

ISSUE DATE:

Jan. 21, 2005

DECISION/ORDER NO:

0128



Ontario

Ontario Municipal Board

Commission des affaires municipales de l'Ontario

PL040263

SEH Developments Limited 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 55-92 of the Town of Carleton Place to rezone lands located at the corner of Mississippi Road and Johnston Street and flanked by Highway No. 7 on the south, from Neighbourhood Shopping Centre (C4-1) and Development (D) to Residential (R6 Special Zone and R8 Special Zone) to permit residential development

OMB File No: Z040050

SEH Developments Limited 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 refusal or neglect to enact proposed amendment 17 to the Official Plan for the Town of Carleton Place to redesignate land at the at the corner of Mississippi Road and Johnston Street and flanked by Highway No. 7 on the south, from Residential and Neighbourhood Commercial to Residential R-X to permit residential development

Approval Authority File No: DP-0139-04001

OMB File No: O040037

APPEARANCES:

Parties

SEH Development Ltd.

Town of Carleton Place

Counsel

P. A. Webber

J. P. Vice

MEMORANDUM OF ORAL DECISION DELIVERED BY M. C. DENHEZ ON DECEMBER 14, 2004 AND ORDER OF THE BOARD

SEH Development Ltd. (developer) proposed a residential development on two vacant lots in the Town of Carleton Place (Town). The project would require changes to the Town's Official Plan and Zoning By-law. Finalization of the proposal was an iterative process, with successive drafts. At one point, it appeared that a consensus between the Town and the developer was impossible and the latter filed this appeal with the Board; however, between the filing of the appeal and the beginning of the hearing, the developer produced a new version of the proposal, which met with the approval of the Town's planning staff.

Ultimately, for the purposes of this hearing, the Town did not instruct its counsel to present evidence, cross-examine witnesses or otherwise argue any challenge to the proposal. Next, planning staff (which was present under subpoena) testified that the *revised* proposal complied with the Provincial Policy Statement, the intent of the Town's Official Plan, the intent of the Town's comprehensive Zoning By-law and the principles of good planning.

The Board has carefully considered all the evidence presented, as well as the positions of counsel. The Board finds that the planning rationale for this proposal is undisputed; and on that basis, the proposed Official Plan amendment and rezoning are hereby approved.

That planning rationale, as presented to the Board, is summarized as follows.

The subject property covers some 1.9 hectares comprised of Blocks 60 and 61 of Plan of Subdivision PL-87, in the southwest half of Lot 13, Concession 11 (formerly Township of Beckwith). Block 61 was designated residential, but Block 60 had been designated and zoned Neighbourhood Commercial. According to the developer's planner, these lots were the last remnant of the Westview Heights area to be built out, and were left in a shape whereby – after meeting setback and parking requirements – no functional commercial use was actually feasible.

The area already had a mix of single and semi-detached homes, townhomes, and apartment units. The developer therefore proposed construction of 50 further townhomes and a 50-unit apartment building.

In the ensuing discussions with the Town, some topics were non-issues. For example, there were no concerns about changing the Commercial designation, nor about plans for stormwater, drainage, noise (a noise report had been approved), repercussions connected to the widening of Highway 7 (which would be some distance to the south) etc. However, there were concerns about parking. Furthermore, the density proposed for the apartment building exceeded what the Official Plan had foreseen.

In addition, although the apartment building would have a higher density than is typically foreseen in the Official Plan (99 units per hectare instead of 71.5 units per hectare), it is on what the Plan calls a "small" site (under 2 hectares), and the Plan also foresees that on such sites, the density rules can be adjusted (section 4.2.3.4) if "the general intent of this Plan is maintained". Under the recently-adopted Official Plan (July 20, 2004), the criterion for apartment buildings on lots of fewer than 2 hectares is that they be "compatible with the surrounding environment in terms of form, height, massing and density" (section 4.2.3.7).

The Town's Director of Planning and Development appeared under subpoena, and testified to the consensus that now prevailed. "We worked very hard to get there", particularly on the subject of "traffic", which the parties agreed was a euphemism for on-street parking. She concluded that the current proposal was "satisfactory" – "a good plan that serves the public interest". There were no outstanding issues, from her perspective, concerning the Plan and zoning changes that remained to be made.

There was, however, one ambiguity. On the day of the hearing, the Town's counsel filed a letter signed by the Town Clerk. The letter was undated. It stated that the Council "is not satisfied that the applicant demonstrated that the following items were addressed". It then listed

- "traffic" (which both the developer's planner and the Town's planner equated with parking);
- "a mix of housing": "The existing community is predominantly medium density..., however, there is no provision (in the proposal) for a low-density housing"; and
- "parkland".

The letter did not, however, give the slightest indication of the response, which Council sought from the Board on these concerns. The Town's counsel was questioned studiously on this point – and he studiously avoided any explanation, on the ground that he had no instructions for same. In her testimony, however, the Town's Director of

Planning was also asked about these concerns. Whatever the earlier situation may have been, as of the date of the hearing she replied that "traffic" (i.e. parking) had been "dealt with". There was no apparent concern over "mix" of housing types, since this proposal does indeed include a mix, which is compatible with the area. Finally, the land dedications and parkland provisions were satisfactory, and she added that at some future point, there may indeed be arrangements for some cash-in-lieu, since parkland allocations for the vicinity are already substantial.

The Board may act only upon the basis of the information that is properly before it. On that basis, the Board finds in favour of the undisputed opinion of the planners for both sides.

Accordingly, the appeal is allowed.

The Board Orders that Amendment No. 17 to the Official Plan of the Town of Carleton Place, as set out in Attachment 1, is hereby approved.

The Board further Orders that the Town's By-law 55-92 is hereby amended in the manner attached hereto as Attachment 2. The Town Clerk is hereby authorized to assign By-law numbers to the said amendments for reference purposes.

"M. C. Denhez"

M. C. DENHEZ
MEMBER

Attachments filed with original decision