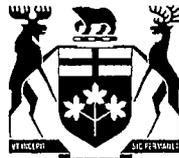


ISSUE DATE:

Jan. 4, 2011



Ontario

Ontario Municipal Board
Commission des affaires municipales de l'Ontario

PL090067

By-law No. 11-022

Amedeo DiMarco 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 of Lot 11, Concession 4 East, Flamborough
Approval Authority File No. 25T-200804
OMB File No. PL090067

Amedeo DiMarco 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 Town of Flamborough to rezone lands respecting Part of Lot 11, Concession 4 East, Flamborough to permit the development of a residential subdivision composed of 128 units
OMB File No. PL090068

APPEARANCES:

Parties

Amedeo DiMarco

City of Hamilton

Landmart Realty Corp.

Silverwood Homes Limited

MC2 Homes

Counsel

A. Stewart

B. Duxbury

R. Cheeseman

M. McQuaid

R. Webb

DECISION DELIVERED BY A. CHRISTOU AND ORDER OF THE BOARD

Amedeo DiMarco has appealed to the Ontario Municipal Board under subsections 51(34) and 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 Town of Flamborough to rezone lands respecting Part of Lot 11, Concession 4, from Agricultural to Residential, to permit the development of a residential subdivision composed of 128 units.

PRELIMINARIES

At the start of the 10 day hearing, Ms Stewart, Counsel for the Appellant (DiMarco) advised the Board that they have come to a settlement with Silverwood Homes Limited (Silverwood) to enter into a cost sharing agreement and they have also agreed on revised wording for condition number 14 of the Subdivision Agreement (Exhibit 2), with respect to a Storm Water Management pond (SWM). They have also been working with the City to resolve issues and they are very near a resolution on all issues except one. Further, the City of Burlington has withdrawn from the hearing, as their issues have been resolved.

Mr. McQuaid, Counsel for Silverwood, advised the Board that he concurs with Ms Stewart's comments and his client's issues have been resolved. He would withdraw his Motion for DiMarco to produce SWM information. With the resolution achieved, he would not be participating any further in the hearing.

On consent, the Parties requested the Board to stand down to allow the continuation of discussions. The Board granted the request.

Upon reconvening, the hearing was converted to a settlement hearing. The Board heard opinion evidence in support of the settlement from Dave Matthews, a qualified land use planner for the applicant; Edward John, a qualified land use planner for the City; and Calvin Norman, the City's Manager of Engineering, Design and Construction.

THE SUBDIVISION

Mr. Matthew testified that the 10.4 ha vacant agricultural parcel of land is situated north of Parkside Drive and east of Highway 6 in the Waterdown community. The land is designated Residential in the former Hamilton Wentworth Official Plan, the former Town of Flamborough Official Plan and the Waterdown North Secondary Plan (OPA 109), and it is zoned Agricultural.

It is a two-phase development and only the southerly 8.4 ha (Phase 1) is subject to this application. A transportation corridor planned to bypass Waterdown, which is currently in the design stages, affects parts of the northern portion of the land. The

crossing of Borers Creek located on the MC2 land to the east, by the new road, is also in the design stage.

The subdivision (Exhibit 7) contains 94 lots for detached dwellings; nine Blocks for 65 townhouses; and a 1.05 ha parcel is set aside for a park. The land is at a high point and half of it is to drain to the east, to a SWM pond to be constructed by MC2 and Landmart, and the rest will drain to the west, to a SWM pond to be constructed by Silverwood.

Exhibit 6 contains the recently revised conditions. Mr. Matthew testified that condition 3 provides for the transfer of land on the northerly parcel for the future arterial road. Conditions 13 to 15 provide for cost sharing for servicing that links adjoining developments, SWM and other aspects; and condition 28 provides for the completion of a consolidated Traffic Impact Study before development of this property. (It was confirmed by Mr. Duxbury, counsel for the City, that the study is now approved and this condition has been met.)

The only matter that remains in dispute in this hearing is a “note” proposed by the City to be included in the Subdivision Agreement, which states:

The owner is advised that the final approval of the engineering design for a portion of the final plan of subdivision will not be provided until downstream flood risk in Borer's Creek is addressed to the satisfaction of the Director of Development Engineering.

Two Zoning By-law Amendments being Attachments 2 and 2(a) to Mr. Matthew's Witness Statement (Exhibit 5), are intended to implement the draft plan of subdivision. Attachment 2 amends Flamborough By-law No. 90-145-Z to establish the zoning for the residential parcels R6-26 (H) (where the H is for archaeological work); while Attachment 2(a) amends Flamborough By-law No. 05-200 to provide zoning for the Park parcel.

It was Mr. Matthew's opinion that the draft plan of subdivision, together with the conditions in Exhibit 6, conforms to the PPS, the Growth Plan, and the Greenbelt Plan and conforms to the designations and policies of the respective Official Plans. Furthermore, the subdivision meets all the requirements of s. 51 of the *Planning Act* and represents good planning.

Mr. John concurs with Mr. Matthew's evidence and conclusions that the proposed subdivision and By-laws implement the OP and represent good planning.

Mr. Norman testified that the Master Drainage Plan provides that SWM is to be used for development in the area. Borer's Creek serves the storm drainage needs in this community. It is to be left as much as possible in its natural stage. However, south of Parkside Drive, its carrying capacity has been found not to be adequate to accommodate all the proposed development. The City is currently reviewing the Master Drainage Plan to determine how to expand capacity before development can proceed. One solution would be to cut back vegetation on the creek bed. Also, he opined that the bridge work for the by-pass will accommodate further improvements to the watercourse. The Class EA for the new road is ready to be filed. It is anticipated that solutions can be implemented in late 2011 or early 2012.

Under cross examination Mr. Norman concurred from an engineering perspective that the "note" in the Subdivision Agreement is not a condition, but only to identify to all that there is an issue that needs to be addressed and provides for a restriction on development until the creek solution can be identified.

ANALYSIS

All Parties challenged the status of the Master Drainage Plan and its ability to be used to delay development. The Master Drainage Plan was completed parallel with the Waterdown Secondary Plan in 2007, but its status remains as Draft document and it is not OP Policy. The downstream issue was not identified at that time and the City has not approved a downstream review since.

Extensive discussion revolved on the above referred "note" in the Subdivision Agreement and how it was dealt with by the Board in its recent decisions for MC2 Homes Inc. (PL081087) and for Landmart (PL081128). The Board has included a similar note in its approval of the MC2 proposal, but the same note does not appear to be included in the Landmart approval.

The Parties did agree and the Board adopts the fact that a "note" is not a condition of subdivision approval and it does not have the same weight as a condition. The intent of this note is to be a warning of some sort that down the road there may be

an engineering technicality that needs to be addressed. It is not intended to unnecessarily delay engineering approvals for the subdivision.

Notwithstanding this understanding, the Board is cognizant of the importance of appropriate SWM to the development of the area and the City's responsibility to deal expeditiously with the resolution of the downstream impediments. The City also has the responsibility to ensure that development of these lands needs to be staged such that no adverse impact is created and any risk is appropriately managed.

The Board is satisfied that the proposed development as represented by the revised draft plan of subdivision conditions (Exhibit 6) and the two implementing Zoning By-laws in Exhibit 5, represents good planning, is consistent with Provincial Policies, conforms to the relevant Official Plans and meets all requirements of s. 51 of the *Planning Act*.

THE BOARD ORDERS that the appeal is allowed and the draft plan shown on the plan prepared by Laurence J. Kuelling, OLS, dated May 22, 2008 comprising Part of Lot 11, Concession 4 in the Town of Flamborough, Regional Municipality of Hamilton/Wentworth, 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.

AND THE BOARD ORDERS that the appeal is allowed, and By-law No. 90-145-Z (Flamborough) is hereby amended in the manner set in Attachment "2" to this Order. The Board authorizes the municipal clerk to assign a number to this by-law for record keeping purposes. **AND THE BOARD FURTHER ORDERS** that the appeal is allowed, and By-law No. 05-200 (Flamborough) is hereby amended in the manner set in Attachment "3" to this Order. The Board authorizes the municipal clerk to assign a number to this by-law for record keeping purposes.

This is the Order of the Board.

"A. Christou"

A. CHRISTOU
MEMBER

ATTACHMENT 3
CITY OF HAMILTON
BY-LAW NO. 10-

**To Amend Zoning By-law No. 90-145-Z (Flamborough), as amended
Respecting Lands located at Part of Lot 11 Concession 4, Parkside Drive,
(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 municipally 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 21st day of December, 1992;

AND WHEREAS the Ontario Municipal Board has issued an Order that Zoning By-law No. 90-145-Z (Flamborough), be amended as hereafter provided;

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

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

1. That Schedule "A-6" appended to and forming part of By-law No. 90-145-Z (Flamborough), as amended, is hereby further amended as follows:

- (a) by changing from the Agriculture "A" Zone to the "R6-26(H)" – Medium Density Residential - Holding Zone for Block 1; and,
- (b) by changing from the Agriculture "A" Zone to the "R1-53(H)" - Urban Residential – Holding Zone for Block 2;

the extent and boundaries of which are 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 Site-Specific "R6-26(H)" – Medium Density Residential - Holding Zone (Block "1") and those lands zoned site specific "R1-53(H)" - Urban Residential – Holding Zone (Block "2") in Section 1 of this By-law by introducing the 'H' Holding 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) That the Owner carry out and complete an archaeological assessment of the Land and mitigate, through preservation or resource removal and documentation, adverse impacts to any significant archaeological resources found. No demolition or soil disturbances shall take place on the subject property prior to the approval of the Director of Planning, the Ministry of Citizenship, Culture and Recreation confirming that all archaeological resource concerns have met licensing and resource conservation requirements.

City Council may remove the 'H' symbol, and thereby give effect to the "R6-26" – Medium Density Residential Zone and the "R1-53" Urban Residential Zone, by enactment of an amending By-law once the above condition has been satisfied.

3. Medium Density Residential "R6-26" Zone modified for the lands shown as Block "1"; and

Permitted Uses

- (a) Street Townhouse
- (b) Semi-Detached Dwelling
- (c) Single Detached Dwelling

Zone Provisions

- (a) Lot Area (minimum)
 - (i) Street Townhouse 156.0 square metres
 - (ii) Semi-Detached Dwelling Min. 162.0 square metres

- (iii) Single Detached Dwelling Min. 270 square metres
- (b) Lot Frontage (minimum)
 - (i) Street Townhouse Min. 5.5 metres
 - (ii) Semi-Detached Dwelling Min. 6.1 metres
 - (iii) Single Detached Dwelling Min. 10 metres
- (c) Lot Coverage (maximum) N/A
- (d) Front Yard (minimum) 4.5 metres, except 6.0 metres for an attached garage or carport.
- (e) Rear Yard (minimum) 7.0 metres
- (f) Interior Side Yard (minimum) 1.2 meters one side, and 0.60 meters on the other side, except for the side yard related to the common wall of a semi-detached / Townhouse dwelling, in which case a minimum side yard of 0.0 metres shall be provided; subject to a maintenance easement for any minimum side yard that is less than 1.2m with said maintenance easement permitting encroachment for maintenance purposes only, for no more than 0.6 metres into the side yard of the lot adjacent the yard with a side yard setback less than 1.2m
- (g) Exterior Side Yard (minimum) 2.4 metres, except that an attached garage or attached carport which fronts on the flankage lot line shall not be located within a minimum of 6.0 metres of the flankage lot line.
- (h) Landscaped Open/Space N/A

- (i) Density Street Townhouses shall comprise a minimum of 50% of this zoning designation.
- (j) Yard Encroachments in accordance with the following:

Structure or Item	Yard Into Which Encroachments 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 - 0.6 metres from the streetline
Setback of all structures from sight triangles	Required front and required exterior side yard	0.3 metre minimum setback from a sight 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.

4. Urban Residential “R1-53” Zone modified for the lands shown as Block “2”; and

Permitted Uses

- (a) Single Detached Dwelling
- (b) Semi-Detached Dwelling

Zone Provisions

- | | | |
|-----|------------------------------|--|
| (a) | Lot Area (minimum) | |
| | (i) Single Detached Dwelling | Min. 270 square metres |
| | (ii) Semi-Detached Dwelling | Min. 162.0 square metres |
| (b) | Lot Frontage (minimum) | |
| | (i) Single Detached Dwelling | Min. 10 metres |
| | (ii) Semi-Detached Dwelling | Min. 6.1 metres |
| (c) | Lot Coverage (maximum) | N/A |
| (d) | Front Yard (minimum) | 4.5 meters, except 6.0 meters to an attached garage or carport. |
| (e) | Rear Yard (minimum) | 7.0 meters |
| (f) | Interior Side Yard (minimum) | 1.2 meters one side, and 0.60 meters on the other side, except for the side yard related to the common wall of a semi-detached dwelling, in which case a minimum side yard of 0.0 metres shall be provided; subject to a maintenance easement for any minimum side yard that is less than 1.2m with said maintenance easement permitting encroachment for maintenance purposes only, for no more than 0.6 metres into the side yard of the lot adjacent the yard with a side yard setback less than 1.2m |
| (g) | Exterior Side Yard (minimum) | 2.4 meters, except that an attached garage or attached carport which fronts on the flankage lot line shall not be located within 6.0 meters of the flankage lot line. |
| (h) | Landscaped Open Space | N/A |

(i) Yard Encroachments in accordance with the following:

Structure or Item	Yard Into Which Encroachments 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 - 0.6 metres from the streetline
Setback of all structures from sight triangles	Required front and required exterior side yard	0.3 metre minimum setback from a sight triangle

(j) Section 5.28.2 shall not apply.

(k) General Provisions - Other than contained herein, the provisions of Section 5 shall apply.

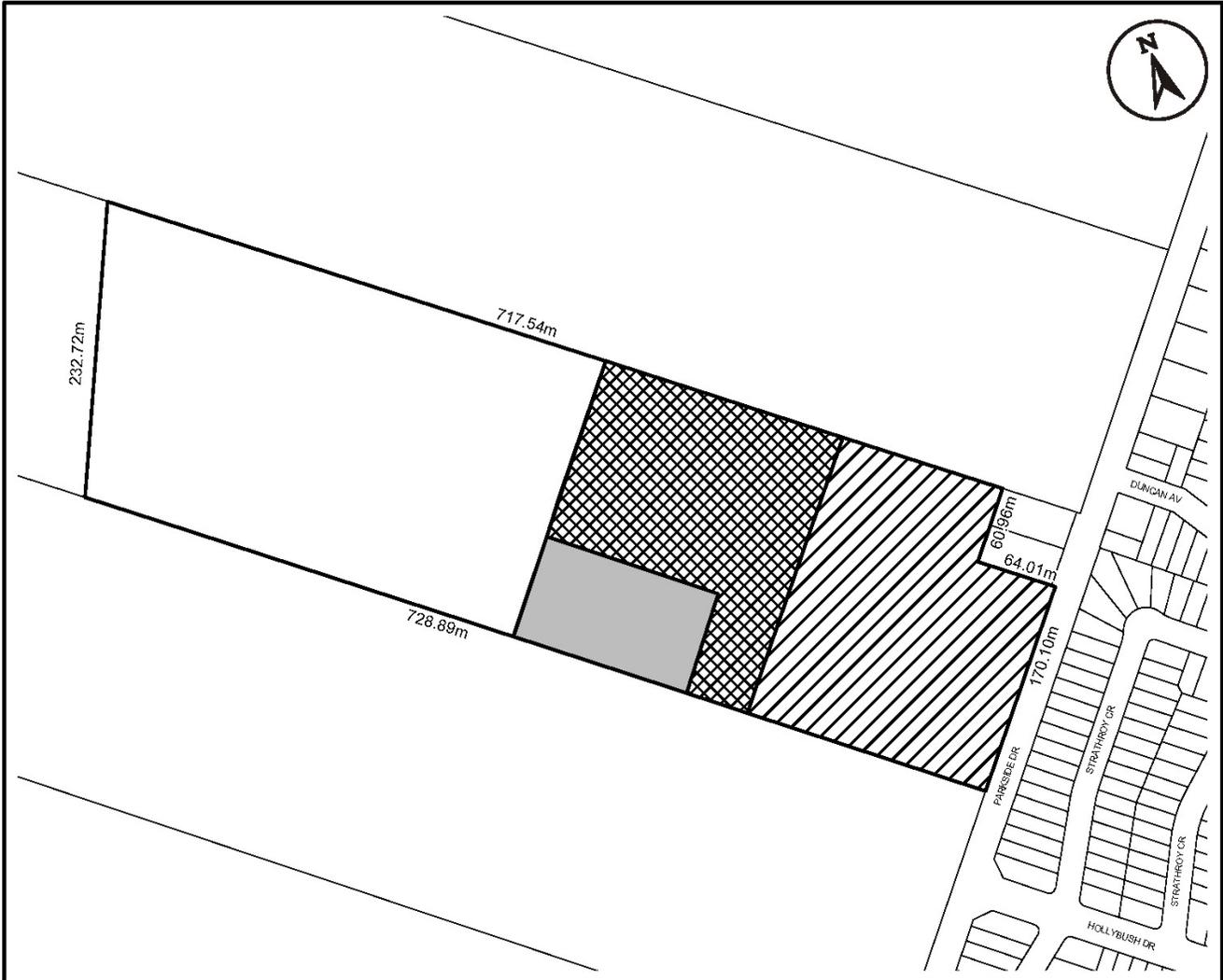
(l) All other zone provisions of Subsection 6.2 shall apply.

5. That the Clerk is hereby authorized and directed to proceed with the giving of notice of passing of this By-law, in accordance with the Planning Act.

PASSED and ENACTED this _____ day of _____, 2010.

Mayor

City Clerk



This is Schedule "A" to By-Law No. 10-
 Passed the day of, 2010

 Clerk

 Mayor

Schedule "A"

Map Forming Part of
 By-Law No. 10-_____

to Amend By-law No.90-145-Z

- Subject Property**
 Part of Lot 11, Concession 4, Parkside Drive
-  **Block 1** - Change in Zoning from the Agricultural "A" Zone to the Urban Residential "R1-53" Zone, Modified
 -  **Block 2** - Change in Zoning from the Agricultural "A" Zone to the Urban Residential "R6-26" Zone, Modified
 -  **Block 3** - Refer to By-law 05-200
 -  Additional Lands of the Applicant not Subject to this Application

Scale:
 N.T.S.

File Name/Number:
 ZAC-08-033 & 25T-200804

Date:
 October 1, 2010

Planner/Technician:
 EJ /AL

PLANNING AND ECONOMIC DEVELOPMENT DEPARTMENT

