

ISSUE DATE:

Jun. 08, 2005

DECISION/ORDER NO:

1497



003-08F
only
PL040937

Ontario Municipal Board

Commission des affaires municipales de l'Ontario

05-387

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

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).

- CLEAN COPY -

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

ATTACHMENT 1

PL040937

Authority: Item 14, Planning & Economic
Development Committee
Report: 04-013 PD04168x
CM July, 14, 2004
Bill No. 185

CITY OF HAMILTON

BY-LAW NO. 04-185

To Adopt:

Official Plan Amendment No. 45 to the former Township of Glanbrook Official Plan;

Respecting:

Lands municipally known as 8029 Twenty Road East

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

1. Amendment No. 45 to the Official Plan of the former Township of Glanbrook Planning Area consisting of Schedule 1, hereto annexed and forming part of this by-law, is hereby adopted.
2. It is hereby authorized and directed that such approval of the Official Plan Amendment referred to in section 1 above, as may be requisite, be obtained and for the doing of all things for the purpose thereof.

PASSED AND ENACTED this 12th day of August, 2004



MAYOR



CLERK

CERTIFIED A TRUE COPY



KEVIN C. CHRISTENSON, CITY CLERK
CITY OF HAMILTON

Amendment No. 45

to the

Official Plan of the former Township of Glanbrook

The following text together with Schedule "A", Land Use Plan of the Official Plan of the former Township of Glanbrook, attached hereto, constitute constitutes Official Plan Amendment No. 45.

Purpose:

The purpose of the Amendment is to redesignate the subject lands from "Rural Area, Agricultural" to "Urban Area, Residential" to permit the development of a residential subdivision.

Location:

The lands affected by this Amendment are part of Part of Lots 7 and 8, Concession 2, in the former Township of Glanbrook. The subject lands are known municipally as 8029 Twenty Road East and have an area of 16.436 hectares, located on the south side of Twenty Road East.

Basis:

The basis for the Amendment is as follows:

- the proposed residential development is consistent with good planning principles and is appropriate for the development of the subject lands;
- the redesignation of the subject lands from "Agricultural" to "Residential" will bring these lands into conformity with the urban boundary of the Regional Official Plan; and
- the proposed development of the subject lands will be consistent with existing development to the west and northwest.

Actual Changes:

1. That Schedule "A", Land Use Plan, of the former Township of Glanbrook Official Plan be revised by redesignating the subject lands from "Rural Area, Agricultural" to "Urban Area, Residential" and identifying the subject lands as OPA No. 45; as shown on the attached Schedule "A" to this amendment.

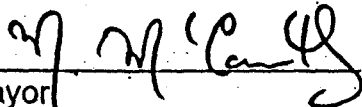
2. Table entitled "Amendments" on Schedule "A" be amended to include OPA No. 45, the Final Approval Date of this OPA and Specific Policy Reference Schedule A, as shown on the attached Schedule "A" to this Amendment.

Implementation:

An implementing Zoning By-Law Amendment and Subdivision Agreement will give effect to this Amendment.

This is Schedule 1 to By-law No.04-185 passed on the 12th day of August, 2004.

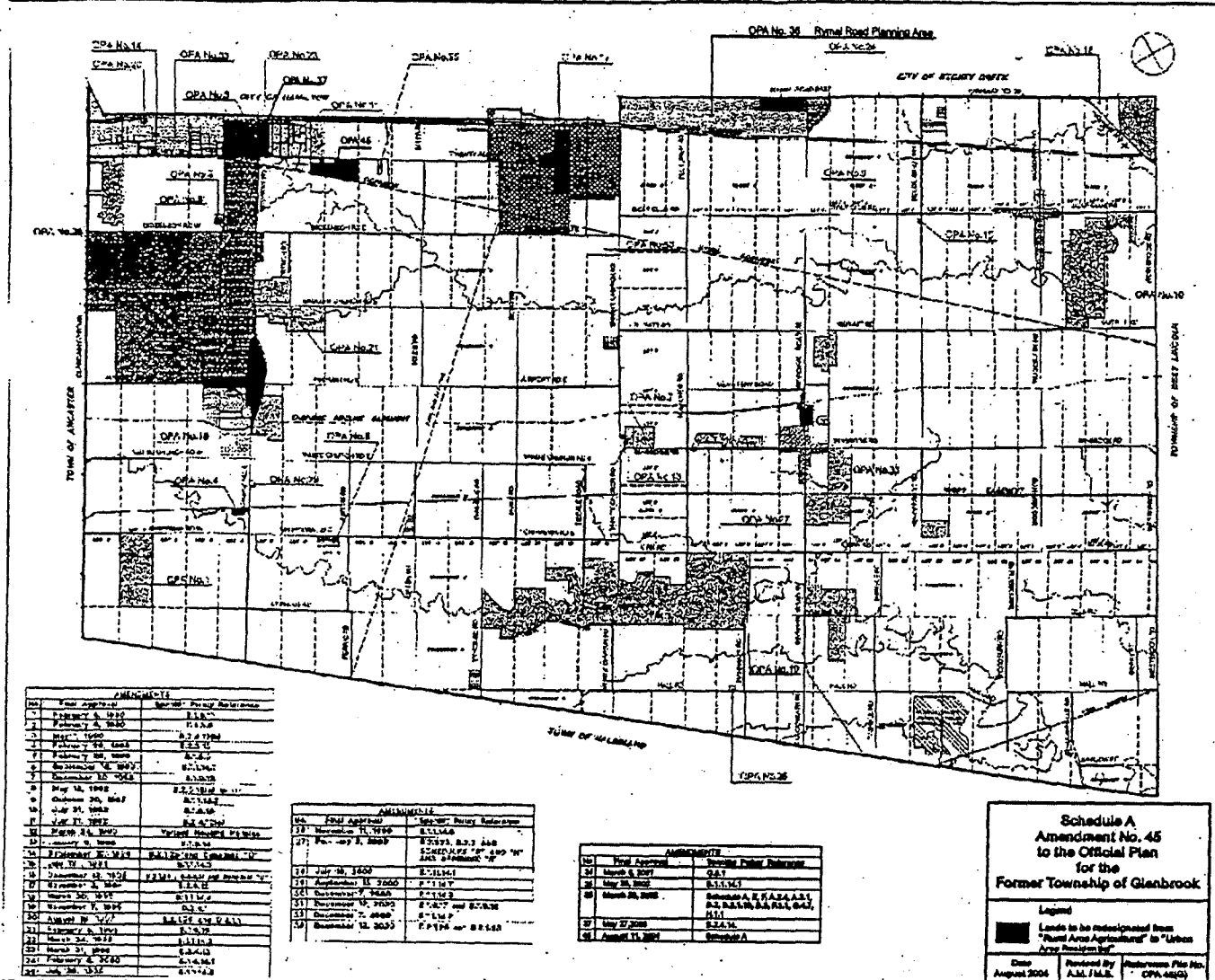
The
City of Hamilton



Mayor



City Clerk



**OFFICIAL PLAN
FOR THE
TOWNSHIP
OF
GLANBROOK**

**SCHEDULE A
LAND USE PLAN**

LEGEND

- RURAL AREA**
 - AGRICULTURAL
 - WOODLUM RURAL SETTLEMENTS AREA
 - RURAL INDUSTRIAL - BUSINESS PARK
 - RURAL INDUSTRIAL
 - INSTITUTIONAL
 - PUBLIC INDUSTRIAL
 - OPEN SPACE AND CONSERVATION
 - SPECIAL POLICY AREA 1
- URBAN AREA**
 - MECHANICAL
 - GENERAL COMMERCIAL
 - BIRCHCOCK VILLAGE
 - BIRCHCOCK COMMUNITY COMPLEX
 - AIRPORT-RELATED COMMERCIAL
 - AIRPORT
 - NORTH GLANBROOK INDUSTRIAL-BUSINESS PARK

No.	Year Adopted	Special Policy Reference
1	January 8, 1990	E.L.S.
2	February 8, 1990	E.L.S.
3	March 1, 1990	E.L.S.
4	February 28, 1991	E.L.S.
5	February 28, 1991	E.L.S.
6	December 12, 1991	E.L.S.
7	December 12, 1991	E.L.S.
8	May 14, 1992	E.L.S.
9	October 26, 1992	E.L.S.
10	July 21, 1993	E.L.S.
11	July 21, 1993	E.L.S.
12	March 24, 1994	Various Municipal Ordinances
13	January 8, 1995	E.L.S.
14	December 12, 1995	E.L.S.
15	December 12, 1995	E.L.S.
16	April 14, 1996	E.L.S.
17	January 12, 1997	E.L.S.
18	January 12, 1997	E.L.S.
19	January 12, 1997	E.L.S.
20	January 12, 1997	E.L.S.
21	January 12, 1997	E.L.S.
22	March 21, 1997	E.L.S.
23	March 21, 1997	E.L.S.
24	February 8, 2000	E.L.S.
25	July 28, 2001	E.L.S.

No.	Year Adopted	Special Policy Reference
26	November 11, 1999	E.L.S.
27	February 1, 2000	E.L.S.
28	July 28, 2001	E.L.S.
29	July 28, 2001	E.L.S.
30	July 28, 2001	E.L.S.
31	December 12, 2000	E.L.S.
32	December 12, 2000	E.L.S.
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100	December 12, 2000	E.L.S.

No.	Year Adopted	Special Policy Reference
1	July 28, 2001	E.L.S.
2	July 28, 2001	E.L.S.
3	July 28, 2001	E.L.S.
4	July 28, 2001	E.L.S.
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100	July 28, 2001	E.L.S.

**Schedule A
Amendment No. 45
to the Official Plan
for the
Former Township of Glanbrook**

Legend
 Lands to be redesignated from "Rural Area Agriculture" to "Urban Area Residential"
 Lands to be redesignated from "Rural Area Agriculture" to "Urban Area Industrial"

Date: August 2006
 Prepared By: A.M./M.E.
 Reference File No.: OPA 45(0)

DATE	REVISION/ISSUE	BY	FOR