

AIRD & BERLIS LLP

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November 12, 2010

File No. 94119

VIA REGULAR MAIL & EMAIL (sybelle.vonkursell@ontario.ca)

Ministry of Municipal Affairs & Housing
Municipal Services Office – Central Ontario
777 Bay Street, 2nd Floor
Toronto, ON M5G 2E5

Attention: Ms. Sybelle von Kursell,
Team Leader

Dear Ms. von Kursell

**Re: Durham OPA No. 128,
MMAH File No. 18-OP-0012-128**

**Re: Notice of Decision
October 27, 2010**

**Re: SS. 17(36) & (40), *Planning Act*
Notice of Appeal
1631057 Ontario Inc.**

RECEIVED
MUNICIPAL SERVICES OFFICE
NOV 17 2010
CENTRAL REGION
MINISTRY OF MUNICIPAL AFFAIRS
AND HOUSING

We represent 1631057 Ontario Inc., the applicant for a Regional Official Plan Amendment (ROPA), Whitby Official Plan Amendment (LOPA), Zoning Bylaw Amendment (ZBA) and Draft Plan of Subdivision to allow for a residential development at the northwest corner of Conlin Road and Anderson Street in Whitby. In addition to the northwest corner, our client also has interests in the northeast, southeast and southwest corners of Conlin Road and Anderson Street. Together the northwest, northeast, southeast and southwest corners of Conlin Road and Anderson Street are the Subject Site (please see Figure 1 identifying the Subject Site outlined in red).

PRELIMINARY POINTS

On behalf of our client, pursuant to Section 17(36) of the *Planning Act*, we are appealing the Minister's purported decision to refuse an Employment Land conversion at the northwest corner of Conlin Road and Anderson Street; see Decision, Part C, s. 2. Respectfully, the Minister has no jurisdiction to deal with the northwest corner of Conlin and Anderson in his Decision as that corner's designation was not subject to nor affected by ROPA No. 128.

The northwest corner of Conlin and Anderson was redesignated "Living Areas" and approved for residential uses by ROPA No. 114. The Ministry has appealed ROPA No. 114 to the Ontario Municipal Board; see OMB Case No. PL060978.

We acknowledge that the northeast, southeast and southwest corners at Conlin Road and Anderson Street (three corners) were under appeal at the OMB at the time of the Minister's decision; see OMB Case No. PL100386 and therefore the Minister could not rightly make a decision with respect to their designation; see Decision, Part D, s. 2. Nonetheless, it is respectfully submitted that it was inappropriate to include in MMAH's response to ROPA No. 128 that the Ministry remains opposed to the redesignation of those three corners of Conlin and Anderson while approving the redesignation to Employment Lands of other properties in West Whitby that were exchanged for the redesignation of the three corners to "Living Areas". As such, the Region's and Town's land budget equation for employment lands will be unbalanced with the three corners of Conlin and Anderson potentially refused as "Living Areas" while the exchanged Employment Lands in West Whitby are approved.

APPEAL OF CERTAIN PORTIONS OF THE DECISION & ROPA No. 128

Pursuant to Section 17(36) of the *Planning Act*, we are appealing the following ROPA policies and modifications made by the Ministry:

- Mod #6 & Policy 3.3.5 – We question the achievability and appropriateness of the proposed ratio.
- Mod # 15 & Policy 7.1.6 – Removes the phrase respecting urban areas "which are separated from one another" and inserts a reference to "healthy and complete, sustainable communities". This revision will have undesirable and inappropriate planning consequences.
- Mod # 16 & Deleted Policy 7.3.4 and associated Table – We are concerned that the proposed additional employment numbers contained in the Table have been removed from the OP without assessing how such removal relates to the amount of employment lands that are being proposed for such designation.
- Mod # 18 & Renumbered Policy 7.3.5 - This policy ignores and makes no allowance for site specific characteristics which are non-conducive to employment land uses.
- Mod # 22 & Renumbered Policy 7.3.9 – We object to the proposed density, intensification and phasing policies.
- Mod # 23 & Renumbered Policy 7.3.11 – We object to the proposed density, intensification and phasing policies.
- Mod # 33 & Renumbered Policy 7.3.15 - We object to the proposed phasing policies.

- Mod # 34 & Renumbered Policy 7.3.18 – We object to the proposed phasing policies.
- Mod # 37 and Policy 8A.2.2 b) ii) – We object to the stated mandatory density target.
- Mod # 39 and Policy 8A.2.2 c) i) - We object to the stated mandatory density target.
- Mod # 67 and Policy 14.10.2 – This policy requires the Region to monitor current census data, yet the current provincial Growth Plan numbers are based on the 2001 Census base, not the 2006 Census base. The Growth Plan Schedule 3’s numbers and distribution are out-of-date and without a proper planning foundation.
- Mod # 70 & Policy 15A – Definitions – we object to the added definition of “compact urban form” and the revised definition of “healthy and complete, sustainable communities”. These definitions are internally inconsistent, not universally achievable, and may prevent otherwise worthwhile development from occurring.
- Mod # 86 and Policy 8C.2.11 – This policy ignores and makes no allowance for site specific characteristics which are non-conducive to employment land uses.
- Various Modifications and Policies – Numerous modifications and policies, including but not limited to Mod # 12, 13, 14, 23, 28, 35, 37, 38, 39, 54, 55 & 62, use or substitute the word “target(s)” with “forecast(s)”. It is imperative that both words should be defined, readily understood and properly used and applied in each and every Official Plan policy where such words are utilised.

APPEAL OF CERTAIN NON-DECISIONS

Pursuant to Section 17(40) of the *Planning Act*, we are also appealing the Minister’s non-decisions, within the statutory 180 days, with respect to the “Intensification Allocations, 2015-2031” Schedule E – Table E9; see Decision, Part D, s. 4 and with respect to policy 7.7.3 and the “Population, Households and Employment” Table; see Decision, Part D, s. 5.

This appeal consists of this letter and the following:

- a completed Appellant Form (A1); and
- our firm cheque in the amount of \$125.00, made payable to the “Minister of Finance”, to cover the applicable appeal fee.

The following provides further background, as it relates to the re-designation of the four (4) corners of Conlin and Anderson to “Living Areas” and the overwhelming support received from both Local and Regional levels of government.

With respect to the northwest corner of Conlin and Anderson:

- On July 29, 2005, a complete submission was made for a Regional and Local Official Plan Amendment, a Zoning Bylaw Amendment and a Draft Plan of Subdivision.
- On September 13, 2006 Durham Region Council voted overwhelmingly in favour of ROPA No. 114, which in part re-designated the northwest corner of Conlin and Anderson from “Employment Areas” to “Living Areas”.
- MMAH appealed the redesignation of the northwest quadrant of Conlin and Anderson to the Ontario Municipal Board and it is being actively case managed by the Board.

With respect to Whitby Council and Town Planning Staff support for the redesignation of the four (4) corners of Conlin and Anderson from “Employment Areas” to “Living Areas”:

- On November 10, 2008, the Town of Whitby held a public meeting for the residents of the Conlin and Anderson neighbourhood to receive public input regarding an appropriate future land use designation for the four corners of Conlin and Anderson.
- At the November 10, 2008 public meeting, the residents of Conlin and Anderson expressed their full support regarding the redesignation of the four corners of Conlin and Anderson from “Employment Areas” to “Living Areas”.
- On November 17, 2008 Whitby Council passed a resolution stating that the Conlin Road and Anderson Street area be designated “Living Areas”.
- In their March 23, 2009 Recommendation Report, Whitby Planning staff, commenting on the Region of Durham Growth Plan Conformity Exercise (Growing Durham), recommended “that a larger area centred on the Anderson corridor and encompassing all four quadrants of the Conlin/Anderson intersection be re-designated from Employment Area to Living Area; see Report No. PL 31-09, page 16.

With respect to Durham Planning Staff and Council support through ROPA No. 128 for the redesignation of the four (4) corners of Conlin and Anderson from “Employment Areas” to “Living Areas”:

- On May 19, 2009, Regional planning staff brought forward their recommended Regional Official Plan Amendment No. 128 to Regional Planning Committee. In ROPA No. 128 Regional planning staff recommended that all four quadrants of the Conlin/Anderson intersection be designated “Living Areas” and an equivalent amount of land (at the time designated “Living Areas”) be designated as “Employment Areas” in West Whitby, which was deemed more suitable for employment purposes than the Subject Site. Regional Planning Committee upheld

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staff recommendation and recommended the same for Regional Council's consideration of ROPA No. 128.

- On June 3, 2009 the Regional Council supported the redesignation of the four corners of Conlin and Anderson from "Employment Areas" to "Living Areas" through the adoption of ROPA No. 128.

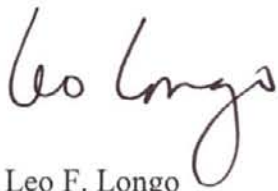
It is respectfully requested that your Ministry forward its record with respect to this appeal to the OMB as soon as is possible.

Thank you for your review and consideration regarding these matters.

Acknowledgement of your receipt of this appeal would be appreciated. Should you require any additional information or clarification respecting this matter, please do not hesitate to contact the undersigned.

Yours truly,

AIRD & BERLIS LLP



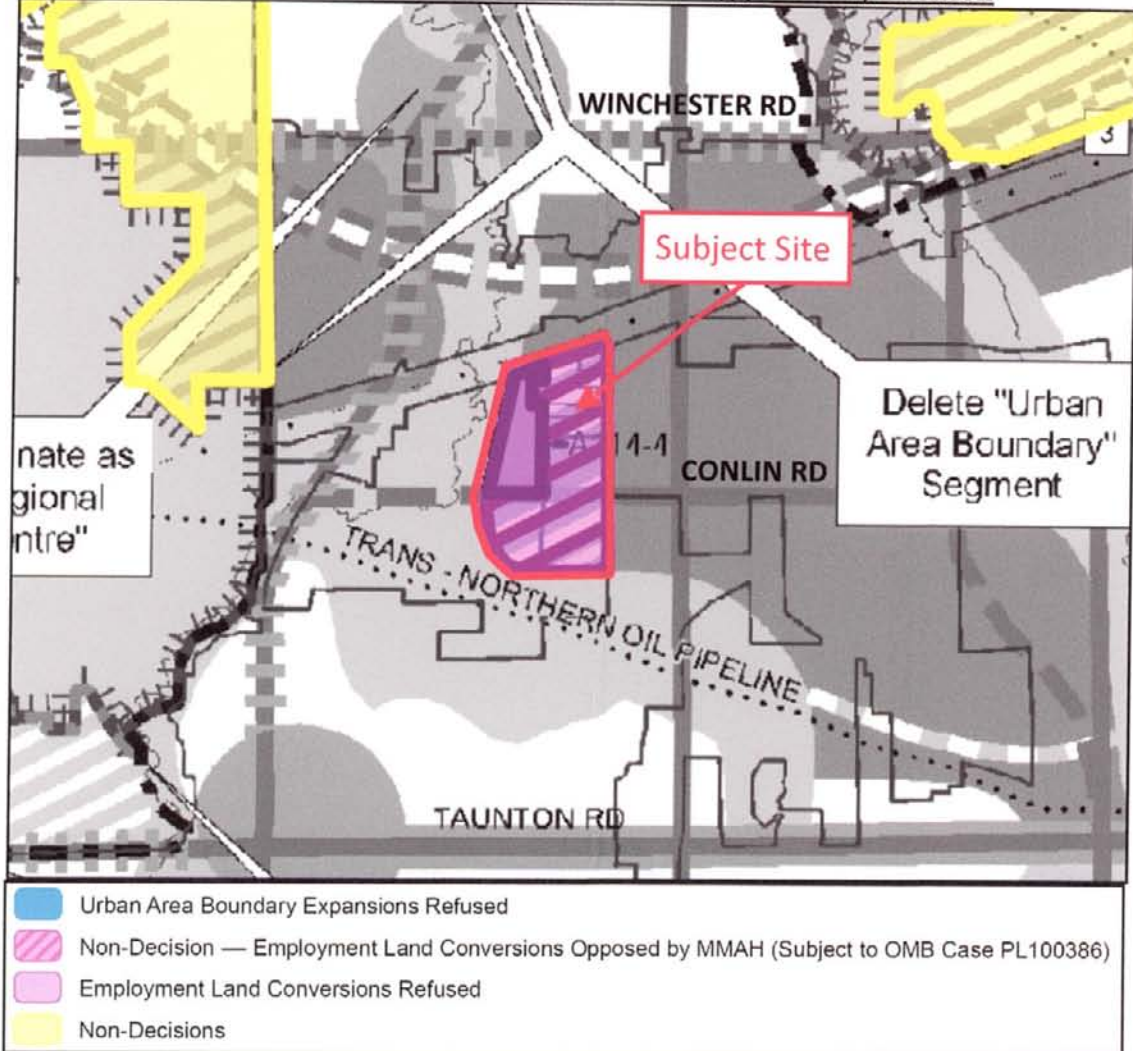
Leo F. Longo

LFL:dd

- C: L. Clay, Regional Director, MMAH (via email)
K. Hare, Solicitor, MMAH (via email)
A. Georgieff, Commissioner of Planning, Durham (via email)
J. Weber, Solicitor, Durham (via email)
B. Short, Director of Planning, Whitby (via email)
R. Hawkshaw, Solicitor, Whitby (via email)

- C: P. Lucchese (via email)
J. Messina (via email)
A. Biglieri (via email)
D. Annand (via email)

Figure 1: Ministry of Municipal Affairs and Housing (MMAH) Decision



Source: MMAH Decision with Respect to Regional Official Plan Amendment No. 128, October 27, 2010.

7454472.1



Environment and Land Tribunals Ontario
Ontario Municipal Board
 655 Bay Street, Suite 1500 Toronto, Ontario M5G 1E5
 TEL: (416) 212-6349 or Toll Free: 1-866-448-2248
 FAX: (416) 326-5370
 www.ello.gov.on.ca

**APPELLANT FORM (A1)
 PLANNING ACT**

**SUBMIT COMPLETED FORM
 TO MUNICIPALITY/APPROVAL AUTHORITY**

Date Stamp - Appeal Received by Municipality

Receipt Number (OMB Office Use Only)

Part 1: Appeal Type (Please check only one box)

SUBJECT OF APPEAL	TYPE OF APPEAL	PLANNING ACT REFERENCE (SECTION)
Minor Variance	<input type="checkbox"/> Appeal a decision	45(12)
	<input type="checkbox"/> Appeal a decision	53(19)
Consent/Severance	<input type="checkbox"/> Appeal conditions imposed	53(27)
	<input type="checkbox"/> Appeal changed conditions	53(14)
	<input type="checkbox"/> Failed to make a decision on the application within 90 days	34(19)
	<input type="checkbox"/> Failed to make a decision on the application within 90 days	34(11)
Zoning By-law or Zoning By-law Amendment	<input type="checkbox"/> Appeal the passing of a Zoning By-law	34(11)
	<input type="checkbox"/> Application for an amendment to the Zoning By-law – failed to make a decision on the application within 120 days	34(11)
	<input type="checkbox"/> Application for an amendment to the Zoning By-law – refused by the municipality	
Interim Control By-law	<input type="checkbox"/> Appeal the passing of an Interim Control By-law	38(4)
Official Plan or Official Plan Amendment	<input checked="" type="checkbox"/> Appeal a decision	17(24) or 17(36)
	<input checked="" type="checkbox"/> Failed to make a decision on the plan within 180 days	17(40)
	<input type="checkbox"/> Application for an amendment to the Official Plan – failed to make a decision on the application within 180 days	22(7)
	<input type="checkbox"/> Application for an amendment to the Official Plan – refused by the municipality	
Plan of Subdivision	<input type="checkbox"/> Appeal a decision	51(39)
	<input type="checkbox"/> Appeal conditions imposed	51(43) or 51(48)
	<input type="checkbox"/> Failed to make a decision on the application within 180 days	51(34)

Part 2: Location Information

N/A

Address and/or Legal Description of property subject to the appeal:

Municipality/Upper tier: DURHAM

Part 3: Appellant Information

First Name: _____ Last Name: _____

1631057 ONTARIO INC.
Company Name or Association Name (Association must be incorporated – include copy of letter of incorporation)

Professional Title (if applicable): _____

E-mail Address: _____
By providing an e-mail address you agree to receive communications from the OMB by e-mail.

Daytime Telephone #: _____ Alternate Telephone #: _____

Fax #: _____

Mailing Address: _____
Street Address Apt/Suite/Unit# City/Town
Province Country (if not Canada) Postal Code

Signature of Appellant: _____ Date: _____
(Signature not required if the appeal is submitted by a law office.)

Please note: You must notify the Ontario Municipal Board of any change of address or telephone number in writing. Please quote your OMB Reference Number(s) after they have been assigned.

Personal information requested on this form is collected under the provisions of the *Planning Act*, R.S.O. 1990, c. P. 13, as amended, and the *Ontario Municipal Board Act*, R.S.O. 1990, c. O. 28 as amended. After an appeal is filed, all information relating to this appeal may become available to the public.

Part 4: Representative Information (if applicable)

I hereby authorize the named company and/or individual(s) to represent me:

First Name: LEO Last Name: LONGO

Company Name: AIRD & BERLIS LLP

Professional Title: _____

E-mail Address: llongo@airdberlis.com
By providing an e-mail address you agree to receive communications from the OMB by e-mail.

Daytime Telephone #: 416-865-7778 Alternate Telephone #: _____

Fax #: 416-863-1515

Mailing Address: 181 BAY STREET SUITE 1800 TORONTO
Street Address Apt/Suite/Unit# City/Town
ONTARIO Country (if not Canada) Postal Code
MEX 1T1

Signature of Appellant: Leo F. Longo Date: November 12, 2010

Please note: If you are representing the appellant and are NOT a solicitor, please confirm that you have written authorization, as required by the Board's Rules of Practice and Procedure, to act on behalf of the appellant. Please confirm this by checking the box below.

I certify that I have written authorization from the appellant to act as a representative with respect to this appeal on his or her behalf and I understand that I may be asked to produce this authorization at any time.

Part 5: Language and Accessibility

Please choose preferred language: English French

We are committed to providing services as set out in the *Accessibility for Ontarians with Disabilities Act, 2005*. If you have any accessibility needs, please contact our Accessibility Coordinator as soon as possible.

Part 6: Appeal Specific Information

1. Provide specific information about what you are appealing. For example: Municipal File Number(s), By-law Number(s), Official Plan Number(s) or Subdivision Number(s):

(Please print)

MMAH DECISION / NON-DECISION - OCTOBER 27, 2010 RE: ROPA #128
MMAH FILE No. 18-OP-0012-128
SEE ATTACHED LETTER

2. Outline the nature of your appeal and the reasons for your appeal. Be specific and provide land-use planning reasons (for example: the specific provisions, sections and/or policies of the Official Plan or By-law which are the subject of your appeal - if applicable). **If more space is required, please continue in Part 9 or attach a separate page.

(Please print)

SEE ATTACHED LETTER

THE FOLLOWING SECTIONS (a&b) APPLY ONLY TO APPEALS OF ZONING BY-LAW AMENDMENTS UNDER SECTION 34(11) OF THE *PLANNING ACT*.

a) DATE APPLICATION SUBMITTED TO MUNICIPALITY: _____
(If application submitted before January 1, 2007 please use the O1 'pre-Bill 51' form.)

b) Provide a brief explanatory note regarding the proposal, which includes the existing zoning category, desired zoning category, the purpose of the desired zoning by-law change, and a description of the lands under appeal:
**If more space is required, please continue in Part 9 or attach a separate page.

[Empty box for explanatory note]

Part 7: Related Matters (if known)

Are there other appeals not yet filed with the Municipality?

YES NO

Are there other planning matters related to this appeal?

YES NO

(For example: A consent application connected to a variance application)

If yes, please provide OMB Reference Number(s) and/or Municipal File Number(s) in the box below:

(Please print)

PL060978 · ROPA #114
PL 100386 · ROPA #128 · CONLIN / ANDERSON LANDS

AIRD & BERLIS LLP - GENERAL ACCOUNT

25662

(0690-5221521) TD Canada Trust (TD) Date: 11-Nov-2010

(MIN0001) Minister of Finance Ref: : M#94119/OMB Appeal

\$125.00

THIS DOCUMENT CONTAINS SECURITY FEATURES - SEE REVERSE

AIRD & BERLIS LLP
BARRISTERS & SOLICITORS
BROOKFIELD PLACE, 181 BAY ST., SUITE 1800, BOX 754
TORONTO, ONTARIO M5J 2T9
(416) 863-1500

TD CANADA TRUST
TORONTO DOMINION CENTRE BRANCH
55 KING STREET WEST & BAY STREET
TORONTO, ONTARIO M5K 1A2

25662

Date 11 11 2010
DD MM YYYY

PAY*THE*SUM*OF*****\$125.00

AMOUNT
*****\$125.00

PAY
TO THE
ORDER
OF
Minister of Finance



PER

B. Berlis
AIRD & BERLIS LLP
GENERAL ACCOUNT

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