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Wentworth Condominium Corp. #99, Dorchar Properties Limited and Gardenview Properties Limited have appealed to the Ontario Municipal Board under section 34(19) of the *Planning Act*, R.S.O. 1990, c. P. 13, as amended, against Zoning By-law 03-345 of the City of Hamilton O.M.B. File No. R030278

APPEARANCES:

Parties

Counsel

City of Hamilton

A. Zuidema

The Enfield Group

M. Bull

Wentworth Condominium Corp. #99,
Dorchar Properties Limited and Gardenview
Properties Limited

M. Rudolph

**MEMORANDUM OF ORAL DECISION DELIVERED BY J. R. AKER
ON MAY 18, 2004 AND ORDER OF THE BOARD**

This is an appeal by Wentworth Condominium Corp. #99, Dorchar Properties Limited and Gardenview Properties Limited (appellants) against Zoning By-law 03-345 enacted by the Council of the City of Hamilton (City) on October 29, 2003.

The Enfield Group (applicant) has purchased two abutting properties, 174 and 182 Mountain Park Avenue and 10 Summit Avenue which will be consolidated for the proposed redevelopment. The site is at the intersection of Mountain Park Avenue and Summit Avenue and has a combined area of approximately 1700 square metres (0.42 acres). Zoning By-law 03-345 would permit a 12 storey residential building with 20 dwelling units. The proposal before the Board is for a gross floor area of 4,870 square metres, a minimum floor area of 200 square metres for each dwelling unit and 43 parking spaces. The building will be stepped back on the west side at 10 storeys.

The appellants are concerned with the compatibility of a 12 storey multi-unit building with the smaller multi-unit buildings that range from 2 storeys to 7 storeys surrounding the subject property.

Mr. James Webb, a qualified planner, and Mr. Robert Glover, a qualified urban design specialist, were retained by the applicant and provided evidence in support of the By-law. Mr. Stephen Robichaud, a qualified planner employed by the City of Hamilton, provided professional land use planning evidence in support of the By-law.

Mr. Keith Birch, a qualified planner, and Mr. Arnold Crone, a spokesperson for the Executive Committee of the Condominium Corporation provided evidence in opposition to the By-law. Ms Margaret Zsadanyi and Douglas Bray, residents in the immediate area, expressed their concerns regarding the By-law.

During the hearing the question of the requirement and jurisdiction of a demolition permit for the existing buildings was raised. Based on the submissions of counsel, the Board finds the matter of the demolition permit is not before the Board as only the Zoning By-law has been appealed to the Board.

On all the evidence presented, the Board finds that the By-law, as required to be amended by the Board, has regard for the Provincial Policy Statement, complies with the Niagara Escarpment Plan, conforms to the Region of Hamilton-Wentworth Official Plan and the City of Hamilton Official Plan, is appropriate, represents good planning and is in the overall public interest of the community. The reasons follow.

The evidence of Mr. Webb supported by Mr. Robichaud is that Policy I of the Provincial Policy Statement encourages the development of strong communities through cost effective development patterns and redevelopment and revitalization in areas that have existing infrastructure. The Board finds the proposed development has regard for these Policies as the subject property is within a designated urban area with existing infrastructure and the housing on the property is in need of significant re-investment.

The evidence of Mr. Webb and Mr. Robichaud is that the subject property is within the lands regulated by the Niagara Escarpment Plan. A key policy is that all development should be of an urban design compatible with the visual and natural

environment of the escarpment. The Board finds the proposal maintains the footprint of the existing development and there is no further encroachment towards the escarpment. The correspondence from Mr. Martin Kilian of Ontario's Niagara Escarpment (Exhibit 2, Tab 4) states that the visual impact of this proposed building versus the potential impact of a building permitted by the existing By-law on this and adjacent lots will be minimal. He concludes that he has no objections to the proposal as it meets the Urban Area policies of the Niagara Escarpment Plan.

The evidence of Mr. Webb and Mr. Robichaud is that the Region of Hamilton-Wentworth Official Plan provides for a broad policy framework and deals with policy that distinguishes urban areas from rural areas. The Official Plan indicates that the subject property is located within an urban area. The evidence is that the proposal will develop on full municipal services and will contribute to the variety of housing types. The Board finds the proposed development is in conformity with the policies of the Regional Official Plan.

The Board received extensive evidence from Mr. Webb, Mr. Glover and Mr. Robichaud on the conformity of the proposed development with the Official Plan of the City of Hamilton. Section A.2.1: Residential Uses contains only the single designation for residential uses. The evidence of Mr. Webb is that the Official Plan does not differentiate between low density residential, medium density residential and high density residential. Policy 2.1.1 does state that preference will be given to locating similar densities of development together. The evidence of Mr. Webb and Mr. Glover is that the surrounding neighbourhood is already characterized as an area of high-density residential development (Exhibit 15).

Mr. Glover referred to Section 2.1.14(i) which states that the height, bulk and arrangement of buildings will integrate with the surrounding areas. His evidence as a specialist in urban design is that the surrounding buildings provide a transition to the proposed 12 storey building. Existing Zoning By-law 6593 permits a 12 storey building at this location and clearly contemplates that 12 storeys is an appropriate height. Furthermore the building will be stepped back on the west side at 10 storeys to reflect the transition from the 7 storey condominium directly west of the subject property.

The evidence of Mr. Glover is that the floor plate of approximately 477 square metres is appropriate as it will not be the smallest or the biggest floor plate of adjacent buildings. In his opinion the bulk of the proposed building is appropriate.

The evidence of Mr. Glover is that the site plan and landscape plan (Exhibit 5) creates a harmonious design and integrates the building with the surrounding area. The building is oriented to Mountain Park Avenue to take advantage of the view from the top of the escarpment over the lower City of Hamilton and the harbour. The additional benefit of the location of the building on the north side of the lot and the north end of the block is that the shadow impact of the proposed building is very low (Exhibit 39). In the opinion of Mr. Glover the shadow impacts are acceptable.

The Board finds the proposed development is in conformity with the policies of the City of Hamilton Official Plan.

On the planning evidence presented, the Board finds that the subject property and the surrounding residential properties are zoned as "E" District, Multiple Dwellings, Lodges and Clubs and was established by By-law 6593 and adopted in 1950, over 50 years ago. On this property the height of a building or structure shall not exceed 12 storeys or 39 metres.

The evidence in the hearing is that the proposal conforms to the 12 storey height restriction. The proposal provides for 43 parking spaces whereas 25 parking spaces are required and the proposal provides for 37% landscaping of the area of the lot where only 25% landscaping is required. There are some minor front yard, side yard and rear yard setback reductions but these were not contested at the hearing.

The evidence of Mr. Birch, in opposing this By-law, is that the proposal is for a reduction in density and that the City of Hamilton is squandering its resources. His evidence is that 33 dwelling units could be built on the subject property and this would make better use of the existing infrastructure and would supply better support for public transportation.

The only significant change in the proposed By-law is for a gross floor area of 4,870 square metres or 2.9 times lot area whereas the existing By-law permits 2,890 square metres or 1.7 times lot area. The proposal before the Board is for 20 larger units

and the evidence before the Board is that the larger mass of the building has acceptable shadow impacts compared to an as-of-right 12 storey thinner building.

In regard to the issues of the appellants, there was no evidence from any representative of Dorchar Properties Limited or Gardenvue Properties Limited as to their concern regarding this development. Mr. Arnold Crone, a spokesperson for Wentworth Condominium Corporation #99, expressed a concern of potential loss of revenue currently received from Mobile Business Communications Ltd. which has an antenna site located on the roof of their building at 166 Mountain Park Avenue. His evidence is that the Condominium Corporation would prefer an 8 storey building instead of the proposed 12 storey building to reduce any impact on the communications tower and protect their revenue stream. The decision of the Board must be based on sound planning principles and not economic or financial reasons.

Three residents spoke in opposition to the proposal. Mr. Crone, speaking on behalf of himself and his wife, moved into 166 Mountain Park Avenue approximately one year ago. He stated that he cannot see the proposed building from his unit but may be forced to endure two years of construction activity.

Ms Margaret Zsadanyi, the owner of the penthouse unit at 166 Mountain Park Avenue, provided the Board with photographs of her penthouse patio. She currently enjoys an expansive view to the west, north and east. Her concern is that there will be some loss of view to the east with the proposed building.

Mr. Douglas Bray, a resident some distance from the proposed building, had no impact on light or view from the subject property as it affects his home. His concerns were in regard to parking and the wind effect created by a 12 storey building.

The Board listened carefully to the concerns of the residents but finds the potential impacts of the proposed building are minor and acceptable.

The Board finds the proposal is based on sound planning principles and represents good planning.

In conclusion, the appeals are allowed, in part, and the Board amends Zoning By-law 03-345 as follows: Section 2(iii) – with respect to the permitted height, change

38 metres to 39 metres; and Section 2(v) – with respect to permitted gross floor area, change 5110 square metres to 4,870 square metres.

In all other respects, the appeals are dismissed.

The Board so Orders.

A handwritten signature in black ink that reads "John Akker". The signature is written in a cursive style with a large initial "J" and "A".

J. R. AKER
MEMBER