



ISSUE DATE:

Dec. 9, 2010



PL091011

By-law No. 10-326

Ontario Municipal Board
Commission des affaires municipales de l'Ontario

Empire Communities (Stoney Creek) Ltd. 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 Lot 25, Concession 5, municipally known as 22 Green Mountain Road West in the City of Hamilton

Approval Authority File No. 25T-200803
OMB File No. PL091011

Empire Communities (Stoney Creek) Ltd. 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 3692-92 of the City of Hamilton to rezone lands respecting 22 Green Mountain Road West from Neighbourhood Development "ND" Zone and Highway Commercial "HC" Zone to Site Specific zoning to implement the proposed draft plan of subdivision

OMB File No. PL090968

APPEARANCES:

Parties

Counsel*/Agent

Empire Communities (Stoney Creek) Ltd.

P. DeMelo*

City of Hamilton

M. Kovacevic*

Juch-Tech Inc.
Hamilton Teleport Limited

S. D. Rogers*

Norman & Isabelle Vartanian

M. Rudolph*

Participant

706870 Ontario Ltd.

W. Robertson

MEMORANDUM OF ORAL DECISION DELIVERED BY M. C. DENHEZ ON NOVEMBER 8, 2010 AND ORDER OF THE BOARD

This dispute has been settled. Empire Communities (Stoney Creek) Ltd. (the Applicant), proposed a 23-hectare subdivision in the "Nash Neighbourhood" of the Stoney Creek area of the City of Hamilton (the City), comprising 423 dwelling units.

This involved an application for two Zoning By-law Amendments (to two separate Zoning By-laws), and approval for a Draft Plan of Subdivision.

However, Juch-Tech Inc. and Hamilton Teleport Limited, two companies which operate a nearby satellite earth station, were concerned about compatibility of uses. The City was also concerned about an abutting privately-owned landfill/quarry. Other area owners were concerned about road alignment. The City did not proceed with approvals, and the Applicant appealed to the Board.

At a Pre-hearing Conference, an Issues List was approved outlining the points to be addressed. With Board-assisted mediation, the Parties reached eventual consensus, involving changes to the proposal, referenced in Minutes of Settlement (Exhibit 3). The relationship with the earth station was addressed, via an "H" Holding provision under Section 36 of the *Planning Act*, pending further agreed information. The concern with the nearby landfill/quarry was similarly addressed via an "H" Holding provision. The access dispute was also resolved; "Street "A" on the Plan of Subdivision would be realigned, and vehicular access to dwellings on "Streets F, I and J" would be reorganized at the rear of the units.

The above would be reflected in the rezoning (under both relevant By-laws), and in the Conditions to the Draft Plan of Subdivision. Certain areas of ambiguity were also clarified. There was apparent unanimity that all topics on the Issues List had been addressed.

At the hearing, the Applicant's Planner, Mr. Armstrong, offered the expert opinion that there had been due regard for all the applicable statutory criteria, the Official Plan, and the Nash Neighbourhood Secondary Plan. The revised arrangements conformed to all applicable criteria for rezoning, and for subdivisions, notably under Subsection 51(24) of the *Planning Act*.

The Board finds no dispute. The Board has carefully considered all the evidence, as well as the submissions of the various interests represented. The Board concludes, as the Planner did, that the proposal now meets the terms of the *Planning Act* for the Zoning By-law Amendments, the Draft Plan of Subdivision, and the Conditions thereto.

THE BOARD THEREFORE ORDERS that the appeal is allowed, and:

1. Zoning By-law 05-200 of the City of Hamilton is hereby amended in the manner set out in Attachment "1" to this Order.
2. Zoning By-law 3692-92 of the former City of Stoney Creek is hereby amended in the manner set out in Attachment "2" to this Order.
3. The Board authorizes the City Clerk to assign numbers to the above for record-keeping purposes.
4. The Board approves the Draft Plan of Subdivision, as it appears in Attachment "3" to this Order.
5. The approval of the Draft Plan of Subdivision is subject to Conditions, as they appear at Attachment "4" hereto.
6. Pursuant to Subsection 51(56.1) of the *Planning Act*, the City 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.

It is so Ordered.

"M. C. Denhez"

M. C. DENHEZ
MEMBER

ATTACHMENT "1"

Amendment to Zoning By-law No. 05-200, 22 Green Mountain Road West (Stoney Creek)

WHEREAS the City of Hamilton has in force several Zoning By-laws which apply to the different areas incorporated into the City by virtue of the *City of Hamilton Act, 1999*, S.O. 1999, Chap. 14;

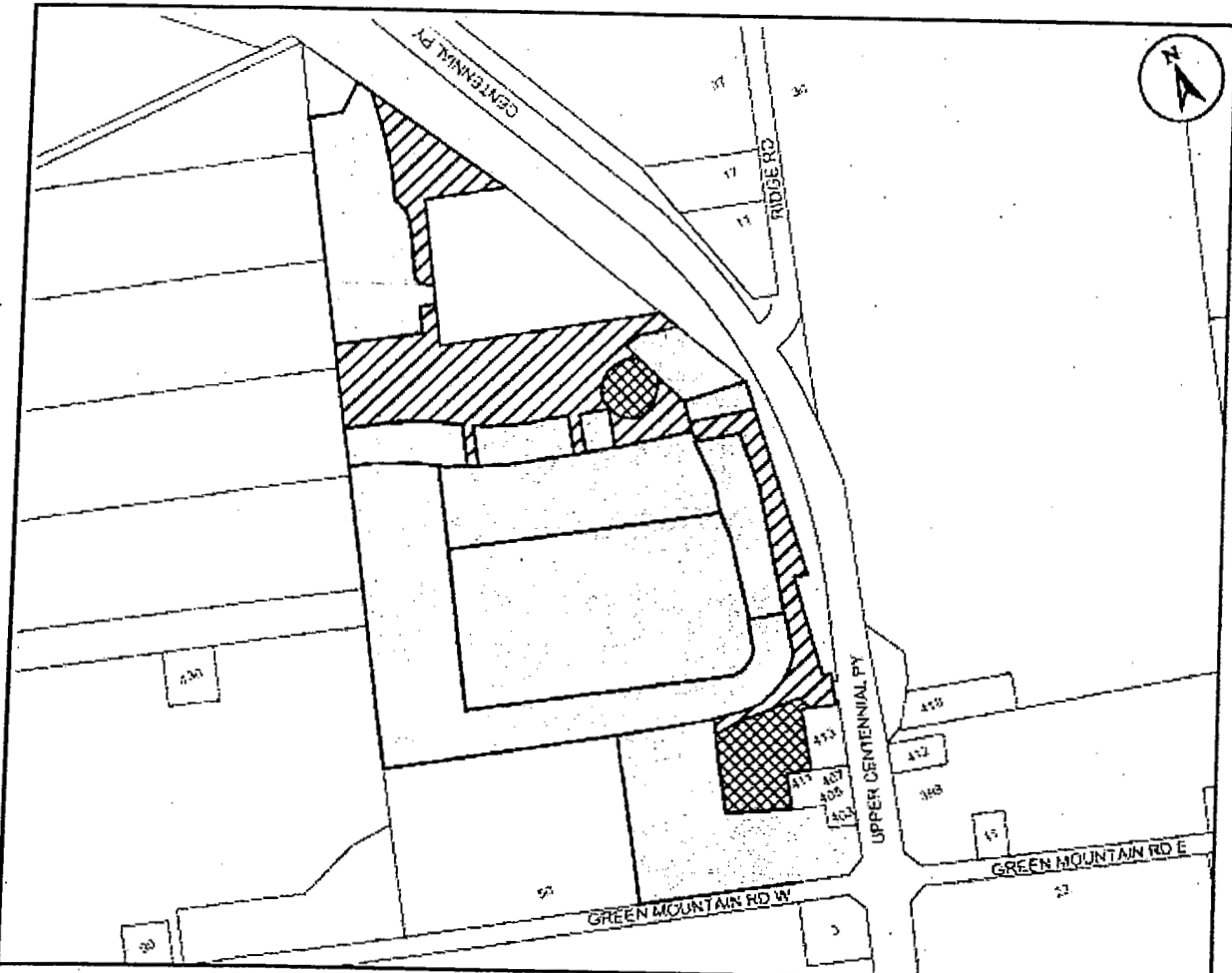
AND WHEREAS the City of Hamilton is the lawful successor to the former Municipalities identified in Section 1.7 of By-law No. 05-200;

AND WHEREAS Zoning By-law No. 05-200 was enacted on the 25th day of May, 2005;

AND WHEREAS this by-law is in conformity with the Official Plan of the City of Hamilton (formerly the City of Stoney Creek Official Plan), approved by the Minister under the *Planning Act* on May 12, 1986;

NOW THEREFORE it is enacted:

1. That Map Nos. 1353, 1354, 1405 and 1406 of Schedule "A" to Zoning By-law No. 05-200, is amended by incorporating additional Conservation/Hazard Land (P5) Zone and Conservation/Hazard Land (P5, 23) Zone boundaries for the applicable lands, the extent and boundaries of which are shown on a plan hereto annexed as Schedule "A";
2. That Schedule "C" of By-law No. 05-200 is amended by adding an additional special exception as follows:
 - "23. Within the lands zoned Conservation/Hazard (P5, 23) Zone, identified on Map 1406 of Schedule "A" and described as 22 Green Mountain Road West, the following special provisions shall apply:
 - a) No person shall erect, or use any land, building, or structure, in whole or in part, within a Conservation/Hazard Land (P5) Zone for any purpose other than that listed in Section (b) below;
 - b) Permitted Use - Archaeological Conservation which, for the purpose of this By-law, shall mean the preservation of an archaeological resource or resources in place."



This is Schedule "A" to By-Law No. 10-
 Passed the day of, 2010

 Clerk




 Mayor

Schedule "A"

Map Forming Part of
 By-Law No. 10- _____
 to Amend By-law No.05-200

Subject Property

22 Green Mountain Road West, Stoney Creek

-  Lands to be Zoned Conservation/Hazard Land (P5) Zone
-  Lands to be Zoned Conservation/Hazard Land (P5 23) Zone
-  Refer to By-law No.3692-92

Scale: N.T.S.	File Name/Number: ZAC-08-026/25T-200803
Date: July 24, 2009	Planner/Technician: JM/NB
PLANNING AND ECONOMIC DEVELOPMENT DEPARTMENT	

