

ISSUE DATE:  
**JAN. 9, 2008**



Ontario

Ontario Municipal Board

Commission des affaires municipales de l'Ontario

PL070394

08-07  
bylaw

IN THE MATTER OF subsection 34(19) of the *Planning Act*, R.S.O. 1990, c. P. 13, as amended

Appellant: Thomas Sullivan, Martin Sullivan and Lynda Campbell  
Subject: By-law No. 07-110  
Municipality: City of Hamilton  
OMB Case No.: PL070394  
OMB File No.: R070074

OFFICE OF THE CITY CLERK	
JAN 14 2008	
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DIS .....	DATE .....
ASST .....	

**APPEARANCES:**

**Parties**

City of Hamilton

Thomas Sullivan, Martin Sullivan and  
Lynda Campbell

**Counsel**

A. Zuidema

B. Duxbury

**DECISION DELIVERED BY D. L. GATES AND ORDER OF THE BOARD**

This hearing involved an appeal by the landowners of 639 Rymal Road West in the City of Hamilton to the City's Zoning By-law 07-110. The Board understood that their concern, which caused them to appeal, was one of the four conditions relating to the lifting of an "H" in the by-law. The condition reads:

"(d) A second access to the subdivision to the south has been constructed or until 12 months has elapsed from the date of Council approval, being April 11, 2008, whichever comes first."

At the outset of the hearing, the Board was advised that the Parties had resolved their differences. They filed Minutes of Settlement, Exhibit "6", and on consent, requested the Board allow the Appeal to the extent necessary to implement the settlement by deleting condition (d).

The Board heard evidence that condition (d) had not been recommended by planning staff, but had been added by City Council because Council was concerned about granting additional planning approvals with the existing road infrastructure. This

concern now appears to be obviated because the Board heard evidence that the second access to the subdivision will be constructed sooner than City Council originally contemplated. The Board heard evidence from the City planner that the condition was not necessary now.

Notwithstanding the foregoing, the Board heard from Mr. Edward John, a professional planner who is employed by the City, in support of the By-law 07-110. He introduced into evidence a City Staff Planning Report which City Council had before it when it passed By-law 07-110. He also filed with the Board Attachment "1", which is the amended by-law the Parties are inviting the Board to approve.

Mr. John testified that the by-law, Attachment "1", represents good planning and has regard for and implemented all relevant planning policies including Official Plan policies, *Planning Act* provisions, and applicable Provincial Policy Statement (PPS) policies for the reasons set out in the planning report (Exhibit "3"). The proposed zoning is similar to other land nearby and the development it will allow is appropriate and consistent with nearby development. The street in front of the proposed five lots is built and adequate infrastructure is in place as required in the holding by-law. This corner property is surrounded by similar development.

Other than the Parties, no one else attended the hearing or appealed By-law 07-110. The Board is satisfied that By-law 07-110, amended as contained in Attachment "1", has regard for and implements the PPS and Official Plans. The zoning proposed is consistent with the zoning by-law and the zoning nearby. The Board finds that By-law 07-110, is in the public interest and represents good planning. For that reason the Board will allow the appeal and amend Bylaw 07-110 in accordance with Attachment "1".

It is so Ordered.

"D. L. Gates"

D. L. GATES  
MEMBER

ATTACHMENT "1"

PL070394

SCHEDULE "A"

CITY OF HAMILTON

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

To Amend Zoning By-law No. 6593 (Hamilton),  
Respecting lands located at 639 Rymal Road West

**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 "The Corporation of the City of Hamilton" 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 6593 (Hamilton) was enacted on the 25<sup>th</sup> day of July 1950, and approved by the Ontario Municipal Board on the 7<sup>th</sup> day of December 1951;

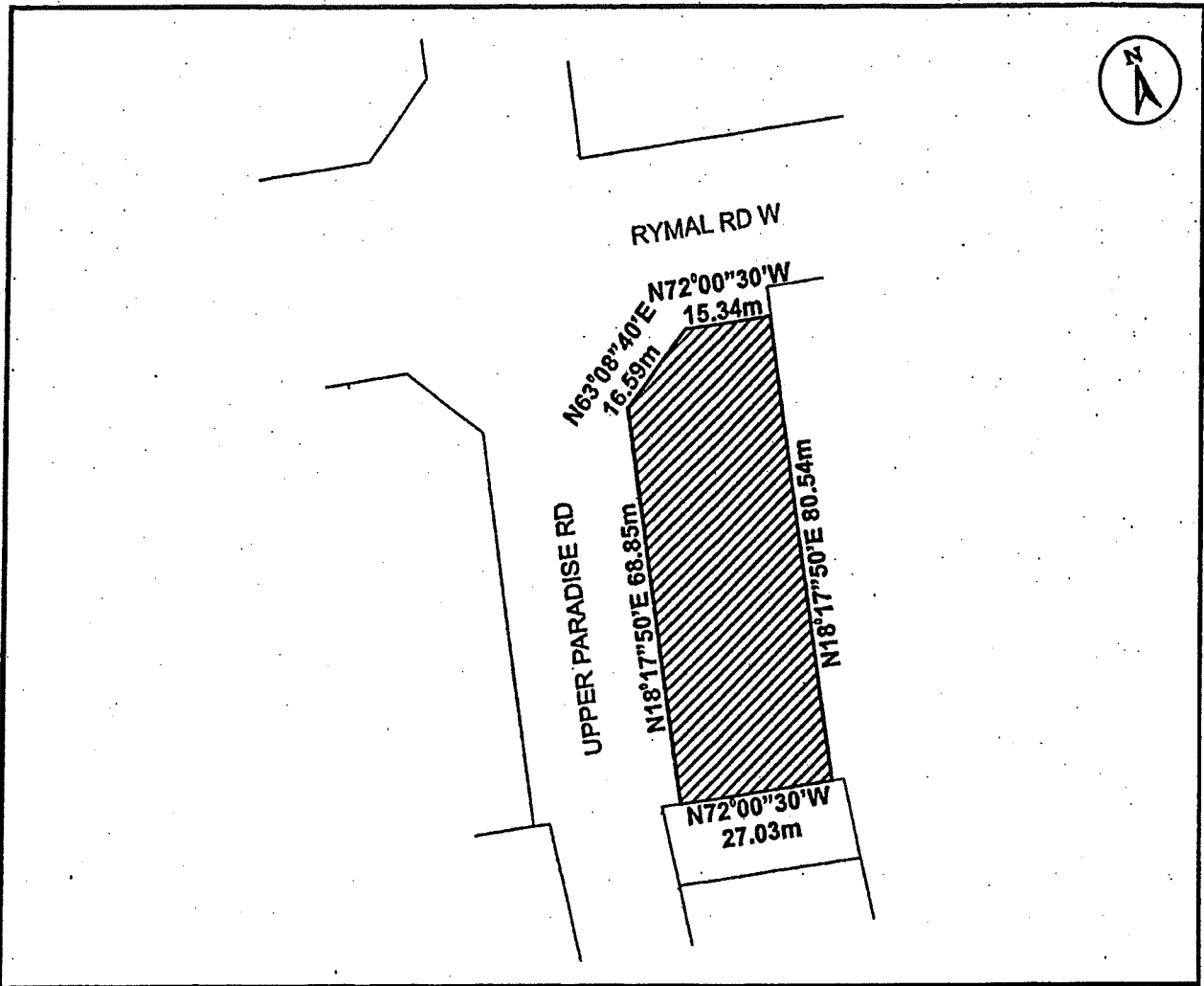
**AND WHEREAS** this by-law is in conformity with the Official Plan of the City of Hamilton in accordance with the provisions of the Planning Act.

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

1. That Sheet "W-37e" of the District Maps, appended to and forming part of Zoning By-law No. 6593 (Hamilton), as amended, is hereby further amended by changing the zoning from the "AA" (Agricultural) District to the "C" - 'H' (Urban Protected Residential, etc. - Holding) District on the lands, the extent and boundaries of which are shown on a plan hereto annexed as Schedule "A".

2. That the 'H' symbol applicable to the lands referred to in Section 1 of this By-law shall be removed conditional upon:
  - a) The owner/applicant conducting an archaeological assessment of the entire development property and mitigating, through preservation or resource removal and documentation, adverse impacts to any significant archaeological resources found. No demolition, grading or soil disturbances shall take place on the subject property prior to the approval from the City of Hamilton's Director of Development and Real Estate and the Ministry of Culture confirming that all archaeological resource concerns have met licensing and resource conservation requirements;
  - b) The owner/applicant investigating the noise levels on the site and determining the noise control measures that are satisfactory to the City of Hamilton in meeting the Ministry of the Environment's recommended sound level limits. An acoustical report prepared by a qualified Professional Engineer containing the recommended control measures shall be submitted to the satisfaction of the City of Hamilton, Director of Development and Real Estate; and,
  - c) Sufficient capacity of the municipal sanitary sewer system being available, to the satisfaction of the City of Hamilton, manager of Development Engineering.
3. That the 'H' symbol shall be removed by amendment to this by-law and the development of the lands referred to in Section 1 of this By-law may at such time proceed in accordance with the "C" District provisions.

ZAC-06-64



This is Schedule "A" to By-Law No. 07

Passed the ..... day of ....., 2007


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Clerk

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Mayor

**Schedule "A"**

Map Forming Part of  
By-law No. 07 \_\_\_\_\_

to Amend By-law No. 6593

 **Subject Property**  
639 Rymal Road West, Hamilton  
Change in Zoning from the "AA" (Agricultural) District to the "C" - 'H' (Urban Protected Residential, etc. - Holding) District

Scale: <b>Not to Scale</b>	File Name/Number ZAC-06-64
Date: <b>September 5, 2006</b>	Planner/Technician: RW/NB



PLANNING AND ECONOMIC DEVELOPMENT DEPARTMENT