

Ontario Municipal Board
Commission des affaires municipales
de l'Ontario



15-172-OMB-03
Attachment 1-Paragraph 1

15-173-OMB-03
Attachment 1-Schedule A & B

ISSUE DATE: March 13, 2017

CASE NO(S): PL151130

PROCEEDING COMMENCED UNDER subsection 34(19) of the *Planning Act*, R.S.O. 1990, c. P.13, as amended

Appellant: Coalition For Rural Ontario Environment Protection
Subject: By-law No. 15-238
Municipality: City of Hamilton
OMB Case No.: PL151130
OMB File No.: PL151133

Heard: March 3, 2017 in Hamilton, Ontario

APPEARANCES:

Parties

Counsel

Coalition for Rural Ontario
Environmental Protection

Peter Pickfield

City of Hamilton

Joanna Wice

**MEMORANDUM OF ORAL DECISION DELIVERED BY J. de P. SEABORN ON
MARCH 3, 2017 AND ORDER OF THE BOARD**

INTRODUCTION

[1] The Coalition for Rural Ontario Environmental Protection ("CROP") appealed several provisions of a series of By-laws enacted by the City of Hamilton ("City"). The provisions under appeal relate to the regulation of landscape contractors. The outstanding appeals were addressed in two Phases (part approval of the uncontested

portions of the By-laws were dealt with by an Order issued on May 3, 2016). Phase 1 (which was heard on November 22 and 23, 2016) related to the appeal of Special Provision 253 (paragraphs 9 and 10, By-law No. 15-173) and By-law No. 15-238. At the conclusion of the Phase 1 hearing, Counsel requested that the Board reserve its decision and withhold its order until it was known if a settlement could be achieved with respect to the remaining aspects of the appeals. Counsel advised the Board in February, 2017 that a settlement had been achieved and a hearing was set for March 3, 2017 for the purpose of receiving evidence with respect to that settlement. This decision disposes of the remaining aspects of the appeals to the By-laws and Rural Hamilton Official Plan Amendment No. 9 ("RHOPA 9"). The Board's decision with respect to Special Provision 253 (also referred to as Special Exception 253) and associated By-law provisions will be issued, as requested by the parties, as a separate decision.

[2] In support of the settlement, Allan Ramsay, qualified to provide opinion evidence in the discipline of land use planning, filed an affidavit and draft order explaining the basis for the agreement reached between CROP and the City. Mr. Ramsay explained the background associated with the appeals and the efforts by CROP and the City to scope the matters in dispute. Briefly, on February 22, 2017 City Council approved the execution of Minutes of Settlement ("MOS") (Exhibit 1 to the Ramsay Affidavit) which have the effect of modifying RHOPA 9 by deleting policy D.2.3.1 g) and replacing it with modifications that clarify that: landscaping contracting shall only be permitted on lots greater than 5 hectares (ha") in size; the majority of the land is to be farmed either in field crops or horticultural products; the area farmed in horticultural products shall be no less than 3 ha; and to ensure the scale of the landscape contracting business is clearly secondary to the main agricultural use, the By-law shall include several regulations relating to the size of buildings and area for outdoor storage, minimum land area for growing of horticultural products as part of a nursery operation based on the size of the property and parking and screening of parking areas. In addition, the agreement requires modifications to By-law No. No. 15-173 as set out in the Minutes of Settlement. The detailed revisions are set out in the Board's Order, Attachment 1 to this decision.

[3] These modifications do not address those aspects of the By-law that relate to Special Provision 253, which will be addressed in a separate decision of the Board. Finally, CROP has written to the Board to confirm the withdrawal of the balance of its RHOPA appeal. Mr. Ramsay testified that the intent of the agreed upon modifications and revisions to the planning instruments is to clarify existing requirements as they relate to landscaping businesses. Several of the participants who attended the November, 2016 hearing in opposition to the appeal of Special Provision 253 were present to hear Mr. Ramsay's evidence with respect to the agreement reached with the City. None of the participants testified in respect of the settlement, their interest being restricted to CROP's appeal of Special Provision 253, dealt with in evidence at the November, 2016 hearing.

[4] I adopt and rely upon the opinion of Mr. Ramsay that the proposed modifications and By-law amendments should be approved as agreed upon by the parties. The MOS, modified RHOPA 9 and the modified By-law No. 15-173 are consistent with the Provincial Policy Statement, conform to the provisions of the Greenbelt Plan, conform to the purpose and intent of the RHOP, represent good planning and are in the public interest. The modifications are consistent with the direction from City Council, a decision which the Board must always have regard to in deciding any appeal.

[5] The decision and order of the Board is to allow the appeal, in part, in accordance with the Order set out as Attachment 1. The Order reflects the withdrawal of CROP's appeal with respect to the other policies of RHOPA 9. The Order further provided that By-law No. 15-173, as modified by paragraph 3 of the Order, is hereby approved save and except Schedule "C", Special Provision 253, which provision is to be determined together with the Board's decision with respect to By-law No. 15-238. That decision was reserved (at the request of the parties) following the November 2016 hearing and will be issued as a separate Order of the Board.

"J. de P. Seaborn"

J. de P. SEABORN
VICE-CHAIR

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Ontario Municipal Board

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Environment and Land Tribunals Ontario
ONTARIO MUNICIPAL BOARD

PROCEEDING COMMENCED UNDER subsections 17(24) and 34(19) of the *Planning Act*, R.S.O. 1990, c. P.13, as amended

Appellants: Coalition For Rural Ontario Environmental Protection

Subject: Approval of Rural Hamilton Official Plan Amendment No. 9 and Zoning By-law Amendments 15-173 and 15-238

Purpose: To add policies to the Official Plan respecting Landscaping Contractors;

To amend the Zoning By-law to permit and regulate Landscaping Contracting Establishments-Secondary in certain zone categories; and

To amend the Zoning by-law to permit Landscaping Contracting Establishments on various properties

Property Address: City of Hamilton

Municipality: City of Hamilton

OMB Case No.: PL151130

OMB File No.: PL150005 and PL151130

ORDER.

THE BOARD ORDERS that

1. The appeal by Coalition For Rural Ontario Environmental Protection ("CROP") of Rural Hamilton Official Plan Amendment 9 ("RHOPA 9") pursuant to Section 17(24) of the *Planning Act* is allowed in part by modifying RHOPA 9 to delete D.2.3.1 g) and replace it with the following:

"g) Landscape Contracting is permitted secondary only to a Nursery and subject to the following conditions and in accordance with the Zoning By-law:

- i) Landscape Contracting shall only be permitted on lots greater than 5.0 hectares in size;

ii) the majority of the land is to be farmed either in field crops or horticultural products;

iii) the area farmed in horticultural products shall be no less than 3 hectares; and,

iv) to ensure the scale of the landscape contracting business is clearly secondary to the main agricultural use, the Zoning By-law shall include the following regulations:

1. the size of buildings and area for outside storage,

2. Minimum land area used for growing of horticultural products as part of a nursery operation based on the size of the property; and,

3. Parking and screening of parking areas.”

2. The withdrawal of CROP’s appeal with respect to all other policies of RHOPA 9 is hereby confirmed.
3. The appeal of CROP with respect to City of Hamilton Zoning By-law Amendment 15-173 (“ZBA 15-173) pursuant to section 34 (11) of the Planning Act is allowed in part, by modifying ZBA 15-173 in accordance with the changes set out in Schedule A and B attached hereto.
4. ZBA 15-173, as modified by paragraph 3 of this Order, is hereby approved save and except Schedule “C”, Special Provision 253, which provision is to be determined together with the Board’s decision with respect to City of Hamilton Zoning By-law Amendment 15-238.
5. The City is directed and authorized both to make the modification set out in this Order, and to remove all references to CROP, from the annotated versions of the instruments as contained in Exhibit “C” and Exhibit “D” to the affidavit of Joanne Hickey-Evans dated March 30, 2016.

Revisions to City of Hamilton By-law 15-173 Re: Landscape Contracting Establishments
– Secondary

1) That the Conservation/Hazard Land – Rural (P6) Zone be amended as follows:

- a) That subsection 7.6.2.2 j) ii) be amended by deleting paragraphs 1) and 2) in their entirety and substituting with the following:
- “1. On lots with a lot area of 7.0 hectares or greater, a minimum of 65 percent of the lot area zoned Agriculture (A1), Rural (A2) and/or Conservation/Hazard Land - Rural (P6) shall be used for the growing of plants, shrubs, trees or similar vegetation as part of the Nursery operation, and may include the growing of other Agricultural products. In no case shall the portion of the lot zoned Agriculture (A1), Rural (A2) and/or Conservation/Hazard Land - Rural (P6) which is used for the growing of plants, shrubs, trees or similar vegetation as part of the Nursery operation be less than 3.0 hectares in area.
 2. On lots with a lot area less than 7.0 hectares, a minimum of 50 percent of the lot area zoned Agriculture (A1), Rural (A2) and/or Conservation/Hazard Land - Rural (P6) shall be used for the growing of plants, shrubs, trees or similar vegetation as part of the Nursery operation. In no case shall the portion of the lot zoned Agriculture (A1), Rural (A2) and/or Conservation/Hazard Land - Rural (P6) which is used for the growing of plants, shrubs, trees or similar vegetation as part of the Nursery operation be less than 3.0 hectares in area.”
- b) That subsection 7.6.2.2 j) iii) be amended by deleting the phrase “and shall occupy no more than 250.0 square metres of gross floor area” and inserting in its place the phrase “and the total gross floor area of all buildings or structures used as part of the Landscape Contracting Establishment – Secondary shall not exceed 250.0 square metres”.
- c) That subsection 7.6.2.2 j) be amended by inserting the following new subsection:
- “vi) Notwithstanding v) above all unenclosed parking areas associated with the Landscape Contracting Establishment – Secondary use shall be screened by a visual barrier in accordance with Section 4.19 of this by-law.”
- d) That subsection 7.6.2.2 d) be amended by deleting the reference to subsection “7.6.2.2 a)” and inserting in its place the reference to subsection “7.6.2.2 b)”.

2) That the Extractive Industrial (M12) Zone be amended as follows:

- a) That subsection 9.12.3.2 i) ii) be amended by deleting paragraphs 1) and 2) in their entirety and substituting with the following:

- “1. On lots with a lot area of 7.0 hectares or greater, a minimum of 65 percent of the lot area zoned Agriculture (A1), Rural (A2) and/or Conservation/Hazard Land - Rural (P6) shall be used for the growing of plants, shrubs, trees or similar vegetation as part of the Nursery operation, and may include the growing of other Agricultural products. In no case shall the portion of the lot zoned Agriculture (A1), Rural (A2) and/or Conservation/Hazard Land - Rural (P6) which is used for the growing of plants, shrubs, trees or similar vegetation as part of the Nursery operation be less than 3.0 hectares in area.
2. On lots with a lot area less than 7.0 hectares, a minimum of 50 percent of the lot area zoned Agriculture (A1), Rural (A2) and/or Conservation/Hazard Land - Rural (P6) shall be used for the growing of plants, shrubs, trees or similar vegetation as part of the Nursery operation. In no case shall the portion of the lot zoned Agriculture (A1), Rural (A2) and/or Conservation/Hazard Land - Rural (P6) which is used for the growing of plants, shrubs, trees or similar vegetation as part of the Nursery operation be less than 3.0 hectares in area.”

- b) That subsection 9.12.3.2 i) iii) be amended by deleting the phrase “and shall occupy no more than 250.0 square metres of gross floor area” and inserting in its place the phrase “and the total gross floor area of all buildings or structures used as part of the Landscape Contracting Establishment – Secondary shall not exceed 250.0 square metres”.

- c) That subsection 9.12.3.2 i) be amended by inserting the following new subsection:

“vi) Notwithstanding v) above all unenclosed parking areas associated with the Landscape Contracting Establishment – Secondary use shall be screened by a visual barrier in accordance with Section 4.19 of this by-law.”

- 3) That the Agriculture (A1) Zone be amended as follows:

- a) That subsection 12.1.3.2.i) ii) be amended by deleting paragraphs 1) and 2) in their entirety and substituting with the following:

- “1. On lots with a lot area of 7.0 hectares or greater, a minimum of 65 percent of the lot area zoned Agriculture (A1), Rural (A2) and/or Conservation/Hazard Land - Rural (P6) shall be used for the growing of plants, shrubs, trees or similar vegetation as part of the Nursery operation, and may include the growing of other Agricultural products. In no case shall the portion of the lot zoned Agriculture (A1), Rural (A2) and/or Conservation/Hazard Land - Rural (P6) which is used for the growing of

plants, shrubs, trees or similar vegetation as part of the Nursery operation be less than 3.0 hectares in area.

2. On lots with a lot area less than 7.0 hectares, a minimum of 50 percent of the lot area zoned Agriculture (A1), Rural (A2) and/or Conservation/Hazard Land - Rural (P6) shall be used for the growing of plants, shrubs, trees or similar vegetation as part of the Nursery operation. In no case shall the portion of the lot zoned Agriculture (A1), Rural (A2) and/or Conservation/Hazard Land - Rural (P6) which is used for the growing of plants, shrubs, trees or similar vegetation as part of the Nursery operation be less than 3.0 hectares in area.”

- b) That subsection 12.1.3.2.i) iii) be amended by deleting the phrase “and shall occupy no more than 250.0 square metres of gross floor area” and inserting in its place the phrase “and the total gross floor area of all buildings or structures used as part of the Landscape Contracting Establishment – Secondary shall not exceed 250.0 square metres”.

- c) That subsection 12.1.3.2.i) be amended by inserting the following new subsection:

“vi) Notwithstanding v) above all unenclosed parking areas associated with the Landscape Contracting Establishment – Secondary use shall be screened by a visual barrier in accordance with Section 4.19 of this by-law.”

- 4) That the Rural (A2) Zone be amended as follows:

- a) That subsection 12.2.3.2 h) ii) be amended by deleting paragraphs 1) and 2) in their entirety and substituting with the following:

“1. On lots with a lot area of 7.0 hectares or greater, a minimum of 65 percent of the lot area zoned Agriculture (A1), Rural (A2) and/or Conservation/Hazard Land - Rural (P6) shall be used for the growing of plants, shrubs, trees or similar vegetation as part of the Nursery operation, and may include the growing of other Agricultural products. In no case shall the portion of the lot zoned Agriculture (A1), Rural (A2) and/or Conservation/Hazard Land - Rural (P6) which is used for the growing of plants, shrubs, trees or similar vegetation as part of the Nursery operation be less than 3.0 hectares in area.

2. On lots with a lot area less than 7.0 hectares, a minimum of 50 percent of the lot area zoned Agriculture (A1), Rural (A2) and/or Conservation/Hazard Land - Rural (P6) shall be used for the growing of plants, shrubs, trees or similar vegetation as part of the Nursery operation. In no case shall the portion of the lot zoned Agriculture (A1), Rural (A2) and/or Conservation/Hazard Land - Rural (P6) which is used for the growing of plants, shrubs, trees or similar vegetation as part of the Nursery operation be less than 3.0 hectares in area.”

- a) That subsection 12.2.3.2 h) iii) be amended by deleting the phrase “and shall occupy no more than 250.0 square metres of gross floor area” and inserting in its place the phrase “and the total gross floor area of all buildings or structures used as part of the Landscape Contracting Establishment – Secondary shall not exceed 250.0 square metres”.
- b) That subsection 12.2.3.2 h) be amended by inserting the following new subsection:
 - “vi) Notwithstanding v) above all unenclosed parking areas associated with the Landscape Contracting Establishment – Secondary use shall be screened by a visual barrier in accordance with Section 4.19 of this by-law.”

Revisions to City of Hamilton By-law 15-173 Re: Landscape Contracting Establishments – Secondary

That Schedule “C” to By-law 15-173 be amended by replacing Special Exception 103 with the following:

“103. In addition to Sections 12.1.1, 12.2.1 and 12.6.1 and notwithstanding Section 12.6.3, on those lands zoned Agriculture (A1) Zone, Rural (A2) Zone and Existing Rural Commercial (E1) Zone, identified on Maps 18, 36, 47, 49, 50, 61, 71, and 73 of Schedule “A” – Zoning Maps, described as addresses:

6 8th Concession Road East	Maps 36 and 47
831 Centre Road	Map 49
850 Centre Road	Map 49
437 Parkside Drive	Map 50
Part of 557 Carlisle Road	Map 18
Part of 22 5th Concession Road East	Map 61
717 Brock Road	Map 71
Part of 624 Millgrove Side Road	Map 73
35 Parkside Drive	Map 73
643 Robson Road	Map 50

The following special provisions shall also apply:

- a) For the properties at 6 8th Concession Road East and 643 Robson Road, the existing landscape contracting establishment shall also be permitted.
- b) For the property located at 831 Centre Road, a landscape operation shall also be permitted and shall be subject to the following regulations:
 - i) A maximum gross floor area of 310.8 square metres shall be permitted for the landscaping shop;
 - ii) A maximum gross floor area of 378.9 square metres shall be permitted for the office associated with the landscaping operation; and,
 - iii) In accordance with Section 12.2.3.1 b), c), d), e) and f).
- c) For the property located at 850 Centre Road, a landscaping operation shall also be permitted and shall be subject to the following regulations:

- i) A maximum gross floor area of 260.0 square metres shall be permitted for the landscaping operation; and,
 - ii) In accordance with Section 12.2.3.1 b), c), d), e) and f).
- d) For the property located at 437 Parkside Drive, a landscaping operation shall also be permitted and shall be subject to the following regulations:
 - i) A maximum gross floor area of 50.7 square metres shall be permitted for the landscaping shop; and,
 - ii) In accordance with Section 12.2.3.1 b), c), d), e) and f).
- e) For the property located at Part of 557 Carlisle Road, a landscape contractor shall also be permitted and shall be subject to the following regulations:
 - i) A maximum gross floor area of 196.0 square metres shall be permitted for the landscape shop; and,
 - ii) In accordance with Section 12.2.3.1 b), c), d), e) and f).
- f) For the property located at Part of 22 5th Concession Road East, a landscaping business shall also be permitted and shall be subject to the following regulations:
 - i) A maximum gross floor area of 350.0 square metres shall be permitted for the landscape business; and,
 - ii) In accordance with Section 12.2.3.1 b), c), d), e) and f).
- g) For the property located at 717 Brock Road, a landscaping operation shall also be permitted and shall be subject to the following regulations:
 - i) A maximum gross floor area of 235.0 square metres shall be permitted for the landscape business;
 - ii) All landscaping equipment shall be stored within the landscape shop;
 - iii) The open storage of materials shall be limited to an area that is 31.7 metres wide by 15.24 metres deep behind the landscaping shop on the west side of the property;

- iv) A 2.0 metre high solid privacy fence shall be erected along the south lot line; and,
 - v) In accordance with Section 12.2.3.1 b), c), d), e) and f).
- h) For the property located at Part of 624 Millgrove Side Road, a lawn maintenance and snow plowing business shall also be permitted and shall be subject to the following regulations:
- i) A maximum gross floor area of 53.5 square metres shall be permitted for the lawn maintenance and snow lowing operation; and,
 - ii) In accordance with Section 12.1.3.1 b), c), d), e) and f).
- i) For the property located at 35 Parkside Drive, a lawn care and tree feeding business shall also be permitted and shall be subject to the following regulations:
- i) A maximum gross floor area of 37.16 square metres shall be permitted for the lawn care and tree feeding business; and,
 - ii) In accordance with Section 12.2.3.1 b), c), d), e) and f).