

Ontario Municipal Board
Commission des affaires municipales
de l'Ontario



ISSUE DATE: September 4, 2014

CASE NO(S): PL131185

PROCEEDING COMMENCED UNDER subsection 17(24) of the *Planning Act*, R.S.O. 1990, c. P.13, as amended

Appellant: Dakota Shopping Centres Ltd and SmartCentres Inc.
Subject: Proposed Official Plan Amendment No. 152
Municipality: City of Hamilton
OMB Case No.: PL131185
OMB File No.: PL131185

PROCEEDING COMMENCED UNDER subsection 34(19) of the *Planning Act*, R.S.O. 1990, c. P.13, as amended

Appellant: Dakota Shopping Centres Ltd and SmartCentres Inc.
Subject: By-law No. 13-224
Municipality: City of Hamilton
OMB Case No.: PL131185
OMB File No.: PL131186

Heard: June 9 and 10, 2014 in Hamilton, Ontario

APPEARANCES:

Parties

Counsel

Heritage Highlands Corporation
and City of Hamilton

S. Snider

Dakota Shopping Centres Ltd.
and Smart Centres Inc.

S. Mahadevan

**DECISION DELIVERED BY SUSAN de AVELLAR SCHILLER AND ORDER OF
THE BOARD**

INTRODUCTION

[1] Heritage Highlands Corporation (“Proponent”) wishes to develop a non-enclosed community scale shopping centre anchored by a department store or a supermarket. The intention is to have a range of retail and service commercial uses on the site.

[2] The site is located at 512 Highland Road West within the West Mountain Planning District Secondary Plan Area. This, and the adjacent area, is experiencing rapid residential and employment growth. The proposed shopping centre is intended to help serve this growth.

[3] The site is bounded on the north by Stone Church Road East, on the east by Upper Mount Albion Road, on the south by Highland Road West and on the west by a proposed extension of Trinity Church Road.

[4] The site is in the former City of Stoney Creek, now the City of Hamilton (“City”), and is subject to the City of Stoney Creek Official Plan (“Stoney Creek OP”) and to Zoning By-law No. 3692-92 (Stoney Creek) (“By-law”).

[5] The City adopted a Stoney Creek OP amendment (“OPA”) and associated By-law amendment (“ZBLA”) to permit the proposed development.

[6] Dakota Shopping Centres Ltd. and Smart Centres Inc. (together “Appellants”) appealed the OPA and ZBLA to this Board.

[7] This was a first appearance in these matters. The only interests attending were the Proponent, the City and the Appellants.

ISSUES, ANALYSIS AND FINDINGS

Official Plan Amendment

[8] The Proponent brought a motion, returnable at this appearance, to dismiss the appeals filed by the Appellants. The Appellants own other shopping centre sites in the broader area.

[9] Following discussions between the parties, the Board was advised that a settlement had been reached.

[10] Counsel for the Appellants advised the Board on June 9, 2014 that the Appellants were withdrawing their appeal of the OPA.

[11] With no other appellants to the OPA, and in accordance with s. 17(30) of the *Planning Act*, R.S.O. 1990, c. P.13 ("Act"), the OPA is in force.

[12] Counsel for the Proponent then advised the Board that the motion to dismiss was abandoned.

Zoning By-law Amendment

[13] The ZBLA now before the Board lists the permitted uses on the subject site. As originally adopted by the City, pharmacies were listed as a permitted use. The parties now ask the Board to place a qualifier on the permission for pharmacies. The amended section will now read:

In addition to the uses permitted in Sub-section 8.10.2 of the Community Shopping Centre "SC2" Zone, the following uses shall also be permitted:

- (a) Personal Service Shops.
- (b) Retail Stores, including one Supermarket.

(c) Pharmacies, however, a stand-alone Pharmacy (drug store) shall not be permitted prior to June 6, 2017.

(d) Fitness Centres.

For the purposes of this By-law a "Fitness Centre" shall be defined as: a commercial establishment which houses [exercise equipment](#) for the purpose of [physical exercise](#), personal well-being, and health.

[14] The Board heard from James Webb, a full Member of the Canadian Institute of Planners and a Registered Professional Planner in Ontario. The Board qualified Mr. Webb to provide independent expert opinion evidence in land use planning matters.

[15] The Board also heard from Giuseppe Muto, a full Member of the Canadian Institute of Planners and a Registered Professional Planner in Ontario. The Board qualified Mr. Muto to provide independent expert opinion evidence in land use planning matters.

[16] Both of these experts support the proposed ZBLA and the amendment to limit pharmacies.

[17] The proposed commercial development is within an established settlement area. Although it is outside the Built-up Area Boundary established by the City, it provides a compact form of development that is transit supportive and on established surface transit routes.

[18] The proposed development will assist in creating a complete community, provide employment, serve a growing area and make efficient use of land and infrastructure.

[19] An Archaeological Assessment was completed and submitted to the City and the Province. The report was reviewed and approved. There are no archaeological concerns on the site.

[20] The site contains no Natural Heritage Features or Systems.

[21] The Eramosa Karst Area of Natural and Scientific Interest (“ANSI”) is nearby. Appropriate hydrogeological studies were undertaken to ensure that the proposed development would not impact the karst features of the nearby ANSI. There are no karst features on the site.

[22] A market study was undertaken and demonstrated that existing retail areas will not be adversely affected by this proposed development.

[23] Having considered the uncontested evidence of Messrs. Webb and Muto, the Board finds that the ZBLA, as further amended at this hearing, is consistent with the Provincial Policy Statement, conforms to the Growth Plan for the Greater Golden Horseshoe, conforms to the former Region of Hamilton-Wentworth Official Plan and conforms to the Stoney Creek OP as modified by the OPA.

[24] The Board also finds that the proposed development has had appropriate regard for the matters of Provincial interest, as set out in s. 2 of the Act.

[25] Having regard to s. 2.1 of the Act, the notes that the planning reports of both Mr. Webb and Mr. Muto were before Council, that Council adopted the ZBLA and that the City appears here in support of the proposed further small amendment.

[26] The Board was advised that the Proponent has certain matters relating to the City of Hamilton Urban Hamilton Official Plan (“UHOP”) under appeal and that the Proponent and the City intend to ask the Board to make appropriate amendments, if needed, to the UHOP to reflect the Board’s decision in this matter.

ORDER

[27] The Board orders that:

1. The appeals by Dakota Shopping Centres Ltd and SmartCentres Inc. are allowed in part.
2. Zoning By-law No. 3692-92 (Stoney Creek) is amended in accordance with Attachment 1 to this decision and the City Clerk is authorized to attach an appropriate number to the By-law.

“Susan de Avellar Schiller”

SUSAN de AVELLAR SCHILLER
VICE-CHAIR

Ontario Municipal Board

A constituent tribunal of Environment and Land Tribunals Ontario

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ATTACHMENT 1

CITY OF HAMILTON

BY-LAW NO. [REDACTED]

To Amend Zoning By-law No. 3692-92 (Stoney Creek) Respecting the Property Located at 512 Highland Road West (Stoney Creek)

WHEREAS the City of Hamilton Act, 1999, Statutes of Ontario, 1999 Chap.14, Sch. C. did incorporate, as of January 1st, 2001, the municipality "City of Hamilton";

AND WHEREAS the City of Hamilton is the successor to certain area municipalities, including the former area municipality known as "The Corporation of the City of Stoney Creek" and is the successor to the former regional municipality, namely, The Regional Municipality of Hamilton-Wentworth;

AND WHEREAS the City of Hamilton Act, 1999 provides that the Zoning By-laws of the former area municipalities continue in force in the City of Hamilton until subsequently amended or repealed by the Council of the City of Hamilton;

AND WHEREAS Zoning By-law No. 3692-92 (Stoney Creek) was enacted on the 8th day of December, 1992, and approved by the Ontario Municipal Board on the 31st day of May, 1994;

AND WHEREAS the Council of the City of Hamilton, in adopting Item [REDACTED] of Report 13-[REDACTED] of the Planning Committee, at its meeting held on the [REDACTED] day of [REDACTED], 2013, recommended that Zoning By-law No. 3692-92 (Stoney Creek) be amended as hereinafter provided;

AND WHEREAS this By-law will be in conformity with the Official Plan of the City of Hamilton (formerly the City of Stoney Creek Official Plan) upon the approval of Official Plan Amendment No. [REDACTED].

NOW THEREFORE the Council of the City of Hamilton enacts as follows:

1. That Map No. 15 of Schedule "A", appended to and forming part of By-law No. 3692-92 (Stoney Creek), is amended by changing the zoning from the Neighbourhood Development "ND" Zone to the Community Shopping Centre (Holding) "SC2-7(H1) (H2) (H3) (H4)" Zone, on the lands the extent and boundaries of which are shown on a plan hereto annexed as Schedule "A".
2. That Sub-section 8.10.6, "Special Exemptions", of Section 8.10 Community Shopping Centre "SC2" Zone, of Zoning By-law No. 3692-92, be amended by adding a new Special Exemption, "SC2-7(H1) (H2) (H3) (H4)" Zone, as follows:

“SC2-7(H1) (H2) (H3) (H4)” 512 Highland Road West, Schedule “A”, Map No. 15

Notwithstanding the definition of a “Lot” within Part 2, Definitions and Section 4.4.2, Restriction on Change, those lands zoned Community Shopping Centre “SC2-7(H1) (H2) (H3) (H4)” for the purposes of this By-law shall be considered as one lot.

For the purposes of this By-law, where lands have been comprehensively planned and are subject to an approved Site Plan and a Development Agreement, pursuant to Section 41 of the Planning Act, any zoning deficiencies resulting from the phased development of the subject lands shall be deemed to conform to the regulations of the By-law, provided that all applicable regulations of the By-law relative to the whole lot and its external lot lines are complied with.

In addition to the uses permitted in Sub-section 8.10.2 of the Community Shopping Centre “SC2” Zone, the following uses shall also be permitted:

- (a) Personal Service Shops.
- (b) Retail Stores, including one Supermarket.
- (c) Pharmacies, however, a stand-alone Pharmacy (drug store) shall not be permitted prior to June 6, 2017.
- (d) Fitness Centres.

For the purposes of this By-law a “Fitness Centre” shall be defined as: a commercial establishment which houses exercise equipment for the purpose of physical exercise, personal well-being, and health.

Notwithstanding the provisions of Paragraphs (d), (e), (f), (j) (l), and (m) of Sub-section 8.10.3 of the Community Shopping Centre “SC2” Zone, on those lands zoned “SC2-7(H1) (H2) (H3) (H4)” by this By-law, the following shall apply:

- (d) Total Minimum Gross Leasable Floor Area: 2,000 sq. m.
- (e) Total Maximum Gross Leasable Floor Area: 19,500 sq. m.
 - Maximum Gross Leasable Floor Area for one Supermarket: 4,000 sq. m.
 - Maximum Gross Leasable Floor Area for one Retail Department Store shall not be permitted prior to the year 2018: 6,000 sq. m.

- | | | |
|-----|--|-----|
| (f) | Minimum Yard Abutting the Westerly Lot Line along the Trinity Church Road Extension: | 11m |
| | Minimum Yard Abutting the Northerly Lot Line along Stone Church Road East: | 6m |
| | Minimum Yard Abutting the Easterly Lot Line along Upper Mount Albion Road: | 6m |
| | Minimum Yard Abutting the Southerly Lot Line along Highland Road West: | 6m |
- (j) Minimum Landscaped Area:
1. A landscaped strip, having a minimum width of 3m, shall be provided and maintained adjacent to any public street, except for points of ingress and egress.
 2. A landscaped strip, having a minimum width of 6m, shall be provided and maintained along the westerly lot line (future Trinity Church Road Extension).
 3. An outdoor patio may be permitted to encroach into the required front yard and landscape strip.

Notwithstanding the Parking Regulations in Section 4.10.3 (a), Dimensions of Parking Spaces, no parking space shall be less than 2.6m in width x 5.5m in length, unless otherwise provided for in this By-law.

Notwithstanding the Parking Regulations in Section 4.10.9, Schedule of Minimum Parking Requirements, the minimum parking spaces required shall be 4 spaces per 93 sq. m. of gross floor area.

Notwithstanding the Loading Regulations in Section 4.9.2, Schedule of Required Loading Spaces, no loading space shall be required for commercial buildings having a gross floor area between 1,000 sq. m. to 1,999 sq. m.

In addition to the regulations of Sub-section 8.10.3, the following shall also apply:

The minimum combined width of the ground floor façade of all buildings located within 20m of the Upper Mount Albion Road lot line shall be equal to 40% or more of the measurement of the front lot line, and shall be subject to the following:

- A. A maximum building set back of 6.0m shall apply;

- B. All principal entrances shall be accessible from the building façade with direct access from the public sidewalk; and,
- C. No parking, driveways, drive through lanes, stacking lanes, or aisles shall be located between a building façade and the public street.

The (H1) symbol may be removed by further amendment to this By-law at such time as the following conditions have been satisfied:

- 1. That the owner complete water distribution upgrades to District 7 Pump Station, and provides adequate water supply to the subject lands, to the satisfaction of the Senior Director of Growth Management.

The (H2) symbol may be removed to permit limited development abutting Stone Church Road by further amendment to this By-law at such time as the following conditions have been satisfied:

- 1. That the owner agrees, in writing, to pay its proportionate share towards the existing stormwater management facility located on the north side of Stone Church Road East and services installed on Stone Church Road East, including road urbanization, to satisfy the best efforts obligation, as outlined in the Heritage Green Subdivision Agreement, to the satisfaction of the Senior Director of Growth Management.
- 2. That the owner agrees, in writing, to:
 - i. urbanize Upper Mount Albion Road from Stone Church Road East, including sanitary sewers, as required, from a midblock entrance to Stone Church Road East, to the satisfaction of the Senior Director of Growth Management, and the Director of Engineering Services, Public Works Department;
 - ii. construct sidewalk from required street lighting on Stone Church Road East and Upper Mount Albion Road from the future Trinity Church Arterial Road to a midblock entrance on Upper Mount Albion Road; and,
 - iii. construct a temporary sidewalk from a midblock entrance to Highland Road West;

all to the satisfaction of the Director of Engineering Services, Public Works Department.
- 3. That the owner agrees, in writing, to implement recommendations from an approved, revised TIS for the proposed use, which identifies the current road network conditions, identified restrictions to access on Stone Church Road East, and the impacts and mitigations required for the road

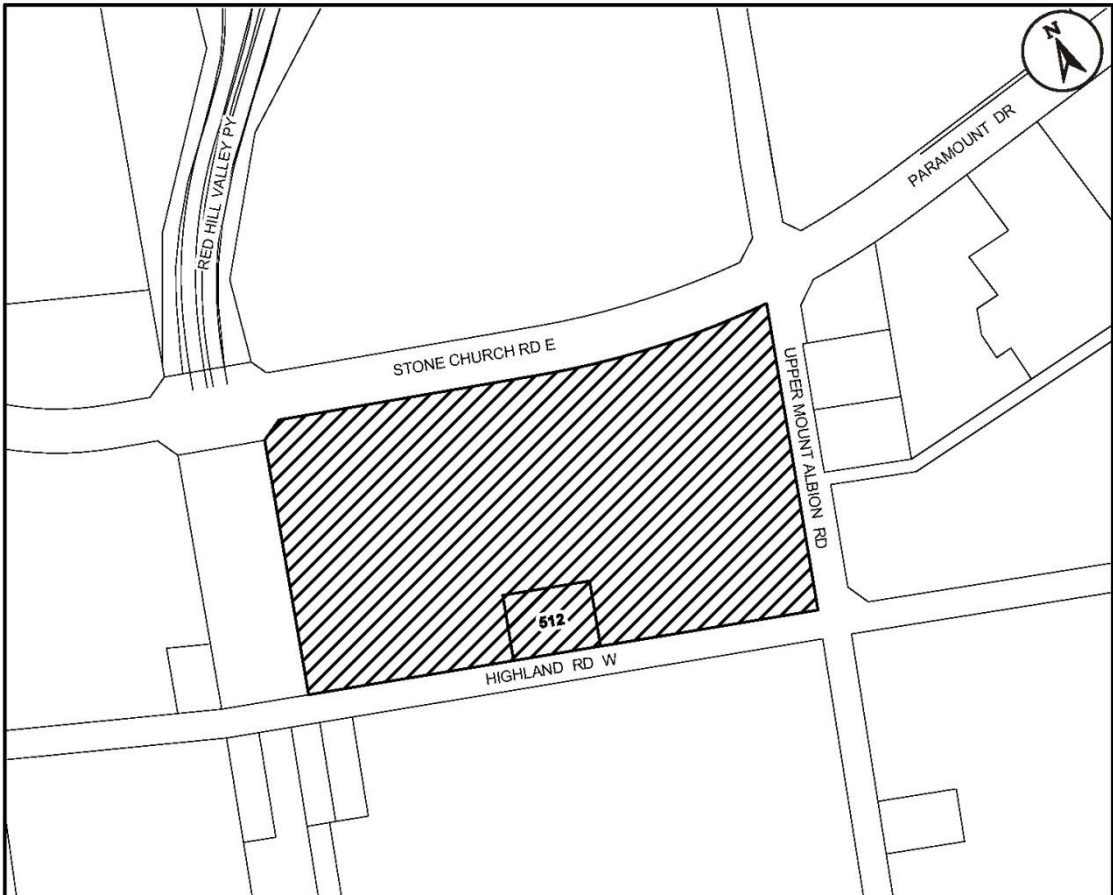
and pedestrian network, to the satisfaction of the Director of Engineering Services, Public Works Department.

The (H3) symbol may be removed by further amendment to this By-law at such time the Trinity Church Arterial Road is constructed to Rymal Road as the following conditions have been satisfied:

1. That the owner agrees, in writing, to implement recommendations from an approved Traffic Impact Study (TIS), prepared by Paradigm Transportation Solutions Ltd., which shall be revised as phasing of the development proceeds, to the satisfaction of the Director of Engineering Services, Public Works Department.

The (H4) symbol may be removed for the remainder of the lands by further amendment to this By-law at such time as the following conditions have been satisfied:

1. That the trunk sanitary and storm sewer outlets at Highland Road West and Upper Mount Albion Road are available, to the satisfaction of the Senior Director of Growth Management.
2. That the owner agrees, in writing, to urbanize (sidewalk, streetlights, and sanitary sewers) for Highland Road West, from Upper Mount Albion to the Trinity Church Arterial Road and Upper Mount Albion Road from a midblock driveway to Highland Road West, to the satisfaction of the Senior Director of Growth Management.
3. That no building or structure shall be erected, altered, extended or enlarged, nor shall any building or structure or part thereof be used, nor shall any land be used, except in accordance with the Community Shopping Centre "SC2" Zone provisions, subject to the special requirements referred to in Section 2.



This is Schedule "A" to By-law No. 13-

Passed the day of, 2013

Mayor

Clerk


Schedule "A"

Map Forming Part of
By-law No. 13-_____

to Amend By-law No. 3692-92

Subject Property

512 Highland Road West

 Change in Zoning from the Neighbourhood Development "ND" Zone to the Community Shopping Centre (Holding) "SC2-7(H1)(H2)(H3)(H4)" Zone, with Special Exception

Scale:
N.T.S.

File Name/Number:
ZAC-07-112(R) & OPA-07-036(R)

Date:
July 15, 2013

Planner/Technician:
JM/AL



Hamilton

PLANNING AND ECONOMIC DEVELOPMENT DEPARTMENT