

ISSUE DATE:

**Feb. 6, 2007**

DECISION/ORDER NO:

**0318**



Ontario

Ontario Municipal Board

Commission des affaires municipales de l'Ontario

PL050597

07-134

Bruce Hauser Investments Limited has appealed to the Ontario Municipal Board under subsection 22(7) 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 the Official Plan for the City of Hamilton to allow phasing of the required comprehensive servicing study respecting land composed of Part Lot 1, Concession 7 to permit development of a plan of subdivision  
(Approval Authority File No. D08-BR)  
OMB File No. O060017

Bruce Hauser Investments Limited has appealed to the Ontario Municipal Board under subsection 51(34) of the *Planning Act*, R.S.O. 1990, c. P.13, as amended, from the failure of the City of Hamilton to make a decision respecting a proposed plan of subdivision on lands composed of Part Lot 1, Concession 7 in the City of Hamilton  
(Approval Authority File No. 25T-93004)  
OMB File No. S050034

Bruce Hauser Investments Limited 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 Part Lot 7, Concession 1 to permit development of a plan of subdivision  
OMB File No. Z060102

#### **APPEARANCES:**

##### **Parties**

Bruce Hauser Investments Limited

City of Hamilton

##### **Counsel**

Manfred Rudolph

Art Zuidema

#### **DECISION DELIVERED BY J.P. ATCHESON AND PROCEDURAL ORDER OF THE BOARD**

The Board at the commencement of the hearing was advised that the parties had reached a settlement of all of the issues associated with the consolidated appeals before the Board. The Board was presented with the following documents which represent and give effect to the settlement reached by the parties:

1. A draft official plan amendment to the former Town of Flamborough Official Plan OPA108 (exhibit 5).
2. A zoning by-law amendment to By-law No. 90-145-Z (Flamborough) respecting lands located at 141 Highway No. 8, Concession 1, Part Lot 7 (West Flamborough) in the former Town of Flamborough, now in the City of Hamilton (exhibit 6).
3. Conditions of Draft Plan Approval "Bayview Estates" (25T- 93004) (exhibit 7).
4. A Draft Plan of Subdivision for Part of Lot 7 Concession 1 (Geographic Township of West Flamborough) now in the City of Hamilton prepared by A.J. Clarke O.L.S. dated October 5, 2006 (exhibit 8).

The Board noted that in the procedural order governing this hearing that 13 residents of the immediate area had been given participant status at the hearing. The Board canvassed those present and determined that the following participants were present Betty-Jean Price, Margaret Walker, John Hannam, Steve Suykens, John Vujicic and Sandra Jordan. Mr. Vujicic on questioning from the Board advised that the participants had not been provided with the details of the settlement.

It was agreed with the consent of the parties and the participants that the Board would hear evidence on the nature of the settlement being proposed and that the Board would then adjourn to allow the parties and the participants to review the settlement documents and that if there were still outstanding matters the Board would hear the submission of the participants. The Board also advised the parties that it had received a letter dated January 29, 2007 from a Karen Turkstra a participant who was not present at the hearing. Copies of this letter were provided to the parties.

The Board then heard from a Mr. James Webb a qualified land use planner, retained by the appellant. He provided an overview of the development and reviewed the settlement document found at exhibits 5 to 8. He pointed out to the Board that the subject lands are designated Rural Settlement in the Greensville area of the former Town of Flamborough. The subject property is some 30 acres in size, contains one dwelling which has been designated as an historic building and is surrounded by

existing residential development. The proposal is clearly an infill development consistent with the development that has already occurred in the area. Access to the proposed development will be by the extension of exiting streets in to the proposed development. No access is being permitted from Highway No. 8.

The proposal is to develop the northern nine lots together with the remnant parcel upon which the existing dwelling is situated. The southern portion of the draft plan lots 10 to 14 plus Block 15 are to be placed in a holding category in order to allow additional time for the completion of the "Greensville Subwatershed Study" or in the alternative additional studies be undertaken to determine the most effective way to deal with stormwater management issues associated with a watercourse that traverse the southern portion of the site. The conditions of draft approval call for the relocation of the existing watercourse conditions 5 and 10 (exhibit 7). The proposed zoning for the property is R-2 which is consistent with the current zoning on abutting properties (exhibit 6).

It was Mr. Webb's evidence that proposed OPA 108 (exhibit 5) was seeking a notwithstanding clause to permit a portion of the site to be developed prior to the completion of the Subwatershed study.

He then reviewed the 26 special conditions of draft plan approval found at exhibit 7. He noted that these conditions were in addition to the normal subdivision conditions of the City of Hamilton and were designed to meet the recommendations of the peer review conducted by the City of the documents filed in support of the proposed development and in particular the Hydrogeologic Assessment exhibit 12. He advised that the concerns all of the agencies circulated were addressed by the draft conditions.

He concluded his evidence by stating that the documents before the Board were consistent with the 1997 Provincial Policy Statement, conform with the policies of the Region of Hamilton Wentworth Official Plan, the Town of Flamborough Official Plan and more particularly OPA 108 was a contemplated response to the directions of Greensville Secondary Plan. He noted that the subject lands were within the Niagara Escarpment Planning Area, were designated as a minor urban centre within the Niagara Escarpment Plan. The proposed use is one contemplated by this Plan. He also proffered the opinion that the Greenbelt Plan and the Places to Grow legislation do not apply to this proposed development.

He concluded his evidence by stating that in his opinion the documents filed with the Board represented good planning, and provided appropriate control for the orderly development of the property by plan of subdivision and should be approved.

The Board then adjourned to allow the parties and the participants to review the documents and hear directly from the experts.

The Board, upon its return, heard submission from the following participants: Betty-Jean Price, Steve Suykens, John Vujcic and Sandra Jordan. Their concerns may be summarized as follows:

1. This development should not proceed in advance of the Subwatershed study currently underway.
2. There is currently a stormwater management problem in the immediate area that should be addressed before the development goes forward.
3. More development in the area will negatively impact the existing resident's groundwater from both a quantity and quality viewpoint.
4. The planning process has not been open or transparent.

The Board then heard from Mr. Ron Scheckenberger a well qualified engineer with many years of experience in stormwater management and Subwatershed planning. He was retained by the City to assist in the peer review of the supporting background material and was involved in making recommendations for some of the special conditions of draft plan approval as they related to the issues of stormwater management. He is well aware of the stormwater issues facing the Price property. His evidence to the Board was that the holding provisions placed on the southern portion of the site were appropriate as this area might be required as part of the overall storm water management solutions for the area. His evidence was that the post development flows from the proposed development would not negatively impact the downstream properties beyond the current problems faced by the Price property. He indicated that the City was aware of the problem and was working on a solution which might require some of the southern part of the subject property. His evidence to the Board was that the conditions of draft approval were appropriate and could assist in providing a

stormwater management solution for the area. He sees no need or benefit in withholding approval of development for the northern part of the site pending the completion of the "Greenville Subwatershed Study".

He also proffered the opinion that the *Drainage Act* petition was redundant and not required and that in his opinion condition #10 of the conditions of Draft Approval (exhibit 7) was the appropriate way to deal with the matters associated with the improvement to the watercourse and that the City had security to ensure that the works were carried out. It was his evidence that a study to define an appropriate stormwater management solution for the immediate area would take about three months and could be completed well within the time frames set out in the holding conditions found in exhibit 6.

The Board then heard from Mr. William Blackport a qualified Hydrogeologist who was retained by the City of Hamilton to undertake a per review of the supporting documentation as it related to the issues of the impacts on water quantity and quality that might result from the proposed development on the surrounding existing development. His evidence to the Board is that conditions 21 to 26 were appropriate and that he is satisfied that the proposed development due to its lot size and the types of sewage system proposed will have no negative impacts on the quantity or quality of potable water currently available in the area. He is satisfied that the monitoring conditions are appropriate. He noted that an additional condition 27 was being proposed as a result of discussions with the participants which would read as follows:

27. that the owner install minimum 5000 gallon cisterns on all of the lots within the draft plan of subdivision (lots 1 to 14) to the satisfaction of the Manager of development Engineering of the City of Hamilton.

It was his opinion that while not necessary this condition together with the other restrictions on water taking would provide an additional level of protection for the ground water supply.

In conclusion he supports the approval of the settlement reached by the parties and reflected in exhibits 5 to 8.

The Board notes that the consolidated matters of this appeal resulted from the City refusal or neglect to initially deal with the applications. The matters in this case are properly before the Board, and the hearing of the Board is the venue provided to the public to express their concerns. The Board has conducted two prehearings with respect to these matters and the residents have been served proper notice. Thirteen residents requested and were granted participant status for the hearing. This is an open and transparent process. The Board finds no defect in the notification prescribed by the *Planning Act* for the matter consolidated in this hearing.

The Board, after considering the submission made and the uncontradicted evidence of the expert witnesses, is satisfied the settlement reached among the parties and reflected in exhibits 5 to 8 represents good planning, has had regard to the criteria set out in section 51 (24) of the *Planning Act* and that the Draft Plan of Subdivision should be approved as presented to the Board. The Board accepts the evidence of the experts that it is appropriate to approve this draft plan in the manner proposed in advance of the completion of the "Greensville Subwatershed Study" and that by doing so will not materially affect the outcome of this study.

The Board is also satisfied that the addition of condition 27 as outlined in this decision is appropriate and should be included as a condition of draft approval.

Accordingly, and for the reason outlined in this decision,

THE BOARD ORDERS that the appeal is allowed and the Official Plan for the former Town of Flamborough is amended as set out in Attachment 1 to this Order.

THE BOARD ORDERS that the appeal against By-law No. 90-145-Z (Flamborough) of the City of Hamilton is allowed in part, and the Board directs the municipality to amend By-law No. 90-145-Z as set out in Attachment 2 to this order. In all other respects, the Board Orders that the appeal is dismissed.

THE BOARD ORDERS that the appeals are allowed and the draft plan shown on the plan prepared by A.J. Clarke and Associates Ltd. dated October 5, 2006 comprising for Part of Lot 7 Concession 1 (Geographic Township of West Flamborough) now in the City of Hamilton is approved subject to the fulfillment of the conditions set out in Attachment 3 to this Order;

AND THE BOARD ORDERS that pursuant to subsection 51(56.1) of the *Planning Act*, the City of Hamilton 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 *Act*. In the event that there are any difficulties implementing the conditions of draft approval or if any changes are required to be made to the draft plan, the Board may be spoken to.

The Board so Orders.

"J.P. Atcheson"

J.P. ATCHESON  
MEMBER

Authority: Item , Economic Development and  
Planning Committee  
Report:  
CM:

Bill No.

## CITY OF HAMILTON

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

**To Amend Zoning By-law No. 90-145-Z (Flamborough),  
Respecting Lands Located at 141 Highway No. 8, Concession 1, Part of Lot 7 (West  
Flamborough), in the former Town of Flamborough, now in the City of Hamilton**

**WHEREAS** the City of Hamilton Act, 1999, Statutes of Ontario, 1999 Chap.14, Sch. C. did incorporate, as of January 1st, 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 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 Council of 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 21<sup>st</sup> day of December, 1992;

**AND WHEREAS** this By-law will be in conformity with the Official Plan of the City of Hamilton (the Official Plan of the Former Town of Flamborough, approved by the Minister under the Planning Act on September 27<sup>th</sup>, 1988), as amended by Official Plan Amendment No.108 proposed by the Corporation of the City of Hamilton as By-law No. 07- , but not yet approved in accordance with the provisions of the Planning Act;

**NOW THEREFORE** the Ontario Municipal Board Orders as follows:

1. Schedule "A-39" attached to and forming part of Zoning By-law No. 90-145-Z (Flamborough), as amended, is hereby amended by changing the zoning:

- (a) from the Settlement Residential "R2-(H)" Holding Zone to the Settlement Residential "R2-31" Zone, for lands comprised in **Block "1"**;
- (b) from the Settlement Residential "R2(H)" Holding Zone and Conservation Management "CM" Zone to the Settlement Residential "R2-31(H)" Holding Zone, for lands comprised in **Block "2"**; and,
- (c) from the Settlement Residential "R2(H)" Holding Zone and Conservation Management "CM" Zone to the Conservation Management "CM" Zone, for lands comprised in **Block "3"**;

the extent and boundaries of which more particularly shown on Schedule "A" annexed hereto and forming part of this by-law.

- 2. That the amending By-law apply a Holding provision for those lands zoned Settlement Residential "R2-31(H)" Holding Zone (Block "2"), in section 1 of this By-law, by introducing the holding "H" symbol as a suffix to the proposed zone. The holding provision shall not be removed until such time as the following condition has been completed:
  - (i) the recommendations of the Greensville Subwatershed Study have been prepared to determine if these lands are required for a centralized stormwater management pond for this catchment area. Should said recommendation not be prepared by January 31<sup>st</sup>, 2008 then the Holding "H" provision shall be lifted.
- 3. Section 7 – Settlement Residential Zone of Zoning By-law No. 90-145-Z (Flamborough), as amended, is hereby further amended by adding the following subsection:

7.3 EXCEPTION NUMBERS

7.3.31 "R2-31" (See Schedule A-39)

Permitted Uses

- (a) Subsection 7.1 shall apply

Zone Provisions

- (a) Lot Area (minimum): 4,047 square metres
- (b) Rear Yard (minimum):
  - (i) Abutting a Conservation Management zone 15 metres
  - (ii) Abutting all other zones 10 metres
- (c) Interior Side Yard (minimum):
  - (i) Abutting a Conservation Management zone 15 metres

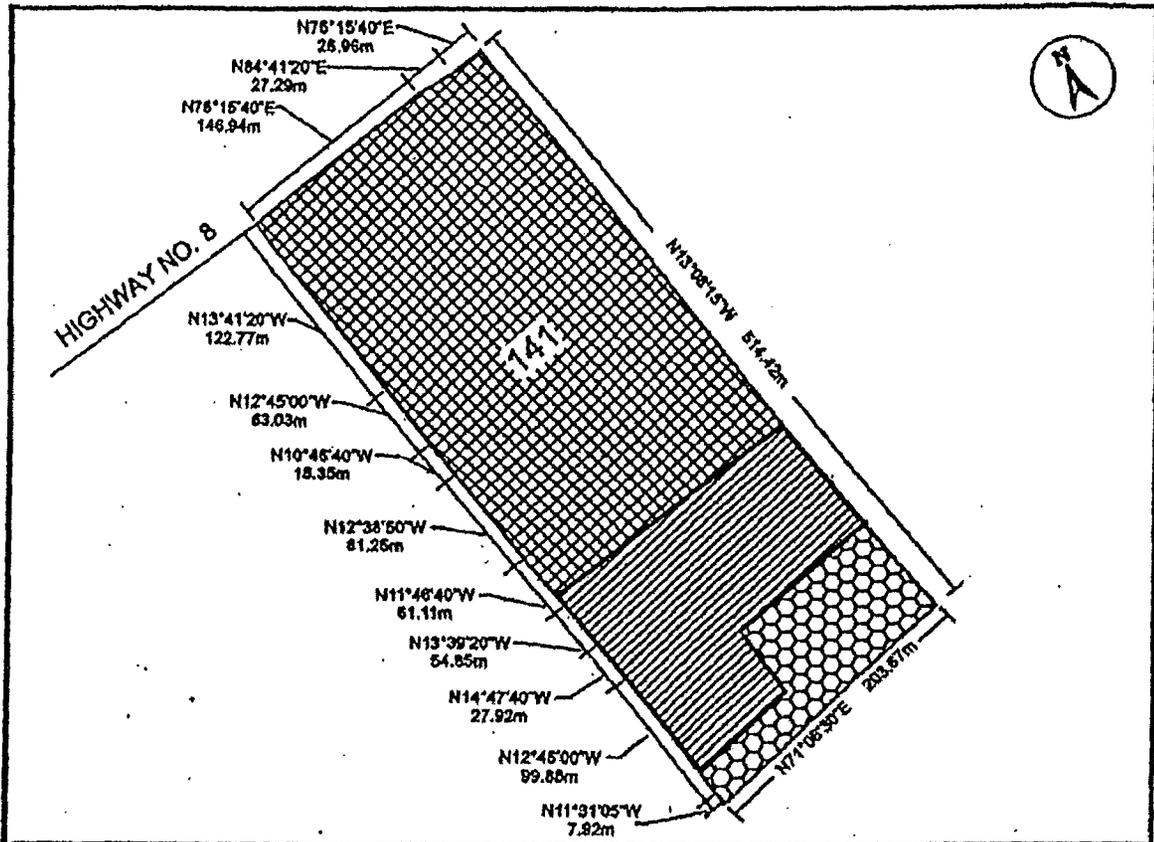
- (ii) Abutting all other zones 1.8 metres
  - (d) Where a Holding "H" provision applies to this zone it shall be lifted when the recommendations of the Greensville Subwatershed Study have been prepared to determine if these lands are required for a centralized stormwater management pond for this catchment area. Should said recommendation not be prepared by January 31<sup>st</sup>, 2008 then the Holding "H" provision shall be lifted.
  - (e) The installation of underground lawn watering and irrigation systems and the filling of swimming pools from well water supplies is prohibited.
  - (f) All other zone provisions of Subsection 7.2 shall apply.
4. That the amending By-law be added to Schedule "A-39" of Flamborough Zoning By-law No. 90-145-Z.
5. 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            , 2007.

\_\_\_\_\_  
MAYOR

\_\_\_\_\_  
CLERK

ZAC-06-24 & 25T93004



This is Schedule "A" to By-Law No. 07-  Passed the ..... day of ....., 2007	----- Clerk  ----- Mayor
---	--------------------------------------

<h2 style="text-align: center;">Schedule "A"</h2> <h3 style="text-align: center;">Map Forming Part of By-Law No. 07-_____</h3> <p style="text-align: center;">to Amend By-law No. 90-145-Z</p>	<p><b>Subject Property</b> 141 Highway No. 8 (Flamborough)</p> <ul style="list-style-type: none"> <li> Block 1 - Change in zoning from the Settlement Residential "R2(H)" Holding Zone to Settlement Residential "R2-S1" Zone.</li> <li> Block 2 - Change in zoning from the Settlement Residential "R2(H)" Holding Zone and Conservation Management "CM" Zone to Settlement Residential "R2-S1(H)" Holding Zone.</li> <li> Block 3 - Change in zoning from the Settlement Residential "R2(H)" Holding Zone and Conservation Management "CM" Zone to the Conservation Management "CM" Zone.</li> </ul>
--	--

Scale: N.T.S.	File Name/Number: ZAC-06-24_D08-BR_D12-BR	Hamilton
Date: Jan 10, 2007	Planner/Technician: JTAKA	
PLANNING AND ECONOMIC DEVELOPMENT DEPARTMENT		