

ISSUE DATE:  
**Jun. 08, 2005**  
DECISION/ORDER NO:  
**1497**



~~127-05~~ 209  
003-05

PL040937

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

05-386

David Harris has appealed to the Ontario Municipal Board under subsection 17(24) of the *Planning Act*, R.S.O. 1990, c. P.13, as amended, from a decision of the City of Hamilton to approve Proposed Amendment No. 45 to the Official Plan for the former Township of Glanbrook to redesignate land at 8029 Twenty Road East from "Rural Area, Agricultural" to "Urban Area, Residential" to permit a residential subdivision  
OMB File No: O040181

David Harris has appealed to the Ontario Municipal Board under subsection 34(19) of the *Planning Act*, R.S.O. 1990, c. P.13, as amended, against Zoning By-law 04-186 of the City of Hamilton  
OMB File No: R040210

David Harris has appealed to the Ontario Municipal Board under subsection 51(39) of the *Planning Act*, R.S.O. 1990, c. P.13, as amended, from a decision of the Council of the City of Hamilton to approve a proposed plan of subdivision on lands composed of Part of Lots 7 and 8, Concession 2 (Glanbrook), in the City of Hamilton  
Municipal File No: 25T200313  
OMB File No: S040104

**APPEARANCES:**

Parties

City of Hamilton  
Weizer Investments Ltd.  
David Harris

Counsel

A. Zuidema  
S. Snider

OFFICE OF THE CITY CLERK  
JUN 10 2005  
REC. BY A. Rawlin DATE .....  
REF'D TO T. M. Cole DATE .....  
REF'D TO M. Smith DATE .....  
REF'D TO L. Barrett DATE .....  
ACTION: \_\_\_\_\_

**MEMORANDUM OF ORAL DECISION DELIVERED BY D. R. GRANGER ON APRIL 5, 2005 AND ORDER OF THE BOARD**

These are appeals by David Harris (appellant) from decisions of the City of Hamilton (City) to approve proposed Official Plan Amendment No. 45 (OPA 45) to the applicable former Township of Glanbrook Official Plan (OP), enact By-law 04-186 (By-law) and to approve a proposed plan of subdivision 25T-200313 (subdivision), with conditions, on approximately 16.44 hectares of land at 8029 Twenty Road East (subject property) owned by Weizer Investments Ltd. (applicant).

The approvals would permit the development of 186 lots for single-detached dwellings, an open space block, a park block, three new streets and the extension of Mother's Street (proposal). The proposed development is known as Glanbrook Hills.

The portion of the subject property proposed for residential development is located within the Urban Area designation of the applicable former Region of Hamilton-Wentworth Official Plan (ROP) pursuant to Regional Official Plan Amendment No. 16 (ROPA 16). There is no dispute to this fact.

David Harris, appellant, provided evidence in opposition to the proposal. Mr. Harris expressed concerns including the appropriateness of the urban development on good agricultural land and protection of an existing wetland area and associated slope.

J. Ariens, on behalf of the applicant, provided expert land use planning evidence in support of OPA 45, an amended By-law and the subdivision with an amended condition.

Having considered all of the evidence presented, including regard for the Provincial Policy Statement (PPS) and subsection 51(24) of the *Planning Act*, the Board finds that OPA 45, By-law 04-186, as amended, and Subdivision 25T-200313, subject to conditions as further amended, are in full conformity and properly implement the applicable Region Official Plan, are appropriate, represent good planning and are in the overall public interest of the community. The reasons follow.

Most compelling in this case is the fact that the developable portion of the subject property is designated for Urban Area uses within the urban boundary of the City. Many concerns of the appellant relate to the appropriateness of that designation, a matter not before this Board. The appellant was forthright in his admission that he was aware of ROPA 16, prior to its approval and that ROPA 16 included the subject property within the urban boundary. ROPA 16 was approved by the City in July 2003 and was not appealed.

Having considered the planning evidence presented, the Board finds there to be an obligation by the City to bring the OP and the applicable Township of Glanbrook Zoning By-law into conformity with ROPA 16 as clearly set out in the policies of the applicable ROP and OP. The evidence of the planner was uncontradicted in that regard. The planner for the applicant confirmed his opinion that the proposal properly meets and implements all Regional objectives providing for appropriate urban development within the existing approved urban boundary for the City.

Located within the proposed subdivision is a wetland area, including associated slopes, adjacent to the Twenty Mile Creek Provincially Significant Wetland. There was no dispute that the Niagara Peninsula Conservation Authority (NPCA) was satisfied with the protection of the wetland area and associated stable top of bank within the designated open space block. This was confirmed in correspondence from the NPCA dated March 29, 2005 presented as Exhibit No. 1, Tab 3. There was no dispute of the City's reliance on the expertise and opinion of the appropriate Conservation Authority in matters related to the protection of the natural environment.

In this case, as a result of the NPCA input, additional setbacks from the stable top of bank, determined on site with an official of the NPCA, afford added protection and result in further amendments to the By-law, as set out in Exhibit No. 9, and subdivision conditions, as set out in Exhibit No. 1, Tab 5, by this Board.

The planner for the applicant confirmed there being adequate rear yard amenity space for the lots backing onto the open space block that require the additional 7.5-metre non-developable rear yard setback area from the determined stable top of bank.

The planner for the applicant confirmed the low density form of development as compatible with the existing large-lot residential development abutting to the west, the wetland open space to the southwest and existing agricultural lands separated by a hydro electric transmission line right of way to the south. His evidence and opinion were uncontradicted in that regard.

While the concerns expressed by the appellant regarding the wetland and slope protection and appropriateness of the proposal were legitimate, he offered no direct evidence to shake the expert evidence presented. The appellant was forthright in his admission that he did not meet with officials of the NPCA or appropriate City planners to further investigate his concerns raised throughout the open public planning approval process followed by the applicant. It would have been prudent to do so in an effort to at least better understand the roles and positions of experts charged with carefully evaluating the proposal in the light of the overall public interest. The appellant has confirmed his now having a clearer understanding as a result of this hearing especially as it relates to the urban boundary issue and reliance of the City on the expertise of the NPCA.

In conclusion, with respect to the Official Plan Amendment, the Board Orders that the appeal is dismissed and Official Plan Amendment No. 45 is approved as set out in Attachment "1" to this decision.

With respect to the By-law and subdivision, the Board Orders that the appeals are allowed, in part, and By-law 04-186 is amended in the form of Attachment "2" to this decision. The proposed draft plan of subdivision 25T-200313 is approved as set out in Exhibit No. 8 now Attachment "3" to this decision subject to the revised conditions as set out in Attachment "4" to this decision. In all other respects, the appeals are dismissed.

Pursuant to subsection 51(56.1) of the *Planning Act*, the City shall have the authority to clear the conditions of draft approval and to administer final approval of the plan of subdivision for the purposes of subsection 51(58) of the *Planning Act*. In the event that there are difficulties implementing any of the conditions of the plan approval or if any changes are required to be made to the draft plan, the Board may be spoken to.

The Board so Orders.

"D. R. Granger"

D. R. GRANGER  
MEMBER

**Authority:** Item 14, Planning and Economic  
Development Committee  
Report PD04168  
CM: July 14, 2004

**Bill No.**

## CITY OF HAMILTON

**BY-LAW NO. \_\_\_\_\_**

**To Amend Zoning By-law No. 464 (Glanbrook)  
Respecting Lands located at 8029 Twenty Road East**

**WHEREAS** the City of Hamilton Act, 1999, Statutes of Ontario, 1999 Chap.14, Sch. 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 Township of Glanbrook" 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 of the former area municipalities 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. 464 (Glanbrook) was enacted on the 16<sup>th</sup> day of March, 1992, and approved by the Ontario Municipal Board on the 31<sup>st</sup> day of May, 1993;

**AND WHEREAS** the Council of the City of Hamilton in adopting Section 14 of Report 04-013 of the Planning and Economic Development Committee at its meeting held on the 6<sup>th</sup> day of July, 2004, recommended that Zoning By-law No. 464 (Glanbrook), be amended as hereinafter provided;

**AND WHEREAS** this by-law is in conformity with the Official Plan of the City of Hamilton (the Official Plan of the former Township of Glanbrook), approved by the Minister under the Planning Act on February 8, 1989;

**NOW THEREFORE** the Council of the City of Hamilton enacts as follows:

1. Schedule "E", appended to and forming part of By-law No. 464 (Glanbrook) is amended as follows:
  - (a) by changing from the General Agricultural "A1" Zone to the Residential "R3-187" Zone, the land comprised of Block 1;
  - (b) by changing from the General Agricultural "A1" Zone to the Residential - Holding "H-R3-187" Zone, the land comprised of Block 2;

- (c) by changing from the General Agricultural "A1" Zone to the Public Open Space "OS2" Zone, the land comprised of Block 3; and,
- (d) by changing from the General Agricultural "A1" Zone to the Open Space - Conservation "OS3" Zone, the land comprised of Block 4;

the extent and boundaries of which are shown on a plan hereto annexed as Schedule "A".

2. That Section 44, "Exceptions to the Provisions of this By-law", of Zoning By-law No. 464, be amended by adding the following new special provisions:

**"R3-187 & H-R3-187**

Notwithstanding the minimum lot frontage, lot area, lot coverage, front yard and rear yard setback regulations of Subsection 15.2 (a), (b), (c), (d) and (f) **REGULATIONS FOR USES PERMITTED IN SUBSECTION 15.1 of SECTION 15: RESIDENTIAL "R3" ZONE**, for those lands zoned modified "R3-187", the following regulations shall apply:

- (a) Minimum Lot Frontage ... 15 metres, except 16 metres for a corner lot
- (b) Minimum Lot Area ..... 450 square metres, except  
490 square metres for a corner lot
- (c) Maximum Lot Coverage .....40%, except 45% for bungalows
- (d) Minimum Front Yard..... 6 metres
- (e) Minimum Rear Yard – Notwithstanding any provision to the contrary, no buildings or structures, including any type of swimming pool, shall be permitted within 7.5 metres of any rear lot line abutting lands zoned Open Space – Conservation 'OS3' Zone.

The removal of the Holding Provision "H" by By-law for those lands zoned site-Specific Residential – Holding "H-R3-187" shall be subject to the Owner resolving fish habitat issues to the satisfaction of the Niagara Peninsula Conservation Authority."

3. The Clerk is hereby authorized and directed to proceed with the giving of notice of the passing of this By-law, in accordance with the Planning Act.

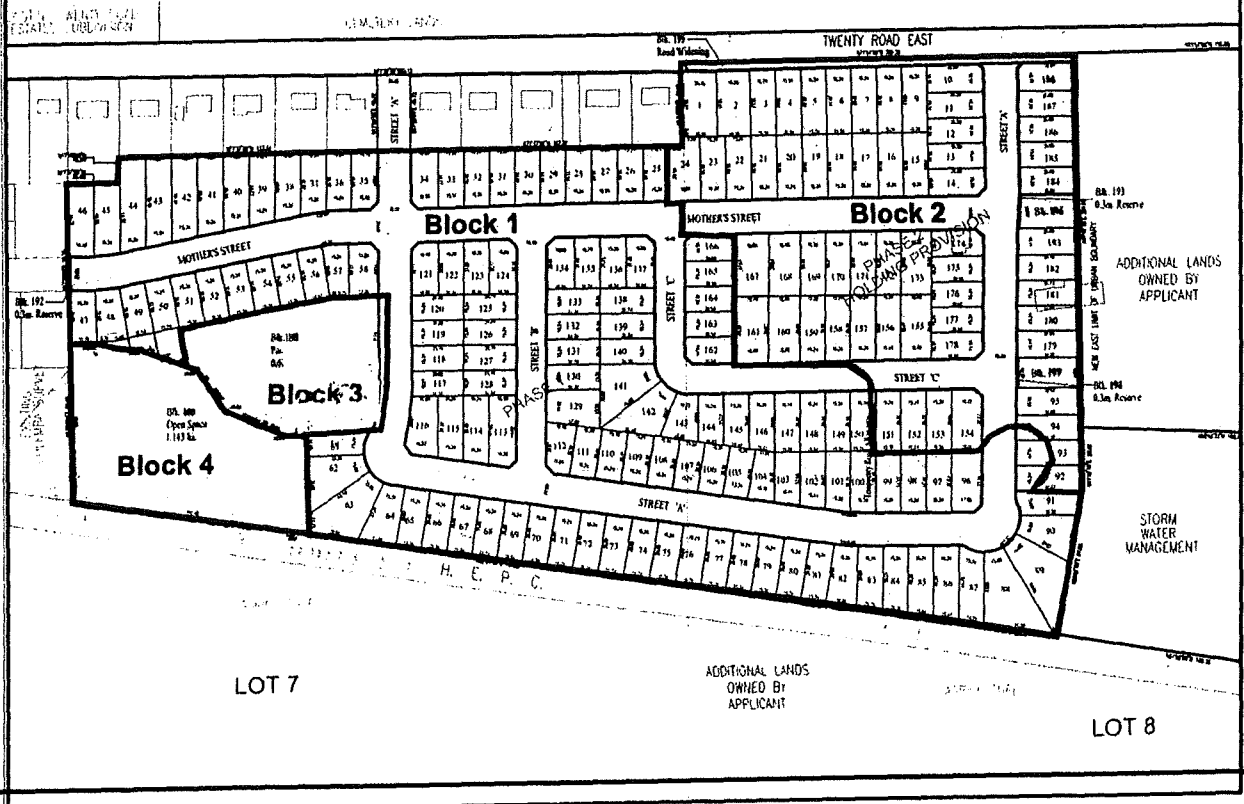
**PASSED and ENACTED** this  
day of \_\_\_\_\_, 2004.

\_\_\_\_\_  
MAYOR

\_\_\_\_\_  
CLERK



25T - 200313



This is Schedule "A" to By-Law No. 04 —

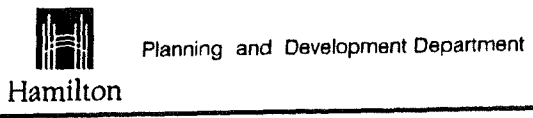
Clerk

Passed the ..... day of ....., 2004

Mayor

# Schedule "A"

Map Forming Part of  
By-Law No. 04-\_\_\_\_  
to Amend By-Law No. 464



## Legend

- Lands to be Rezoned From the General Agricultural "A1" Zone to:
- Block 1** - Residential "R3-187"
- Block 2** - Residential-Holding "H-R3-187"
- Block 3** - Public Open Space "OS2"
- Block 4** - Open Space - Conservation "OS3"

North 	Scale <b>NOT TO SCALE</b>	Reference File No. <b>OPA-03-16_ZAC-03-54</b>
	Date <b>June 17, 2004</b>	Drawn By <b>L.M.M.</b>