

ISSUE DATE:

**June 29, 2012**



PL070395

Ontario Municipal Board  
Commission des affaires municipales de l'Ontario

IN THE MATTER OF subsection 17(24) of the *Planning Act*, R.S.O. 1990, c. P.13, as amended

Appellant: Silverwood Homes Limited  
Subject: Proposed Official Plan Amendment No. 109  
Municipality: City of Hamilton  
OMB Case No.: PL070395  
OMB File No.: O070054

IN THE MATTER OF subsection 51(34) of the *Planning Act*, R.S.O. 1990, c. P.13, as amended

Appellant: Silverwood Homes Limited  
Subject: Proposed Plan of Subdivision No. 25T-200621  
Municipality: City of Hamilton  
Property  
Address/Description: Part of Lot 11, Concession 4  
OMB Case No.: PL070395  
OMB File No.: PL080150

**APPEARANCES:**

**Parties**

City of Hamilton

Silverwood Homes Limited

**Counsel**

M. Kovacevic

M. McQuaid

**MEMORANDUM OF ORAL DECISION DELIVERED BY J. P. ATCHESON  
ON JUNE 19, 2012 AND ORDER OF THE BOARD**

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This was a continuation of a hearing resulting from a Board decision dated December 11, 2008, in the matter of consolidated appeals by Silverwood Homes Limited (the "Appellant") to a portion of the Official Plan Amendment No.109 to the Official Plan of the Town of Flamborough now, in the City of Hamilton. The Appellant also appealed the City of Hamilton's failure to make a decision with respect to a proposed Draft Plan of Subdivision (File 25T-200621) composed of lands in Part Lot 11, Concession 4 (former Township of East Flamborough now, in the City of Hamilton) and the City's failure or

neglect to enact zoning by-law amendments to Zoning By-law 05-200 of the City of Hamilton and Zoning By-law 90-145-Z of the former Town of Flamborough to rezone the Draft Plan of Subdivision lands from Agricultural to Residential to permit the development contemplated by the Draft Plan of Subdivision. Amedeo DiMarco, an abutting property owner joined the appeal with respect to Official Plan Amendment No. 109 as it affects his lands, which are shown on Exhibit 19.

### **Context and history**

The Silverwood lands, some 32 hectares in size, are located in the northwest corner of Waterdown, in the former Town of Flamborough. The property is bounded on the west by an easement in favour of Sun-Canadian Pipe-Line and Imperial Oil, on the north by Borers Creek, on the east by the DiMarco lands, and on the south by Parkside Drive.

The disposition of the Board in its December 11, 2008, decision was as follows:

1. **THE BOARD ORDERS** that the appeal is allowed in part and Amendment No. 109 to the Official Plan of the former Town of Flamborough is modified as set out in Attachment "1" and, further, the matters as set out and deferred by the Board's Decision/Order dated June 25, 2008, that are consistent with Attachment "1" to this Order are further approved.
2. **THE BOARD ORDERS** that the appeal against By-law No. 05-200 of the City of Hamilton is allowed in part, and By-law No. 05-200 is amended as set out in Attachment "2" to this Order and is approved, in all other respects, the Board Orders that the appeal is dismissed.
3. **THE BOARD ORDERS** that the appeal against By-law No. 90-145-Z of the former Town of Flamborough is allowed in part, and By-law No. 90-145-Z is amended as set out in Attachment "3" to this Order and is approved, in all other respects, the Board Orders that the appeal is dismissed.
4. **THE BOARD ORDERS** that the appeal is allowed and the draft plan shown on the plan prepared by Metropolitan Consulting Inc. dated

November 17, 2008, being Part of Lot 11, Concession 4, formerly the Township of East Flamborough now, in the City of Hamilton, is approved subject to the fulfilment of the conditions set out in Attachment "4" 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.

It now appears that the Appellant and the Municipality are unable to agree upon a revised condition with respect to a secondary access for the second phase of the development being condition No. 16 which states,

that prior to registration of the final Plan of Subdivision, the owner agrees that not more than 100 units shall be registered until a second street access is provided to service the draft approved lands to the satisfaction of the Director of Development Engineering.

Prior to the commencement of the hearing, Counsel for the parties present approached the Board seeking an adjournment of the hearing. The reason for the request is that the appellant has submitted an alternative plan for the secondary access not previously provided to the City. Counsel for the Municipality indicated that he has not had time to have this alternative considered by the appropriate city departments and needs time for those consultations and considerations to take place. Counsel for the Appellant agrees.

The Board, at the commencement of the hearing, acknowledged that a request for an adjournment had been made on consent of the parties present.

The Board on a without prejudice basis inquired whether there was a reasonable expectation that the alternative now being proposed might have a reasonable chance of resolving the dispute before the Board.

The Board is satisfied from the response from Counsel that the adjournment is warranted from that perspective and further, the Board accepts that the City needs time to appropriately consider the alternative now being proposed.

Accordingly, the Board granted the adjournment and rescheduled a two-day hearing to commence on Wednesday, September 12, 2012, at 10 a.m., on 50 Main Street, in the City of Hamilton, in the event the parties cannot resolve the matter.

The Board directed Counsel for the Municipality to confirm the venue with the Board office and the parties present.

The Board also directed Counsel for the Municipality to notify the nearby property owners of the new hearing date and venue. The property owners being;

1. Landmart Realty Corp. - R. Cheeseman
2. Amedeo DiMarco - A. Stewart

If the matter is resolved, the parties are to advise the Board, at the earliest possible date, so that the hearing dates can be relinquished.

No further notice is required.

The Member remains seized.

This is the Order of the Board.

“J. P. Atcheson”

J. P. ATCHESON  
MEMBER