

ISSUE DATE:
MAR. 8, 2006
DECISION/ORDER NO:
0717



Ontario

Ontario Municipal Board

Commission des affaires municipales de l'Ontario

PL041198

06-351

Flamborough Chamber of Commerce, Waterdown Business Improvement Area and Westdale Village Business Improvement Area have appealed to the Ontario Municipal Board under subsection 17(24) of the *Planning Act*, R.S.O. 1990, c. P.13, as amended, from a decision of the City of Hamilton to approve Proposed Amendment No. 21 to the Official Plan for the Region of Hamilton-Wentworth now the City of Hamilton to redesignate land at Part of Lots 12 and 13, Concession 3 (East Flamborough) to add a Specific Policy Area to permit department stores
OMB File No. O050051
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Trinity Development Group Inc., Rosart Properties, Waterdown Business Improvement Area and others have appealed to the Ontario Municipal Board under subsection 34(19) of the *Planning Act*, R.S.O. 1990, c. P.13, as amended, against Zoning By-law 05-021 of the City of Hamilton
OMB File No. R050063
OMB Case No. PL041198

Trinity Development Group Inc. has appealed to the Ontario Municipal Board under subsection 51(39) of the *Planning Act*, R.S.O. 1990, c. P.13, as amended, from a decision of the City of Hamilton to approve a proposed plan of subdivision on lands composed of Part of Lots 12 and 13, Concession 3 (East Flamborough), in the City of Hamilton
25T200404
OMB File No. S040107
OMB Case No. PL041198

APPEARANCES:

Parties

Flamborough Power Centre Inc.

Trinity-Rosner

Counsel*/Agent

Dennis Wood*

OFFICE OF THE CITY CLERK	
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ACTION: <u>Azuidema</u>	
<u>T. McCabe</u>	
<u>L. Barrow</u>	
<u>A. D. ...</u>	

City of Hamilton	A. Zuidema*
Rosart Properties	L. Townsend-Renaud*
Flamborough Chamber of Commerce and Waterdown BIA	D. Bronskill*
203490 Ontario Inc.	M. Van Lirope

**MEMORANDUM OF ORAL DECISION FROM A PREHEARING
CONFERENCE DELIVERED BY D. L. GATES ON NOVEMBER 14, 2005
AND ORDER OF THE BOARD**

On Monday November 14, 2005 a further prehearing conference on this matter took place in Hamilton. At the outset, the Board was advised that the remaining Parties had settled their differences. On consent they asked that the Board issue three Orders, Attachments #1, 2 and 3. The Orders build on one another and permit some development to proceed if only one or two of the Orders are the subject of a court review (which 203490 Ontario Inc. the "Company" has already commenced and withdrawn).

Mr. Van Lirope spoke on behalf of the Company, a former Appellant and Party to this matter. He requested an adjournment on the basis that his lawyer resigned from the file late Friday afternoon. Until late Friday afternoon Mr. Van Lirope thought that his lawyer would be making a Motion for Adjournment. At around 4:30 p.m. on Friday, November 11, his lawyer sent a facsimile of a letter to the Company advising that his firm was withdrawing from the file. Mr. Van Lirope indicated that he was President and part owner of the Company. Mr. Wood, Mr. Zuidema, and Mr. Bronskill opposed the adjournment on behalf of their respective clients.

The original basis for the Motion for Adjournment was so that the Company could pursue its appeal rights prior to the Board ultimately coming to its decision. The Company suggested that this would prevent duplication of effort and be in the public interest. It took the position that if it was successful in their appeal to the courts then another costly hearing would have to be held and the time spent by the Board on this

matter would be wasted. As of Monday, November 14 the Motion for Adjournment was for these reasons and to allow the Company to retain another solicitor. In essence the Board was being requested to adjourn the Motion for Adjournment for a Company that was no longer a Party or Appellant at the hearing.

It must be noted that the Company requested an adjournment in mid July and was fortunate to have the matter adjourned until mid September. In October the Board ruled that the Company had not pursued its appeal diligently and for this reason and others set out in the Board's decision dismissed the Company's appeal without a hearing. Also, because this matter involves large retail big box stores any delay can cause great prejudice to the parties. The Company and Flamborough Power Center Inc. are competitors for the same types of uses and the same tenants.

The proponents of the Orders take the position that the Company has not demonstrated even today that it is proceeding earnestly, that the Board is functus because it has already dismissed the Company's appeal and that to allow the adjournment would be to overrule the Board's previous decision and permit the Company to succeed in delaying now when such delay was not permitted previously by the Board.

Even the Flamborough Chamber of Commerce and the Waterdown BIA believed that they were being prejudiced and requested costs of this morning. They stated that nothing has been produced to suggest the Company will proceed diligently. It was noted that the Company includes principals who are experienced in land development. It was also noted that the Company has a history of engaging counsel at the last minute. The return date for this prehearing conference was originally scheduled for five days earlier.

It was suggested that everyone is prejudiced by the delay except the Company, which has nothing to lose by delay. All the other parties accepted the risk of proceeding and are requesting the Board to proceed.

In the circumstances the Board hereby dismisses the companies request to adjourn its Motion for Adjournment and dismisses the Motion for Adjournment for the reasons set out by the proponents above. The Board will consider costs on the request of any Party. It is so Ordered.

Planning Issues

At the outset of this matter the Trinity lands and the Loblaws lands comprise lands owned by Riotrin. Riotrin, and the Company, both owners of land on the South side of Highway #5, and FPCI a landowner on the North side of Highway #5 are competitors. All sites are somewhat constrained by the necessity of completing the Highway #5 and #6 interchange, particularly the lands of the Company which also has access challenges. Each company appealed each other's planning instruments which would give the other company a competitive advantage. Some of the planning instruments were appealed by the Waterdown Business Improvement Area and the Flamborough Chamber of Commerce ostensibly to protect existing businesses so as to prevent blight in older retail areas.

On November 14, the Board heard oral evidence from Mr. Fothergill, an experienced planner retained by FPCI in 2003 respecting these applications. He was qualified by the Board to give opinion evidence. He indicated that FPCI and Trinity lands are designated in the Official Plan for the former Town of Flamborough as Prestige Industrial-Commercial and General Industrial-Commercial and that these designations permit a wide range of industrial and commercial uses including wholesale and/or retail warehouse use and home improvement, furniture or appliance outlet.

In June 2004, FPCI applied to amend the Official Plan for the Region of Hamilton-Wentworth, and Flamborough OP, and the Zoning By-law to permit an expanded range of retail and commercial uses and in particular department stores. A public meeting was held on February 1, 2005 and Amendments 21 and 98 were adopted amending the Regional and City's OP's respectively so as to permit the development of a big box retail including department stores on the FPCI property. Staff recommended in favour of these planning instruments including Zoning By-law Amendment 05-021 subject to the phasing of development pending traffic studies, traffic improvements, and a satisfactory market study for the final phase. Each planning instrument attracted a number of appeals.

Regional Official Plan Amendment Number 17, adopted on October 29, 2003 and now in force, permits department stores and grocery stores on the Trinity lands (Riotrin Power Center lands at that time). Trinity's lands are also subject to Flamborough's

Official Plan Amendment #96 which permitted department store, grocery store and retail establishments subject to size limitations. Development on the Trinity lands is to be phased in in conjunction with road improvements. Initially Trinity appealed this O. P. Amendment but withdrew its appeal by letter dated February 2, 2005.

The FPCI property is currently zoned Prestige Industrial-M1-1 and General Industrial M2-1 which permits a wide range of industrial and commercial uses implementing the OP (but not department stores). The zoning on the Trinity lands is Prestige Industrial Holding, which additionally permits wholesale and retail warehouse facilities, retail establishments and video rental establishment. Zoning holding provisions which tie development to road improvements, also exist on the Trinity lands in particular relating to the Highway #5 and #6 interchange. Trinity initially appealed this zoning (By-law 03-332) but withdrew its appeal by letter dated February 2, 2005.

FPCI's applications were filed to permit retail and commercial uses including department stores similar to the uses permitted on the Trinity lands (Riotin lands at that time) with the exception of a supermarket. In support of the FPCI applications Mr. Fothergill authored a planning report, submitted a MPG market report, a MPG response to peer review, traffic impact study, a revised traffic impact study and an addendum to the traffic study.

Both the sites on the North and South side of Highway #5 were thoroughly examined through an exhaustive public process prior to the Municipality passing the various planning instruments. Exhaustive planning studies were completed which concluded these applications were in the public interest, conform and implement the regional and local official plans and represent good planning.

Since that time all the parties have agreed to settle with similar holding provisions for each except that the Company has not agreed to settle but wishes to press on with its appeal based on market issues. The revisions to implement the settlement only make the planning instruments stronger by providing more access to FPCI's land, more detail in the holding provisions and greater support for existing businesses.

Mr. Fothergill recommended the Plan of Subdivision with the proposed conditions to the Board. He testified that the plan meets all the tests set out in Section 51(24) of the *Planning Act* and that it is in the public interest because it provides for a widening of

Highway #5 and a significant road widening (Block 6) of Highway #6 in order to facilitate the proposed intersection. All landowners in the vicinity would benefit from these dedications.

Through the subdivision process, the Municipality will be provided with a water tower site, and a storm water detention and quality pond. Additionally the City has the ability to link the lands south of Block 12 (Block 12 contains a watercourse) to the lands to the North if it chooses to link them in the future. Development on Blocks 2 and 15 can be sited so as to front on and have access onto Street A and not Highway #5. Mr. Fothergill opined, the subdivision conditions (which help accomplish the foregoing) are reasonable in the circumstances.

Attachment #1, as a result of the settlement, permits the subdivision plan to proceed and adds an additional condition for a further road connection through FPCI's lands to Highway #5 should the Ministry of Transportation or the Municipality require it.

The Board heard no reason why this subdivision plan should not proceed, heard extensive evidence as to its advantages as noted above and will dismiss any outstanding appeals as provided for in Attachment #1. Attachment #1 is so Ordered.

Attachment #2 is the Order which dismisses the Rosart, Trinity and all the other appeals to the extent set out in the Order. The Board notes that the Flamborough Chamber of Commerce and Waterdown BIA withdrew their appeals by letter dated October 24, 2005 to the extent set out in Attachments #2 & 3.

A good explanation as to these planning instruments is set out in the Staff Report attached as Exhibit "C" to Mr. Fothergill's Affidavit wherein the Staff supported these amendments. Relevant portions of the Executive Summary of the Staff Report as well as the Recommendations are attached as Attachment #4. Clearly the Staff and City Council believed these applications were in the public interest and good planning. Their reasoning is set out in the Attachment. Mr. Fothergill came to the same conclusions. The Board specifically adopts paragraphs 127 & 129 of Mr. Fothergill's affidavit which states as follows:

"127. For the reasons outlined above, it is my opinion that the FPCI applications have been thoroughly reviewed by the City, its staff and consultants, and have been the subject of a

thorough public consultation process. The proposed development is appropriate for the FPCI property, is supported by planning, market and traffic studies and meets the official plan tests...

129. It is my opinion, the FPCI proposed development represents good planning."

The Board heard no reason why the OP amendments and Zoning Amendment should not proceed, heard extensive evidence as to their advantages and that they represented good planning and will dismiss any outstanding appeals as provided for in Attachment #2. These proposals will give local residents a full range of shopping alternatives in their local community. They will compliment and support the nearby industrial uses, without causing blight in older commercial areas or unforeseen traffic problems which cannot be managed by the planned traffic improvements. Attachment #2 is so Ordered.

Mr. Fothergill then went on to review Attachment #3. With respect to the OP, the changes would strengthen the position of the Waterdown BIA and the Flamborough Chamber of Commerce by increasing the minimum size of retail stores, eliminating restaurants from some of FPCI's lands and limiting exceptions from these rules. An automobile service station and gas bar was added as a permitted use to be ancillary to the proposed Canadian Tire store. On some of the lands accessory convenience retail uses were deleted as a permitted use (Site-Specific Area 14). On a portion of a Site-Specific Area 14 lands restaurants were deleted and market study rules enhanced.

On the same lands amendments to the Zoning By-law deleted Accessory Convenience Retail Store but added Automobile Convenience Center and strictly defined it. The amendments decreased the required rear yard setback so as to permit the buildings more easily to face Street A and not front on Highway #5. They also clarify the calculation of gross floor area of all retail establishments and identify precisely the exceptions to the minimum size restrictions for certain retail uses. Also as in Attachment #1 & 2 the amendments set out the new access requirements of the Ministry of Transportation through FPCI's land. They also reduce the number of square foot floor space permissible for each phase for the FPCI development.

In all cases Mr. Fothergill recommended the original planning instruments (OP's and Zoning By-law) and the amendments as good planning. All these amendments seem to the Board to be in the interests of the Flamborough Chamber of Commerce and the Waterdown BIA in preventing blight in existing commercial areas.

The Board heard no reason why the proposed development should not proceed. The Board heard extensive evidence as to its advantages and that the OPs and Zoning Amendment as amended represented good planning and will dismiss any outstanding appeals as provided for in Attachment #3. Attachment #3 is so Ordered.

"D. L. Gates"

D. L. GATES
MEMBER

ONTARIO MUNICIPAL BOARD**Commission des affaires municipales de l'Ontario**

Flamborough Chamber of Commerce, Waterdown Business Improvement Area and Westdale Village Business Improvement Area have appealed to the Ontario Municipal Board under subsection 17(24) of the *Planning Act*, R.S.O. 1990, c. P.13, as amended, from a decision of the City of Hamilton to approve Proposed Amendment No. 21 to the Official Plan for the Region of Hamilton-Wentworth now the City of Hamilton to redesignate land at Part of Lots 12 and 13, Concession 3 (East Flamborough) to add a Specific Policy Area to permit department stores

OMB File No. O050051

OMB Case No. PL041198

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OMB File No. R050063

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25T200404

OMB File No. S040107

OMB Case No. PL041198

ORDER OF THE ONTARIO MUNICIPAL BOARD**THE BOARD HEREBY ORDERS THE FOLLOWING:**

1. That the appeal by the Flamborough Chamber of Commerce and the Waterdown Business Improvement Area of Official Plan Amendment No. 98 to the Official Plan of the former Town of Flamborough ("OPA 98") is allowed in part, by modifying OPA 98 as indicated on Schedule "A". OPA 98 is approved, as modified, in the form set out in Schedule "B".
2. That the appeal by the Flamborough Chamber of Commerce and the Waterdown Business Improvement Area of Zoning By-law No. 05-021 ("By-Law 05-021") is allowed in part, by

amending By-law 05-021 as indicated on Schedule "C". By-law 05-021 is approved, as amended, in the form set out in Schedule "D".

3. That the appeals of the Flamborough Chamber of Commerce and the Waterdown Business Improvement Area of OPA 98 and By-law No. 05-021 are otherwise dismissed.

CITY OF HAMILTON

BY-LAW NO. 05-021

**To Amend Zoning Bylaw No. 90-145-Z (Flamborough)
and to Amend Bylaw No. 03-332, respecting lands
described as being within Part of Lots 12 and 13,
Concession 3, (East Flamborough), in the former Town
of Flamborough, now in the City of Hamilton**

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

AND WHEREAS the City of Hamilton is the successor to certain area municipalities, including the former area municipality known as "The Corporation of the Town of Flamborough" and is the successor 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. 90-145-Z (Flamborough) was enacted on the 5th day of November, 1990, and approved by the Ontario Municipal Board on the 21st day of December, 1991;

AND WHEREAS By-law No. 03-332 which amends Zoning By-law No. 90-145-Z (Flamborough) was enacted on the 29th day of October, 2003, and approved in part by the Ontario Municipal Board on the 5th day of July, 2004;

AND WHEREAS the Council of the City of Hamilton, in adopting Section 13 of Report 05-003 of the Planning and Economic Development Committee at its meeting held on the 9th day of February, 2005, recommended that Zoning By-law No. 90-145-Z (Flamborough) and Zoning By-law No. 03-332, be amended as hereinafter provided;

AND WHEREAS this by-law is in conformity with the Official Plan of the City of Hamilton, as amended by Official Plan Amendment No. 21 to the former Official Plan of The Regional Municipality of Hamilton-Wentworth and by Official Plan Amendment No. 98 to the former Official Plan of the Town of Flamborough, proposed by the Council of the City of Hamilton, but not yet approved in accordance with the provisions of the Planning Act.

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

1. That Schedule "A-29", appended to and forming part of By-law No. 90-145-Z (Flamborough), be amended as follows:
 1. Schedule No. A-29, attached to and forming part of Zoning By-law No. 90-145-Z, is hereby amended by changing the zoning from the Prestige Industrial 'M1-1' Zone and the General Industrial 'M2-1' Zone to Prestige Industrial Holding 'M1-12-1 (H)' Zone, Prestige Industrial Holding 'M1-12-2 (H)' Zone and Prestige Industrial Holding 'M1-12-3 (H)' Zone on those lands being Part of Lots 12 and 13, Concession 3 (Geographic Township of East Flamborough), Block 157 Registered Plan 62M-739 being in the City of Hamilton, shown on Schedule 'A' attached to and forming part of this By-law.
2. Section 29 - Prestige Industrial 'M1' Zone of Zoning By-law No. 90-145-Z (Flamborough) is hereby amended by adding thereto the following subsection:

"29.3.12 'M1-12' (see Schedule A-29)

(a) PERMITTED USES

Accessory Convenience Retail Store
Wholesale and Retail Warehouse Facility
Retail Establishment excluding any Retail Establishment primarily involved with food sales such as a Supermarket
Automotive Convenience Centre
Automobile Service Station subject to Section 21.2
Gas Bar subject to Section 21.2
Car Wash as an accessory use to a gas bar, subject to Section 21.2
Business, Professional or Administrative Office
Medical Clinic
Computer, Electronic or Data Processing Establishment
Community Centre
Dry Cleaning Establishment
Dry Cleaning Distribution Station
Exhibition Conference Hall
Financial Institution
Funeral Home
Industrial Research and Development Establishment
Personal Service Establishment
Place of Entertainment
Place of Recreation
Printing or Publishing Establishment
Public Use
Restaurant - standard, convenience or fast food
Video Rental Establishment
Warehouse Membership Club

Motel
Hotel

(b) ZONE PROVISIONS

- (i) Minimum Lot Frontage..... 30 metres
- (ii) Minimum Lot Area..... 8,000 square metres
- (iii) Maximum Lot Coverage..... 30% except a lot with only Business, Professional or Administrative Office which shall be permitted a maximum lot coverage of 50%
- (iv) Yard abutting a streetline other than a Provincial Highway (minimum)..... 6 metres
- (v) Yard abutting a Provincial Highway (minimum) 14 metres
- (vi) Interior Side Yard (minimum)..... 3 metres
- (vii) Rear yard not abutting a streetline or Provincial Highway (minimum)..... 6.0 7.5 metres
- (viii) Planting Strip (minimum)..... 6.0 metres width across all lot lines abutting a street.
- (ix) Notwithstanding Zone Provision (b)(viii) above, a minimum 15 metre by 15 metre landscaped triangle shall be provided and maintained for corner lots with one streetline on Dundas Street East, and a minimum 12 metre by 12 metre landscaped triangle shall be provided and maintained for corner lots in all other cases, which shall be suitably landscaped and designed to provide an attractive appearance. The required 15 by 15 metre landscaped triangle shall also include a gateway feature which shall be defined through site plan approval.
- (x) Maximum Total Gross Floor Area for all uses excluding Motel, Hotel Community Centre and Public Use..... 55,740 square metres
- (xi) Retail Establishments, Wholesale and Retail Warehouse Facilities, Warehouse Membership Clubs:
 - 1. Maximum Total Gross Floor Area..... 39,110 square metres
 - 2. Maximum Gross Floor Area for

- any individual outlet..... 12,077 square metres
3. Minimum Gross Floor Area for any individual outlet..... 1,858 square metres
4. Notwithstanding Zone Provision (xi)(3) above, a maximum of 35% of the total existing Gross Floor Area of all Retail Establishments, Wholesale and Retail Warehouse Facilities and Warehouse Membership Clubs **either existing or under construction** each equal to or exceeding 1,858 square metres Gross Floor Area shall be permitted as Retail Establishments each having a minimum Gross Floor Area between 465 square metres and 1,857 square metres.
- (xii) Minimum Gross Floor Area for each Restaurant - standard, convenience, or fast food (excluding Restaurants accessory to a **Place of Recreation, a Place of Entertainment or a retail use**)..... 372 square metres
- (xiii) **Notwithstanding Zone Provision (xii) above, a maximum of three (3) fast food restaurants may have a Gross Floor Area of less than 372 square metres.**
- (xiv) **Minimum Gross Floor Area for each Personal Service Establishment, Dry Cleaning Establishment, Dry Cleaning Distribution Station, Video Rental Establishment, and Place of Entertainment..... 325 square metres**
- (xv) **Notwithstanding subsection (xiv) above, a maximum of three (3) such outlets as identified in Zone Provision (xiv) above, may each have a Gross Floor Area of less than 325 square metres.**
- (xvi) **A maximum of one (1) Financial Institution and one (1) Automotive Convenience Centre is permitted.**
- (xvii) Maximum Gross Floor Area for an Accessory Convenience Retail Store..... 340 93 square metres
- (xviii) Each use other than accessory uses shall be contained in a building having all of its customer access doors opening directly outdoors and shall not open onto another store or an unenclosed corridor.
- (xix) Notwithstanding the provisions of Section 5.21, PARKING REGULATIONS, which shall apply only to Motel, Hotel, Community

Centre, Exhibition Conference Hall and Public Use; the minimum number of parking spaces to be provided and maintained for all other uses shall be five (5) spaces per 100 square metres of Gross Floor Area.

- (xx) Notwithstanding any other provisions of Zoning By-law No. 90-145-Z to the contrary, lands zoned Prestige Industrial 'M1-12' and identified on Schedule A-29 to this By-law shall be treated as a single lot for the purposes of Zone Provisions (x) and (xi), **(xiii), (xv) and (xvi)** above, notwithstanding any consolidation or division of the same.
- (xxi) For the purposes of this By-law, a "Warehouse Membership Club" shall be defined as a building with a minimum Gross Floor Area of 7,000 square metres, occupied by a single user, where the principal use is the sale of food and non-food products which are generally stored, displayed and offered for sale in one and the same area in a warehouse format and where customers, whether retail or wholesale, are generally required to be members of the club, but excludes department stores and supermarkets.
- (xxii) **For the purposes of this by-law an AUTOMOTIVE CONVENIENCE CENTRE shall mean a single building, containing more than one individual outlet, with a minimum Gross Floor Area of 465 square metres and a maximum Gross Floor Area of 1,050 square metres and which contains a gas bar and/or car wash on the same lot and which building is designed, developed and maintained by the owner of the lot and the use of which may include a combination of individual outlets which may include a maximum of 1 convenience retail outlet and a maximum of 2 restaurants (including standard, convenience and fast food), regardless of whether such outlets are separately leased and have customer access from inside or outside the AUTOMOTIVE CONVENIENCE CENTER. Further, notwithstanding the provisions of subsections (xii), (xiii), (xiv), (xv) and (xvii) above, there are no size restrictions for the individual outlets within the building.**

- (xxiii) All other provisions of Subsection 29.2 ('M1' Zone) shall apply **except that outdoor storage areas, including a garden centre and a home improvement/building supplies area, shall be permitted provided that they are screened from view.**

(c) HOLDING PROVISIONS

The Holding provisions of Section 36(1) of the Planning Act, R.S.O., 1990, as amended, apply to the lands zoned 'M1-12' by introducing Holding symbol 'H' as a suffix to the proposed Site-Specific Prestige Industrial Zone.

The Holding Provision 'M1-12-1' will prohibit all permitted uses, except a Motel, Hotel, Community Centre and Public Use on the lands zoned 'M1-12' until such time that:

- (i) A Traffic Impact Study has been submitted to the satisfaction of the Ministry of Transportation and the City of Hamilton which recommends the transportation improvements required to accommodate a maximum gross floor area of ~~39,947~~ **25,000** square metres, excluding motel, hotel, community centre and public uses; and,
- (ii) Arrangements, financial and otherwise, for improvements recommended in the above study have been completed to the satisfaction of the Ministry of Transportation and the City of Hamilton.

The Holding Provision 'M1-12-2' will prohibit the gross floor area exceeding ~~39,947~~ **25,000** square metres, excluding a Motel, Hotel, Community Centre and Public Use, on the lands zoned 'M1-12' until such time as:

- (i) A Traffic Impact Study has been submitted to the satisfaction of the Ministry of Transportation and the City of Hamilton which recommends the transportation improvements required; and
- (ii) **A second municipal road allowance connecting the subject lands to Dundas Street (Highway 5) has been dedicated to the City of Hamilton by way of a plan of subdivision to provide appropriate access to the subject lands as may be required by and to the satisfaction of the City of Hamilton and the Ministry of Transportation; and,**
- (iii) Arrangements, financial and otherwise, for any required road accesses, roadway infrastructure or interchange works ~~recommended in the above study have been~~ **including Highway Nos. 5 and 6 intersection/interchange improvements, are** completed to the satisfaction of the Ministry of Transportation and the City of Hamilton.

The Holding provision 'M1-12-3' will prohibit the use of the lands zoned 'M1-12' for a Warehouse Membership Club until a market impact study has been submitted to the satisfaction of the City of Hamilton's Director of Development and Real Estate that demonstrates that there will be no significant impact on the planned function of other commercial areas.

City Council may remove the 'H' symbol, and thereby give effect to the Site-Specific Prestige Industrial 'M1-12' Zone provisions by enactment of an amending By-law once the conditions are fulfilled.

3. The provisions of subsection 29.3.4 – “MI-I1” of Section 2 of By-law No. 03-332 are hereby amended as follows:
- (a) Provision (a) – PERMITTED USES is amended by adding the following permitted uses:
- “Accessory Convenience Retail Store
Gas Bar subject to Section 21.2
Car Wash as an accessory use to a gas bar, subject to Section 21.2
Community Centre
Public Use
Warehouse Membership Club
Motel
Hotel”
- (b) Provision (b)(iv) is deleted in its entirety and replaced by the following:
- “Maximum Total Gross Floor Area for
all uses excluding Motel, Hotel,
Community Centre and Public Use..... 52,000 square metres”
- (c) Sub-provisions (v), (vi) and (vii) of Provision (b) are deleted in their entirety and replaced by the following:
- “(v) Retail Establishments, Wholesale and Retail Warehouse Facilities
Warehouse Membership Clubs:
1. Maximum Gross Floor Area for
any individual outlet 12,077 square metres
 2. Minimum Gross Floor Area for
any individual outlet..... 1,858 square metres
 3. Notwithstanding Zone Provision (v)(2) above, a maximum of 35% of
the total existing Gross Floor Area of all Retail Establishments,
Wholesale and Retail Warehouse Facilities and Warehouse
Membership Clubs each equal to or exceeding 1,858 square metres
Gross Floor Area shall be permitted as Retail Establishments each

having a minimum Gross Floor Area between 465 square metres and 1,857 square metres.”

- (d) Sub-provision (viii) of Provision (b) is renumbered as sub-provision (vi).
- (e) Sub-provision (ix) of Provision (b) is deleted in its entirety and replaced by the following:
 - “(vii) Each use other than an accessory use shall be contained in a building having all of its customer access doors opening directly outdoors and shall not open onto another store or an unenclosed corridor.”
- (f) Sub-provision (x) of Provision (b) is deleted in its entirety and replaced by the following:
 - “(viii) Notwithstanding the provisions of Section 5.21 – PARKING REGULATIONS, which shall apply only to Motel, Hotel, Community Centre and Public Use, the minimum number of parking spaces to be provided and maintained for all other uses shall be five (5) spaces per 100 square metres of Gross Floor Area.”
- (g) Sub-provision (xi) of Provision (b) is renumbered as sub-provision (ix).
- (h) Sub-provision (xii) of Provision (b) is renumbered as sub-provision (xvii).
- (i) The following sub-provisions are added to Provision (b):
 - (x) Yard abutting a streetline other than a Provincial Highway (minimum) 6 metres
 - (xi) Yard abutting a Provincial Highway (minimum) 14 metres
 - (xii) Interior Side Yard (minimum)..... 3 metres
 - (xiii) Rear yard not abutting a streetline or Provincial Highway (minimum)..... 7.5 metres
 - (xiv) Planting Strip (minimum)..... 6.0 metres width across all lot lines abutting a street
 - (xv) Maximum Gross Floor Area for an Accessory Convenience Retail Store..... 93 square metres
 - (xvi) For the purposes of this By-law, a “Warehouse Membership Club” shall be defined as a building with a minimum Gross Floor Area of 7,000 square metres, occupied by a single user, where the principal use is the sale of food and non-food products which are generally stored, displayed and offered for sale in one and the same area in a warehouse format and where customers,

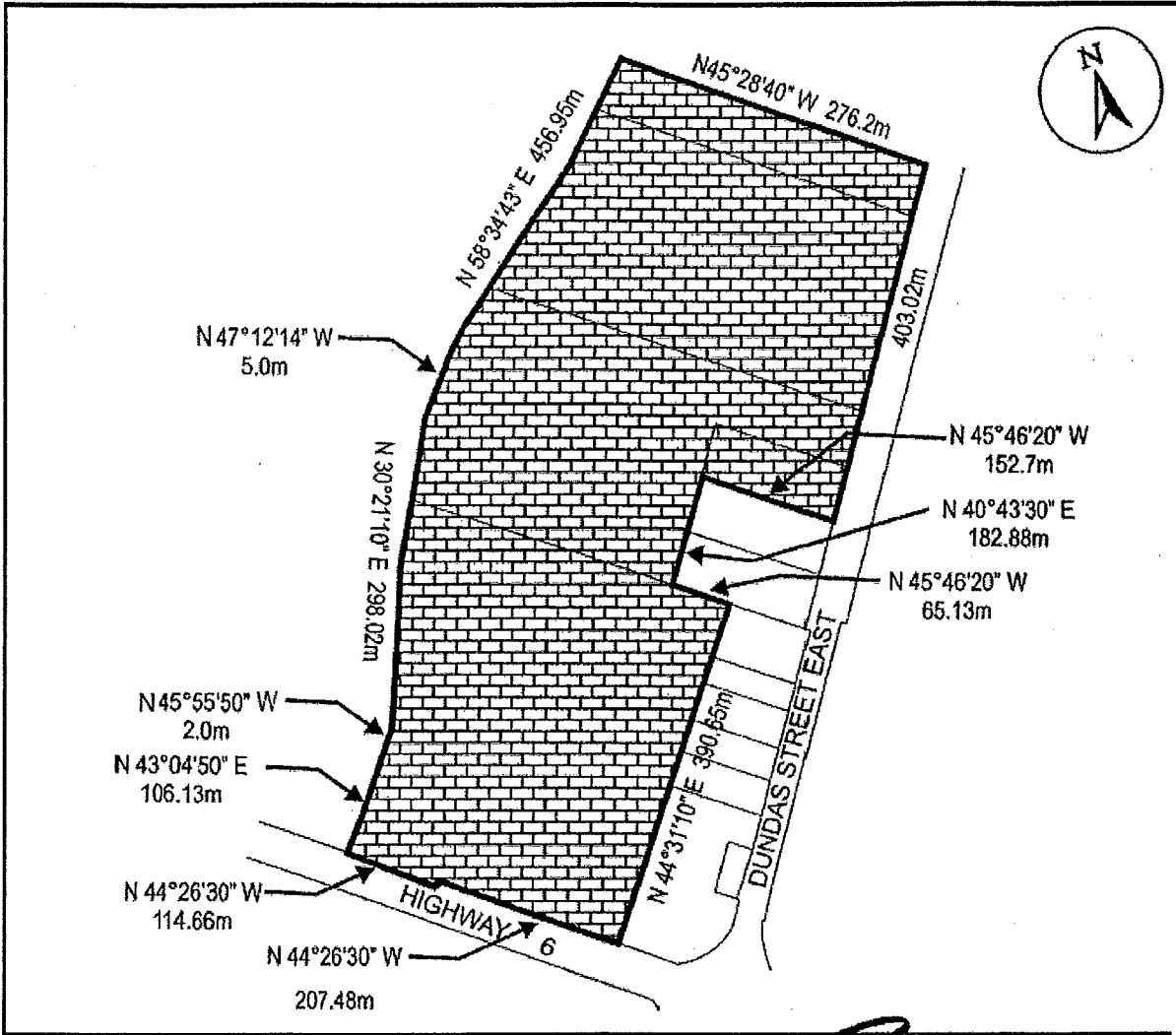
whether retail or wholesale, are generally required to be members of the club, but excludes department stores and supermarkets.”

- (j) All other provisions of By-law 03-332 shall continue to apply.
- 4. The Clerk is hereby authorized and directed to proceed with the giving of notice of the passing of this By-law, in accordance with the Planning Act.

PASSED and ENACTED this 9th day of February, 2005.

MAYOR

CLERK



This is Schedule "A" to By-Law No 05-021


Passed the 9th day of February, 2005

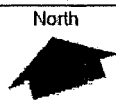
[Handwritten Signature]
 Clerk
 Mayor

Schedule "A"

Map Forming Part of
 By-Law No. 05-021
 to Amend By-Law No. 90-145-Z

Subject Property

 Change in zoning to Modified M1-12-1(H), Modified M1-12-2(H), Modified M1-12-3(H).



Scale:
 Not to Scale

Date:
 February 2005

File Name/Number:
 ZAC-03-108/ZAC-04-58/
 ROPA-04-02/OPA-04-12
 Planner/Technician:
 CT/LM