
<th>Applicable Standard</th>
<th>Unit of Measure</th>
</tr>
</thead>
<tbody>
<tr>
<td>No Measurements Provided</td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

### Ground Water

<table>
<thead>
<tr>
<th>Contaminant Name</th>
<th>Maximum Concentration</th>
<th>Applicable Standard</th>
<th>Unit of Measure</th>
</tr>
</thead>
<tbody>
<tr>
<td>ACETONE</td>
<td>71</td>
<td>3300</td>
<td>μg/l</td>
</tr>
<tr>
<td>BENZENE</td>
<td>94</td>
<td>12000</td>
<td>μg/l</td>
</tr>
<tr>
<td>BROMODICHLOROMETHANE</td>
<td>&lt;</td>
<td>0.8</td>
<td>50000</td>
</tr>
<tr>
<td>BROMOFORM</td>
<td>&lt;</td>
<td>0.4</td>
<td>52000</td>
</tr>
<tr>
<td>BROMOMETHANE</td>
<td>&lt;</td>
<td>0.8</td>
<td>16</td>
</tr>
<tr>
<td>CARBON TETRACHLORIDE</td>
<td>&lt;</td>
<td>0.8</td>
<td>100</td>
</tr>
<tr>
<td>CHLOROBENZENE</td>
<td>&lt;</td>
<td>0.4</td>
<td>500</td>
</tr>
<tr>
<td>CHLOROFORM</td>
<td>8.4</td>
<td>2700</td>
<td>μg/l</td>
</tr>
<tr>
<td>DIBROMOCHLOROMETHANE</td>
<td>4.8</td>
<td>50000</td>
<td>μg/l</td>
</tr>
</tbody>
</table>

Filed Record of Site Condition #68556 on 2009/12/23
## Appendix “D” to Report PED09232(a) (Page 8 of 23)

### Ontario Ministry of the Environment - Record of Site Condition #68556

<table>
<thead>
<tr>
<th>Contaminant Name</th>
<th>Maximum Concentration</th>
<th>Applicable Standard</th>
<th>Unit of Measure</th>
</tr>
</thead>
<tbody>
<tr>
<td>DICHLOROBENZENE, 1,2- (O-DCB)</td>
<td>&lt;</td>
<td>0.4</td>
<td>7600 µg/l</td>
</tr>
<tr>
<td>DICHLOROBENZENE, 1,3- (M-DCB)</td>
<td>&lt;</td>
<td>0.4</td>
<td>7600 µg/l</td>
</tr>
<tr>
<td>DICHLOROBENZENE, 1,4- (P-DCB)</td>
<td>&lt;</td>
<td>0.4</td>
<td>7600 µg/l</td>
</tr>
<tr>
<td>DICHLOROETHANE, 1,1-</td>
<td>&lt;</td>
<td>1.2</td>
<td>50000 µg/l</td>
</tr>
<tr>
<td>DICHLOROETHANE, 1,2-</td>
<td>&lt;</td>
<td>0.8</td>
<td>110 µg/l</td>
</tr>
<tr>
<td>DICHLOROETHYLENE, 1,1-</td>
<td>&lt;</td>
<td>1.2</td>
<td>4.1 µg/l</td>
</tr>
<tr>
<td>DICHLOROETHYLENE, TRANS-1,2,-</td>
<td>&lt;</td>
<td>55</td>
<td>100 µg/l</td>
</tr>
<tr>
<td>DICHLOROPROPAINE, 1,2-</td>
<td>&lt;</td>
<td>0.8</td>
<td>58 µg/l</td>
</tr>
<tr>
<td>DICHLOROPROPENE, 1,3-</td>
<td>&lt;</td>
<td>0.8</td>
<td>24 µg/l</td>
</tr>
<tr>
<td>ETHYLBENZENE</td>
<td>1.6</td>
<td></td>
<td>50000 µg/l</td>
</tr>
<tr>
<td>ETHYLENE DIBROMIDE</td>
<td>&lt;</td>
<td>0.8</td>
<td>21 µg/l</td>
</tr>
<tr>
<td>METHYL ETHYL KETONE</td>
<td>6.4</td>
<td></td>
<td>50000 µg/l</td>
</tr>
<tr>
<td>METHYL ISOBUTYL KETONE</td>
<td>&lt;</td>
<td>4</td>
<td>50000 µg/l</td>
</tr>
<tr>
<td>METHYL TERT BUTYL ETHER</td>
<td>&lt;</td>
<td>0.8</td>
<td>50000 µg/l</td>
</tr>
<tr>
<td>METHYLENE CHLORIDE</td>
<td>&lt;</td>
<td>1.2</td>
<td>50000 µg/l</td>
</tr>
<tr>
<td>STYRENE</td>
<td>&lt;</td>
<td>0.4</td>
<td>5900 µg/l</td>
</tr>
<tr>
<td>TETRACHLOROETHANE, 1,1,1,2-</td>
<td>&lt;</td>
<td>0.4</td>
<td>38 µg/l</td>
</tr>
<tr>
<td>TETRACHLOROETHANE, 1,1,2,2-</td>
<td>&lt;</td>
<td>0.4</td>
<td>140 µg/l</td>
</tr>
<tr>
<td>TOLUENE</td>
<td>7.2</td>
<td></td>
<td>37000 µg/l</td>
</tr>
<tr>
<td>TRICHLOROETHANE, 1,1,1-</td>
<td>&lt;</td>
<td>1.2</td>
<td>200 µg/l</td>
</tr>
<tr>
<td>TRICHLOROETHANE, 1,1,2-</td>
<td>&lt;</td>
<td>0.8</td>
<td>50000 µg/l</td>
</tr>
<tr>
<td>XYLENES</td>
<td>34</td>
<td></td>
<td>35000 µg/l</td>
</tr>
</tbody>
</table>

### Final RSC Property Profile - Risk Assessment Standards

<table>
<thead>
<tr>
<th>Soil</th>
<th>Contaminant Name</th>
<th>Maximum Concentration</th>
<th>Applicable Standard</th>
<th>Unit of Measure</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>No Measurements Provided</td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Sediment</th>
<th>Contaminant Name</th>
<th>Maximum Concentration</th>
<th>Applicable Standard</th>
<th>Unit of Measure</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>No Measurements Provided</td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Ground Water</th>
<th>Contaminant Name</th>
<th>Maximum Concentration</th>
<th>Applicable Standard</th>
<th>Unit of Measure</th>
</tr>
</thead>
<tbody>
<tr>
<td>DICHLOROETHYLENE, CIS-1,2-</td>
<td>1400</td>
<td>1540</td>
<td>µg/l</td>
<td></td>
</tr>
<tr>
<td>TETRACHLOROETHYLENE</td>
<td>25</td>
<td>27.5</td>
<td>µg/l</td>
<td></td>
</tr>
</tbody>
</table>

Filed Record of Site Condition #68556 on 2000/12/23
### Contaminant Name

<table>
<thead>
<tr>
<th>Contaminant Name</th>
<th>Maximum Concentration</th>
<th>Applicable Standard</th>
<th>Unit of Measure</th>
</tr>
</thead>
<tbody>
<tr>
<td>TRICHLOROETHYLENE</td>
<td>100</td>
<td>110</td>
<td>μg/l</td>
</tr>
<tr>
<td>VINYL CHLORIDE</td>
<td>220</td>
<td>233</td>
<td>μg/l</td>
</tr>
<tr>
<td>CHLOROMETHANE</td>
<td>45</td>
<td>49.5</td>
<td>μg/l</td>
</tr>
</tbody>
</table>

### Remedial Action and Mitigation

#### Remediated Soils

Estimate of quantities of soil, if any, originating and remaining on the RSC property that have been remediated, at a location either on or off the RSC property, to reduce the concentration of contaminants in the soil.

<table>
<thead>
<tr>
<th>Soil Remediation Process</th>
<th>Estimated Quantity of Soil (in-situ cubic meters)</th>
</tr>
</thead>
<tbody>
<tr>
<td>No Remediation Provided</td>
<td></td>
</tr>
</tbody>
</table>

#### Removed Soils

Estimated quantity of soil or sediment, if any, removed from and not returned to the RSC property (in-situ cubic meters): 0

#### Deposited Soils

Estimated quantity of soil or sediment, if any, being brought to and deposited at the RSC property not including any soil that has been remediated off the RSC property (identified in the Soil Remediation Process above) (in-situ cubic meters): 0

#### Remediated or Removed Soil From Near Property Boundary

Has any soil, sediment or ground water at the RSC property that is or was located within 3 meters of the RSC property boundary been remediated or removed for the purpose of remediation: NO

#### Ground Water Control or Treatment Measures

Ground Water Control or treatment measures that were required for the RSC property prior to the certification date for the purpose of filing the RSC:

- not applicable

- Other than the activities identified above, constructed works to control or otherwise mitigate release or movement of known existing contaminants that are required for the RSC property after the certification date:
  - not applicable

#### Other Activities Including Risk Management Measures

Other than the activities identified above, constructed works to control or otherwise mitigate release or movement of known existing contaminants that were required for the RSC property prior to the certification date for the purpose of filing the RSC:

- not applicable

Other than the activities identified above, constructed works to control or otherwise mitigate release or movement of known existing contaminants that are required for the RSC property after the certification date:

- CPU requirements:
  - a) install any equipment - No
  - b) monitoring any contaminant - Yes (groundwater for contaminants of concern)
  - c) refrain from constructing any building specified - Yes (including no basements)
d) refrain from using the property for any use specified - Yes (parking lot only; no res/park/inst uses)

e) other: implement a health & safety plan for the site - Yes

**Monitoring or Maintenance**

Soil monitoring requirements, or any requirements for care, maintenance, or replacement of any monitoring control works, for known existing contaminants, if any, on the RSC property, after the certification date:

not applicable

Ground Water monitoring requirements, or any requirements for care, maintenance, or replacement of any monitoring control works, for known existing contaminants, if any, on the RSC property, after the certification date:

Groundwater Monitoring:

The groundwater monitoring shall commence forthwith on an annual basis until such time as the Director, upon application by the Owner, has reviewed the data available and either amends or revokes the CPU.

The groundwater monitoring program shall include all groundwater contaminants of concern (COC’s) outlined in the risk assessment. The duration of the monitoring program will be dependent on the review of the results of the program. Any proposed changes to the program shall be submitted to the Director for review and approval in writing prior to implementation of any changes.

**Certifications**

As the qualified person, and in relation to this Part of the RSC, I certify that:

1. A phase one environmental site assessment of the RSC property, which includes the evaluation of the information gathered from a records review, site visit and interviews, has been conducted in accordance with the Regulation by or under the supervision of a qualified person as required by the Regulation.

2. I have conducted or supervised a phase two environmental site assessment, which includes the evaluation of information gathered through the sampling and analysis of soil and other site investigation or assessment activities, of all or part of the RSC property with respect to one or more contaminants, in accordance with the Regulation.

3. The information represents the site conditions at the sampling points at the time of sampling only and the conditions between and beyond the sampling points may vary.

4. As of 2009/05/12, in my opinion, based on the phase one environmental site assessment and the phase two environmental site assessment, and any confirmatory sampling, there is no evidence of any contaminants in the soil, ground water or sediment on, in or under the RSC property that would interfere with the type of property use to which the RSC property will be put, as specified in the RSC.

5. If non-potable ground water standards have been applied,

a. I have given written notice of intention to apply non-potable ground water site condition standards to the clerk of the local municipality in which the property is located and the clerk of any upper-tier municipality in which the property is located.

b. The owner of the property has informed me that either,

   i. the owner did not receive a notice of objection from either the local municipality or the upper-tier municipality within 30 days of the municipality or upper-tier municipality receiving the notice described in paragraph a.

   ii. after receiving a notice of objection from the municipality, the municipality has withdrawn its objection and given written consent to the application of non-potable ground water standards.
c. I did not receive a notice of objection from either the local municipality or the upper-tier municipality within 30 days of the municipality receiving the notice described in paragraph a, or, after I received a notice of objection from the municipality, the municipality gave written consent to the application of non-potable ground water standards.

6. As of 2009/05/12, in my opinion, based on the phase one and phase two environmental site assessments and any confirmatory sampling, the RSC property meets the applicable Full Depth site condition standards prescribed by section 37 of the Regulation for all contaminants prescribed by the Regulation in relation to the type of property use for which this RSC is filed, except for those contaminants (if any) specified in this RSC at Part 2, Final RSC Property Profile - Risk Assessment Standards.

7. As of 2009/05/12, the maximum known concentration of each contaminant in soil, sediment and ground water at the RSC property for which sampling and analysis has been performed is specified in this RSC at Final RSC Property Profile.

8. In relation to any contaminant excepted from the certification mentioned above and as specified in this RSC at Part 2, Final RSC Property Profile - Risk Assessment Standards, or in relation to any other contaminant that in my opinion is likely to cause an adverse effect:
   a. A risk assessment was prepared for the contaminant with respect to the property for which the phase two environmental site assessment was conducted.
   b. The Director has accepted the risk assessment under clause 168.5 (1) (a) of the Act.
   c. As of 2009/05/12, the property for which the phase two environmental site assessment was conducted meets the standards specified in the risk assessment for the contaminant.

As the qualified person, and in relation to this Part of the RSC, I also certify that:

1. I am a qualified person and have the qualifications required by section 5 of the Regulation.
2. I have in place an insurance policy that satisfies the requirements of section 7 of the Regulation.
3. I acknowledge that the RSC will be filed in the Environmental Site Registry, that records of site condition that are filed in the Registry are available for examination by the public and that the Registry contains a notice advising users of the Registry who have dealings with any property to consider conducting their own due diligence with respect to the environmental condition of the property, in addition to reviewing information in the Registry.
4. The opinions expressed in this RSC are engineering or scientific opinions made in accordance with generally accepted principles and practices as recognized by members of the environmental engineering or science profession or discipline practising at the same time and in the same or similar location.
5. To the best of my knowledge, the certifications and statements in this part of the RSC are true as of 2009/05/12.
6. By signing this RSC, I make no express or implied warranties or guarantees.

I, the qualified person named below, on the date stated below, make all of the stated certifications applicable to the qualified person in this Part of the record of site condition.

Name of Qualified Person ___________________ Signature ___________________ Date ________________

A signed and dated copy of this Part of the record of site condition has been received by the Ministry of the Environment prior to the filing of this record of site condition in the Environmental Site Registry.

Filed Record of Site Condition #65556 on 2009/12/23
Record of Site Condition Filing Form

IMPORTANT notes for submission of Record of Site Condition (RSC) to Ministry of the Environment (MOE):

After completing RSC on Brownfields website, ensure that a signed copy of RSC is submitted to MOE.

Print the downloaded version of RSC in PDF.

Ensure that footer of each page of RSC detail indicates that the RSC is on "Submitted" status.

Forward the signed copy of PDF file together with the additional documentation listed under sections:

• Additional Documentation Provided by Property Owner or Agent
• Additional Documentation Provided by Qualified Person

The forwarding address and fax information for MOE office is:

Ministry of the Environment
Environmental Assessment and Approval Branch
2 St. Clair Avenue West, Floor 12 A
Toronto, Ontario M4V 1L5

Fax Number: 416-314-6810
November 16, 2009

J. Beume Real Estate Limited
Unit 105 - 100 James St S
Hamilton, Ontario, L8P 2Z2

Dear Sir/Madam

RE: Director Response to Risk Assessment for Part of Lots 7, 8, 9, 10 and 11
Plan No. 694 as in AB303124, Hamilton (Property)
Risk assessment number 7563-7HPPS3
Certificate of property use number 3845-7USQRC
SDB file number RA1018-08

This is to acknowledge your submission of a risk assessment report on 2008/12/11 regarding the Property to the Ministry of the Environment (Ministry). The Ministry’s review of the risk assessment involved the following reports, documents and information / correspondence.

“Risk Assessment Pre-Submission Form for 840 Upper James Street, City of Hamilton” by Intrinsk Environmental Sciences Inc., report dated August 15, 2008


In addition, the Ministry’s review has considered aspects of the following documents, but only where necessary to complete its review of the risk assessment documents listed above.

Based on the documents provided to the Ministry as part of the risk assessment report, our reviewers can confirm that the risk assessment HAS been conducted in accordance with the Environmental Protection Act (the Act), Ontario Regulation 153/04 (the Regulation), and the
associated guidance documents. By way of this letter I am providing you written notice of the
director's decision to ACCEPT the risk assessment 7563-7HPPS3 relating to the Property in
accordance with s. 168.5 of the Act.

The Ministry's review comments (attached) pertain to whether the risk assessment was conducted
in a manner consistent with the Act, the Regulation, and associated guidance documents.
Although some data, formulae and calculations were looked at during the review of the risk
assessment, the Ministry does not independently verify data nor calculations, the quality of which
are solely the responsibility of the Qualified Person who prepared the risk assessment.

The Director's decision to accept the risk assessment and issue a Certificate of Property Use
under s.168.6 of the Act is based on the information and the assumptions set out in the risk
assessment report. It is also based on the assumption that the Property will be used as described
in the risk assessment and that the steps outlined in the risk management plan will be fully
implemented as set out in the attached Certificate of Property Use 3845-7USQRC.

Please do not hesitate to call if you have any questions.

Yours truly,

[Signature]

Director for the purpose of s. 168.5 of the Environmental Protection Act

c: Chris Bacigalupo, Intrinsik Environmental Sciences Inc.
   Ralph di Cienzo, Landtek Limited
   Judith Szekely, District Engineer, Hamilton District Office
   Hamilton District Office
   Kevin C. Christenson, City Clerk
   John A. Spolnik, Chief Building Official
Certificate of Property Use
Environmental Protection Act, R.S.O. 1990, c. E.19, s.168.6

Certificate of property use number 3845-7USQRC
Risk assessment number 7563-7HPPS3

Client: J. Beune Real Estate Limited
Unit 105 - 100 James St S
Hamilton, Ontario, L8P 2Z2

Site: Part of Lots 7, 8, 9, 10 and 11
Plan No. 694 as in AB303124
Hamilton

The conditions of this Certificate of Property Use (CPU) address the Risk Management Measures in the Risk Assessment noted above and described in detail in Part 1 below (Risk Assessment). In the event of a conflict between the CPU and the Risk Assessment, the conditions of the CPU take precedence.

Summary:
Refer to Part 1 of the CPU, Interpretation, for the meaning of all the defined capitalized terms that apply to the CPU.

i) CPU requirements addressed in Part 4 of the CPU, Director Requirements, are summarized as follows:

a. Installing any equipment
b. Monitoring any contaminant
c. Refraining from constructing any building specified
d. Refraining from using the Property for any use specified
e. Other: Implementing a health and safety plan for the Property.

Yes

No

Yes

Yes

Yes

ii) Duration of Risk Management Measures identified in Part 4 of the CPU is summarized as follows:

a. Groundwater Monitoring: The groundwater monitoring shall commence forthwith on an annual basis until such time as the Director, upon application by the Owner, has reviewed the data available and either amends or revokes the CPU.

The groundwater monitoring program shall include all groundwater contaminants of concern (COCs) outlined in Table 1.3 of the risk assessment as summarized below in Section 3.2, and will be conducted in conjunction with the contaminant delineation study at the adjacent
property, located at 858 Upper James Street, Hamilton, Ontario which is the suspected source for the contamination flowing through the subject property. The duration of the monitoring program will be dependent on the review of the results of the program. Any proposed changes to the annual groundwater monitoring program shall be submitted to the Director in writing for approval and be fully supported by scientific rationale. Approval in writing by the Director is required prior to implementation of any changes.

b. The restriction on certain land use and the construction of basements will be required indefinitely.

c. All other Risk Management Measures shall continue indefinitely until the Director amends or revokes the CPU.

Part 1: Interpretation

In the CPU the following terms shall have the meanings described below:

"Adverse Effect" has the same meaning as in the Act; namely,
(a) impairment of the quality of the natural environment for any use that can be made of it,
(b) injury or damage to property or to plant or animal life,
(c) harm or material discomfort to any person,
(d) an adverse effect on the health of any person,
(e) impairment of the safety of any person,
(f) rendering any property or plant or animal life unfit for human use,
(g) loss of enjoyment of normal use of property, and
(h) interference with the normal conduct of business;

"Act" means the Environmental Protection Act, R.S.O. 1990, c. E. 19, as amended;

"Contaminant" has the same meaning as in the Act; namely any solid, liquid, gas, odour, heat, sound, vibration, radiation or combination of any of them, resulting directly or indirectly from human activities that may cause an Adverse Effect;

"Contaminant of Concern" has the meaning as set out in section 3.2 of the CPU;

"CPU" means this Certificate of Property Use Number 3845-7USQRC, as may be amended from time to time;

"Director" means the undersigned Director or any other person appointed as a Director for the purpose of issuing a certificate of property use;

"EBR" means the Environmental Bill of Rights, 1993, S.O. 1993, c. 28, as amended;

"Ministry" means Ontario Ministry of the Environment;

"O.Reg. 153/04" means Ontario Regulation 153/04, "Record of Site Condition – XV.1 of the Act" as amended, made under the Act;

"Owner" means the owner(s) of the Property, including the person(s) to whom this CPU is issued, J. Beume Real Estate Limited, the current registered owner(s) of the Property;

"OWRA" means the Ontario Water Resources Act, R.S.O. 1990, c.0.40, as amended;

"Property" means the property that is the subject of the CPU and described in the "Site" section on page 1 above;
“Property Specific Standards” means the property specific standards established for the Contaminants of
Concern set out in the Risk Assessment and in section 3.2 of the CPU;

“Provincial Officer” means a person who is designated as a provincial officer for the purposes of the Act;

“Qualified Person” means a person who meets the qualifications prescribed in O. Reg. 153/04;

"Risk Assessment" means the Risk Assessment 7563-7H0PS3 accepted by the Director on November 16,
2009, and set out in the following documents:

• "Risk Assessment Pre-Submission Form for 840 Upper James Street, City of Hamilton" by
Intrinsik Environmental Sciences Inc., report dated August 15, 2008;

• "A Risk Assessment of 840 Upper James Street, Hamilton, Ontario, by Intrinsik Environmental
Sciences Inc, dated December 2008"; and

• "A Revised Risk Assessment of 840 Upper James Street, Hamilton, Ontario, by Intrinsik
Environmental Sciences Inc, dated June 2009";

"Risk Management Measures" means the risk management measures specific to the Property described in
the Risk Assessment and/or Part 4 of the CPU;

“Tribunal” has the same meaning as in the Act; namely, the Environmental Review Tribunal.

Part 2: Legal Authority

2.1 Section 19 of the Act states that a certificate of property use is binding on the executor,
administrator, administrator with the will annexed, guardian of property or attorney for property of
the person to whom it was directed, and on any other successor or assignee of the person to whom
it was directed.

2.2 Subsection 132(1.1) of the Act states that the Director may include in a certificate of property use
a requirement that the person to whom the certificate is issued provide financial assurance to the
Crown in right of Ontario for any one or more of,

(a) the performance of any action specified in the certificate of property use;

(b) the provision of alternate water supplies to replace those that the Director has
reasonable and probable grounds to believe are or are likely to be contaminated or
otherwise interfered with by a contaminant on, in or under the property to which the
certificate of property use relates; and

(c) measures appropriate to prevent adverse effects in respect of the property to which
the certificate of property use relates.

2.3 Section 168.6 (1) of the Act states that if the Director accepts a risk assessment relating to a
property, he or she may, when giving notice under clause 168.5 (1)(a), issue a certificate of
property use to the owner of the property, requiring the owner to do any of the following things:

1) Take any action specified in the certificate that, in the Director’s opinion, is
necessary to prevent, eliminate or ameliorate any adverse effect on the property,
including installing any equipment, monitoring any contaminant or recording or
reporting information for that purpose.

2) Refrain from using the property for any use specified in the certificate or from
constructing any building specified in the certificate on the property.

2.4 Subsection 168.6(2) of the Act states that a certificate of property use shall not require an owner of
property to take any action that would have the effect of reducing the concentration of a
contaminant on, in or under the property to a level below the level that is required to meet the standards specified for the contaminant in the risk assessment.

2.5 Subsection 168.6(3) of the Act states that the Director may, on his or her own initiative or on application by the owner of the property in respect of which a certificate has been issued under subsection 168.6(1),
(a) alter any terms and conditions in the certificate or impose new terms and conditions; or
(b) revoke the certificate.

2.6 Subsection 168.6(4) of the Act states that if a certificate of property use contains a provision requiring the owner of property to refrain from using the property for a specified use or from constructing a specified building on the property,
(a) the owner of the property shall ensure that a copy of the provision is given to every occupant of the property;
(b) the provision applies, with necessary modifications, to every occupant of the property who receives a copy of the provision; and
(c) the owner of the property shall ensure that every occupant of the property complies with the provision.

2.7 Subsection 196(1) of the Act states that the authority to make an order under the Act includes the authority to require the person or body to whom the order is directed to take such intermediate action or such procedural steps or both as are related to the action required or prohibited by the order and as are specified in the order.

2.8 Subsection 197(1) of the Act states that a person who has authority under the Act to make an order or decision affecting real property also has authority to make an order requiring any person with an interest in the property, before dealing with the property in any way, to give a copy of the order or decision affecting the property to every person who will acquire an interest in the property as a result of the dealing.

2.9 Subsection 197(2) of the Act states that a certificate setting out a requirement imposed under subsection 197(1) may be registered in the proper land registry office on the title of the real property to which the requirement relates, if the certificate is in a form approved by the Minister, is signed or authorized by a person who has authority to make orders imposing requirements under subsection 197(1) and is accompanied by a registrable description of the property.

2.10 Subsection 197(3) of the Act states that a requirement, imposed under subsection 197(1) that is set out in a certificate registered under subsection 197(2) is, from the time of registration, deemed to be directed to each person who subsequently acquires an interest in the real property.

2.11 Subsection 197(4) of the Act states that a dealing with real property by a person who is subject to a requirement imposed under subsection 197(1) or 197(3) is voidable at the instance of a person who was not given the copy of the order or decision in accordance with the requirement.

Part 3: Background

3.1 The Risk Assessment was undertaken for the Property to establish the risks that the Contaminants identified in the Risk Assessment may pose to future users and to identify appropriate Risk Management Measures to be implemented to ensure that the Property is suitable for the intended use: “commercial use”, as defined in O. Reg. 153/04, specifically “paved parking lot”.

3.2 The Contaminants on, in or under the Property that are present either above Table 3 of the Soil, Ground Water and Sediment Standards for Use under Part XV.1 of the Environmental Protection Act published by the Ministry and dated March 9, 2004 or for which there are no such standards, are set out in the Risk Assessment (Contaminants of Concern). The Property Specific
c) Land Use Restrictions: the use of the Property is restricted to the proposed use as a paved parking lot; no buildings or any subsurface building spaces are permitted to be constructed on the Property.

4.3 Refrain from using the Property for any of the following use(s): residential/park/land/institutional or agricultural.

4.4 Refrain from constructing the following building(s): No buildings or subsurface building spaces are permitted to be constructed.

4.5 N/A

Site Changes
4.6 In the event of a change in the physical site conditions or receptor characteristics at the Property that may affect the Risk Management Measures and/or any underlying basis for the Risk Management Measures, forthwith notify the Director of such changes and the steps taken, to implement, maintain and operate any further Risk Management Measures as are necessary to prevent, eliminate or ameliorate any Adverse Effect that will result from the presence on, in or under the Property or the discharge of any Contaminant of Concern into the natural environment from the Property. An amendment to the CPU will be issued to address the changes set out in the notice received and any further changes that the Director considers necessary in the circumstances.

Reports
4.7 Retain a copy of any reports required under the CPU, the Risk Assessment and any reports referred to in the Risk Assessment (until otherwise notified by the Director) and within ten (10) days of the Director or a Provincial Officer making a request for a report, provide a copy to the Director or Provincial Officer.

Property Requirement
4.8 For the reasons set out in the CPU and pursuant to the authority vested in me under subsection 197(1) of the Act, I hereby order you and any other person with an interest in the Property, before dealing with the Property in any way, to give a copy of the CPU, including any amendments thereto, to every person who will acquire an interest in the Property as a result of the dealing.

Certificate of Requirement
4.9 Within fifteen (15) days from the date of receipt of a certificate of requirement, issued under subsection 197(2) of the Act, register the certificate of requirement on title to the Property in the appropriate land registry office.

4.10 Immediately after registration of the certificate of requirement, provide to the Director written verification that the certificate of requirement has been registered on title to the Property.

Owner / Occupant Change
4.11 While the CPU is in effect, forthwith report in writing, to the Director any changes of ownership, or occupancy of the Property, which for greater certainty does not include an invitee or permit holder.

Financial Assurance
4.12 The Director has not included in the Certificate of Property Use a requirement that the owner provide financial assurance to the Crown in right of Ontario.

Part 5: General
Standards for these Contaminants of Concern with risk management measures, are as outlined in Table 1.3 "Final Property - Specific Groundwater Standards" of the risk assessment and summarized as follows:

<table>
<thead>
<tr>
<th>Contaminant</th>
<th>Groundwater</th>
</tr>
</thead>
<tbody>
<tr>
<td>Chloromethane</td>
<td>49.5</td>
</tr>
<tr>
<td>Dichloromethylene, cis 1,2</td>
<td>1540</td>
</tr>
<tr>
<td>Tetrachloroethylene</td>
<td>27.5</td>
</tr>
<tr>
<td>Trichloroethylene</td>
<td>110</td>
</tr>
<tr>
<td>Vinyl Chloride</td>
<td>233</td>
</tr>
</tbody>
</table>

3.3 I am of the opinion, for the reasons set out in the Risk Assessment that the Risk Management Measures described therein and outlined in Part 4 of the CPU are necessary to prevent, eliminate or ameliorate an Adverse Effect on the Property.

3.4 The Risk Assessment indicates the presence of Contaminants of Concern which require ongoing restriction of land use and pathway elimination. As such, it is necessary to prepare a health and safety plan for future intrusive work, groundwater monitoring requirements, restrict the use of the Property and impose building restrictions as set out in the Risk Assessment and in Part 4 of the CPU.

Part 4: Director Requirements

Pursuant to the authority vested in me under section 168.6(1) of the Act, I hereby require the Owner to do or cause to be done the following:

Risk Management Measures

4.1 Implement, and thereafter maintain or cause to be maintained, the Risk Management Measures

4.2 Without restricting the generality of the foregoing in Item 4.1, carry out or cause to be carried out the following key elements of the Risk Management Measures:

a) Groundwater Monitoring: The groundwater monitoring shall commence forthwith on an annual basis until such time as the Director, upon application by the Owner, has reviewed the data available and either amends or revokes the CPU. The groundwater monitoring program shall include all groundwater contaminants of concern (COCs) outlined in Table 1.3 of the risk assessment as summarized below in Section 3.2, and will be conducted in conjunction with the contaminant delineation study at the adjacent property, located at 858 Upper James Street, Hamilton, Ontario which is the suspected source for the contamination flowing through the subject property. The duration of the monitoring program will be dependent on the review of the results of the program. Any proposed changes to the annual groundwater monitoring program shall be submitted to the Director in writing for approval and be fully supported by scientific rationale. Approval in writing by the Director is required prior to implementation of any changes.

b) An annual groundwater monitoring report shall be prepared in accordance with acceptable scientific practices by a Qualified Person, as defined in O.Reg. 153/04, and include sufficient information, data, interpretation and recommendations for the ultimate purpose of protecting and conserving the natural environment pursuant to Section 3 of the Environmental Protection Act. The annual groundwater monitoring report shall be submitted to the District Manager, Hamilton District Office of the Ministry not later than April 30th each year, covered by the report.
5.1 The requirements of the CPU are severable. If any requirement of the CPU or the application of any requirement to any circumstance is held invalid, the application of such requirement to other circumstances and the remainder of the CPU shall not be affected thereby.

5.2 An application under sub section 168.6(3) of the Act to,
   a) alter any terms and conditions in the CPU or impose new terms and conditions; or
   b) revoke the CPU;
   shall be made in writing to the Director, with reasons for the request.

5.3 The Director may amend the CPU under subsections 132(2) or (3) of the Act to change a requirement as to financial assurance, including that the financial assurance may be increased or provided, reduced or released in stages. The total financial assurance required may be reduced from time to time or released by an order issued by the Director under section 134 of the Act upon request and submission of such supporting documentation as required by the Director.

5.4 Subsection 186(3) of the Act provides that non-compliance with the requirements of the CPU constitutes an offence.

5.5 The requirements of the CPU are minimum requirements only and do not relieve you from,
   a) complying with any other applicable order, statute, regulation, municipal, provincial or federal law; or
   b) obtaining any approvals or consents not specified in the CPU.

5.6 Notwithstanding the issuance of the CPU, further requirements may be imposed in accordance with legislation as circumstances require.

5.7 In the event that, any person is, in the opinion of the Director, rendered unable to comply with any requirements in the CPU because of,
   a) natural phenomena of an inevitable or irresistible nature, or insurrections,
   b) strikes, lockouts or other labour disturbances,
   c) inability to obtain materials or equipment for reasons beyond your control, or
   d) any other cause whether similar to or different from the foregoing beyond your control,

the requirements shall be adjusted in a manner defined by the Director. To obtain such an adjustment, the Director must be notified immediately of any of the above occurrences, providing details that demonstrate that no practical alternatives are feasible in order to meet the requirements in question.

5.8 Failure to comply with a requirement of the CPU by the date specified does not absolve you from compliance with the requirement. The obligation to complete the requirement shall continue each day thereafter.

Part 6: Hearing before the Environmental Review Tribunal

6.1 Pursuant to section 139 of the Act, you may require a hearing before the Environmental Review Tribunal (the "Tribunal"), if within fifteen (15) days after service on you of a copy of the CPU, you serve written notice upon the Director and the Tribunal.

6.2 Pursuant to section 142 of the Act, the notice requiring the hearing must include a statement of the portions of the CPU and the grounds on which you intend to rely at the hearing. Except by leave of the Tribunal, you are not entitled to appeal a portion of the CPU or to rely on a ground, that is not stated in the notice requiring the hearing.
6.3 Service of a notice requiring a hearing must be carried out in a manner set out in section 182 of the Act and Ontario Regulation 227/07: Service of Documents, made under the Act as they may be amended from time to time. The address, email address and fax numbers of the Director and the Tribunal are:

The Secretary
Environmental Review Tribunal
655 Bay Street, Suite 1500
Toronto, ON, MSG 1E3
Fax: (416) 314-4506
Email: ERTTribunalSecretary@ontario.ca

and

Geoffrey Knapper, Director
Ministry of the Environment
119 King Street West, 9th Floor
Hamilton Ontario L8P 4Y7
Fax: 905-521-7806
Email: Geoffrey.Knapper@ontario.ca.

6.4 Unless stayed by application to the Tribunal under section 143 of the Act, the CPU is effective from the date of issue.

6.5 If you commence an appeal before the Tribunal, under section 47 of the Environmental Bill of Rights, 1993 (the “EBR”), you must give notice to the public in the EBR registry. The notice must include a brief description of the CPU (sufficient to identify it) and a brief description of the grounds of appeal.

The notice must be delivered to the Environmental Commissioner of Ontario who will place it on the EBR registry. The notice must be delivered to the Environmental Commissioner at 605-1075 Bay Street, Toronto, Ontario M5S 2B1 by the earlier of:

6.5.1 two (2) days after the day on which the appeal before the Tribunal was commenced; and

6.5.2 fifteen (15) days after service on you of a copy of the CPU.

6.6 Pursuant to subsection 47(7) of the EBR, the Tribunal may permit any person to participate in the appeal, as a party or otherwise, in order to provide fair and adequate representation of the private and public interests, including governmental interests, involved in the appeal.

6.7 For your information, under section 38 of the EBR, any person resident in Ontario with an interest in the CPU may seek leave to appeal the CPU. Under section 40 of the EBR, the application for leave to appeal must be made to the Tribunal by the earlier of:

6.7.1 fifteen (15) days after the day on which notice of the issuance of the CPU is given in the EBR registry; and

6.7.2 if you appeal, fifteen (15) days after the day on which your notice of appeal is given in the EBR registry.
Appendix "D" to Report PED09232(a) (Page 23 of 23)

Issued at Toronto this 16th day of November 2009.

Geoffrey Knapper
District Manager
Hamilton District Office
Director for the purpose of s. 168.5 of the Environmental Protection Act