

**Ontario Municipal Board**  
Commission des affaires municipales  
de l'Ontario

**14-307**  
**Attachment 1**

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AUG 11 2014

LEGAL SERVICES



**ISSUE DATE:** August 6, 2014

**CASE NO(S):** PL101294

Keith and Brenda Pickles have 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 to enact a proposed amendment to Zoning By-law 90-145-Z of the former Town of Flamborough (now City of Hamilton) to rezone lands respecting 341 Mountsberg Road from Agricultural "A" Zone to permit the development of two single detached dwellings  
OMB File No. PL101294

Heard: July 16, 2014 in Hamilton, Ontario

**APPEARANCES:**

**Parties**

**Counsel**

City of Hamilton

Michael Kovacevic

Keith and Brenda Pickles

Manfred Rudolph

**MEMORANDUM OF ORAL DECISION DELIVERED BY J. V. ZUIDEMA ON  
JULY 16, 2014 AND ORDER OF THE BOARD**

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[1] The reader is directed to an earlier disposition rendered by my colleague, Vice Chair Schiller, for the background leading up to the hearing event before me.

[2] The parties had arrived at a settlement and asked that the hearing event be converted to a settlement hearing. Minutes of Settlement were filed and a proposed draft zoning by-law was prepared and presented.

[3] Greg MacDonald, a land use Planner with the City of Hamilton ("City"), was qualified and accepted as an expert in his field. His evidence was provided jointly on behalf of both parties and as such, was not challenged in any way.

[4] He opined that the proposed draft zoning by-law represented good planning, was in the public interest and was consistent with both the 2005 Provincial Policy Statement ("PPS") as well as the 2014 PPS. Further he explained how it conformed to the City's existing Rural Official Plan and also to the version currently before the Board on appeal.

[5] That appeal is ongoing and not before me but Mr. MacDonald explained that his recommendation to approve the proposed draft zoning by-law in no way hampered either the process or substance of the matter before the Board otherwise constituted. In fact, part of the settlement included the Appellants' withdrawal of their appeal on the City's Rural Official Plan.

[6] I also heard that this settlement resolved an ongoing civil litigation between the parties. Again, that matter is not for me to comment upon but I commend the parties in reaching a resolution that settles not only this particular file, but also another Board file and Court action.

[7] Based upon the uncontroverted evidence of Mr. MacDonald, I provided an oral decision granting the appeal in part in order to give effect to the settlement achieved. The draft which was presented and amended, is now attached to this decision and forms part of it.

[8] Therefore the Board orders that the appeal is granted in part and the proposed draft zoning by-law herein attached as Attachment 1 is hereby approved. In all other respects, the appeal is dismissed and there will be no order as to costs.

*"J. V. Zuidema"*

J. V. ZUIDEMA  
VICE CHAIR

**Ontario Municipal Board**

A constituent tribunal of Environment and Land Tribunals Ontario  
Website: [www.elfto.gov.on.ca](http://www.elfto.gov.on.ca) Telephone: 416-212-6349 Toll Free: 1-866-448-2248

**CITY OF HAMILTON**

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

**To Amend Zoning By-law No. 90-145-Z Respecting Lands Located at 341  
Mountsberg Road, 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 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 Flamborough" 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. 90-145-Z (Flamborough) was enacted on the 5<sup>th</sup> day of November 1990, and approved by the Ontario Municipal Board on the 21<sup>st</sup> day of December, 1992;

**AND WHEREAS** the Ontario Municipal Board has issued an Order that Zoning By-law No. 90-145-Z, 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 Council of the City of Hamilton enacts as follows:

1. Schedule "A-2" of Zoning By-law No. 90-145-Z (Flamborough), as amended, is hereby further amended by changing from the Agriculture "A" Zone, to the Agriculture "A-91" Zone, modified with a special exception, the extent and boundaries of which are more particularly shown on Schedule "A" annexed hereto and forming part of this by-law.

2. Section 33 – Agriculture "A" Zone of Zoning By-law No. 90-145-Z (Flamborough), as amended, is hereby further amended by adding the following subsections:

33.3 EXCEPTION NUMBERS

33.3.91 "A-91"

Permitted Uses:

- (a) All uses in accordance with Section 33.1
- (b) Notwithstanding the above, Dwelling "A" on Schedule "A-2" shall only be used as an accessory building.

Zone Provisions

The following regulations shall apply to the building existing on the date of the passing of this by-law being the \_\_\_\_\_ day of \_\_\_\_\_, 2014, and as shown as Dwelling "A" on Schedule "A-2":

- (a) Minimum Front Yard Setback..... 10 metres
- (b) Maximum Height..... 10 metres
- (c) For the purpose of this by-law, an "accessory building" shall mean a detached building or structure which:
  - (i) is used for an accessory use;
  - (ii) cannot contain food preparation facilities;
  - (iii) cannot be used for human habitation; and
  - (iv) includes a detached garage, detached carport and deck.
- (d) All other zone provisions of Subsection 33.2 shall apply.

General Provisions

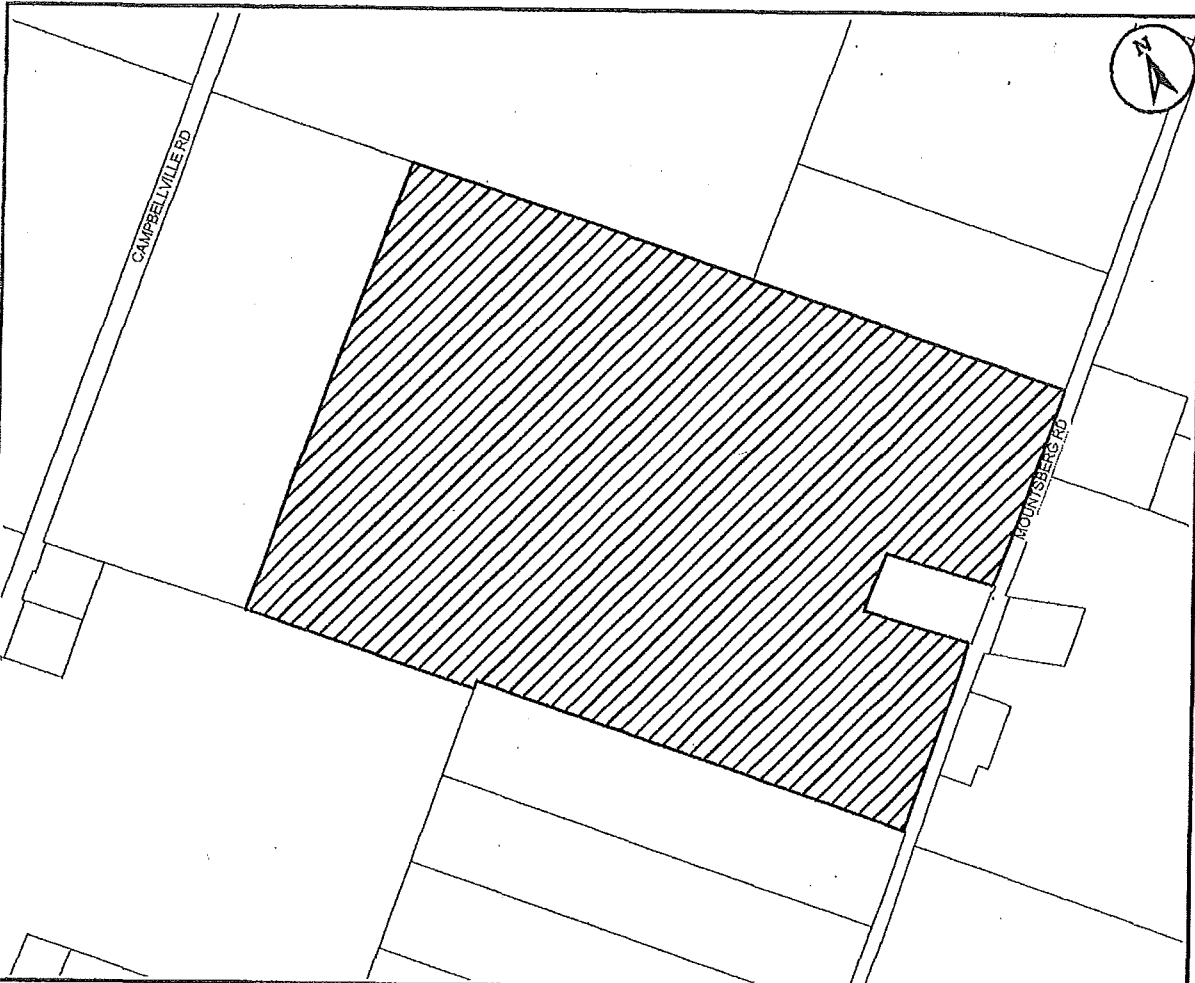
Other than contained herein, the provisions of Section 5 shall apply.

PASSED and ENACTED this [ ] day of [ ], 2014.

\_\_\_\_\_  
R. Bratina  
Mayor

\_\_\_\_\_  
Rose Caterini  
Clerk

ZAC-09-050



This is Schedule "A" to By-Law No. 14-

Passed the ..... day of ....., 2014

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Mayor

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Clerk

## Schedule "A"

Map Forming Part of  
By-Law No. 14-\_\_\_\_\_

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

### Subject Property

341 Mountsberg Road



Change in Zoning from the Agricultural 'A' Zone to the Agricultural 'A-91' Zone Modified with special exception.

Scale:  
N.T.S.

File Name/Number:  
ZAC-09-050

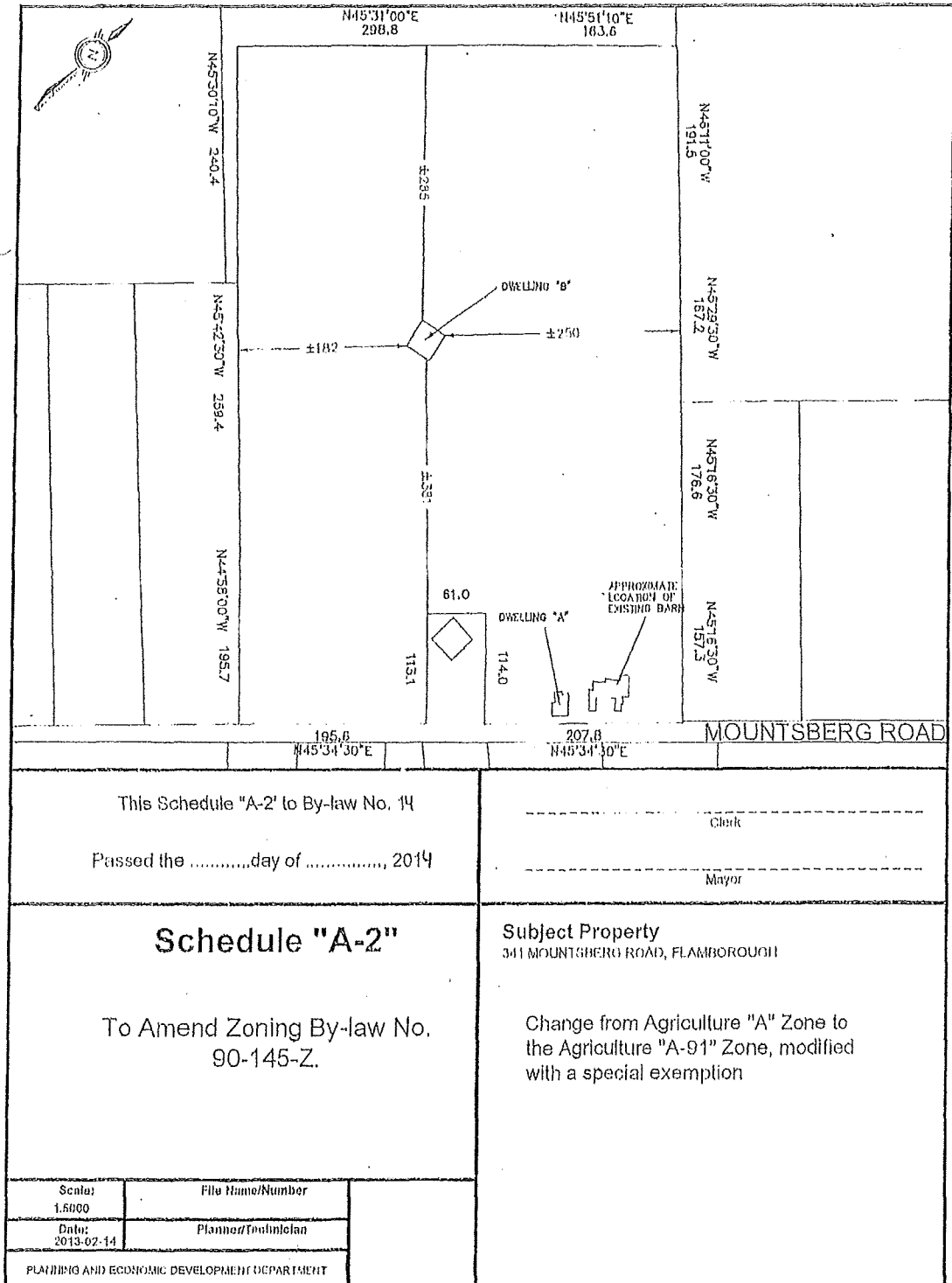
Date:  
June 24, 2014

Planner/Technician:  
GM/NB



**Hamilton**

PLANNING AND ECONOMIC DEVELOPMENT DEPARTMENT



This Schedule "A-2" to By-law No. 14  
Passed the .....day of ....., 2014

\_\_\_\_\_  
Clerk  
\_\_\_\_\_  
Mayor

**Schedule "A-2"**  
  
To Amend Zoning By-law No.  
90-145-Z.

**Subject Property**  
341 MOUNTSBERG ROAD, FLAMBOROUGH  
  
Change from Agriculture "A" Zone to  
the Agriculture "A-91" Zone, modified  
with a special exemption