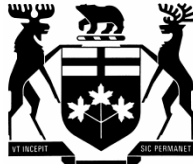


ISSUE DATE:

**JUN. 3, 2011**



Ontario

Ontario Municipal Board

PL101191

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

Appellant: Wayne Holman  
Subject: 2010-58 (of the former Township of Brant)  
Municipality: Municipality of Brockton  
OMB Case No.: PL101191  
OMB File No.: PL101191

### **APPEARANCES:**

#### **Parties**

Price Schonstrom Inc.

Wayne Holman

Municipality of Brockton

#### **Counsel**

P. T. Fallis

G. C. Magwood

#### **Participant**

Marie McDonald

### **DECISION DELIVERED BY M. A. SILLS AND ORDER OF THE BOARD**

Price Schonstrom Inc. (PSI/Applicant) made an application to the Municipality of Brockton to amend Zoning By-law 92-35 of the Town of Walkerton, to allow for the use of the subject property as a parking area for the exclusive use of the employees of their adjacent manufacturing facility. The subject property is described as Plan Lot 1, Plan 7 (EXP Plan 722; Part 2) and Lots 1 and 2, 7 William W/S in the Municipality of Brockton (geographic Town of Walkerton).

In September 2010, Council adopted Zoning By-law Amendment 2010-58 (ZBA), which effectively rezoned the lands from "Residential - 'R2' Zone" to "Residential Special 'R2-x' Zone", to permit the property to be used as a parking lot. Wayne Holman (Appellant) filed an appeal of that decision. Subsequent to filing the appeal, the

Appellant brought a Motion seeking a Board Order declaring that Brockton By-law 2010-58, as enacted, does not conform to the Walkerton Community Official Plan, and contravenes Zoning By-law 92-35. The Applicant has filed a Response to the Motion.

Prior to the commencement of the hearing, the Parties informed the Board that they have agreed to set aside the Motion in favour of proceeding directly to a hearing on the merits of the appeal. It was the consensus of the Parties that proceeding in this manner would result in a more expeditious use of hearing time. The Board agreed.

Ms Marie McDonald, who resides across the street from the subject lands at 113 William Street, requested and was granted Participant status. She has concerns with respect to the subject property being used as a parking lot.

## **Background**

The lands that are the subject of this application consists of a 0.35 hectare parcel east of the Saugeen River, are bound by William Street to the west and Durham Street to the north. The subject lands are designated "Primary Urban Community" by the County of Bruce Official Plan (OP) and "Residential" by the Walkerton Community Official Plan (WCOP). Historically, these lands were zoned "M1 – Light Industrial" in the Walkerton Comprehensive Zoning By-law 2375 (1966), and subsequently rezoned to "R2 – Residential 2" in Comprehensive Zoning By-law 84-41 (1984).

Since 1981, PSI has operated a metal fabrication manufacturing facility on the industrially zoned lands immediately flanking the subject property to the east (municipally known as 603 Durham Street East). PSI, who employs approximately 40 full time certified tradespersons, is a leading expert in the design and manufacture of specialty stainless steel process equipment and pressure vessels. The lands occupied by PSI were historically part of a national railway company and used for railway purposes including freight yards and storage depots.

In 2006, PSI acquired the corner lot portion of the subject lands (Part Lot 1, Plan 7). Since acquisition, the Applicant has removed a small amount of vegetation and applied gravel surfacing to facilitate the use of the property as a parking lot for PSI employees. As this lot is at a lower elevation from the lands on which the manufacturing facility is sited, a set of wooden stairs has been installed to allow employees to conveniently access the plant without having to leave PSI property. The two lots

immediately south of the corner lot (Lots 1 and 2 E/S William Street, Plan 7) were acquired by PSI in 2010 for the express purpose of expanding the employee parking area. Together, these three lots form the land parcel which is the subject of this rezoning application. The remaining PSI lands are zoned for general industrial use. The lands to the north, south and west are used for residential uses.

### **Position of the Appellant**

Wayne Holman purchased his residential property located at 121 William Street in 1990. His property abuts the most southerly lot acquired by PSI in 2010. He contended that a parking lot does not present a “welcome sight”, and he is concerned that the property will become a “junk heap”. He contended that the proposed use as a parking lot is “aesthetically not compatible with the residential nature of the neighbourhood” and will lower property values. He is also concerned that the proposed use will result in an increase in commercial traffic on William Street, and the on-site storage of snow in the winter months will contribute to basement flooding of homes in the immediate area.

Under cross-examination, Mr. Holman acceded that PSI existed at the time that he purchased his home, and has co-existed with the neighbourhood for many years. With respect to the issue of basement flooding, while he conceded that past occurrences have been attributed to the Saugeen River, he believes this situation will be compounded by the storage of snow on the subject property.

Ms Karen Baker owned and resided at the property located at 113 William Street from 2001 to 2009. She was called as a witness by the Appellant. Ms Baker testified that up until 2009, the three vacant lots across the street from the home she formerly owned were “lovely treed lots”. During the year of 2008 to 2009, the trees were taken down, and the ground levelled and gravelled for the purpose of developing the area as parking lot. It was her evidence that “at no time previous to the clearing and levelling of the three lots were any of those three lots ever used for parking”. She contended that the parking lot “detracts from the residential streetscape of William Street”.

### **Concerns of the Participant**

Ms Marie McDonald purchased, and now resides at the property formerly owned by Ms Baker. She told the Board that at the time of purchasing her property, she was

told by the real estate agent that the subject lands were zoned residential. She testified that she has concerns with respect to the future of her property; specifically, that the parking lot will result in increased noise, dust and traffic, and on-site snow storage will exacerbate the “water problems” already being experienced by local residents. She expressed further concerns related to overall aesthetics and “having to look at a parking lot”.

### **Position of the Applicant**

Mr. Richard Grubb has been an employee of PSI since 1996, and President of the company since January 2009. He is a long time resident of Walkerton. Prior to moving to his present location, he and his family resided in the immediate vicinity of the PSI facility. He asserted that during the time in which he lived near the property, PSI had “no impact on his quality of life”.

He told the Board that PSI has grown over the 30 years since it was established, and the additional property acquisitions were intended to accommodate increased employee parking needs, and eliminate nuisance on-street parking. He testified that after purchasing the northern portion of the subject lands in 2006, PSI cut down one or two trees, applied a gravel surface cover, and installed the wooden staircase. This area has been used as an employee parking lot since it was acquired by PSI. He submitted that some trees have been removed from the property by the Town and/or other persons. Except for cutting the overgrown vegetation, the southern portion of the subject lands has not been touched since it was acquired in 2010.

Mr. Grubb told the Board that it is his understanding that for several years the subject property was used as a parking lot for employees of the Canada Spool and Bobbin Company. This company was formerly located across Durham Street to the north and is now the site of a condominium development. The lands which are the subject of this application were subsequently sold and ceased to be used as a parking lot until being purchased by PSI in 2006.

Mr. Grubb testified that PSI had not received any complaints regarding use of the original parcel as a parking area. In fact, Mr. Grubb stated he was not even aware that a zoning by-law amendment was required until a complaint by Mr. Holman regarding the proposed re-development of the property in 2010. Mr. Grubb further asserted that “it would appear that Mr. Holman has been using PSI property for parking”. In support of

this contention, he submitted photos which clearly reveal an automobile owned by Mr. Holman, as well as a commercial vehicle, parked on PSI property.

### **Planning Evidence**

The Board heard from Mr. John Cox and Ms Heather James, both qualified to provide expert opinion evidence in land use planning matters.

Mr. Cox provided a planning report after reviewing the applicable municipal planning documents, and the background material provided by the Appellant. It was his opinion that as a parking lot is not a residential use, the proposed ZBA is not in conformity with the WCOP (2001) or the County OP (2009). He opined that an Official Plan Amendment would be required to permit the property to be used as a parking lot.

Mr. Cox submitted that the County OP (approved in June 2010) designates Walkerton as a Primary Urban Community, and delegates detailed land use policies to the local OP. The WCOP designates the subject property as Residential. The relevant applicable permitted uses criteria for properties within the Residential designation are set out in subsection 3.1.3c) which states:

*“Other uses compatible with residential neighbourhoods may also be permitted including such uses as public parks, bed and breakfast operations, home occupations, group homes, day nurseries, day schools and local commercial uses”.*

Mr. Cox opined that of the permitted uses listed in this provision, none are applicable to a parking lot which extends an industrial use on to adjoining land. While the latter three uses may include parking areas, in these instances, a parking lot is clearly intended to be accessory to the main permitted use.

Mr. Cox asserted that he does not agree with the opinion of municipal planning staff that the proposed parking area can be considered a local commercial use. Local commercial uses are intended to serve the surrounding residential neighbourhood, and are usually considered to be uses such as convenience stores, personal service uses, day care centres, etc. Parking areas associated with these types of development are clearly intended to be ancillary to the principal use. He opined that the use of the lands for a parking lot does not offer any amenity to the neighbourhood and is not compatible with neighbouring residential uses.

The designations and permitted uses of the WCOP do not permit parking lots which are adjacent to separately designated industrial uses. Neither the “Residential” nor the “Business Park” designations provide any policy which permits parking on adjacent land within another OP designation. In contrast, the WCOP does support the relocation of industrial uses located within residential areas, rather than permitting their expansion on to adjacent lands, as set out in subsection 3.7.2c), which states:

*“Encourage the relocation of highway commercial uses and industry located in commercial and residential areas to more appropriate lands within Walkerton”*

Likewise, a parking lot is not a use permitted within Zoning By-law 92-35. The parking requirements of the zoning by-law do not set out provisions for locating parking areas on property within a separately zoned property adjacent to the main use. It was his opinion that the subject application should be refused.

Ms Heather James, a land use planner employed by the County of Bruce, prepared the municipal planning report with respect to this application. It was her opinion that the proposed ZBA is consistent with the Provincial Policy Statement (PPS), conforms to the County OP and the WCOP, and represents good land use planning.

Ms James provided the Board with a chronology of land uses related to the subject property, confirming her understanding that Plan 7, Lots 1 and 2 had been used for parking purposes by the Canada Spool and Bobbin Company from 1956 to 1982. These lands were acquired by Richard Grubb for employee parking purposes in order to relieve parking congestion on municipal roadways and PSI lands. The most northerly lot is currently used for this purpose.

The “R2” zone permits residential uses, home occupations and accessory buildings/structures. Ms James submitted that the proposed ZBA is very restrictive and would limit the permitted use of the subject property to a parking area for the exclusive use of PSI employees; parking of trucks or other machinery, and outdoor storage uses is prohibited. In addition, the property will be subject to site plan control By-Law No. 2010-59, which was also passed by Council, requires a Site Plan Control Agreement (SPCA) be registered on title with the lands.

Ms. James confirmed that Mr. Holman submitted a letter of objection to the subject application prior to the related public meeting. In his letter, Mr. Holman outlined his concerns and requested that specific criteria be included in the SPCA. Ms James

testified that she attempted to address many of his concerns in her planning report and related recommendation to Council respecting the contents of the ZBA. Moreover, she is prepared to support many of his requests regarding specific provisions of the SPCA. She contended that of the many site plan control requests made by Mr. Holman, there were only three that she could not support. These included a requirement for surface paving and perimeter fencing, and the prohibition of lighting. She was concerned that paving the area would potentially decrease surface water drainage and ground absorption, and the absence of lighting could result in safety concerns. While she was prepared to support fencing on the boundary line separating Mr. Holman's property from PSI lands, she felt that fencing of the north and rear lot lines was not necessary.

The WCOP, originally adopted in September 2001 and approved by the County in November 2001, is the lower-tier local Plan in force and effect for the subject lands. This Plan has been replaced with a new OP adopted in October 2009 and approved by the County in December 2009.

Ms James is of the opinion that the proposed parking area can be considered to be a local commercial use as it will provide parking for an adjacent industrial use in an existing residential community. A portion of these lands have been used for parking purposes and co-existed with the residential community for many years. Ms James contended that keeping the subject lands within the "Residential" zoning category will protect the neighbouring residential homes from incompatible uses. The proposed ZBA will ensure that PSI employee parking is the only additional use that will be permitted on the subject property. In the event that PSI ceases to use the property for employee parking, the lands will only be permitted to be used for other residential purposes. As well, permitting parking on the subject lands will mitigate the impact of on-street nuisance parking and ensure that emergency vehicles have unobstructed access to the residential neighbourhood.

Ms James referred the Board to WCOP policies pertaining to the comprehensive zoning by-law, as follows:

*Section 7.5 (c) Existing legal non-conforming land uses may be placed in zones that do not correspond with the Land Use designation of the Official Plan. The Comprehensive Zoning By-law may recognize existing uses, provided the following criteria are met:*

- i) *The applicable zone does not permit as-of-right, changes in the use of the building(s), structures(s) or lot that would result in significant impacts on adjacent uses;*
- ii) *The recognition of the legal non-conforming use does not represent a danger to surrounding uses and/or persons; and,*
- iii) *The legal non-conforming use does not interfere with the desirable development or enjoyment of the adjacent area.*

*Section 7.5 (e) It is not the intent of this Plan to zone all lands in accordance with the land use designations until such time as the policies of the Plan can be met. However lands may be pre-zoned in accordance with the land use designations provided that Council is satisfied that it will further the goals and strategic objectives, and other relevant objectives and policies of this Plan.*

Ms James contended that the WCOP does not require the zoning on the property to be in conformity as it is a historical use, and will accomplish other goals and objectives of the Plan. The parking area conforms to the WCOP but is not a permitted use. The site-specific ZBA permits the lands to be used for parking purposes for the exclusive use of PSI employees. Should the property no longer be required for this purpose, it will revert back to uses permitted in the “Residential” zoning category. Since parking is an existing use of the subject lands, no significant impacts will result, nor will the surrounding uses be endangered. In fact, provisions of the SPCA will require landscaped areas resulting in the aesthetic enhancement of the property. The proposed site-specific ZBA, along with the requirement for a SPCA, will minimize any potential impacts to the residential neighbourhood.

Ms James argued that the permitted uses for lands designated Residential as set out in Section 3.1.3 (c), is not intended to be an all-inclusive list. Rather, the intent of this section is to ensure that the proposed use can demonstrate compatibility with the residential neighbourhood. It was her opinion that the site-specific ZBA and SPCA will ensure the parking area is compatible with the residential neighbourhood. The proposed parking area will be organized, landscaped and fenced appropriately in order to enhance the aesthetic appearance of the property and ensure compatibility with adjacent land uses. The provision of a parking area on these lands will eliminate the



need for on-street parking by PSI employees, thereby eliminating nuisance parking while at the same time, increasing the availability of street parking for the use and convenience of the residential neighbourhood.

Ms James opined that the proposed parking area will fulfill economic goals and objectives of the WCOP intended to encourage retention of industry and employment opportunities. PSI is a well-established, stable industry which provides employment opportunities for local residents, and has been in existence for decades in this residential neighbourhood.

The subject lands are within the Flood Fringe Constraint Area of the Saugeen River and as such, are subject to the Environmental policies of the WCOP, the Saugeen Valley Conservation Authority's (SVCA) *Interference with Wetlands and Alteration to Shorelines*, and the Watercourses Regulation (Ontario Regulation 169/06). These policies encourage the protection of life and property by respecting natural and man-made hazards and constraints in land use development, by leaving them in a natural state. No buildings or structures are proposed and the surface material to be used is a hard-packed permeable substance which will allow for natural ground water drainage. In a letter dated August 5, 2010, the SVCA confirmed they have "*no objection to the approval of the application that will permit the use of the subject lands as a parking lot in conjunction with the adjacent general industrial use*".

The subject lands are designated as Primary Urban Community in the County OP. Permitted uses include a variety of residential development, home occupations, commercial, industrial, recreational/open space, institutional facilities, hazard land areas and transportation facilities. Local OP's are to be prepared in accordance with the policies of the County OP in order to guide and control the future physical, economic and social development of the community, and to more clearly define the boundaries of the urban community. It was Ms James opinion that the proposal conforms to the intent of the County OP.

Ms James opined that the proposal is consistent with PPS policies respecting promoting efficient development and land use patterns which sustain the financial well-being of the Province and municipalities, and providing for an appropriate range and mix of residential and employment uses, including industrial, commercial and institutional uses (Section 1.1.1). She submitted that PSI is an industry which provides employment for the local community, and a parking area is a necessary accessory use to an

adjacent industrial property. Likewise, the proposal is consistent with Section 1.3.1(c) which sets out that, planning authorities shall promote economic development.

### **Analysis and Disposition**

The Board has carefully reviewed the applicable Provincial and municipal planning documents, and considered the evidence of Mr. Cox and Ms James, and the concerns of local residents. With respect to the expert witnesses, I found the evidence of Ms James to be more comprehensive and more convincing.

Ms James testified that the proposed site-specific ZBL will limit use of the area to parking for PSI employees. The continued use of the "Residential" zoning category will ensure that should the property no longer be required by PSI for parking purposes, it will revert back to other residential uses.

Mr. Cox argued that a parking lot is not a residential use and an Official Plan Amendment would be required in order to permit the subject property to be used for this purpose. The Board finds that the evidence does not support this contention. Section 7.5 (c) of the WCOP sets out criteria which specifically permits non-conforming land uses to "*be placed in zones that do not correspond with the land use designation of the Official Plan*". The specific criterion emphasizes that consideration must be given to the potential for impacts on adjacent uses/persons.

There can be no dispute that the focal issue for the Board to determine in this matter is whether or not the proposed use of the subject property as a parking lot is compatible with the surrounding residential uses.

The Board is satisfied that the Municipality has attempted to balance the concerns of the Appellant and local residents, while at the same time consider the needs of a long time local industry. It was further evident to the Board that Ms James has made every attempt to address the concerns of the Appellant by supporting many of his requests related to provisions of the SPCA.

The subject lands have been used for parking purposes for several years. Mr. Grubb testified that "PSI never received a complaint from anyone regarding the use of the land as a parking lot from 2006 to 2010". There was no evidence before the Board to indicate anything other than that PSI has co-existed harmoniously with the residential community for more than thirty years. In this regard, the Board accepts the testimony of

Mr. Grubb that PSI has attempted to be a “good neighbour” to the local residential community. He provided the Board with two letters which were circulated to local residents and neighbours of PSI (Exhibit 2 – Tab 3). These letters provide updates related to PSI’s development plans, and invite residents to comment by either attending a scheduled Open House or by contacting company officials. The Board notes the content of the letter dated August 25, 2010 as follows:

*“We want to keep you informed and encourage you to call with any questions. Our aim is to be a good neighbour, realizing that we have a special challenge being an industry located in a residential area. Our door is always open for you to visit us and work with us”.*

Likewise, there was no compelling evidence presented which could demonstrate that the existence of the parking area, has resulted in the creation of adverse impacts to the neighbours or the neighbourhood.

With respect to the concerns expressed by Ms McDonald and Mr. Holman related to dust, noise, increased traffic, water problems and aesthetics, while the Board can appreciate their desire to protect their own residential properties, I find that these amount to little more than an apprehension of impact. The proposed ZBA is very restrictive with respect to how the property can be used; the parking of trucks and other machinery on the property, outdoor storage and the erection of buildings, is prohibited. The SPCA will address parking layout and the type of surface material to be used, as well as require a defined entrance/exit, landscaping along the front and side lot lines, fencing along the property line abutting the Appellant’s property, safety lighting, and a snow storage strategy.

The WCOP sets out goals which are intended to identify the future direction of the community. The Board notes the goals set out in *Section 1.5 – Community Goals*, as follows:

*d) To provide a positive economic climate to attract industry, encourage private investment, create a wide range of employment opportunities, and enhance a balanced municipal assessment base.*

*e) To promote the attraction and retention of light and environmentally clean industry to diversify the economic base and provide employment opportunities.*

Section 1.1.1 of the PPS sets out policies for sustaining healthy, liveable and safe communities by “promoting efficient development and land use patterns which sustain the financial well-being of the Province and municipalities” and by “accommodating an appropriate range and mix of residential, employment (including industrial, commercial and institutional uses) ... to meet the long term needs” of the community.

The proposed ZBA will accommodate the needs of a well-established local industry, and provide the Municipality with an opportunity to fulfill goals and objectives related to retention of industry, and the preservation of employment opportunities. As such, the Board finds that the Municipality has acted in the greater public interest by approving the ZBA.

For the reasons stated above, the Board is satisfied that the proposed ZBA is appropriate, and represents good land use planning. The proposal is consistent with municipal and Provincial planning policies and supports the goals and objectives of the WCOP.

**THE BOARD ORDERS** that the appeal is dismissed.

The Board so Orders.

“M. A. Sills”

M. A. SILLS  
MEMBER