

ISSUE DATE:

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PL120995

Ontario
Ontario Municipal Board
Commission des affaires municipales de l'Ontario

Recchia Developments Inc. has appealed to the Ontario Municipal Board under subsection 22(7) of the *Planning Act*, R.S.O. 1990, c. P.13, as amended, from Council's neglect to enact a proposed amendment to the Official Plan for the City of Hamilton to redesignate lands at 231 York Road to add a site specific exception to the Residential designation to permit the proposed residential development
Approval Authority File No. OPA-11-019
OMB File No. PL120995

Recchia Developments Inc. 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 neglect to enact a proposed amendment to Zoning By-law 3581-86 of the City of Hamilton to rezone lands respecting 231 York Road from R2 to R1 to permit the proposed residential development
OMB File No. PL120996

APPEARANCES:

Parties

Counsel

Recchia Developments Inc

Nancy Smith

City of Hamilton

Michael Minkowski

DECISION DELIVERED BY C. HEFFERON AND ORDER OF THE BOARD

BACKGROUND

[1] The subject appeal to the Ontario Municipal Board ("Board") concerns a 0.42 ha site municipally known as 231 York Road in the former Town of Dundas, now the City of Hamilton ("subject lands").

[2] The subject lands are composed of what had been two separate parcels that later merged after an earlier owner acquired them. That earlier owner spent several

years seeking permission from the City of Hamilton (“City”) to re-develop the subject lands with 18 townhouse residential units. That concept was exhibited to the evidence as Exhibit 2, Tab 2, page 7.

[3] In November 2012, Recchia Developments Inc (“Recchia”) acquired a beneficial interest in the subject lands from the earlier owner. Recchia applied for amendments to the (former) Town of Dundas Official Plan and to the (former) Town of Dundas Zoning By-law No. 3581-86 for the purpose of re-developing the subject lands with 18 townhouse residential units. This Recchia concept plan was essentially the same concept plan that had been proposed by the earlier owner.

[4] Both this Recchia proposal and the earlier proposal involved demolishing an existing single detached home on the site and replacing it with a row of townhouse residential units laid out lengthwise or perpendicular to York Road. The first two Recchia concept plans were exhibited to the evidence as Exhibit 2, Tab 2, pages 8 and 9.

[5] Both of these proposals to redevelop the subject lands with townhouses met with considerable opposition from the residents of York Road, Forestview Drive, Cammay Drive and Fieldgate Street, particularly from those residents whose properties are adjacent to the subject lands. In response to opposition from the local residents and from the City, Recchia made a number of modifications to the original proposal.

[6] The current application with a draft site plan was submitted to the City on May 11, 2012. It represents a further modification to the draft site plan and application. The current draft site plan (as shown in Exhibit 2, Tab 2, Page 10) was modified to reflect the latest comments from City planning staff. In the current draft site plan, the four-unit block of townhouses on the west portion of the subject lands (as shown in Exhibit 2, Tab 2, page 8 and 9) has been replaced with a single family detached home. This modification reduced the unit count to 15, that is, 14 townhouse residential units plus one single family detached home.

[7] The application before the Board is, then, to develop a total of 15 residential units on the subject lands.

[8] The site layout is shown on the draft site plan, which was exhibited to the evidence as Exhibit 2, Tab 2, page 10. The draft site plan is not before the Board.

STATUTORY CONTEXT

[9] The applicable official plan is the (former) Town of Dundas Official Plan, referred to hereinafter as the “DOP” and the applicable zoning by-law is the (former) Town of Dundas Zoning By-law 3581-86, which is referred to hereinafter as the “By-law”.

[10] Although the Urban Hamilton Official Plan (“UHOP”) has been adopted by the City and approved (with modifications) by the Province, it is not determinative for the purpose of these proceedings. It has been appealed in its entirety and is therefore not in force. Because the UHOP, which will eventually also replace the Regional Municipality of Hamilton-Wentworth Official Plan (“ROP”), has been appealed, the ROP is also still in force.

MATTER BEFORE THE BOARD

[11] Recchia has appealed to the Board the refusal or neglect of the City to make a decision within 180 days on (Recchia’s) application for a site-specific amendment to the DOP to allow a townhouse residential development on the subject lands at a density of 36 u/p/ha.

[12] Recchia has also appealed the refusal or neglect of the City to make a decision within 120 days on its application for a site-specific amendment to the By-law to:

1. Permit a reduced setback for the proposed Block A from York Road. Block A is shown on Exhibit 2, Tab 2, page 10;
2. Permit reduced landscaped open space (resulting from the reduced front yard setback);

3. Permit a reduced buffer strip along the west property line, and
4. Add “single family detached home” as a permitted use.

PARTICIPANTS

[13] The Board granted participant status to the following:

- Jennifer Lawrence
- Penelope Hill
- Tracy Rivers
- Michele McInnes
- Barbara Bucciachio
- William and Joyce Moore
- George Vnoucek
- Brad and Leigh Tutt

THE PARTICIPANTS’ POSITION

[14] The participants oppose the proposed development because they are of the view that the requested density is too high and because both the townhouse building form and the proposed site plan or site concept offend the character of the existing community.

THE CITY’S POSITION

[15] The City supports the participants’ position.

RECCHIA’S POSITION

[16] Recchia contends that the proposed development complies with the residential intensification policies of the Province, the Region, the (former) Town of Dundas, and the City, as set out in the UHOP. It also holds the view that both the design and draft site plan or site concept are compatible with the character of the existing community.

EVIDENCE AND FINDINGS

[17] The Board qualified Bill Curran, who is an architect, to provide opinion evidence on architecture and urban design. Mr. Curran testified that the latest draft site plan, which was exhibited to the evidence as Exhibit 2, Tab 2, page 10, represents good urban design and fits the character of the existing homes and other development in the nearby community.

[18] His definition of the nearby community included all of the lands within a 10 minute walk of the subject lands. He advised that within a five minute walk of the subject lands, there are some 64 townhouse residential units in a development composed of several buildings set both lengthwise and crosswise on that large site. These can be seen on the aerial photo exhibited to the evidence as Exhibit 38. There is also an L-shaped 2-storey building that includes a long-term care home with ground floor neighbourhood-type retail. And within a six to 10 minute walk, there is a public school. The circles drawn on Exhibit 12 illustrate Mr. Curran's five and 10 minute walks.

[19] Mr. Curran's definition of the boundaries of the neighbourhood was vigorously disputed by several of the participants, who contended that their neighbourhood, as they define it, is composed exclusively of single-family detached homes. They defined the boundaries of their neighbourhood as being the area between roughly Watson's Lane on the west and the designated rural lands several blocks to the east. The participants contended that their neighbourhood is separated from the mixed or varied forms of development west of Watson's Lane by a Hydro corridor. They also maintained that the Hydro corridor represents a clear line of demarcation between the two areas. Their homes on large lots with ample front and rear yards can be seen in the aerial photo exhibited to the evidence as Exhibit 38.

[20] In his cross-examination, Michael Minkowski, who is counsel for the City, challenged Mr. Curran's ground-level knowledge of the neighbourhood surrounding the subject lands.

[21] The City called Edward John, Manager of the Development Planning Section of Hamilton's Planning and Economic Development Department. The Board qualified Mr. John to provide opinion evidence on land use planning. He testified that the local community includes only those lands identified as "York Road" in Schedule Q of the By-law. They do not, in his view, include any of the properties west of Watson's Lane.

[22] Nancy Smith, Counsel for Recchia, challenged both Mr. John's evidence as well as his qualifications to provide opinion evidence on urban design. The Board accepts Ms. Smith's submission on this matter and finds that Mr. John, a land use planner, was not qualified to give opinion evidence on urban design. The City did not call any other witnesses qualified to give opinion evidence on urban design.

[23] However, the Board found Mr. John's opinion evidence on land use planning matters pertaining to the area defined by Schedule Q of the By-law, which Mr. John said is referred to as the "York Road" planning area among City officials, to be both detailed and knowledgeable.

[24] The Board does not accept Mr. Curran's urban design evidence that the local community includes both the single family detached homes along York Road, Fieldgate Street, Cammay Drive and Forestview Drive, as well as the townhouse development and the long term care facility with ground floor retail immediately west of Watson's Lane and north of York Road.

[25] Mr. Curran and Mr. Fothergill both testified that the townhouse development on the west side of Watson's Lane, that has existed for what Mr. Curran estimated has been at least 35 years has had no adverse impact on the single family homes to the east of this stretch of Watson's Lane. Watson's Lane continues north and east from York Road encircling the single family detached homes in what the City identified in its evidence as the "York Road" area. As noted above, this area is shown as Schedule Q of the By-law.

[26] The Board qualified Edward Fothergill, who was also retained by Recchia, to provide opinion evidence on land use planning.

[27] The Board was persuaded by the detailed evidence of the participants on this matter. They were very clear on what they saw as their neighbourhood and how its physical character should be defined. Accordingly, the Board accepts their evidence, which was supported by the expert evidence of Mr. John and finds that the neighbourhood in which the subject lands are located does not include the existing townhouse, long term care facility and retail development west of Watson's Lane.

[28] Again as noted above, Recchia requires a site specific amendment to the DOP, as well as a site specific amendment to the By-law in order to develop its lands as proposed in the draft site plan entered as evidence as Exhibit 2, Tab 2, page 10.

[29] Section 3.1.3.3 of the DOP restricts development in areas designated "Neighbourhood Residential" to a maximum of 28 units per hectare ("u/p/ha") and among other matters, requires consistency with the Infill Guidelines contained in s. 2.5 of the DOP. Recchia has proposed a density of 36 u/p/ha on the subject lands.

[30] Mr. Fothergill reminded the Board that the new UHOP, which will replace the DOP and the ROP, has been appealed to the Board and is not yet in effect. He pointed out that with the exception of a permitted city-wide density of 60 u/p/ha, the UHOP continues the intent of the documents it will eventually supersede, which is to encourage intensification of not just defined intensification areas (such as the Downtown core and urban corridors) but also of all residential areas located within the Hamilton urban area.

[31] Mr. John disagreed with Mr. Fothergill on this interpretation of the UHOP. He took the Board to the (2005) Provincial Policy Statement ("PPS"), s. 4.5, which reads in part:

"The official plan is the most important vehicle for implementation of the PPS".

[32] Mr. John testified that although the entire municipality may be developed at a density of 60 u/p/ha, it is the intent of the UHOP that this threshold is included only to allow maximum flexibility to both City officials and to landowners. It does not mean that the stable residential neighbourhoods (such as, the area he identified as the York Road neighbourhood) are to be re-developed at that density.

[33] He also pointed to the third paragraph of s. 4.5, which provides that:

“Municipal official plans shall provide clear, reasonable and attainable policies to protect provincial interests and direct development to suitable areas”.

[34] The Board accepts Mr. John’s evidence and finds that it is the function of municipal officials to direct development to suitable areas, which they do by use of land use designations. The designation or planned function of the entire York Road planning area in both the DOP and the UHOP is single family detached residential. This means that this area is planned for single-family detached residences. This planned function did not change either when Council adopted the new UHOP or when the Minister of Municipal Affairs and Housing modified parts of (the UHOP) and subsequently approved it.

[35] The Board accepts Mr. John’s evidence and finds that the planned function of the subject lands is for homes, most likely single-family detached homes, fronting on a public road, in this case York Road.

[36] On the evidence of the participants supported by the expert land use planning evidence of Mr. John, the Board finds that the proposed development offends the single family detached residential character of the neighbourhood that Mr. John identified as the York Road neighbourhood.

GENERAL FINDING

[37] On the evidence, the Board finds that although the proposed 15 units physically fit on the site, they do not fit into the neighbourhood. The Board accepts the evidence of Mr. John and finds that the proposed townhouse concept as shown in Exhibit 2, Tab 2,

page 10, contravenes the planned function of the subject lands as set out in the DOP and as well contravenes the standards set down in the By-law for the R2 zone.

[38] Neither the City nor the participants attempted to deny that the subject lands must intensify – that is, they have to be redeveloped with more than two houses, likely considerably more than two houses. On the evidence, the Board finds that the issue to be resolved through negotiation between City planning officials and Recchia is the number of residential units that can be put on the subject lands without compromising the planned function of these lands or offending the character of this stable residential neighbourhood.

ORDER

[39] The Board orders the appeal is dismissed.

[40] The Board orders that the requested amendments to the (former) Town of Dundas Official Plan and the (former) Town of Dundas Zoning By-law No. 3581-86 are not allowed.

“C. Hefferon”

C. HEFFERON
MEMBER