

ISSUE DATE:

Jan. 5, 2011



Ontario

PL090665

By-law No. 11-024

Ontario Municipal Board

Commission des affaires municipales de l'Ontario

Sulphur Springs Development Corp. 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 87-57 of the City of Hamilton to rezone lands respecting 237 and 271 Lime Kiln Road from Agricultural "A" Zone and Deferred Development "D" Zone to "R3-" Exception Zone, Institutional "I-" Exception Zone and Public Open Space "O2" Zone to permit the proposed draft plan of subdivision OMB File No. PL090665

Sulphur Springs Development Corp. 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 Lots 48 and 49, Concession 2, former Township of Ancaster, in the City of Hamilton

Approval Authority File No. 25T 200403

OMB File No. PL090707

APPEARANCES:

Parties

Counsel

City of Hamilton

J. Wice

Sulphur Springs Development Corp.

S. Snider

MEMORANDUM OF ORAL DECISION DELIVERED BY D. R. GRANGER ON DECEMBER 20, 2010 AND ORDER OF THE BOARD

This is the hearing of the appeals by Sulphur Springs Development Corp. (Applicant) from the failure of the City of Hamilton (City) to make a decision respecting a proposed Draft Plan of Subdivision (Subdivision) and refusal to enact a proposed amendment to By-law 87-57 (By-law) to permit the development of a 40-lot single-detached dwelling residential subdivision, including parkland and future development blocks, (Proposal) on a 4.765-hectare property at 237 and 271 Lime Kiln Road in the former Town of Ancaster (Subject Property).

The Parties have settled this dispute.

On November 8, 2010, the Board heard evidence from G. Shields, qualified expert land use planner for the Applicant; M. Henry and J. Wilson, qualified expert archaeologists for the Applicant; and, J. Muller, qualified expert land use planner and archaeologist for the City.

None of the expert evidence presented contradicted the facts that the Subject Property is designated Urban Area in the applicable Niagara Escarpment Plan (NEP), Urban in the applicable Hamilton-Wentworth Region Official Plan (ROP) and Residential in the applicable former Town of Ancaster Official Plan (OP). The Subject Property has always been contemplated for urban residential development.

What wasn't contemplated was the discovery of a significant unmarked abandoned cemetery area dating back to the late 18th/early 19th century. Now known as the Hatt-Cooley Pioneer Cemetery, the archaeological experts agree that the find represents one of the oldest cemeteries in the area that probably served the broader Ancaster settlement area at its beginnings. It represents a significant cultural heritage resource.

The archaeological experts were unanimous in their satisfaction with the agreement reached that addresses the conservation/preservation of the cemetery; clarifies the definition of the boundary of the cemetery; and, addresses the process to address gravesites found beyond that boundary. The archaeological experts for the Applicant confirmed that in their several years of experience, the agreed proposal represents a very positive and an unusually positive outcome in the circumstance.

The Board heard from three remaining Participants.

Richard Hatt, great-great grandson to the Hatt-Cooleys expressed the importance of preserving such a significant find as the cemetery. He noted several historic references confirming the existence of a cemetery on the Subject Property.

Kelly Cooley, whose grandfather's grandfather was one of the original Cooleys, also expressed the significance of the cemetery and its preservation.

Art French, Chair of the Hamilton Municipal Heritage Committee, confirmed the interest of his Committee in seeing this significant cemetery preserved.

All Participants expressed their being happy, pleased and optimistic in the settlement reached that will insure the conservation/preservation of the cemetery.

On December 20, 2010, upon reconvening, the Board was informed of the City Council's full endorsement of the settlement.

The land use planner for the Applicant confirmed his opinion that the Proposal, as now officially settled between the Parties, is consistent with the policies of the Provincial Policy Statement (PPS), especially as they relate to Natural Heritage, Cultural Heritage and Archaeology. Similarly, the Proposal conforms to the Growth Plan for the Greater Golden Horseshoe (GP) as well as the applicable NEP, ROP and OP.

He presented the final revised proposed plan of subdivision as Exhibit No. 19, the final agreed conditions of draft plan approval as Exhibit No. 20 and the final form of the By-law amendment as Exhibit No. 21a, including the additional amendment to the new City-wide By-law 05-200, that affects the Open Space and Conservation/Hazard Land areas proposed for protection, as Exhibit No. 21b.

By-law 05-200 came into effect subsequent to By-law 87-57 and was not appealed by the Applicant. The Parties request the Board to utilize its broad authority to perfect the settlement to recognize the additional protections afforded from the proposed Open Space and Conservation/Hazard Land zones as they apply to the natural and cultural heritage elements of the Proposal. City Council has endorsed the settlement, including the amendment to By-law 05-200. There was no opposition to the Board exercising its authority in that regard.

Pursuant to Section 88 of the *Ontario Municipal Board Act*, the Board finds it to be just and proper to grant the further relief sought in the circumstance of this fully resolved dispute that further enhances the protection of identified natural and cultural heritage lands. The Board will amend By-law 05-200 accordingly.

In conclusion, the Board relies on and adopts the evidence and opinion of the land use planner for the Applicant that was not contradicted.

The Board finds that the revised subdivision, conditions of draft plan approval and proposed by-law amendments are consistent with the PPS and conform to the GP, ROP, and OP.

The Board finds that the proposed plan of subdivision satisfies the criteria of subsection 51(24) of the *Planning Act* and the proposed subdivision, conditions of approval and by-law amendments are appropriate, represent good planning and are in the overall public interest of the community.

With respect to the proposed plan of subdivision, on consent and at the request of the Parties, the appeal is allowed and the draft plan presented as Exhibit No. 19 as prepared by IBI Group with a last revised date of December 16, 2010 for Part of Lots 48 and 49, Concession 2, Former Township of Ancaster, now the City of Hamilton, is approved subject to the fulfilment of the conditions set out in Exhibit No. 20.

On consent and at the request of the Parties, 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.

With respect to the By-law, on consent and at the request of the Parties, the appeal is allowed and By-laws 87-57 and 05-200 are amended in the manner as set out in Exhibit No. 21a and 21b respectively. The Board authorizes the City Clerk to assign numbers to the by-laws for record keeping purposes.

The Board commends the efforts of the Parties and Participants in resolving this dispute.

The Board so Orders.

"D. R. Granger"

D. R. GRANGER
VICE-CHAIR

Authority:

Bill No. [REDACTED]

CITY OF HAMILTON

BY-LAW NO. [REDACTED]

**To Amend Zoning By-law No. 87-57 (Ancaster), as Amended
Respecting Lands Located at 237 and 271 Lime Kiln Road being at Part of Lots 48
and 49, Concession 2 (Ancaster)**

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 Ancaster" 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. 87-57 (Ancaster) was enacted on the 22nd day of June 1987, and approved by the Ontario Municipal Board on the 23rd day of January, 1989;

AND WHEREAS the Ontario Municipal Board has issued an order that Zoning By-law No. 87-57 (Ancaster) be amended as hereinafter provided;

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

AND WHEREAS the By-law will be in conformity with the Urban Hamilton Official Plan, (adopted by the City of Hamilton and awaiting Provincial approval), upon approval of Official Plan Amendment No. [REDACTED] proposed by the City of Hamilton but not yet approved in accordance with the provisions of the Planning Act.

NOW THEREFORE the Ontario Municipal Board Orders as follows:

1. That Map 1 to Schedule "B" of Zoning By-law No. 87-57 (Ancaster), as amended, is hereby further amended by changing from the Agricultural "A" Zone to the following:
 - (a) Residential "R3-626" Zone, Modified, the lands comprised of Block "1";
 - (b) Residential "R3-627" Zone, Modified, the lands comprised of Block "2";
 - (c) Residential "R3-628" Zone, Modified, the lands comprised of Block "3";
 - (d) Residential "R3-629" Zone, Modified, the lands comprised of Block "4";
and,
 - (e) Residential "H-R3-628" Holding Zone, Modified, the lands comprised of Block "5",

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

2. That Section 34: Exceptions of Zoning By-law No. 87-57 (Ancaster), as amended, is hereby further amended by adding the following subsections:

"R3-626" Notwithstanding any provisions to the contrary of Section 11.3.2, Regulations of Section 11.3: Residential "R3" Zone and Section 9, General Provisions for Residential Zones of By-law No. 87-57 (Ancaster), the following special provisions shall apply to the lands zoned "R3-626".

Development Regulations

- | | | |
|-----|----------------------|---|
| (a) | Minimum Lot Area | 580 square metres, except on a corner lot the minimum lot area shall be 700 square metres. |
| (b) | Minimum Lot Frontage | 14.5 metres per dwelling unit, except, on a corner lot the minimum lot frontage shall be 17.5 metres. |
| (c) | Maximum Lot Coverage | 45% for a 1-storey dwelling unit and 42.5% for a 2-storey dwelling unit. |
| (d) | Minimum Front Yard | 4.5 metres to a dwelling, except 6.0 metres to an attached garage. |

Notwithstanding Section 15.2(e), Schedule "C" requirements shall not apply.

- (e) Minimum Side Yard 1.2 metres, except, 2.4 metres for an exterior side yard.
- (f) Yard Encroachments 1.5 metres for an enclosed porch or open stairways that project into any minimum front or rear yard, and into any minimum side yard not more than 45 centimetres.
- (g) All other zone provisions of Subsection 11.3, Residential "R3" Zone, and Section 9 General Provisions for Residential Zones shall apply.

"R3-627" Notwithstanding any provisions to the contrary of Section 11.3.2, Regulations of Section 11.3: Residential "R3" Zone and Section 9, General Provisions for Residential Zones of By-law No. 87-57 (Ancaster), the following special provisions shall apply to the lands zoned "R3-627".

Development Regulations

- (a) Minimum Side Yard 1.2m on one side, 2.5 metres on the other side and a minimum separation between dwellings of 3.7m.
- (b) Accessory Buildings The provisions of Section 7.18(a) shall apply, except that accessory buildings shall be setback a minimum of 2.5m from the base of a retaining wall.
- (c) In-Ground Swimming Pools The provisions of Section 7.16(c) shall apply, except that an in-ground swimming pool shall be setback a minimum of 2.5m from the base of a retaining wall.
- (d) Decks The provisions of Section 9.10 shall apply, except that decks shall be setback a minimum of 2.5m from the base of a retaining wall.
- (e) All other zone provisions of the "R3-626" Zone and Section 9 General Provisions for Residential Zones shall apply.

"R3-628" Notwithstanding any provisions to the contrary of Section 11.3.2, Regulations of Section 11.3: Residential "R3" Zone and Section 9, General Provisions for Residential Zones of By-law No. 87-57 (Ancaster), the following special provisions shall apply to the lands zoned "R3-628".

Permitted Uses

- (a) Subsection 11.3.1 shall apply.
- (b) A single detached dwelling existing at the date of passing of the By-law shall also be permitted, being the [REDACTED] day of [REDACTED], 2010.

Development Regulations

- (a) Minimum Lot Area 560 square metres, except on a corner lot the minimum lot area shall be 610 square metres.
- (b) Minimum Lot Frontage 16 metres along a condominium road, except 18.0 metres for a corner lot fronting onto a condominium road or public highway.
- (c) Maximum Coverage 45% for a 1-storey dwelling unit and 42.5% for a 2-storey dwelling unit.
- (d) Minimum Setback from a Condominium Road 4.5 metres to a dwelling, except 6 metres to an attached garage from a condominium road
- (e) Minimum Side Yard 1.2. metres
- (f) Condominium Road A minimum 9 metre wide interior road shall be provided for driveway access to the individual dwelling units.

For the purposes of this by-law, the condominium road shall be deemed to be a street and shall be used to determine minimum lot frontage, and setback requirements for dwelling lots.

- (g) Minimum Landscaping 45%
- (h) Parking 2.0 spaces per dwelling unit
- (i) Visitors Parking 0.5 spaces per unit, which shall be permitted on one side of a condominium road, and/or within a designated parking area.
- (j) Minimum Parking Stall Dimensions for Visitors Parking 2.6m X 5.5m within a designated parking area
2.5m X 6.5m for parallel parking along a condominium road
- (k) The provisions of Section 11.3.2 shall not apply to a single detached dwelling existing at the date of passing of the By-law being the [REDACTED] day of [REDACTED], 2010.
- (l) All other zone provisions of Subsection 11.3, Residential "R3" Zone and Section 9, General Provisions for Residential Zones shall apply

"R3-629" Notwithstanding any provisions to the contrary of Section 11.3.2, Regulations of Section 11.3: Residential "R3" Zone and Section 9, General Provisions for Residential Zones of By-law No. 87-57 (Ancaster), the following special provisions shall apply to the lands zoned "R3-629".

Development Regulations

- (a) Minimum Side Yards 1.2m on one side, 2.5 metres on the other side and a minimum separation between dwellings of 3.7m.
- (b) Accessory Buildings The provisions of Section 7.18(a) shall apply, except that accessory buildings shall be setback a minimum of 2.5m from the base of a retaining wall contiguous to a rear lot line.
- (c) In-Ground Swimming Pools The provisions of Section 7.16(c) shall apply, except that an in-ground swimming pool shall be setback a minimum of 2.5m

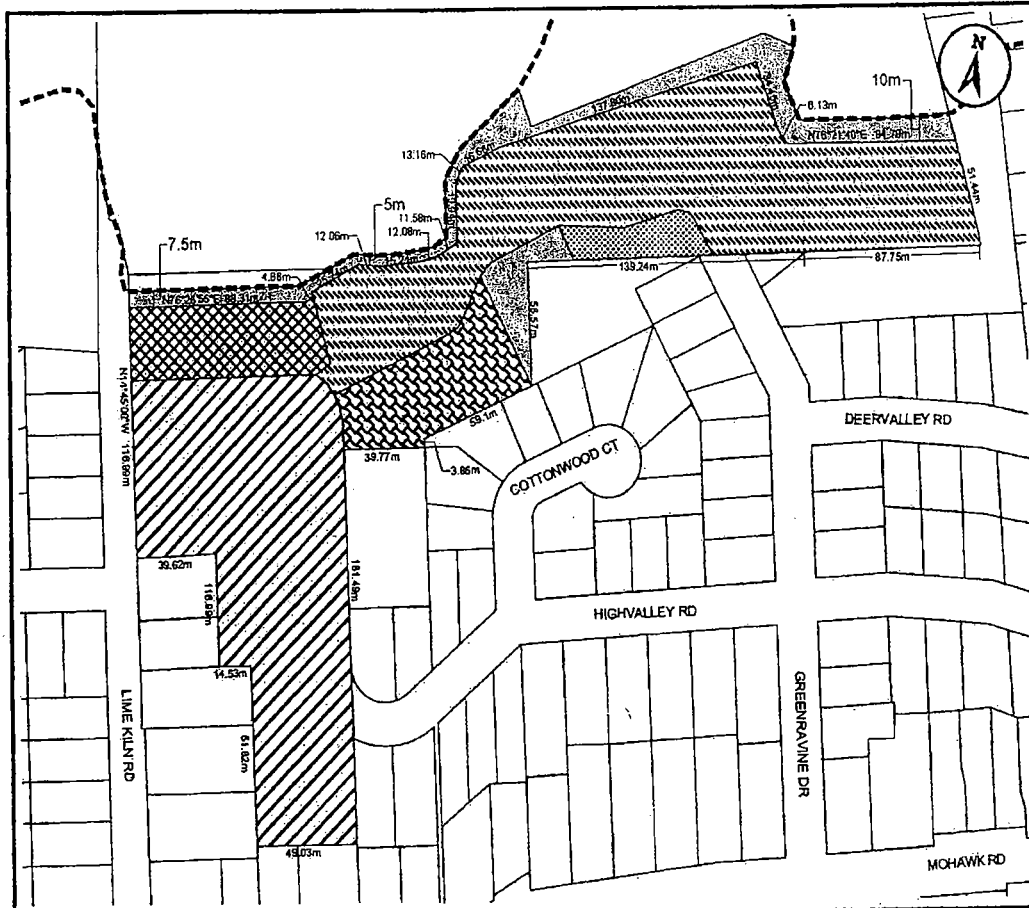
from the base of a retaining wall contiguous to a rear lot line.

- (d) Decks The provisions of Section 9.10 shall apply, except that decks shall be setback a minimum of 2.5m from the base of a retaining wall contiguous to a rear lot line.
- (e) All other zone provisions of the "R3-628" Zone and Section 9, General Provisions for Residential Zones shall apply.

"H-R3-628" Notwithstanding any provisions to the contrary of Section 11.3.2, Regulations of Section 11.3: Residential "R3(H)" Holding Zone and Section 9, General Provisions for Residential Zones of By-law No. 87-57 (Ancaster), the following special provisions shall apply to the lands zoned "H-R3-628".

Removal of Holding Provision

- (a) The 'H' Holding prefix shall be lifted from the "H-R3-628" Zone once the following conditions have been completed, to the satisfaction of the Director of Planning:
 - i) The subject lands have been assembled with the adjacent lands to allow for the creation of appropriately-sized future residential lots; and,
 - ii) The adjacent lands for purposes of land assembly have received final zoning approval to permit single detached dwellings in accordance with the "R3-628" Zone.



This is Schedule "A" to By-Law No. 10-

Passed the day of, 2010

Clerk

Mayor

<h2>Schedule "A"</h2> <p>Map Forming Part of By-Law No. 10-_____</p> <p>to Amend By-law No. 87-57</p>		<p>Subject Property 237 and 271 Lime Kiln Road</p> <p> Block 1 - Change in Zoning from the Agricultural "A" Zone to the Residential "R3-626" Zone, Modified</p> <p> Block 2 - Change in Zoning from the Agricultural "A" Zone to the Residential "R3-627" Zone, Modified</p> <p> Block 3 - Change in Zoning from the Agricultural "A" Zone to the Residential "R3-628" Zone, Modified</p> <p> Block 4 - Change in Zoning from the Agricultural "A" Zone to the Residential "R3-629" Zone, Modified</p> <p> Block 5 - Change in Zoning from the Agricultural "A" Zone to the Residential "H-R3-628" Holding Zone, Modified</p> <p> Refer to By-law 05-200.</p> <p> Proposed ESA Boundary</p>
<p>Scale: N.T.S.</p>	<p>File Name/Number: ZAC-04-21</p>	
<p>Date: Nov. 26, 2010</p>	<p>Planner/Technician: CT/MS</p>	<p>Hamilton</p>
<p>PLANNING AND ECONOMIC DEVELOPMENT DEPARTMENT</p>		