

ISSUE DATE:

Jun. 28, 2011



Ontario

PL100633

10-128-OMB-01
Attachments 1, 2, 3, & 4

Ontario Municipal Board
Commission des affaires municipales de l'Ontario

2243361 Ontario Inc. has 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 or to refuse approval of) Proposed Amendment No. 223 to the former City of Hamilton Official Plan

Approval Authority File No. CI-09-H
OMB File No. PL100633

Wayne Clayton has 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 or to refuse approval of) Proposed Amendment No. 158 to the former City of Stoney Creek Official Plan

Approval Authority File No. CI-09-H
OMB File No. PL100633

2243361 Ontario Inc., 5A Developments Inc. 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 10-128 of the City of Hamilton
OMB File No. PL100634

APPEARANCES:

Parties

Counsel*/Agent

City of Hamilton

Michal Minkowski*

5A Developments Inc.

Vanessa Bacher*

1823474 Ontario Inc.

Sean Gosnell*

T. D. L. Group

Victor Labreche

Wayne Clayton

DECISION DELIVERED BY J. E. SNIEZEK AND ORDER OF THE BOARD

Introduction

The City of Hamilton passed By-law 10-128 that represents a "New Industrial Zoning By-law" that regulates uses and sets development standards. Following a pre-hearing conference, appeals by 1201076 Ontario Limited, Bunge Canada Holdings Inc.

Flamborough Power Centres Inc., Shawcor Ltd., 2243321 Ontario Limited and Sam's Auto Wrecking Co. Ltd. were settled. The appeal by ZBX Hamilton Lands Inc. was withdrawn May 19th, 2011.

The outstanding appeals are set out below:

- 5A Developments Inc.
- 1823474 Ontario Inc.
- T. D. L. Group
- Wayne Clayton

The Board has received a letter from Horst Felber with respect to property at 68 Trinity Church Road.

The Board heard testimony from Allan Fletcher a qualified professional planner with the City of Hamilton who has previously been recognized by the Board as an expert witness. Mr. Fletcher is the Manager of Strategic Projects and the planner responsible for the New Industrial Zoning By-law.

Review of the evidence

Mr. Fletcher provided an overview of the New Industrial Zoning By-law including the following elements:

- Hamilton Bay Front – a heavy industrial area – former Dofasco and Stelco with a mix of heavy industrial uses with pockets of residential housing – also includes light manufacturing as a buffer surrounding the heavy industrial area
- Flamborough - a prestige industrial area
- Red Hill Business Park
- The Airport Industrial Area - not included in the new by-law
- Ancaster Business Park

- Stoney Creek – QEW – prestige and light industrial area
- West Hamilton Innovation District
- Remnant parcels in Dundas
- Remnant parcels in Hamilton Mountain
- Parcels south of the innovation district

Mr. Fletcher indicated that the number of industrial zones in the communities that were amalgamated had been reduced from 24 industrial zones to 5.

Mr. Fletcher spoke to Mr. Clayton who owns a house on McNally Road that is an enclave of residential uses in the former Municipality of Stoney Creek. The Stoney Creek Business Park surrounds the residential uses along McNally Road. The industrial area boundary to the south is Barton Street. Mr. Fletcher stated that the proposed zoning restrictions contained in Section 440 prohibit loading spaces along the building face abutting the residential area, increase the minimum rear yard to 9 metres, provide for no manufacturing uses within 28 metres and require a buffer along the industrial/residential interface with a berm (1.8 metres) and wall combination (3 metres). The zone also includes a clarification of the rear yard setback of 24 metres and outdoor display area limitations of 25%. The details of the by-law are contained in Exhibit 5, Tab 5 and 6. The settlement represents "good planning" and conforms to the Official Plan. As a result of the settlement, the appeal of Official Plan Amendment is now dismissed.

Mr. Clayton confirmed that he was in agreement with the settlement and the new zoning restrictions.

Mr. Fletcher indicated that the TDL Group owns property in an industrial zone in the Stoney Creek Business Park. The property fronts on the South Service Road and the settlement will permit a restaurant of 280m² not exceeding 30% of the building. The proposed by-law prohibits restaurants along Fruitland Road.

The second part of the amendment concerns the permission of a restaurant at the intersection of Highways 5 and 6. This is necessary because of the reconstruction of this intersection.

Mr. Fletcher opined that the provisions of the revised by-law contained in Exhibit 8 represent "good planning" and conform to the Official Plan.

Mr. Labreche indicated that the proposed by-law amendment reflects the settlement discussions.

Mr. Fletcher indicated that 1823474 Ontario Inc. owns property located at 620 South Service Road. A motor vehicle service station is a permitted use. 1823474 Ontario Inc. wants to develop a gas bar, store, take-out restaurant with drive thru and a single bay car wash (which is not permitted). The exception 439 permits the addition of the car wash use and confirms that the interpretation of the "Motor Vehicle Service Station" permits the convenience store and the accessory use permits the restaurant use with the drive thru. This was contained in a letter dated May 30, 2011 from Mr. Fletcher and is now known as Exhibit 10. Mr. Fletcher confirmed his written comment in his oral testimony before the Board.

Mr. Fletcher concluded that the zoning amendment contained in Exhibit 9 and the Letter of May 30, 2011 (Exhibit 10) represented "good planning" and conformed to the Official Plan.

Mr. Gosnell agreed with the submissions of the City and asked the Board to affirm the interpretation letter in its decision.

5A Developments owns an eight acre property across Fruitland Road at 650 South Service Road that is zoned M3. The subject lands are in the Stoney Creek Industrial Business Park. The proposed settlement adds a range of support uses to the M4 zone and four uses to the M3 zone – restaurant, financial establishment, retail and personal services. The restaurant use is not limited in size, a drive thru is not permitted, no restaurant shall be located within 40 metres of Fruitland Road, retail establishments are restricted to a maximum size of 500 square metres and retail and personal services floor area is limited to 15% of the gross floor area.

Mr. Fletcher opined that the settlement reflects good planning practise and conforms to the planning policy framework and that Exhibit #11 reflects the settlement discussions.

The City made submissions to the Board with respect to the previous Order the proposed amendments are contained in Exhibit 12B.

Findings

Based upon the submissions of the Parties and the uncontested evidence of Mr. Fletcher the Board allows the appeals in part and amends the Board previous decision in accordance with Exhibit 12B (Attachment 5). The Zoning By-law is amended in accordance with Exhibits 7, 8, 9, and 11 and attached as Attachments 1, 2, 3 and 4 to this Order.

THE BOARD ORDERS that the appeals against By-law 10-128 of the City of Hamilton are allowed in part, and the Board directs the municipality to amend By-law 10 – 128 set out in Attachments 1, 2, 3, and 4 to this order. In all other respects, the Board Orders the appeal are dismissed.

AND THE BOARD ORDERS that the Decision of the Board issued March 25, 2011 is amended in accordance with Attachment 5.

AND THE BOARD ORDERS that the appeal of Official Plan Amendment 158 is dismissed.

"Joseph E. Sniezek"

JOSEPH E. SNIEZEK
MEMBER

ATTACHMENT 1

Exhibit #7
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**WAYNE CLAYTON
MINUTES OF SETTLEMENT – BY-LAW CHANGES**

That based on the Minutes of Settlement and Council Resolution, By-law 10-128 be amended as follows:

1. That Schedule "C" to By-law 10-128 be amended to add the following Special Exception:
 - "440. In addition to Section 5.2.1, 9.3.3 c), 9.3.3 e), 9.3.3 k) for those lands zoned Prestige Business Park (M3) Zone, identified on Maps 1256, 1257, 1309 and 1310 of Schedule "A" – Zoning Maps, and described as 1047-1049 Barton Street, the following special provisions shall also apply:
 - a. In addition to Section 5.2.1, the following shall also apply:
 - i) Loading Spaces shall not be permitted on any west elevation of a building on 1047-1049 Barton Street that faces the eastern lot line of 1023 Barton Street, 320, 324, 328, 332, 336, 340 and 344 McNeilly Road, except where separated by another building; and,
 - ii) Notwithstanding i) above, should a loading space be located within 40.0 metres of the eastern lot line of 1023 Barton Street, 320, 324, 328, 332, 336, 340 and 344 McNeilly Road, the following shall apply:
 1. The loading space shall be limited to a maximum length of 10.0 metres; and,
 2. Shall be screened from the above noted property line by a noise attenuation wall attached to the building equal in length to the loading space.
 - b. In addition to Section 9.3.3 the following shall also apply:
 - i) Minimum Yard abutting any portion of a property line of the properties known as 1023 Barton Street, 320, 324, 328, 332, 336, 340 and 344 McNeilly Road shall be 9.0 metres within which no parking shall be located.
 - c. In addition to Section 9.3.3 e) the following shall also apply:

ATTACHMENT 2

EX-8

WITHOUT PREJUDICE

Proposed Amendments:

1. That Section 9.3.1 of By-law 10-128 be amended to add "Restaurant" as a permitted use.
2. That Section 9.3.3 of By-law 10-128 be amend to add the following sub-section:
 - "r) Restaurant Requirements
 - i) Restaurants shall only be permitted in the following locations:
 - a) on South Service Road located between Lake Avenue and Winona Road, but shall not be located on any property with frontage on Fruitland Road;
 - b) on Barton Street located between Lake Avenue and Winona Road, but shall not be located on any property with frontage on Fruitland Road; and,
 - c) The north side of Highway #5, west of Highway # 6.
 - d) Regulations a), b) and c) above shall not apply to restaurants accessory to a use on the property.
 - ii) Maximum gross floor area for a restaurant, as permitted in a) and b) above, whether freestanding or within a multi-tenant building shall be limited to 280 square metres.
 - iii) Where a restaurant is located on a property with frontage on South Service Road, the following shall also apply:
 - a) No restaurant shall occupy more than 30% of the total gross floor area on a property, "

ATTACHMENT 3

Exhibit #9
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WITHOUT PREJUDICE

Proposed Amendment:

1. That Schedule "C" to By-law 10-128 be amended to add the following Special Exception as follows:

"439. In addition to Section 9.3.1, on those lands zoned Prestige Business Park (M3) Zone, identified on Maps 1149 and 1200 of Schedule "A" – Zoning Maps and described as 620 South Service Road, a stand-alone car wash, accessory to a Motor Vehicle Service Station, shall also be permitted."

ATTACHMENT 4

EX 11

WITHOUT PREJUDICE

Proposed Amendment:

1. That Special Exception 399 of Schedule "C" to By-law 10-128 be amended as follows:

"399. In addition to Section 9.3.1 and Section 9.3.3, on those lands zoned Prestige Business Park (M3) Zone, identified on Maps 1149 and 1200 of Schedule "A" – Zoning Maps and described as 650 South Service Road, the following special provisions shall also apply:

- a. That the following uses shall also be permitted:
 - i) Restaurant
 - ii) Financial Establishment
 - iii) Retail
 - iv) Personal Services
- b. That the following regulations shall also apply:
 - i) Notwithstanding any other regulation within this by-law, a restaurant shall not be limited in size;
 - ii) No drive through facility shall be permitted even as an accessory use;
 - iii) No Restaurant shall be located within 40 m of Fruitland Road; and
 - iv) An individual Retail Establishment shall be restricted to a maximum gross floor area of 500 square metres.
 - v) Notwithstanding any other regulation within this by-law, the maximum gross floor area related to Retail and Personal Services shall be limited to 15% of the total gross floor area."

ATTACHMENT 5

Ex 12B

PL100633

The Decision dated March 25, 2011 as amended by the Decision dated April 12, 2011, is further amended as follows:

On Page 5, paragraph 6 of the March 25, 2011 Decision, the words "allowed in part" are deleted and the following substituted therefor: "dismissed and Official Plan Amendment 233 (former City of Hamilton) is in full force and effect".

On Page 5, paragraph 7 of the March 25, 2011 Decision, the following words be added at the conclusion of the paragraph: "in accordance with Exhibit 2, Tab 9 filed."

at the conclusion of the paragraph

On page 6, last paragraph, the following words be added: "and his appeal of Zoning By-law 10-128."

Note:

Substitution pages to be provided by City to Board in respect of p. 386 and p. 387 found in Exhibit 2, Tab 9.