

ISSUE DATE:

Oct. 06, 2010



PL081087

10-~~292~~<sup>9</sup>

By-law No.

Ontario Municipal Board  
Commission des affaires municipales de l'Ontario

MC2 Homes Inc. 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 90-145-2 of the City of Hamilton to rezone lands respecting Part of Lots 9 and 10 Concession 4 (East Flamborough) in Waterdown from the Agricultural "A" Zone to Urban Residential "R1" Zone to permit single detached dwellings, from Agriculture "A" Zone to Urban Residential "R6" to permit street townhouses and from the Agricultural "A" Zone to the Conservation Management "CM" Zone to allow for a storm water management pond. The purpose of the desired zoning change is to implement the Official Plan, which is in force, and to facilitate a plan of subdivision of the subject lands  
OMB File No. PL081087

MC2 Homes Inc. 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 respecting Part of Lots 9 and 10 Concession 4 (East Flamborough) in Waterdown  
(Approval Authority File No. 25T200709)  
OMB File No. PL081090

**APPEARANCES:**

**Parties**

MC2 Homes Inc.

City of Hamilton

Landmart Realty Corp.

Amadeo DiMarko

Parkside Hills Inc. and Silverwood Homes  
Limited

**Counsel**

R. K. Webb

B. Duxbury

R. D. Cheesman

A. Stewart

**DECISION DELIVERED BY K. J. HUSSEY AND ORDER OF THE BOARD**

This is a settlement hearing for the above noted appeals. The matter relates to applications by MC2 Homes Inc. ("Applicant") for Zoning By-law amendments and for

draft plan of subdivision approval on lands described as Part of Lots 9 and 10 Concession 4, Township of East Flamborough, in the City of Hamilton.

At the commencement of the hearing Counsel for the Applicant recognized the efforts of the City of Hamilton in achieving this resolution. Counsel for the parties Landmart Realty Corp., Amadeo DiMarko and the representative for Parkside Hills Inc. acknowledged that their issues were also resolved.

Land Use Planner Mark Yarrington, presented evidence and opinion in support of the settlement. Mr. Yarrington was retained by the Applicant in 2003 to review the land use planning policies for the area with respect to the development and approval process for MC2 Homes Inc., Phase 1. He has been involved in the day-to-day processing and administration of this matter, Phase 2, and has full knowledge of the issues related to these appeals. Mr. Yarrington provided an overview of the area, and gave a detailed description of the proposal.

The subject property is 20.941 hectares of vacant agricultural fields and vegetation associated with the Borers Creek. It is located on the north side of Parkside Drive, west and north of Wimberley Avenue. South of the subject property is the existing residential development, MC2 Homes, Phase 1. The surrounding land uses include existing residential neighbourhoods and vacant lands slated for residential and commercial development, a YMCA, an Elementary School and a High School. To the north there is a natural heritage feature that is associated with the east- west tributaries of Borers Creek.

The former Hamilton Wentworth Official Plan, the former Town of Flamborough Official Plan, and the Waterdown North Secondary Plan (OPA 109), are the applicable official plan policy documents for the subject lands. The lands are currently zoned Agricultural "A" Zone in accordance with the By-law No 190 -145 -Z.

The purpose for the proposed zoning by-law amendments is to implement the draft plan of subdivision by changing the zoning from Agricultural to Site-Specific Urban residential R 1-31 Zone and Medium Density Residential R6-14, to permit development of 136 residential units, consisting of 124 single detached and 12 townhouse units. In addition, lands identified as Valley, Environmentally Significant Area, Provincially

Significant Wetlands, related buffer areas and lands required for Storm Water Management, are to be rezoned Conservation Management CM Zone.

After a thorough review of the planning documents, Mr. Yarrington concluded that the settlement represents good planning. It was his evidence that the proposal complies with all applicable planning policies; it is consistent with provincial policies and conforms to all the relevant official plan documents. Mr. Yarrington confirmed that the draft plan of subdivision together with the conditions set out in Exhibit "4", meet the criteria prescribed by subsection 51(24) of the *Planning Act*.

This evidence and opinion was not contradicted and no other evidence was proffered. The Board relies upon and adopts the evidence and opinion of Mr. Yarrington, and on full consent of all the parties, accepts the settlement as presented. On the basis of the evidence filed and the opinion evidence of the expert witness, the Board finds that the proposal is consistent with Provincial Policies, conforms to the relevant Official Plans, and represents good planning.

Accordingly, the Board Orders the following:

- 1) Zoning By-law No 90-145-Z (Flamborough) is amended as set out in Exhibit 5a, now attachment "1" to this decision.
- 2) Zoning By-law No 05-200 (City of Hamilton) is amended as set out in Exhibit 5a Appendix "3", now attachment "2" to this decision.
- 3) The draft plan of subdivision as revised on August 4, 2010, is approved substantially in the form set out in Exhibit 2, subject to the conditions of draft approval as set out in Exhibit 5b, now attachment "3" to this decision.

In the event that there are difficulties implementing the conditions of draft plan approval, or if any substantive changes are required to be made to the draft plan, the Board may be spoken to.

The Board commends the efforts of the parties in resolving this matter.

This is the Order of the Board.

"K. J. Hussey"

K. J. HUSSEY  
MEMBER

**ATTACHMENT "1"**

Authority:

Bill No. [REDACTED]

**CITY OF HAMILTON**

**BY-LAW NO. [REDACTED]**

To Amend Zoning By-law No. 90-145-Z (Flamborough), Respecting Lands Located at  
203 Parkside Drive Part of Lots 9 and 10, Concession 4 (Flamborough)

**WHEREAS** the City of Hamilton Act, 1999, Statutes of Ontario 1999 Chap. 14, Schedule C did incorporate, as of January 1<sup>st</sup>, 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. 90-145-Z (Flamborough) was enacted on the 5th of November 1990 and approved by the Ontario Municipal Board on the 21<sup>st</sup> of December, 1991;

**AND WHEREAS** the Ontario Municipal Board has issued an Order that Zoning By-law No. 90-145-Z (Flamborough), be amended as hereafter provided;

**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 Flamborough) in accordance with the provisions of the Planning Act.

**NOW THEREFORE** the Ontario Municipal Board Orders as follows:

1. That Schedule "A-6" appended to and forming part of Zoning By-law No. 90-145-Z (Flamborough), as amended, is hereby further amended;
  - (a) by changing the zoning from the Agricultural "A" Zone to the Medium Density Residential "R6-14"(H) - Holding Zone, Modified, for lands shown as Block "1";

- (b) by changing the zoning from the Agricultural "A" Zone to the Urban Residential "R1-31"(H) - Holding Zone, Modified, for lands shown as Block "2"; and,
- (c) by changing the zoning from the Agricultural "A" Zone to the Urban Development "UD" (H) - Holding Zone, for lands shown as Block "3";

the extent and boundaries of which are more particularly shown on Schedule "A" annexed hereto and forming part of this By-law.

2. That the amending By-law apply a Holding provision for those lands zoned Medium Density Residential "R6-14"(H) - Holding Zone, Modified (Block "1"), the Urban Residential "R1-31"(H) - Holding Zone, Modified (Block "2"), and the Urban Development "UD"(H) - Holding Zone, Modified (Block "3") in Section 1 of this By-law by introducing the 'H' Holding symbol as a suffix to the proposed zone. The Holding provision shall not be removed until such time as the following condition has been completed:
  - (i) The Holding provision shall preclude development of the subject lands until such time that the Class Environmental Assessment Report for the East-West road has been approved and the final alignment of the corridor has been determined to the satisfaction of the Director of Development Engineering.City Council may remove the 'H' symbol, and thereby give effect to the Medium Density Residential "R6-14" Zone, the Urban Residential "R1-31" Zone, and the Urban Development "UD" Zone by enactment of an amending By-law once the above condition has been satisfied.
3. That the amending By-law be added to Schedule "A-6" of Flamborough Zoning By-law No. 90-145-Z.
4. 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 [REDACTED] day of [REDACTED], 2010.

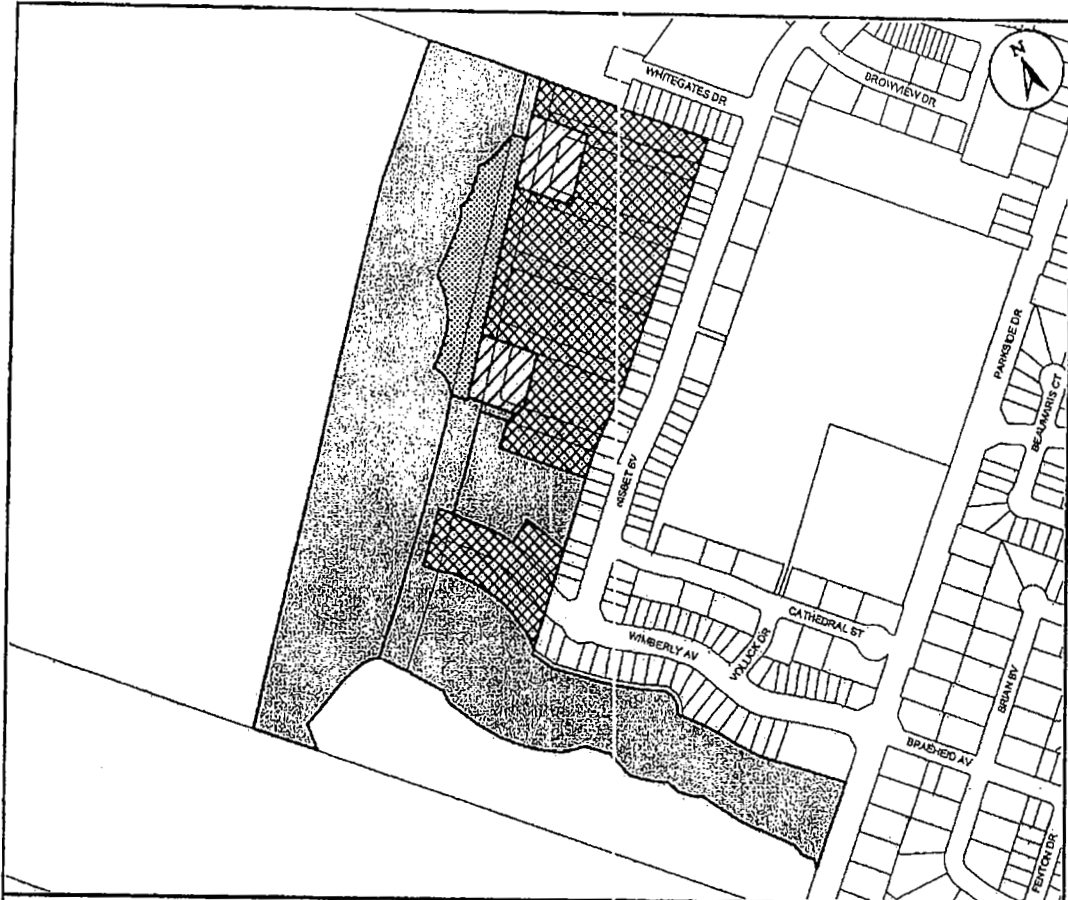
---

Fred Eisenberger  
Mayor

---

Rose Caterini  
Clerk

ZAC-07-060  
25T-200709







This is Schedule "A" to By-Law No. 10-  
 Passed the ..... day of ....., 2010

-----  
 Clerk  
 -----  
 Mayor

**Schedule "A"**

Map Forming Part of  
 By-Law No. 10-\_\_\_\_\_

to Amend By-law No. 90-145-Z

- Subject Property**
-  Block 1 - Lands to be rezoned from the Agricultural "A" Zone to the Medium Density Residential "R6-14"(H) Holding Zone, Modified
  -  Block 2 - Lands to be rezoned from the Agricultural "A" Zone to the Urban Residential "R1-31"(H) Holding Zone, Modified
  -  Block 3 - Lands to be rezoned the from Agriculture "A" Zone to the Urban Development "UD"(H) Holding Zone
  -  Block 4 - Refer to By-law 05-200

Scale: N.T.S.	File Name/Number: 25T-200709, ZAC-07-060
Date: Sept. 24, 2010	Planner/Technician: CT/SW
PLANNING AND ECONOMIC DEVELOPMENT DEPARTMENT	

