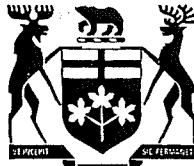


ISSUE DATE:

OCT. 28, 2005

DECISION/ORDER NO:

2842



Ontario

Ontario Municipal Board

Commission des affaires municipales de l'Ontario

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LAW DEPARTMENT

Beccarea only.

Susan Ivanic has 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 or neglect to enact a proposed amendment to Zoning By-law 90-145-Z of the City of Hamilton to rezone lands respecting 928 Brock Road from Agricultural "A" to Site-Specific Agricultural "A-78" to permit the operation of an existing automobile repair and auto body shop for a portion of the property OMB File No. Z040065

Susan Ivanic has appealed to the Ontario Municipal Board under subsection 69(3) of the *Planning Act*, R.S.O. 1990, c. P. 13, as amended, to protest against the levying of the fees in relation to an application to rezone the lands known municipally as 928 Brock Road in the City of Hamilton OMB File No. M030070

APPEARANCES:

Parties

City of Hamilton

Susan Ivanic

Counsel

Nancy Smith

**MEMORANDUM OF ORAL DECISION DELIVERED BY R. A. BECCAREA
ON OCTOBER 5, 2005 AND ORDER OF THE BOARD**

The Board was advised at the commencement of its hearing that the appeals have been resolved on consent.

The Board was asked to approve the settlement that was reached and in that regard heard from Mr. Mark Dorfman, a planner who had been retained by the City.

There were three appeals before the Board. As part of the settlement, both Ms. Ivanic and Ms. Smith asked the Board with respect to Ms. Ivanic's appeals regarding:

- (a) Council's refusal to enact a proposed amendment to rezone the subject lands at 928 Brock Road from Agricultural "A" to Site Specific Agriculture "A"-78 to permit the operation of an existing automobile repair and auto body shop. (OMB File No Z040065) that it be dismissed.

- (b) A protest against the levying of the fees in relation to the above rezoning application pursuant to Section 69(3) of the *Planning Act* (OMB File M030070) that it be dismissed.
- (c) With respect to Ms. Ivanic's appeal respecting her request that the Institutional "1-8" Zone be modified to include a residential use on her adjacent property (OMB File No. Z050107), the Board was asked to approve that appeal in part and that By-law 90-145-Z be amended in accordance with the attached Zoning By-law, as it relates to that vacant lot which is adjacent to 928 Brock Road.

Mr. Dorfman advised the Board that the settlement reached constituted good land use planning and that the attached Zoning By-law conforms to the Official Plans for the former Region of Hamilton-Wentworth and the former Township of Flamborough, both of which are still in effect.

Mr. Dorfman explained to the Board and Linda Sway, Rosalyn Vanderboom and Frank Evans, concerned neighbours of Ms. Ivanic who attended, that the proposed By-law, if approved, would only permit a single dwelling unit on the premises, if it was used in conjunction with the already permitted Institutional Use of a day nursery and only if the dwelling unit was contained in the same building as the day nursery, and only if it was limited to 186 square meters in size.

In light of the history of the use of 928 Brock Road, the Board accepts Mr. Dorman's opinion that the attached By-law constitutes good land use planning.

The Board Orders that the appeal is allowed in part and that By-law 90-145-Z (Flamborough) is amended in the manner attached hereto as Attachment "1". In all other respects, the Board Orders that the appeals are dismissed.

"R.A. Beccarea"

R. A. BECCAREA
MEMBER

CITY OF HAMILTON

BY-LAW NO. _____

**To Amend Zoning By-law No. 90-145-Z (Flamborough)
Respecting Lands Known as Part of Lot 7, Concession 5 (West Flamborough)
Part 2 of Plan 62R-15442**

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 municipality known as "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 City of Hamilton;

AND WHEREAS Zoning By-law No. 90-145-Z (Flamborough) was enacted on the 5th day of November, 1990, and approved by the Ontario Municipal Board on the 21st day of December 1992;

AND WHEREAS this by-law is in conformity with the Official Plan of the City of Hamilton (formerly the Town of Flamborough Official Plan) in accordance with the provisions of the Planning Act;

NOW THEREFORE the Ontario Municipal Board Orders, as follows:

1. Section 22.3.8 of the Zoning By-law of the former Town of Flamborough, as enacted by By-law 2000-08-Z by the former Council of the Town of Flamborough, is further amended, as follows:

Permitted Uses

Within the "I-8" Zone, only the following uses are permitted:

- (a) Day Nursery.
- (b) One Dwelling Unit in conjunction with one operating Day Nursery.

Zone Provisions

- (a) Day Nursery shall be limited to a maximum of 31 children.
 - (b) One Dwelling Unit shall only be located within the same building as the permitted Day Nursery.
 - (c) The maximum Gross Floor Area of the Dwelling Unit part of the permitted building is 186 square metres.
 - (d) All other zone provisions of Subsection 22.2 shall apply.
2. That By-law 2000-08-Z of the former Town of Flamborough is hereby repealed.

The effective date of this By-law shall be the date of the issuance of this Order.

Explanatory Note

This By-law applies to an existing 0.459 hectare lot located on the east side of Brock Road. The subject lot was created by severance in 2000. The lot is zoned as "I-8" under Zoning By-law 90-145-Z of the former Town of Flamborough. This zoning exception was enacted as By-law 2000-08-Z on January 31, 2000 by the former Town of Flamborough.

The existing zoning of the subject property is "Institutional" and by exception allows for a Day Nursery with a maximum of 31 children.

This amendment extends the current permitted use to allow for one dwelling unit only in conjunction with an operating Day Nursery in the same building. The maximum gross floor area of the dwelling unit part of the building is a maximum of 186 square metres. The number of children is still limited to 31 in the Day Nursery.