

ISSUE DATE:

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PL090665

Ontario
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