

Issue Date:

May 20, 2009



PL080959

Ontario Municipal Board
Commission des affaires municipales de l'Ontario

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

Appellant: Thomas Cavanagh Construction Ltd.
Appellant: Arnold Kimmel Limited and Hartman Management Corporation
Subject: By-law No. 2008-250
Municipality: City of Ottawa
OMB Case No.: PL080959
OMB File No.: PL080959

APPEARANCES:

Parties

City of Ottawa

Thomas Cavanagh Construction Ltd. and
Arnold Kimmel Limited and Hartman
Management Corporation

TDL Group Corp.

Counsel

T. Marc

D. Kelly and U. Melinz (not present)

M. Polowin and C. Beaudoin

**MEMORANDUM OF ORAL DECISION DELIVERED BY N. C. JACKSON
AND ORDER OF THE BOARD**

This panel is dealing with an extensive list of Appeals to new City of Ottawa Comprehensive Zoning By-law 2008-250.

Thomas Cavanagh Construction Ltd. (Appeal Number 8) seeks the zoning in place when five Country Lot Subdivisions, four in the former Township of West Carleton and one in the former City of Gloucester were approved. The changes sought are to reflect the lot regulations of the approved lots in the draft and some final approved Plans of Subdivision. The Board was assured that the lot regulation provisions sought comply with the Rural designation of the Ottawa Official Plan and with the Provincial Policy Statement.

The Board accepts the evidence of City of Ottawa planner David Leclair that the changes sought represent reasonableness under the term good planning and are agreed to by City Planning Committee and City Council. The five subdivisions are set out on page 3 of Exhibit 1. Use is not affected and where applicable, wetland restrictions will continue to apply.

The Cavanagh Appeal was two-fold: zone in or extend the transition provisions in section 9 of By-law 2008-250 cut off by June 25, 2008 for completed planning applications listed. There is now a settlement between Cavanagh and the City to recognize the previously approved lots so the section 9 part of the Appeal is withdrawn.

Mr. Polowin, on behalf of TDL, has already been added as a Party to this Appeal and others including Number 50 to follow. He asks for an acknowledgement that the dismissal of the section 9 portion of the Cavanagh appeal to be with respect to TDL, on a without prejudice basis of the right of TDL to argue its right to continue with the hearing even if there is a settlement, withdrawal and dismissal of the Appeal that they were added to as a Party. Although the merits were briefly discussed, all legal counsel agreed to the acknowledgement. TDL does not object to the zoning in of the Cavanagh Plans of Subdivision or to the dismissal of the remainder of that appeal including as to section 9. The Board accepts the TDL position for the record that their consenting to dismissal of the Cavanagh appeal respecting section 9 is without prejudice to the right of TDL to argue the right of a party to continue when the Appeal is withdrawn, settled or dismissed which is to be argued on another day in another Appeal.

The Board will amend By-law 2008-250 in the form of the zoning map and text changes set out in the form of the amending by-law on pages 25 to 30 of Exhibit 1 made Attachment "1" to this Decision and Order. The Cavanagh Appeal is allowed in part respecting the zoning in of the Subdivision lots and is otherwise dismissed respecting section 9 and the balance of the appeal.

The Second Appeal before the Board, Number 50, is respecting the continued zoning for convenience store status as enjoyed under former Kanata Zoning status, the store being located at the northwest corner of Richmond Road and Stonehaven Drive, now in the City of Ottawa. Ottawa City Council has accepted this change together with a

Queuing text change to require that in the Queuing line be a minimum of 11 spaces in total, with a minimum of seven spaces before or at the order board.

Planner Leclair, for the City, testified these changes are meant to give some flexibility and are in conformity with the City Official Plan and the Provincial Policy Statement. This is also now a settlement with the Appellant.

TDL was present and seeks the same acknowledgement respecting the appeal of section 9 Transition provisions. That is agreed to by the City and the Appellants Arnold Kimmel Limited and Hartman Management Corporation. The acknowledgement is that the dismissal of the section 9 portion of the appeal is without prejudice to the right of TDL to pursue the right of a party to continue when an appeal is settled, dismissed or withdrawn on another day, in another appeal.

The Board accepts the evidence of the city planning witness Leclair and allows the Appeal in part as to Zoning in of the use and as to Queuing and dismisses the balance of the Appeal (section 9 Transition) subject to the without prejudice position of TDL that they can argue the right of a party to continue with an appeal settled, withdrawn or dismissed in another appeal hearing on another day.

The Board amends By-law 2008-250 in the manner of the By-law shown on Exhibit 1, Tab 7, pages 31 and 32 as to map and text changes (convenience store use and Queuing, text change: "seven spaces before or at the order board and a minimum total of 11 spaces") Attachment "2" to this Decision and Order.

The Board so Orders.

"N. C. Jackson"

N. C. JACKSON
MEMBER

ATTACHMENT "1"

BY-LAW FOR CONSIDERATION BY
THE ONTARIO MUNICIPAL BOARD

A by-law of the City of Ottawa to amend By-law No. 2008-250 to correct technical errors to resolve certain appeals to the Ontario Municipal Board.

The Council of the City of Ottawa, pursuant to Section 34 of the *Planning Act*, R.S.O.1990, enacts as follows:

1. The Zoning Map of By-law No. 2008-250, entitled "City of Ottawa Zoning By-law" is amended as follows:

- (a) for the lands shown as Area A on Attachment 1 to this by-law change the zoning from RR2 to RR2[327r];
- (b) for the lands shown as Area A on Attachment 2 to this by-law change the zoning from RU to RU[328r];
- (c) for the lands shown on Attachment 3 to this by-law change the zoning as follows:
 - (i) Area A from RR3 to RR3[329r]
 - (ii) Area B from RR2[520r] to RR2[330r];
- (d) for the lands shown on Attachment 4 to this by-law change the zoning as follows:
 - (i) Area A from RU to RU[332r]
 - (ii) Area B from RR2 to RR2[331r]
 - (iii) Area C from RR2[129r] to RR2[333r].

2. Section 240 – Rural Exceptions of the said by-law is amended by adding the following exceptions:

I Exception Number	II Applicable Zone	Exception Provisions		
		III Additional Land Uses Permitted	IV Land Uses Prohibited	V Provisions
327r	RR2[327r]			- minimum lot area: 7000 m ² - minimum lot width: 45 m - minimum rear yard setback: 7.5 m - minimum interior side yard setback: 4.5 m
328r	RU[328r]			- minimum interior side yard setback: 4 m

329r	RR3[329r]			- minimum rear yard setback: 7.5 m - minimum interior side yard setback: 4 m
330r	RR2[330r]			- minimum rear yard setback: 7.5 m - minimum interior side yard setback: 4 m - all buildings and structures are subject to the setbacks indicated in Section 72- Setback from the Trans Canada Pipeline
331r	RR2[331r]			- minimum rear yard setback: 7.5 m
332r	RU[332r]			- minimum interior side yard setback: 4 m
333r	RR2[333r]			- minimum rear yard setback: 7.5 m - no building, structure, septic tank or tile field allowed due to proximity to or existence of a wetland or natural environment area

3. Exception [241r] of Section 240 – Rural Exceptions of the said by-law is amended as follows:

(a) by deleting the following from Column V:

- minimum lot width of 40 m


(b) by adding the following to Column V:

- minimum lot width: 30 m
- minimum rear yard setback: 7 m
- minimum interior side yard setback: 1.2 m
- maximum lot coverage: no maximum

APPROVED by the Ontario Municipal Board on the _____ of May, 2009

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**Lands Affected Part of
The Zoning Map
of By-law No. 2008-250**

This is Attachment 1 to By-law Number _____, passed _____, 2009

Lands Affected by By-law

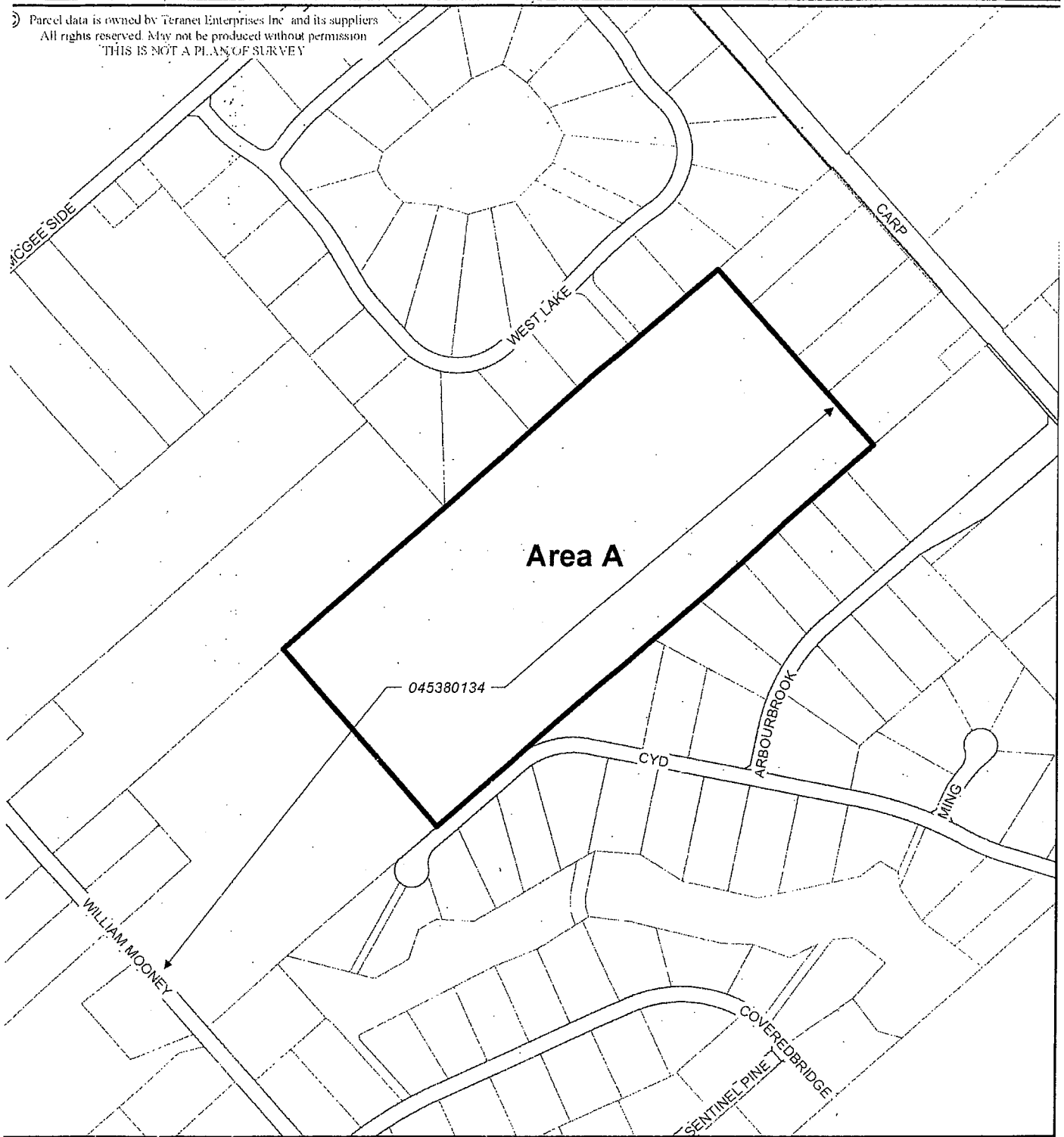
Area A Rezoned from RR2 to RR2[327r]

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ICO\2009...WESTLAKESOUTH_LANDS.MXD

**Lands Affected Part of
The Zoning Map
of By-law No. 2008-250**

This is Attachment 2 to By-law Number _____, passed _____, 2009

Lands Affected by By-law

Area A Rezoned from RU to RU[328r]

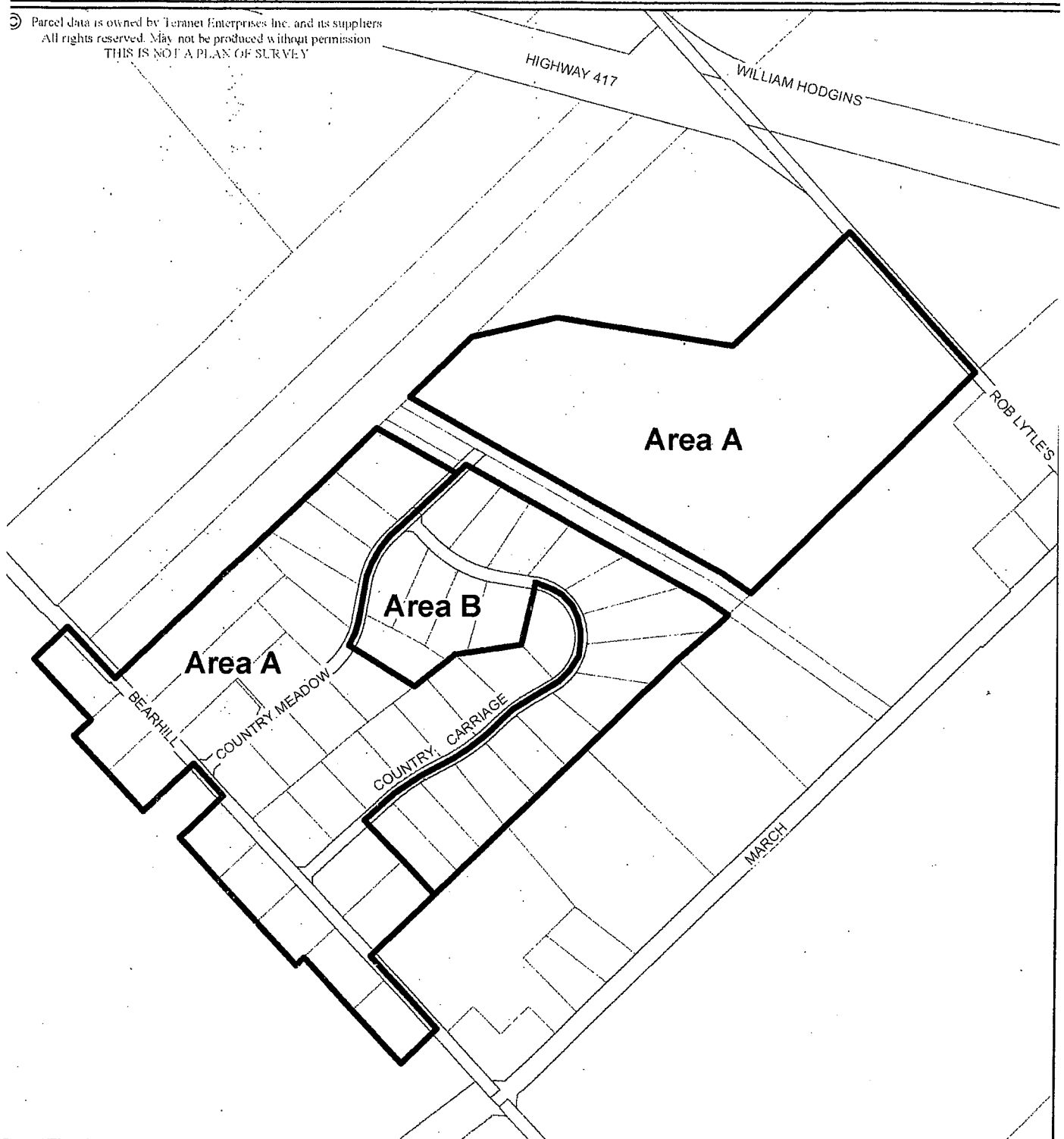
045380134 Denotes Teranet-Polaris Parcel Identification Number

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**Lands Affected Part of
 The Zoning Map
 of By-law No. 2008-250**

This is Attachment 3 to By-law Number _____, passed _____, 2009

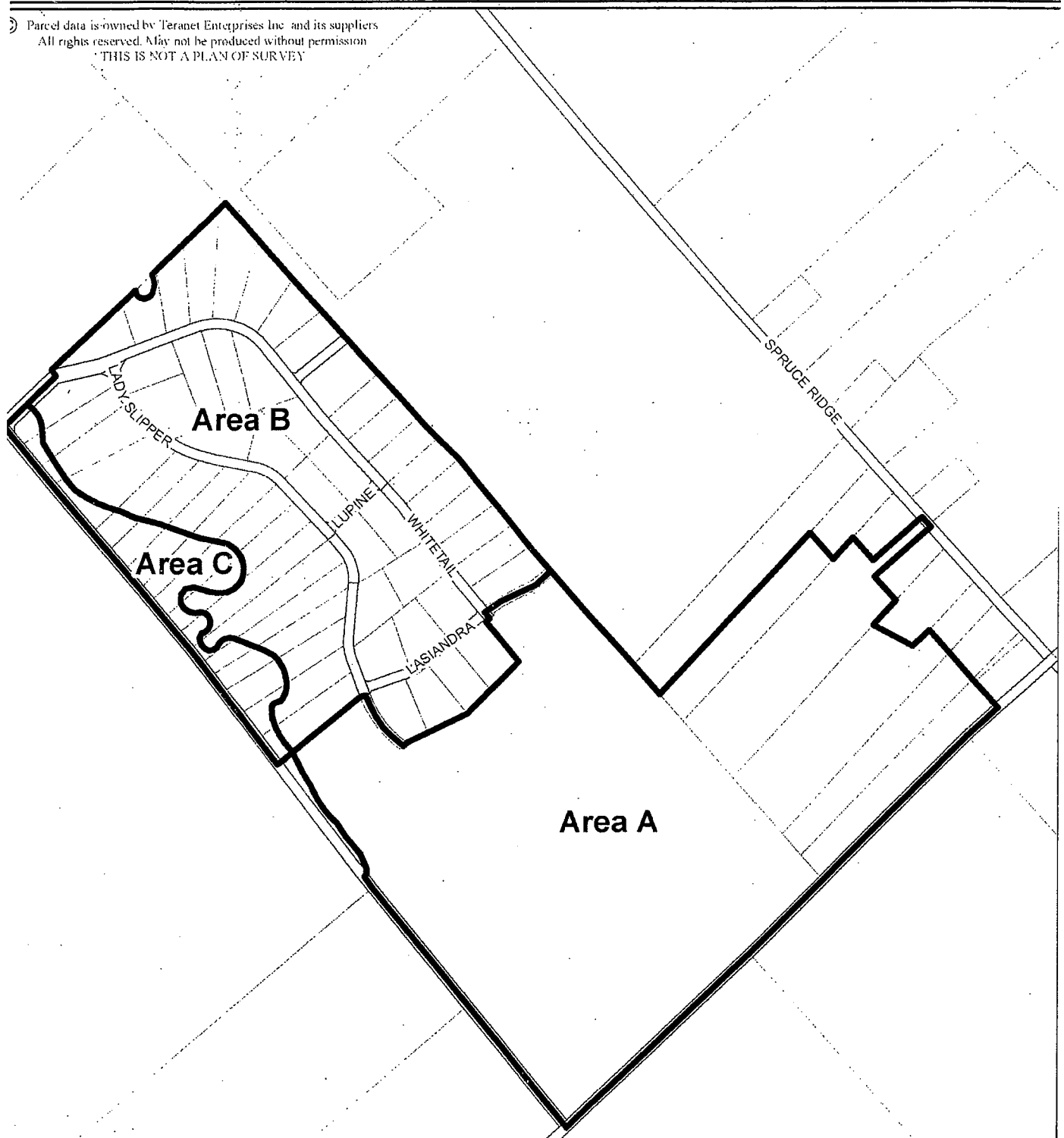
Lands Affected by By-law

Area A Rezoned from RR3 to RR3[329r]
 Area B Rezoned from RR2[520r] to RR2[330r]

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**Lands Affected Part of
The Zoning Map
of By-law No. 2008-250**

This is Attachment 4 to By-law Number _____, passed _____, 2009

Lands Affected by By-law

- Area A Rezoned from RU to RU[332r]
- Area B Rezoned from RR2 to RR2[331r]
- Area C Rezoned from RR2[129r] to RR2[333r]

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ATTACHMENT "2"

BY-LAW FOR CONSIDERATION BY
THE ONTARIO MUNICIPAL BOARD

A by-law of the City of Ottawa to amend By-law No. 2008-250 to correct technical errors to resolve certain appeals to the Ontario Municipal Board.

The Council of the City of Ottawa, pursuant to Section 34 of the *Planning Act*, R.S.O.1990, enacts as follows:

1. The Zoning Map of By-law No. 2008-250, entitled "City of Ottawa Zoning By-law" is amended by changing the zoning for the lands known municipally as 800 Stonehaven Drive shown as Area A on Attachment 1 to this by-law from LC7[74] to LC7[1694].

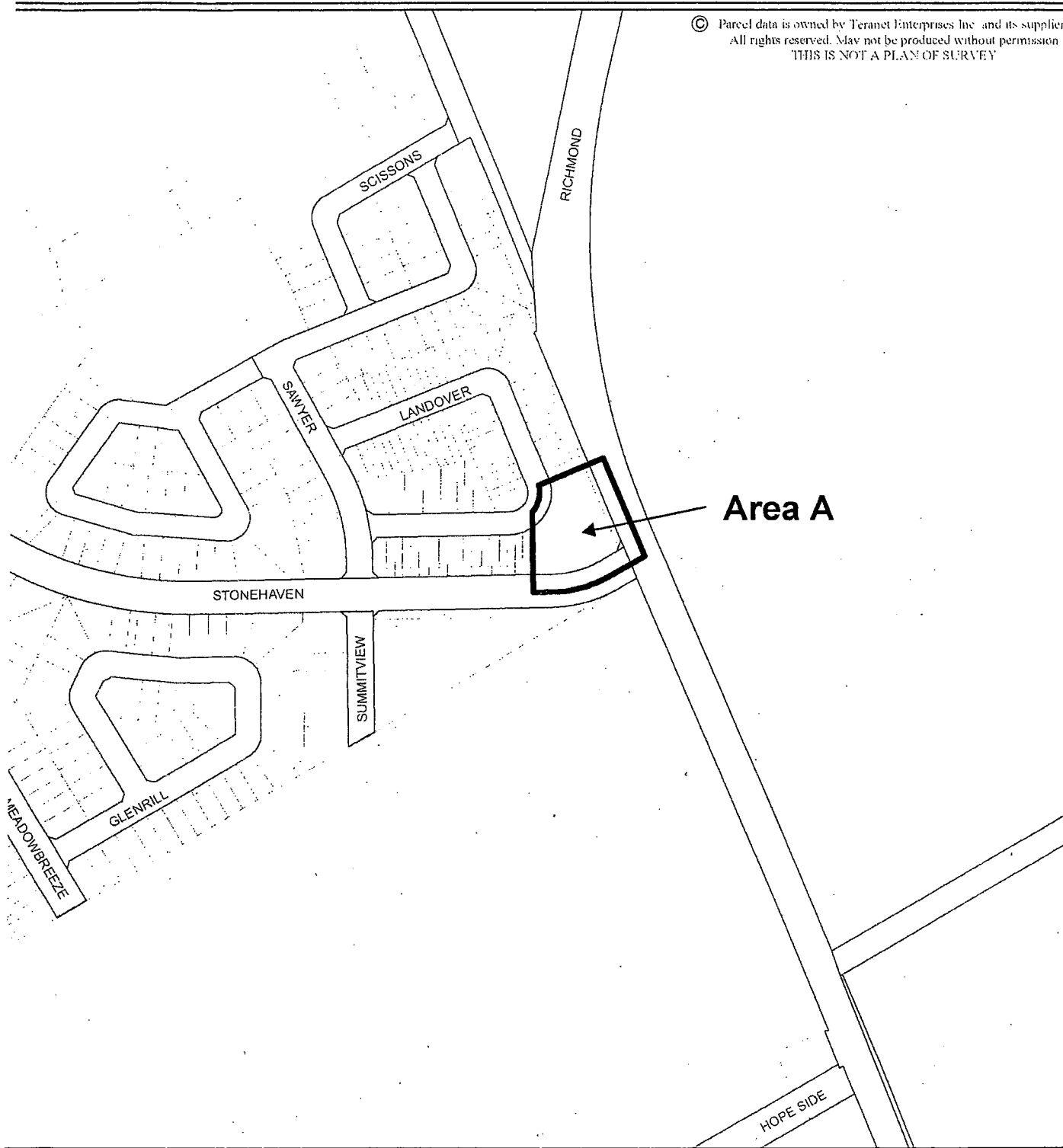
2. Section 239 – Urban Exceptions of the said by-law is amended by adding the following exception:

I Exception Number	II Applicable Zone	Exception Provisions		
		III Additional Land Uses Permitted	IV Land Uses Prohibited	V Provisions
1694	LC7[1694]	- automobile service station - gas bar - car wash - convenience store		

3. Subclause (c)(ii) of Table 112 of the said by-law is amended by deleting the text appearing after the words "With order board:" and replacing it with the text "7 before/at order board and a minimum total of 11".

APPROVED by the Ontario Municipal Board on the _____ of May, 2009

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**Lands Affected Part of
 The Zoning Map
 of By-law No. 2008-250**

This is Attachment 1 to By-law Number _____, passed _____, 2009

Lands Affected by By-law

Area A Rezoned from LC7[74] to LC7[1694]

047424114 Denotes Teranet-Polaris Parcel Identification Number

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