

ISSUE DATE:

Jan. 19, 2011



PL091174

By-law No. 11-042  
Ontario Municipal Board  
Commission des affaires municipales de l'Ontario

MC2 Homes Inc. 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 of Part of Lots 9 & 10, Concession 4 (former Township of East Flamborough), City of Hamilton  
Approval Authority File No. 25T-200904  
OMB File No. PL091174

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-Z of the City of Hamilton to rezone lands respecting 203 Parkside Drive from Agricultural "A" Zone to Urban Residential (Single Detached) Zone-R1-31 Zone and Conservation Management "CM" Zone to implement the proposed plan of subdivision  
OMB File No. PL100017

#### APPEARANCES:

##### Parties

MC2 Homes Inc.

Landmart Realty Corporation

City of Hamilton

##### Counsel

Ronald Webb/Laura Dottori (student at law)

Russell Cheeseman

Brian Duxbury

#### MEMORANDUM OF ORAL DECISION DELIVERED BY J. de P. SEABORN ON JANUARY 10, 2011 AND ORDER OF THE BOARD

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At the commencement of the hearing the parties advised that the appeals in respect of a proposed draft plan of subdivision and associated zoning by law amendments were resolved. Mr. Yarranton, the land use planner retained by the MC2 Homes Inc. (Applicant) testified in support of the settlement reached and the planning instruments before me for approval.

Briefly, the Applicant's project, situated on the north side of Parkside Drive in the north Waterdown planning area, has proceeded in stages with Phase 1 to the east, registered in November 2009. This phase includes single detached homes, a storm water management pond designed to serve a number of landowners, access, and lands to be zoned conservation/hazard land. The zoning by-law amendments generally re-zone the lands from Agricultural to Urban Residential as well as incorporate the conservation/hazard lands zone boundaries. The project is integrated and has been planned with surrounding development involving Landmart Realty Corporation, Amedeo DiMarco and Silverwood Homes. All parties are satisfied with the proposed draft plan, including the conditions. The City of Burlington, a party at earlier hearings, did not appear as its concerns are addressed.

Based on the testimony of Mr. Yarranton and his opinion evidence, I find that the planning instruments which the parties have agreed to have regard to matters of provincial interest, are consistent with the Provincial Policy Statement, and conform to applicable provincial plans, in particular the Growth Plan. The zoning by-law amendments and draft plan (including the conditions) conform with relevant official plan policies and constitute good planning. I also find that regard has been had to the criteria set out in subsection 51(24) of the *Planning Act*.

As indicated above, the plan of subdivision is subject to conditions. Counsel submitted special conditions of draft plan approval which are followed by a series of notes. I confirm that these notes are not conditions of the approval, but merely identify additional issues that the parties have agreed must be addressed. This finding is consistent with a previous decision of the Board on a similar matter (PL090067, a decision issued January 4, 2011).

Based on the evidence given and the submissions of the parties, I find as follows:

1. The appeal of the proposed plan of subdivision is allowed and the Applicant's draft plan dated November 8, 2010 set out in Attachment "1" is approved, subject to the City's standard draft plan conditions and special draft plan conditions set out in Attachment "2". At the request of Counsel, the draft plan conditions shall be cleared by the Board for final approval and I remain seized for that purpose.

2. The appeals under subsection 34(11) of the *Planning Act* are allowed and By-law 90-145-Z (Flamborough) is modified in the manner set out in Attachment "3" and By-law 05-200 is modified in the manner set out in Attachment "4". The Clerk is authorized to assign a number to each By-law for record keeping purposes.

This is the order of the Board.

"J. de P. Seaborn"

J. de P. SEABORN  
VICE CHAIR

**ATTACHMENT 3**

**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 of 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 Urban Residential "R1-31" Zone, Modified, for lands shown as Block "1";
  - (b) by changing the zoning from the Agricultural "A" Zone to the Urban Residential "R1-54" Zone, Modified, for lands shown as Block "2";

- (c) by changing the zoning from the Agricultural "A" Zone to the Urban Residential "R1-49 Zone, Modified for lands shown as Block "3";
- (d) by changing the zoning from the Agricultural "A" Zone to the Urban Residential "R1-31(H)" – Holding Zone, Modified for lands shown as Block "4"; and,
- (e) by changing the zoning from the Agricultural "A" Zone to the Urban Residential "R1-48 Zone, Modified for lands shown as Block "5";

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

2. Section 6 – Urban Residential Zone of By-law 90-145-Z (Flamborough), as amended, is hereby further amended by adding the following subsections:

6.3 EXCEPTION NUMBER

6.3.54 "R1-54" (See Schedule A-6)

Permitted Uses

Subsection 6.1 shall apply

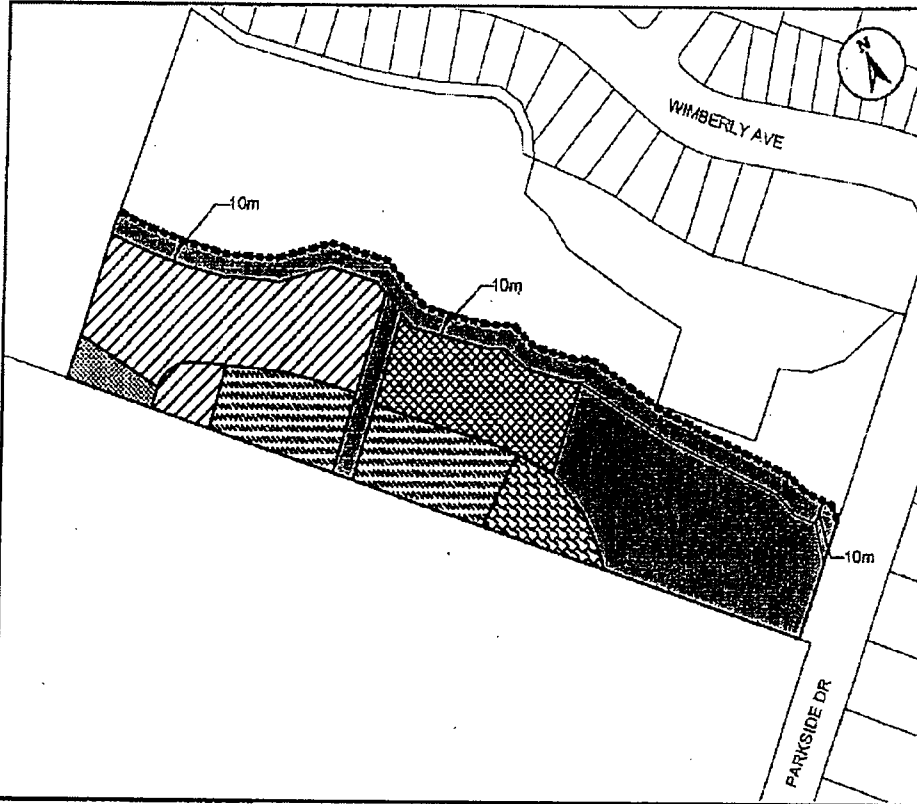
Zone Provisions

- (a) Rear Yard (minimum) 5.0 metres
- (b) All other zone provisions of the Urban Residential "R1-31" Zone shall apply.

3. That the amending By-law apply a Holding provision for those lands zoned Urban Residential "R1-31(H)" – Holding Zone, Modified (Block "4") 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) That it has been demonstrated that the parcel of land to the north of Block "4" for future development has adequate frontage and access to a public street or highway to the satisfaction of the Director of Planning.

City Council may remove the 'H' symbol, and thereby give effect to the Urban Residential "R1-31" Zone by enactment of an amending By-law once the applicable condition has been satisfied.









This is Schedule "A" to By-Law No. 11-  
 Passed the ..... day of ....., 2011


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 Clerk  
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 Mayor

**Schedule "A"**  
 Map Forming Part of  
 By-Law No. 11-\_\_\_\_\_  
 to Amend By-law No.90-145-Z

**Subject Property**

203 Parkside Drive

- EBA Boundary
-  Block 1 - Lands to be rezoned from the Agricultural "A" Zone to the Urban Residential "R1-31" Zone, Modified
-  Block 2 - Lands to be rezoned from the Agricultural "A" Zone to the Urban Residential "R1-54" Zone, Modified
-  Block 3 - Lands to be rezoned from the Agricultural "A" Zone to the Urban Residential "R1-49" Zone, Modified
-  Block 4 - Lands to be rezoned from the Agricultural "A" Zone to the Urban Residential "R1-31(h)" Holding Zone, Modified
-  Block 5 - Lands to be rezoned from the Agricultural "A" Zone to the Urban Residential "R1-48" Zone, Modified
-  Refer to By-law 05-200

Scale: N.T.S.	File Name/Number: ZAC-05-019, 25T-206904	
Date: January 5, 2011	Planner/Technician: CT/AL	
PLANNING AND ECONOMIC DEVELOPMENT DEPARTMENT		