

ISSUE DATE:
Jan. 23, 2006
DECISION/ORDER NO:
0214



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Ontario Municipal Board
Commission des affaires municipales de l'Ontario

MC2 Homes Inc. 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 Council of the City of Hamilton to make a decision respecting a proposed plan of subdivision on lands composed of Part of Lots 9 and 10, Concession 4 (Flamborough) in the City of Hamilton Municipality's File No. 25T-95013
OMB File No. S040028

MC2 Homes Inc. 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 former Township of Flamborough now City of Hamilton to rezone lands respecting Part of Lots 9 and 10, Concession 4 (Flamborough) from Agricultural to "Site Specific Low Density Residential (R1)" and "Site Specific Medium Density Residential (R6)" to permit the development of a residential subdivision
OMB File No. Z040079

APPEARANCES:

Parties

Counsel

MC2 Homes Inc.

R.K. Webb

City of Hamilton

A. Zuidema

City of Burlington

N. Shea-Nicol

Upcountry Estates Ltd.

B. Horosko

Paletta International Corporation

S. Snider, S.R. Garrod

**MEMORANDUM OF ORAL DECISION DELIVERED BY E. PENDERGRAST ON
JANUARY 16, 2006, AND ORDER OF THE BOARD**

This hearing was the result of appeals filed by MC2 Homes Inc. (MC2) from a failure of the Council of the City of Hamilton (Hamilton) to make a decision respecting a proposed plan of subdivision, and from Hamilton's refusal or neglect to enact a proposed amendment to Zoning By-law 90-145-Z of the former Township of

Flamborough regarding part of Lots 9 and 10, Concession 4, in the former Township of Flamborough. The proposed rezoning is to redesignate the lands from Agricultural to Site Specific Low Density Residential (R1) and Site Specific Medium Density Residential (R6) in order to permit the proposed subdivision to proceed.

The hearing was scheduled for ten days, commencing on January 16, 2005. However, as the result of the productive efforts of all parties, a settlement was achieved after only one day. Based on the planning evidence it heard in support of the settlement, the Board issued favourable oral decisions on the appeals. In addition, the Board granted a motion from Mr. Garrod to give Paletta International Corporation (Paletta) party status.

This written decision provides background to and a brief summary of the main terms of the settlement, and issues the necessary orders to implement it, as follows.

The proposed development includes 181 residential units in Stage 3 of what are known as the OPA 28 lands, which refers to the lands covered by OPA 28 of the Official Plan of the former Town of Flamborough (the Official Plan). Subsection A.1.8 of OPA 28 sets out specific preconditions to any development in the OPA 28 lands, including the completion of the Transportation Master Plan Environmental Assessment. However, Subsection A.1.11 identifies specific conditions under which a limited amount of development can proceed in advance of the fulfillment of the subsection A.1.8 preconditions in order to address a shortfall of housing in Waterdown, should the Region and the Town (now Hamilton) determine that such a shortfall is imminent.

In accordance with the Board's order from a third prehearing conference (PHC) held on November 15, 2005, the draft procedural order for this hearing identified the issues to be addressed at the hearing. These issues included:

1. three draft plan conditions (i, v and xlv) included in Exhibit 14, which were issues for MC2; and
2. the tests for interim development set out in subsection ii), iii) up to the words "and has advanced"; and in subsection iv) of Policy A.1.11 of OPA 28.

The three subsections referenced in item 2 above read in full as follows:

- (ii) The transportation impacts of the development have been evaluated and addressed;
- (iii) The Environmental Assessment for the Transportation Master Plan (Waterdown/Aldershot Transportation Environmental Assessment) is proceeding expeditiously and has advanced to the stage where the alternatives have been identified and the potential routes have been identified for evaluation; and
- (iv) The development will not impact, prejudice or compromise secondary planning processes, the Transportation Study process, or any of the alternatives or alternative routes under consideration in the Environmental Assessment process for the Transportation Master Plan (Waterdown/Aldershot Transportation Environmental Assessment) or the evaluation and selection of alternatives or the implementation of the preferred alternatives.

Although Hamilton and MC2 advised the Board at the November 15, 2005 PHC that they had achieved consensus regarding the proposed development, a key sticking point at the PHC was a resolution adopted by Burlington City Council in opposition to (i) releasing any interim development, (ii) taking a position on the Phase 2 recommendations of the Waterdown/Aldershot Transportation Master Plan (the Transportation Master Plan) or (iii) proceeding with any additional phases of the Master Plan until an agreement on cost-sharing principles is finalized. However, at this hearing, counsel advised that the conditions of draft plan approval of the proposed subdivision had been revised to include a new condition xxviii) that satisfactorily addressed Burlington's concern. The revised conditions were submitted as Exhibit 17, and the new condition xxviii) reads as follows:

- (xxviii) That the owner agrees to pay an amount of \$2,500 per single and semi-detached residential unit and \$1,980 per townhouse unit toward the cost of road works to be undertaken in the City of Burlington as approved by the Council of the City of Burlington for north/south capacity improvements which are required for the development of the OPA 28 lands, to be collected by the City of Hamilton at the time that building

permits are issued, and to be paid to the City of Burlington at the time that the construction tender for the road works is approved.

Mr. Zuidema and Ms Shea-Nicol advised the Board that, at very recent special meetings, the councils of both Hamilton and Burlington had endorsed the proposed planning instruments (draft plan, revised conditions of draft approval including condition (xxviii), and a draft by-law) required to allow the proposed development to proceed. However, while the new condition provided the basis for a settlement of the MC2 appeals with Hamilton and Burlington, it raised concerns for Upcountry and Paletta, who had only very recently seen the new condition (xxviii) and were concerned that the levies identified in that condition would set a precedent for the imposition of a similar condition and levies on the development of their clients' OPA 28 lands.

Resolution of the Issues

The first set of issues identified above, related to three specific conditions of draft approval contained in Exhibit 14, were resolved to MC2's satisfaction in the revised conditions (Exhibit 17), and most of the hearing day was allocated to negotiations among the parties regarding condition xxviii). However, counsel found a mutually satisfactory resolution of this matter, which involved a request to the Board to include certain wording in the body of its decision, as set out in Exhibit 18. The Board reviewed the wording, and, with two very minor changes that were agreeable to all counsel, found the wording appropriate for inclusion in a decision to approve the revised conditions of draft approval, should such approval be given on the basis of the planning evidence in support of the settlement, including an explanation of the logic underlying proposed condition xxviii). The two minor revisions were to replace the word "basis" on page 1 of Exhibit 18 with the word "understanding" and to delete the phrase "of the parties" on page 2 of the exhibit.

The Board then heard from Mark Yarranton, a Registered Professional Planner qualified by the Board to give opinion evidence on land use planning in relation to the proposed development. Mr. Yarranton provided an overview of the proposed development and related settlement, with reference to the proposed draft plan (Exhibit 20), the proposed conditions of draft plan approval (Exhibit 17) and the proposed zoning

by-law (Exhibit 21). Having considered his evidence, the Board accepts and adopts his professional opinion that the proposed draft plan, subject to the proposed conditions, conforms with the Official Plan, including OPA 28, has appropriate regard for the conditions set out in subsection 51(24) of the *Planning Act* and represents good planning in the public interest. The Board also accepts and adopts his professional opinion that the proposed by-law conforms to the Official Plan, including OPA 28, and represents good planning in the public interest.

Before proceeding to a decision on the settlement, the Board heard a more detailed explanation from Mr. Horosko and other counsel of the wording in Exhibit 18, with reference to Exhibits 22 (a) and (b). Exhibit 22 (b) sets out recommended transportation improvements to service development in the OPA 28 lands, with estimated costs and estimates of the growth-related component of these costs. Exhibit 22 (a) takes the two recommended improvements located within Burlington (the widening of Waterdown Road between Highway 403 and Mountain Brow Road; and the King Road/North Service Road intersection) and divides the growth-related portion of these cost estimates by the low and high end of the range of units anticipated in the OPA 28 lands, in order to come up with an average per unit cost of \$2,500 for single and semi-detached unit. The per unit cost for townhouses was estimated to be somewhat lower, at \$1,980 per unit. These two per unit cost estimates are included in Exhibit 18, on the assumption that the growth-related costs will be collected through development charges required to be paid on an area-specific basis by the developers within the OPA 28 lands.

Because the specific improvements and estimated costs included in Exhibit 22 (b) are at this point only recommendations, and because the question of whether development charges will be levied on an area-specific basis or a City-wide basis has not been finally determined, Mr. Horosko described the two per unit estimates as "worst case" estimates, from the perspective of the developers. In fact, it is yet to be determined exactly which improvements will be endorsed, what they will cost and the area over which development charges will actually be levied. All of these matters will ultimately be determined through appropriate public processes. However, the inclusion of condition xxviii) provides meaningful comfort to Burlington that the costs of transportation improvements required for the MC2 development will be paid in step with the development

Having come to its positive conclusion respecting the proposed planning instruments, and having considered the more detailed explanation of the wording in Exhibit 18, as summarized above, the Board finds it appropriate to adopt the wording set out in Exhibit 18, with the two minor amendments noted above. Therefore, the Board makes the following finding regarding condition xxviii):

Condition xxviii) in Exhibit 17 was the subject of concern by Paletta International Corporation and Upcountry Estates Ltd. The Board has approved this condition on the understanding that it is not to be considered as a precedent nor to in any way prejudice the rights or positions of any persons as to the appropriate amounts or process for any future development charges or similar requirements relating to improvements to be undertaken in the City of Burlington relating to the development of the OPA 28 lands. Specifically, the issues of required facilities and costs, and whether any such development charges should be determined on an area specific or city wide basis are issues that remain to be determined during any Development Charges By-law process, or other cost apportioning process, independently of this decisions. Further, condition xxviii is approved on the understanding that MC2 Homes Inc. shall be subject to any future revisions of development charges or this condition that may be determined relating to improvements to be undertaken in the City of Burlington, whether this results in increases or decreases in the amounts set out in condition xxviii).

Conclusion

The Board finds that the proposed settlement represents good planning in the public interest, and it congratulates the parties on their hard work and resulting success in resolving the issues.

Orders with Respect to the Draft Plan of Subdivision

THE BOARD ORDERS that the appeal is allowed and that the draft plan shown on the plan prepared by Bousfields Inc., dated December 8, 2005, comprising Part of Lots 9 and 10, Concession 4, Geographic Township of East Flamborough, City of Hamilton (Exhibit 20) is approved, subject to the fulfillment of the conditions set out in Attachment 1 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 plan 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 any of the conditions of draft plan approval, or if any changes are required to be made to the draft plan, the Board may be spoken to.

Order with Respect to the By-law

THE BOARD ORDERS that the appeal is allowed and that By-law No. 90-145-Z (Flamborough) is hereby amended in the manner set out in Attachment 2 to this Order, including the words "square metres" that are handwritten on page 4. The Board authorizes the municipal clerk to assign a number to this by-law for record keeping purposes.

"E. Pendergrast"

E. PENDERGRAST
MEMBER

ATTACHMENT 2

PL040361

Authority: Item 7.1, Council Minutes
January 12, 2006

Bill No.

CITY OF HAMILTON

BY-LAW NO.

To Amend Zoning By-law No. 90-145-Z (Flamborough),
Respecting Lands Located at 203 Parkside Drive, Concession 3, Part of Lots 9 &
10, (Flamborough)

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
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. 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 (the Official Plan of the former Town of Flamborough) in accordance with the
provisions of the Planning Act;

AND WHEREAS the Council of the City of Hamilton, at a special meeting held on
the 12th day of January, 2006, recommended that Zoning By-law No. 90-145-Z
(Flamborough), be amended as hereinafter provided;

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

1. Schedule "A-6" of Zoning By-law No. 90-145-Z (Flamborough), as amended, is hereby further amended;

By-law respecting 203 Parkside Drive, Concession 3, Part of Lots 9 & 10, (Flamborough
(Page 2 of 6)

- (a) by changing from Agriculture "A" Zone to Site Specific Medium Density Residential "R6-14" Zone, for lands comprised in **Blocks "1" and "5"**;
- (b) by changing from Agriculture "A" Zone to Site Specific Urban Residential "R1-31" Zone, for lands comprised in **Block "2"**;
- (c) by changing from Agriculture "A" Zone to Conservation Management "CM" Zone, for lands comprised in **Blocks "3" and "4"**;

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

2. Section 11 – Medium Density Residential Zone of Zoning By-law No. 90-145-Z (Flamborough), as amended, is hereby further amended by adding the following subsection:

11.3 EXCEPTION NUMBERS

11.3.14 "R6-14" (See Schedule A-6)

Permitted Uses

- (a) Street Townhouse

Zone Provisions

- | | |
|----------------------------------|---|
| (a) Lot Area (minimum) | 156.0 square metres |
| (b) Lot Frontage (minimum) | 6.0 metres |
| (c) Lot Coverage (maximum) | N/A |
| (d) Front Yard (minimum) | 4.5 metres, except 6.0 metres to an attached garage or attached carport |
| (e) Rear Yard (minimum) | 6.5 metres |
| (f) Interior Side Yard (minimum) | 1.2 metres, except in the common interior side |
| (g) Exterior Side Yard (minimum) | 3.5 metres, except that an attached garage or attached carport which |

**By-law respecting 203 Parkside Drive, Concession 3, Part of Lots 9 & 10, (Flamborough
(Page 3 of 6))**

fronts on the flankage lot line shall not be located within 6.0 metres of the flankage lot line

- (h) Landscaped Open Space N/A
- (j) Yard Encroachments in accordance with the following:

Structure or Item	Yard Into Which Encroachment is Permitted	Maximum Encroachment Permitted into Required Yard
Sills, beltcourses, cornices, chimney breasts, pilasters, eaves or gutters	All	0.65 metres
Bay windows with or without a foundation	Required front and required exterior side yard	1.00 metres
Steps and unenclosed porches	Required front, required rear and required exterior side yard	Porches – 2.0 metres Steps – 0.60 metres from the streetline
Setback of all structures from site triangles	Required front and required exterior side yard	0.30 metre minimum setback from a site triangle

- (k) General Provisions – Other than contained herein, the provisions of Section 5 shall apply.
- (l) All other zone provisions of Subsection 11.2 shall apply.

3. Section 6 – Urban Residential Zone of Zoning By-law No. 90-145-Z (Flamborough), as amended, is hereby further amended by adding the following subsection:

- 6.3 EXCEPTION NUMBERS**
- 6.3.31 "R1-31" (See Schedule A-6)**

**By-law respecting 203 Parkside Drive, Concession 3, Part of Lots 9 & 10, (Flamborough
(Page 4 of 6)**

Permitted Uses

Subsection 6.1 shall apply.

Zone Provisions

- (a) Lot Area (minimum) 270.0 metres ^{Square}
- (b) Lot Frontage (minimum) 10 metres
- (c) Lot Coverage (maximum) N/A
- (d) Front Yard (minimum) 4.5 metres, except 6.0 metres to an attached garage or attached carport
- (e) Rear Yard (minimum) 6.5 metres
- (f) Interior Side Yard (minimum) 1.2 metres one side, and 0.90 metres other side
- (g) Exterior Side Yard (minimum) 3.5 metres, except that an attached garage or attached carport which fronts on the flankage lot line shall not be located within 6.0 metres of the flankage lot line
- (h) Landscaped open Space N/A
- (j) Yard Encroachments in accordance with the following:

Structure or Item	Yard Into Which Encroachment is Permitted	Maximum Encroachment Permitted into Required Yard
Sills, beltcourses, cornices, chimney breasts, pilasters, eaves or gutters	All	0.65 metres,
Bay windows with or without a foundation	Required front and required exterior side yard	1.00 metres

**By-law respecting 203 Parkside Drive, Concession 3, Part of Lots 9 & 10, (Flamborough
(Page 5 of 6)**

Steps and unenclosed porches	Required front, required rear and required exterior side yard	Porches – 2.0 metres Steps – 0.60 metres from the streetline
Setback of all structures from site triangles	Required front and required exterior side yard	0.30 metre minimum setback from a site triangle

(k) Subsection 5.28.2 shall not apply.

(l) All other zone provisions of Subsection 6.2 shall apply.

4. That the amending By-law be added to Schedule "A-6" of Flamborough Zoning By-law No. 90-145-Z.
8. 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.

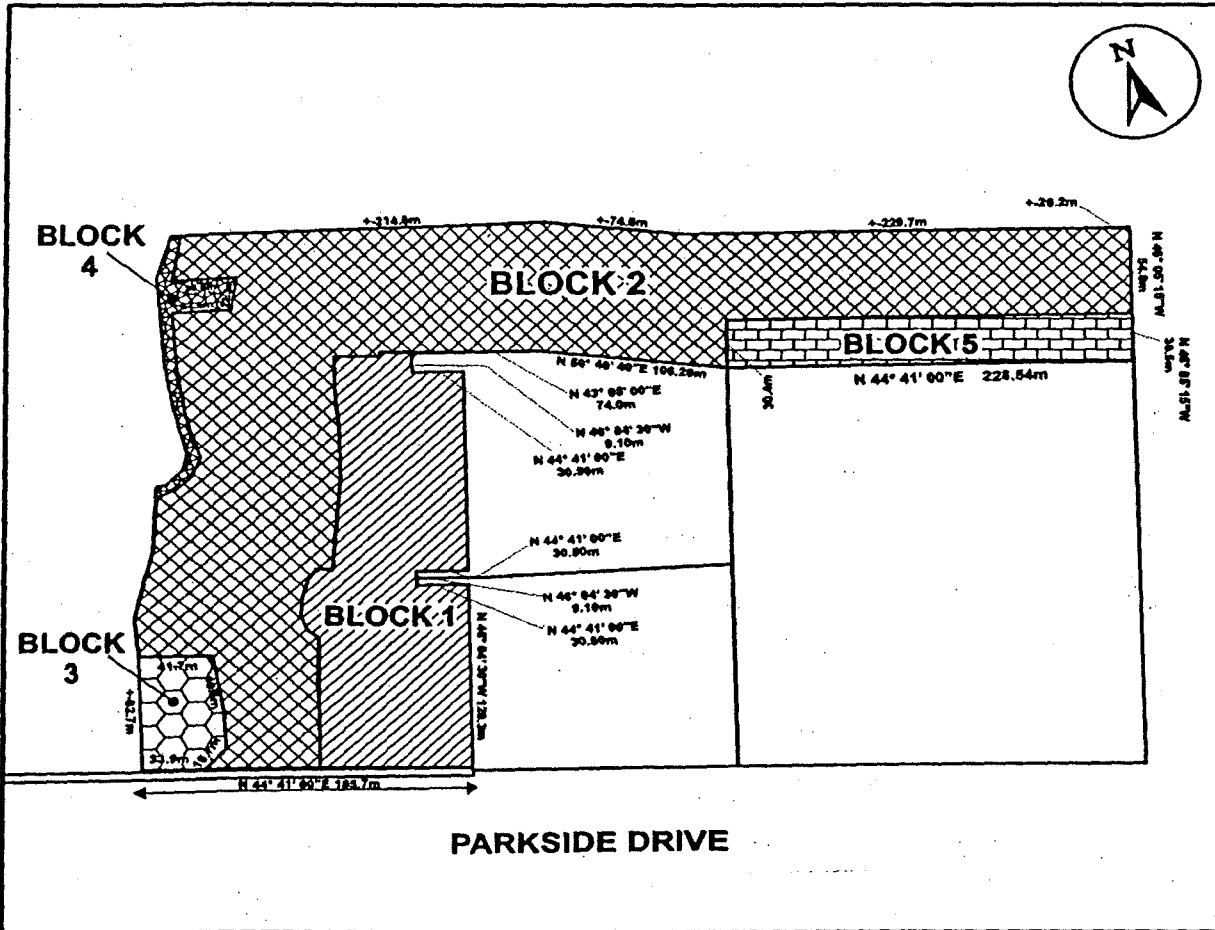
PASSED and ENACTED this day of , 2006.

MAYOR

CLERK

ZAC-04-23 & 25T95013(R)

By-law respecting 203 Parkside Drive, Concession 3, Part of Lots 9 & 10, (Flamborough
(Page 6 of 6))



This is Schedule "A" to By-Law No. 06—

Clerk

Passed the day of, 2006

Mayor






Schedule "A"

Map Forming Part of
By-Law No. 06-
to Amend By-Law No. 90-145-Z

 Planning and Economic Development Department
Hamilton

Subject Property

203 Parkside Drive
Part of Lots 9 & 10, Concession 4

-  Block 1 - To be rezoned from the Agricultural "A" Zone to Medium Density Residential "R6-14" Zone
-  Block 2 - To be rezoned from the Agricultural "A" Zone to Urban Residential "R1-31" Zone
-  Block 3 - To be rezoned from the Agricultural "A" Zone to Conservation Management "CM" Zone
-  Block 4 - To be rezoned from the Agricultural "A" Zone to Conservation Management "CM" Zone
-  Block 5 - To be rezoned from the Agricultural "A" Zone to Medium Density Residential "R6-14" Zone



Scale:
Not to Scale

Date:
January 10, 2006

File Name/Number:
ZAC-04-23&25T95013(R)

Planner/Technician:
JT/LC

T&C File Name: zac-04-23_schedule_a.cdr