

ISSUE DATE:

July 18, 2007

DECISION/ORDER NO:

2034



Ontario

Ontario Municipal Board

Commission des affaires municipales de l'Ontario

PL070114

07-265

Landmart Realty Corp. has appealed to the Ontario Municipal Board under subsection 34(11) of the *Planning Act*, R.S.O. 1990, c. P.13, as amended, from Council's refusal or neglect to enact a proposed amendment to Zoning By-law 87057 of the former Township of Ancaster, now the City of Hamilton to rezone lands legally known as Part of Lot 50, Concession 3, from Agriculture "A" Zone to Residential "R4" Zone, to permit a residential development.

OMB File No: Z070011

Landmart Realty Corp. has appealed to the Ontario Municipal Board under subsection 51(34) of the *Planning Act*, R.S.O. 1990, c. P.13, as amended, from the failure of the City of Hamilton to make a decision respecting a proposed plan of subdivision on lands composed Part of Lot 50, Concession 3, in the former geographic Township of Ancaster, now in the City of Hamilton

Approval Authority File No: 25T-200613

OMB File No: S070030

APPEARANCES:

Parties

Landmart Realty Corp.

City of Hamilton

Counsel

Russell Cheeseman

Art Zuidema

DECISION DELIVERED BY R. ROSSI AND ORDER OF THE BOARD

Landmart Realty Corp. (the Applicant/Appellant, hereafter the Applicant) has proposed to change the zoning of its lands from Agricultural "A" Zone to the Residential "R4" Zone, Modified (Block 1) and the Open Space "O2" Zone (Block 2). The proposed modified Residential R4 Zone will permit a minimum lot area of 375 square metres; minimum front yards of three metres to a dwelling and six metres to an attached garage; minimum lot coverage of 45% for one-storey dwellings and 40% for two-storey dwellings; and an alcove may be permitted to encroach into a required yard to a maximum of 0.6 metres. The purpose of the application is to create 100 lots for single-detached dwellings; one lot for an existing single detached dwelling; one block for parkland; blocks for future development; a temporary turning circle; 0.3 metre reserves; and four public roads.

Both the Applicant and the City of Hamilton have reached agreement on the proposed changes to the Zoning By-law and on the plan of subdivision, but they remain apart on the appropriateness of Conditions 8, 17 and 22 proposed for the draft plan of subdivision.

Russell Cheeseman represented the Applicant and provided three witnesses (qualified) opposed to the City's proposed conditions: Planner John Ariens; Geotechnical Engineer Ian Shaw; and Traffic Consultant Norma Moores.

Art Zuidema represented the City of Hamilton and provided four witnesses (qualified) in support of the City's proposed conditions: Senior Project Manager, Development Planning, Raymond Lee; City Senior Planner Greg Macdonald; City Engineer Tony Sergi; and Transportation Engineer Brian Malone.

Planner John Ariens referred the Board to the Applicant's previous minutes of settlement and conditions with the City (Exhibit 1, Tab 2) for the Springbrook Meadows East development (Schedule A). He also cross-referenced from the same exhibit the "Partial List of Meadowlands Phase 10 Conditions of Draft Plan Approval as Settlement Agreement" (Schedule B) for the Meadowlands Phase 10 development, with the more recently-written, City-proposed draft plan conditions for Phase 10 (Tab 5) and the Applicant's own proposed draft plan conditions (Tab 6). The first 15 conditions of Schedule B from the previous minutes of settlement for the Springbrook Meadows East development were transferred into the proposed conditions for today's hearing with Condition 8 in contention.

Both Parties agree that as Condition 4 requires a groundwater study, Condition 16 – "The owner shall agree in writing that should a Hydro geological report be required as per Condition 8, the report shall also identify any significant recharge and discharge zones, to the satisfaction of the Director of Development Engineering" – should be deleted from the list of conditions and the Board accepted this recommendation.

Mr. Ariens then provided his expert planning opinion on the remaining three conditions in contention: Conditions 8, 17 and 22. He explained that Condition 8 works in tandem with Condition 4 and was agreed to in the minutes of settlement. The City now proposes, however, that existing Condition 8 is renumbered as 8b and that an

additional Condition 8a be added. Thus, instead of Condition 16; Condition 8a would read:

Prior to registration of the plan, the Owner will submit a Hydro geological report, for the subdivision, to the City, prepared by a qualified professional to assess the potential groundwater impacts, provide recommendations to mitigate any potential groundwater impacts, and to identify any works recommended including monitoring, to the satisfaction of the Director of Development Engineering.

Then, Condition 8b would contain the same wording as the existing Condition 8:

The Owner agrees in writing that in the event groundwater is encountered during any construction within the subdivision, including but not limited to house construction, the Owner will submit a Hydro geological report to the City, prepared by a qualified professional, to assess the impacts, provide recommendations to mitigate the groundwater impacts and undertake the works as recommended including monitoring, to the satisfaction of the Director of Development Engineering.

Mr. Ariens opined that this condition is redundant in that Condition 8a requires the hydro geological report in any case, so the two reports would address the same things: groundwater impacts and provide recommendations to mitigate. The Applicant accepts Condition 8a, but does not wish to engage in a duplication of effort, as proposed by Condition 8b.

Mr. Ariens pointed out that there is a time dimension in respect of the hydro geological report. Both Conditions 8a and 8b require hydro reports in the case of Condition 8a, the timing of submission of that report is prior to the construction of homes and there will be no construction prior to registration (other than possibly a few model homes). Condition 8a requires the report to be delivered at the front end of housing construction. In comparison to the existing Condition 8, that condition is different in that it is more an optional report whereby the City is exercising an option to require that report. The need for a report is triggered by a finding of water, so the new Condition 8a

will require a hydro geological report, then in Condition 8 (which the City proposes is 8b), the City needs the Applicant to report the finding of any water. The report moves from a huge watershed study area covering hundreds of acres and moving along to the eventual building of houses to the specific subdivision and then to the more specific issue of where the Applicant might hit water on the subdivision. Mr. Ariens explained that the hydro geological report will be done well in advance of the registration and servicing of the subject lands and in fact, such a study (Exhibit 1, Tab 11) has already been completed and the Applicant's witnesses testified that they indeed expect to encounter groundwater on the subject lands. Mr. Ariens stated that where the Applicant encounters water during construction – whether putting in pipes or footing or a basement, the Applicant's hydro geological study will have determined the impact of groundwater. While Mr. Zuidema suggested that different results could arise, Mr. Ariens answered that this would be addressed through mitigation. Mr. Zuidema submitted that this additional provision (Condition 8a) provides the City with a trigger and a level of comfort where it can confidently issue building permits to ensure that what is built is sound and based on good engineering. It would provide the City with an additional degree of flexibility by enabling it to seek more study from the Applicant.

Geotechnical Engineer Ian Shaw provided both geotechnical and hydro geological evidence. He told the Board that Conditions 8a and 8b were essentially requesting the same scope of work and were redundant, in his opinion. The only difference is the timing when they need to be done. Condition 8a requires a report prior to the plan's registration and the existing Condition 8 states that if the Applicant finds water on its site during construction, a hydro geological report would be required. Mr. Shaw stated that as the report would be done prior to registration, it would essentially be the same report. By retaining both Conditions 8a and 8b, the Applicant would do a report prior to registration of the draft plan and then, when work starts on the site (and groundwater will be encountered), the condition reads that the Applicant needs to do another report which, in his expert opinion, would be the exact same report.

Mr. Shaw explained further that one does not stop at the report: one has to plan, mitigate any problems that are foreseen, monitor during the construction period to confirm what is required and react appropriately in order to mitigate anything unforeseen that arises. As he told the Board, the need for additional work is simply recognizing what the hydro geologists are already doing in their existing report –

identifying, mitigating and monitoring. He rejected Mr. Zuidema's suggestion that in the course of construction, "there might be new information", as the only thing one would obtain is more detailed information based on the existing comprehensive hydro geological report.

City engineer Tony Sergi told the Board that Condition 8a will ensure the whole project starts out properly while Condition 8b will address any specific situation or problem that arises. He said that Condition 8a will provide the evaluation and Condition 8b will provide the confirmation and the courses of action needed to address arising issues. Planner Greg Macdonald relied on Mr. Sergi's evidence on Condition 8 and he was satisfied that the extra wording (Condition 8b) was appropriate and that "it is better to be safe than sorry."

As Mr. Cheeseman pointed out, all Parties agreed that Condition 8 represents an issue of timing – when water is encountered. Condition 8b requires a hydro geological study when one starts construction and one finds find water. Condition 8a requires a report at the outset in any case. Mr. Shaw has already confirmed that the Applicant will encounter groundwater on the site. While Mr. Sergi said that theoretically, the first report could show no water, Mr. Shaw already confirmed that extreme water conditions will be encountered. Further, Mr. Shaw has built in a monitoring process and if any changes occur, the Applicant's hydro geological experts will address them (Exhibit 1, Tab 11, p.99). As Mr. Cheeseman pointed out, it is in everybody's interest to ensure that these problems do not occur, but Mr. Shaw's report plans for any unforeseen problems.

The Board has considered the evidence regarding Condition 8 and determines the proposed Conditions 8a and 8b to be redundant. The City will require a hydro geological study and the Applicant has provided that report for the City's review. The Board preferred the expert evidence of Mr. Shaw in relation to the contents of his study and how it comprehensively plans for investigation, monitoring and mitigation of any problems that might arise, to Mr. Sergi's opinion that one report essentially sets the stage while the second report addresses any problems. Mr. Shaw's evidence is to be preferred as he is the author and has confirmed that any hydro geological issues that arise are covered off by the initial comprehensive report and that such issues are but an extension of what has already been proposed: to address any issues that arise. The

Board considers it unnecessary to require two conditions that require the same thing and determines that the single Condition 8 in both Tabs 5 and 6 is sufficient to address the City's concerns. Further, the same condition was previously accepted and agreed to by the City in the minutes of settlement for the Applicant's Springbrook Meadows East development. There is nothing unique to distinguish this development, which abuts the aforementioned development that requires dual conditions imposed for what would amount to essentially the same information – how to mitigate groundwater issues. Thus, the Board strikes out the proposed Condition 8a and leaves Condition 8 as it currently stands.

As for Condition 17 in Tab 5, requiring the Applicant to implement and construct the Garner Road East and Springbrook Avenue intersection improvements, as well as front-end the cost of the required works (with the City recovering the proportionate share from Springbrook Meadows East and West), Mr. Ariens took the Board to Condition 13 that flowed from the identical condition in the previous minutes of settlement for Springbrook Meadows East, where the Applicant was required to only pay 50% of the costs of the traffic study and will provide its proportionate share for the necessary improvements to the aforementioned intersection. Mr. Ariens noted that the Applicant agreed to Condition 13, but is contesting this new Condition 17, which essentially requires the Applicant to not only pay for its share of the traffic study, but to also front-end the costs of the intersection improvements and construct it as well. Mr. Ariens noted that no such condition was required in the Springbrook Meadows East development.

Mr. Ariens explained that the conditions for a draft plan of subdivision have to be within the Applicant's ability to satisfy. He cited the history of the problems with the Meadowlands Phase 8 development and its difficulties in obtaining secured road crossings over a hydro corridor and the farmer who refused to give up his lands. That requirement caused damages in the millions of dollars, all because the Applicant could not satisfy conditions that related to someone else's lands. With little or no room for lane widening or turning lanes and an increase needed, the Applicant would be forced by the proposed condition to attempt to obtain the lands of adjacent landowners and it could represent a condition that the Applicant cannot satisfy.

Mr. Zuidema asked Mr. Ariens whether the Applicant had investigated the current width of the City's road at this intersection to determine whether such an improvement could be required without affecting any additional lands. Mr. Ariens responded that he had not done any investigation although a traffic study has been submitted to the City, but has not yet been reviewed). Mr. Zuidema attempted to distinguish the Springbrook Meadows East development from the proposed Condition 17 for this case, as that subdivision was not going to have access to Springbrook Avenue. Mr. Ariens responded that the Springbrook Meadows East development might benefit from the intersection improvement although the cost sharing was worked out and that subdivision was not required to front end that intersection.

Traffic Engineer Norma Moores spoke to Condition 17. Ms Moores' traffic analyst report (Exhibit 1, Tab 8) was done for the Springbrook/Garner intersection and examined what immediate improvements would be required. The report also apportioned each subdivision's share to the cost of these improvements based on traffic generated by each subdivision. Her report concluded that based on existing volumes, no roadway improvements are required to support the construction of the first four subdivisions planned along Springbrook Avenue in the Ancaster Meadowlands Neighbourhood IV Secondary Plan (Tab 9, p.80). Ms Moores opined that the City should not require Condition 17 of the Applicant. She stated that Garner Road's current status is as a city road and is under the City's jurisdiction. While improvements will be contemplated in the future, these are adequately covered by the development charges by-law through which every developer pays.

Exhibit 7 contains traffic graphs (City's evidence) that reflect a different methodology from that used by Ms Moores in her work although they are based on her report's traffic counts. She told the Board that these graphs are typically used by the Ministry of Transportation for country roads where one does not expect a lot of traffic and where there are more free flow conditions on a rural highway. The graphs represent that under existing conditions, there would be a need for a left-turn lane now, before a single house is even built in the area.

Ms Moores used the highway capacity methodology in her January and June 2007 analyses and she said this is a more up-to-date methodology than what City Transportation Engineer Brian Malone provided via the graphs. She noted that at no

time did the City express concerns with her methodology and that she has applied the same methodology in her previous work in Ancaster and in fact, the City has told her to use the methodology she utilized in those examples. Mr. Zuidema noted that Ms Moores has never provided the City with copies of her January or June reports and had no discussion with the City of her recommendations.

Ms Moores advised the Board that Garner Road is an arterial road that continues to function like a rural two-lane highway. It has a rural cross section, but with improvements in the area, it is operating within the urban context.

City Transportation Engineer Brian Malone agreed with the findings in Ms Moores' January report regarding recommendations for stop control and the construction of two turning lanes. In the June report, however, he opined that Ms Moores took a different approach and trip generation was revised to reflect a different quantity of land for trip generation (comparing the data from both reports - p.68 versus p.79). He added that there was no discussion of left turning lanes in Ms Moores' June report, whereas in the January report, the base assumption was that it has already been widened to a four-lane with an existing left-turn situation. The June report looked at today's existing situation. It assumed the existing Garner Road as a two-lane roadway not yet built to its full four-lane configuration and the report did not build in an operational assessment of a left turn lane. Mr. Malone noted that Garner road is still a rural road and is close to its existing MTO state, so he used that methodology to analyze the situation and concluded that a left-turn lane was warranted at Springbrook Avenue and Garner Road.

Mr. Malone reviewed Exhibit 7 and told the Board that there will be a process for widening Garner Road at some future point, but the question is when that municipally-led reconstruction would happen. He opined that it was appropriate for the Applicant to spend money to improve the intersection for the purposes of safety until such point as the City reconstructs Garner Road.

~~Mr. Malone also stated that his methodology from Exhibit 7 reveals that for the~~

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So Orders the Board.

ATTACHMENT 2

CITY OF HAMILTON

BY-LAW NO. _____

To Amend Zoning By-law No. 87-57 (Ancaster), Respecting Lands Located at 425 Springbrook Avenue

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

AND WHEREAS the City of Hamilton is the successor to certain area municipalities, including the former area municipality known as the "The Corporation of the Town of Ancaster" and is the successor to the former Regional Municipality, namely, "The Regional Municipality of Hamilton-Wentworth";

AND WHEREAS the City of Hamilton Act, 1999, provides that the Zoning By-laws 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 of the City of Hamilton;

AND WHEREAS Zoning By-law No. 87-57 (Ancaster) was enacted on the 22nd day of June 1987, and approved by the Ontario Municipal Board on the 23rd day of January, 1989;

AND WHEREAS this by-law is in conformity with the Official Plan of the City of Hamilton (the Official Plan of the former Town of Ancaster) in accordance with the provisions of the Planning Act;

NOW THEREFORE the Ontario Municipal Board Orders as follows:

1. Schedule "B" of Zoning By-law No. 87-57 (Ancaster), as amended, is hereby further amended by changing from the Agricultural "A" Zone:

(a) to the Residential "R4-562" Zone, the lands comprised in Block "1"; and,

(b) to the Residential "R4-563" Zone, the lands comprised in Block "2",

the extent and boundaries of which are shown on a plan hereto annexed as Schedule "A".

2. That Section 34: Exceptions of Zoning By-law No. 87-57 (Ancaster), as amended, is hereby further amended by adding the following subsections:

R4-562 That notwithstanding the provisions of paragraphs (a), (b), (c), (d) and (e)(ii) of Subsection 12.2 "Regulations" of Section 12:

Residential "R4" Zone, Schedule "C", and the Provisions of Section 7.12, "Yard Encroachments", the following special provisions shall apply to the lands zoned "R4-562":

Regulations

- (a) Minimum Lot Area 415 square metres.
- (b) Minimum Lot Frontage 12 metres, except on a corner lot the minimum lot frontage shall be 15 metres.
- (c) Maximum Lot Coverage 45 percent.
- (d) Minimum Front Yard 6.0 metres.
- (e) Minimum Side Yard On a corner lot, the minimum side yard abutting a street shall be 3.0 metres.
- (f) An alcove and similar architectural features shall be permitted to project into any minimum yard a distance of not more than 60 centimetres.

R4-563

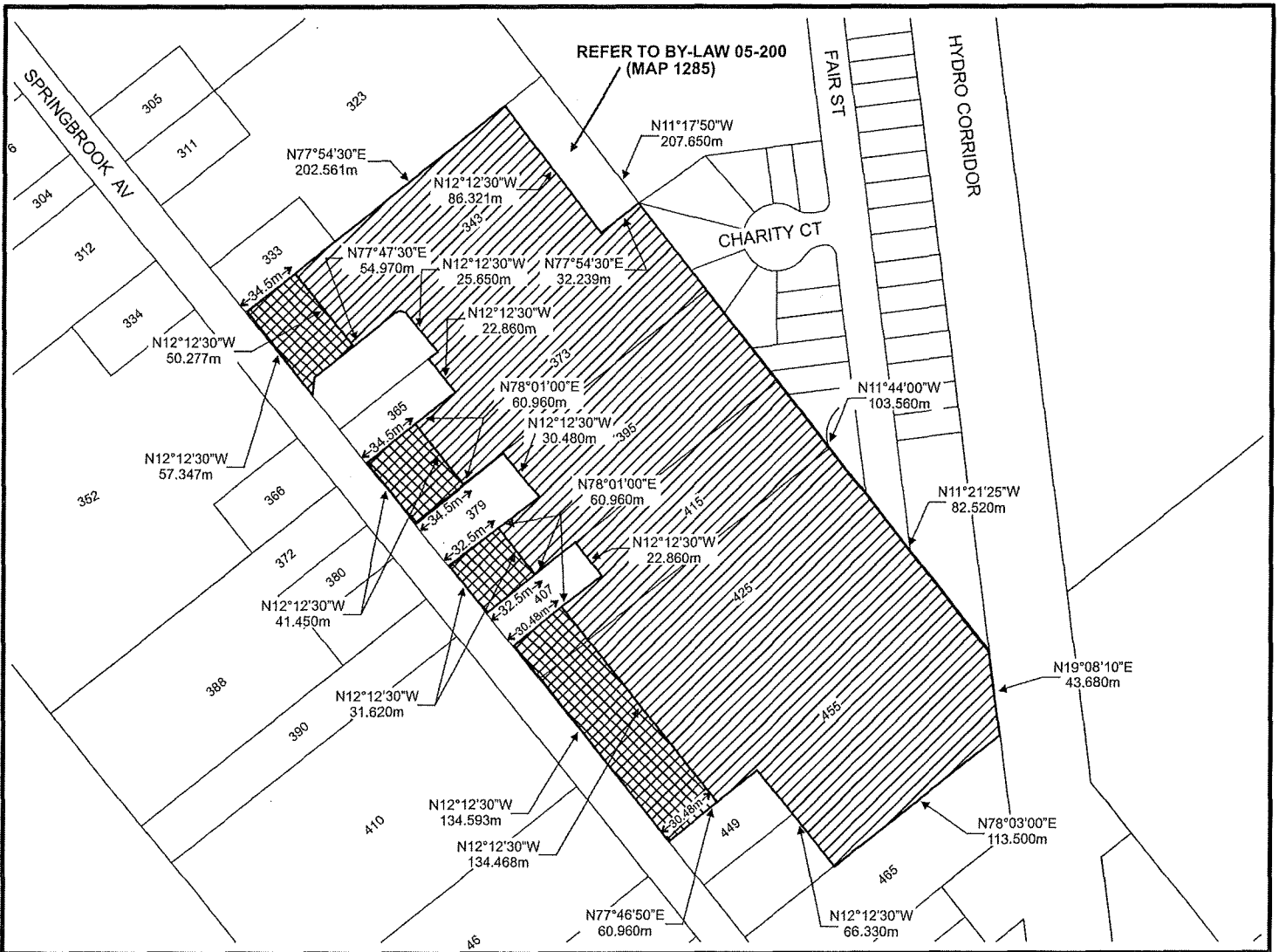
That notwithstanding the provisions of paragraphs (a), (b), (c), (d) and (e)(ii) of Subsection 12.2 "Regulations" of Section 12: Residential "R4" Zone, Schedule "C", and the Provisions of Section 7.12, "Yard Encroachments", the following special provisions shall apply to the lands zoned "R4-563":

Regulations:

- (a) Minimum Lot Area 375 square metres.
- (b) Minimum Lot Frontage 12 metres, except on a corner lot the minimum lot frontage shall be 15 metres.
- (c) Maximum Lot Coverage 45 percent.
- (d) Minimum Front Yard 3.0 metres to the dwelling and 6.0 metres to a garage shall be provided.
- (e) Minimum Side Yard On a corner lot, the minimum side yard abutting a street shall be 3.0 metres.

- (f) An alcove and similar architectural features shall be permitted to project into any minimum yard a distance of not more than 60 centimetres.
- 3. That the amending By-law be added to Map 1 of Schedule B of Ancaster Zoning By-law No. 87-57.

ZAC-06-67/25T-200613



This is Schedule "A" to By-Law No. 07-

Passed the day of, 2007

Clerk

Mayor

Schedule "A"

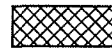
Map Forming Part of By-Law No. 07-_____

to Amend By-law No. 87-57

Subject Property

Lot 50, Concession 3, Ancaster, Meadowlands Phase 10

Change in zoning from the Agricultural "A" Zone to the:



Block 1 - Residential "R4-562" Zone



Block 2 - Residential "R4-563" Zone

Scale:
N.T.S.

File Name/Number:
ZAC-06-67 / 25T-200613

Date:
April 25, 2007

Planner/Technician:
GM/MC



Hamilton

PLANNING AND ECONOMIC DEVELOPMENT DEPARTMENT