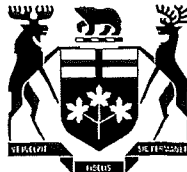


ISSUE DATE:

Dec. 18, 2009



Ontario

Ontario Municipal Board
Commission des affaires municipales de l'Ontario

09-088-OMB-01
Attachment 1

PL090466

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

Appellant: Queendale Garden Homes Limited
Subject: By-law No. 09-088
Municipality: City of Hamilton
OMB Case No.: PL090466
OMB File No.: PL090466

APPEARANCES:

Parties

Queendale Garden Homes Limited

City of Hamilton

Counsel

Nancy Smith

Michael Kovacevic

**MEMORANDUM OF ORAL DECISION DELIVERED BY J. E. SNIEZEK
ON NOVEMBER 23, 2009 AND ORDER OF THE BOARD**

Introduction

By-law 09-088 zoned the subject lands Urban Protected Residential Modified and Urban Protected Residential Holding Modified from Urban Protected Residential and Agricultural. The Holding provision would be removed when the owner has conveyed a portion to an adjacent property owner at 759 Rymal Road.

Glendale Garden Homes (the Appellant) is appealing Sections 1(d), 1(e) and 2 of By-law 09-088 while the unappealed Sections are in full force and effect.

The Board was informed that the Parties had reached a settlement of the matter. The Minutes of Settlement (Attachment 1) removes the holding provision from Blocks 4 and 5 and requires that the remnant parcel be conveyed to the City of Hamilton (the City).

Review of the Evidence

The Board has an affidavit from James Webb (who was in attendance on the Telephone Conference Call (TCC). Mr. Webb is a Registered Professional Planner (RPP) in the Province of Ontario. Mr. Webb in his affidavit supports the Minutes of Settlement that in his professional planning opinion are consistent with the Provincial Policy Statements (PPS), conform to the City of Hamilton Official Plan and represent good planning.

The Minutes of Settlement will result in the creation of three infill lots with site specific zoning regulations governing lot area, lot width and minimum rear yard.

The primary objective of imposing the holding provision is to ensure that no remnant parcels remain in distinct private ownership. The settlement and revised by-law accomplishes that.

Findings

The Board finds that the Minutes of Settlement results in a planning solution that is consistent with the PPS, conforms to the Hamilton Official Plan and represents good planning.

The Appeal is allowed and By-law 09-88 is amended as set out in Attachment "1". (see Appendix "1" of the Minutes of Settlement)

The Board Order will be withheld until such time as Section 4 of the Minutes of Settlement has been satisfied.

"J. E. Sniezek"

J. E. SNIEZEK
MEMBER

ATTACHMENT "1"

PL090466

Appellant: Queendale Garden Homes Limited
Municipality: City of Hamilton
Property: 765 Rymal Road East
By-law No.: 09-088

MINUTES OF SETTLEMENT

WHEREAS the City of Hamilton passed Zoning By-law Amendment 09-088 on April 29, 2009;

AND WHEREAS Queendale Garden Homes Limited appealed sections 1(d), 1(e) and 2 of the said By-law to the Ontario Municipal Board;

AND WHEREAS, by Order of the Ontario Municipal Board dated August 20, 2009, By-law 09-088 was deemed to have come into force as of April 29, 2009, save and except the appealed Sections;

AND WHEREAS the parties have reached a settlement regarding the appealed Sections;

NOW THEREFORE, the undersigned, by their solicitors, agree to a resolution of this appeal on the following terms:

1. We agree to make submissions to the Ontario Municipal Board on the first available date to counsel and the Board, by telephone conference call if possible, in support of these Minutes of Settlement to be filed as an Exhibit and attached to the Board Order.

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2. We consent to an Order of the Ontario Municipal Board
 - Allowing the appeal;
 - Approving the amendments to Zoning By-law Amendment 09-088 attached as Appendix 1.
 - Withholding the Board Order until being advised that Section 4 of these Minutes of Settlement have been satisfied.

3. Queendale Garden Limited will present professional land-use opinion evidence to the Board in support of the amendments attached as Appendix 1.

4. Upon being advised that the Change of Condition of Consent as identified in Section 8 of these Minutes of Settlement is final and binding, Queendale Garden Limited agrees to transfer to the City of Hamilton the lands identified as Part 6 on the Sketch Prepared for Land Division, being Appendix "B" to the staff report dated March 30, 2009 and attached as Appendix 2 to these Minutes of Settlement, at no cost to the City of Hamilton.

5. The City of Hamilton agrees to retain ownership to Part 6 until the earlier of the following events:

- (a) Queendale Garden Limited (or a related legal entity to its principal, Paul Silvestri) purchases the lands to the south for assembly with Part 6 to create a lot; or
- (b) The City of Hamilton enters into an Agreement of Purchase and Sale to sell Part 6 on terms in accordance with the Section 7 of these Minutes of Settlement.

6. In the event that the purchase contemplated by Section 5(a) occurs, the City of Hamilton will transfer Part 6 to Queendale Garden Limited (or a related legal entity to its principal, Paul Silvestri) at no cost to the City of Hamilton.
7. In implementing Section 5(b) of these Minutes of Settlement, the City of Hamilton agrees to use commercially reasonable efforts to sell Part 6 at market value as of the date of the Agreement of Purchase and Sale for Part 6. As of the date of these Minutes of Settlement, the parties agree that the market value of Part 6 is \$20,000. The City of Hamilton agrees that it will not enter into an Agreement of Purchase and Sale for Part 6 at a market value of less than \$20,000 without the written consent of Queendale Garden Limited. The City of Hamilton agrees to use commercially reasonable efforts to recover any servicing costs incurred by Queendale Garden Limited for Part 6 (or a related legal entity to its principal, Paul Silvestri) pursuant to the existing subdivision agreement in relation to Plan 62M-643 which were not paid by the City of Hamilton.

8. Upon execution of these Minutes of Settlement, the City of Hamilton will immediately notify the Secretary to the Committee of Adjustment that the City of Hamilton requests a change to Condition 3 of the Notice of Decision – HM/B-08:164 – B-164/08 to read as follows:

- That the lands identified as Part 6 be transferred to the City of Hamilton at no cost to the City.

Dated this 3rd ^{November} day of ~~October~~, 2009

City of Hamilton



By the City Solicitor
Peter Barkwell

Dated this 3rd ^{November} day of ~~October~~, 2009

Queendale Garden Limited



By its solicitor
Nancy Smith

APPENDIX 1

Changes to By-law 09-088

1. Section 1(d) – delete the “H” and the reference to “Holding”.
2. Section 1 (e) – delete the “H” and the reference to “Holding”.
3. Delete Section 2.

