



Ontario

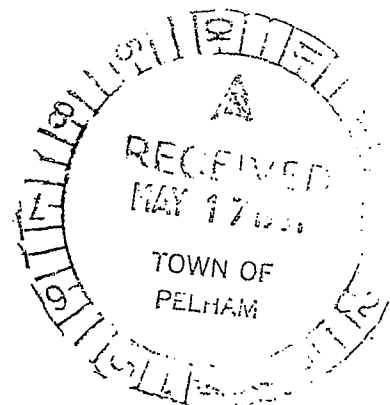
Ontario Municipal Board
Commission des affaires municipales de l'Ontario

R 890530
R 870525

IN THE MATTER OF Section 34(18) of
the Planning Act, 1983

AND IN THE MATTER OF appeals by
Canadian National Railway, Bryland
Developments Limited and others
against Zoning By-law 1261 (1989) of
the Corporation of the Town of
Pelham
O.M.B. File No. R 890530

AND IN THE MATTER OF appeals by
Stephen Kaiser, the Preservation of
Agricultural Lands Society, the
Landcorp Group and others against
Zoning By-law 1136(1987) of the
Corporation of the Town of Pelham
O.M.B. File No. R 870525



C O U N S E L :

G. F. Brooks Q.C. - for The Town of Pelham

G. R. Green Q.C. - for Stephen Kaiser et al.

DECISION OF THE BOARD delivered by S.R. COLE

By-law 1261 rezones certain lands situate on either side of Highway No. 20, east of Station Road from Light Industrial, General Industrial & Residential R1 and R2 to Highway Commercial and Highway Commercial Exception. The aim is to permit a broader range of commercial uses at the easterly entrance to the Town of Pelham.

At the outset of the hearing, the Board had filed with it as Exhibits 37 and 38, communications from Canadian National Railway and Bryland Developments Ltd, (which operates under the name The Landcorp Group) respectively indicating the unqualified withdrawal of C.N.'s appeal and the withdrawal of Bryland's appeal subject to By-law 1261

Mr. Kaiser's land that abuts her property although she wanted to and it was offered to her.

Mr. Kaiser was unable to state how he proposed to develop the land or whether someone else would develop it. He has already sold a part interest in the property which now, after the sale of the rear lands to Mr. King, extends back 430 feet from the highway.

The Board had the benefit of testimony from only one planner, she being called by the Town in support of its by-law. In the main the Board agrees with her comments as to the overall planning merits of the by-law and the need for the insertion of a general height limitation of 10.5 metres in the by-law to reflect what previously existed but it parts company with her in relation to the safeguards that she feels are built into this by-law and the pending comprehensive by-law so as to minimize any impact upon Mrs. Hines in particular.

The Board shares her opinion that the Kaiser site should be of one uniform zoning throughout, be it Highway Commercial, as proposed, or Residential-R1 as it now is. She, of course, favours the Highway Commercial zoning. The objectors recognize, as does the Board, the validity of such zoning in this situation. They however wish to limit the depth of such rezoning so as to minimize the impact upon their enjoyment of their properties.

If, as the objectors want, the Board were to direct a split zoning, i.e. Highway Commercial over the front 194 feet, to correspond with the depth of the property to the west, and Residential R1 over the remaining 236 feet then effectively the rear lands would be potentially land-locked and sterile. The Board, while recognizing a latent efficacy in such zoning concept, does not consider such solution to be good planning.

Having come to this conclusion and on the premise that Highway

Kaiser site.

A property owner is entitled to place reliance upon existing planning controls. Nothing is immutable and to that extent such reliance cannot be absolute. However unless there is a valid reason to change planning controls which is accompanied by adequate protection of in-place users of adjacent properties, no such change should occur lightly.

The Board understands and accepts the reasoning behind the rezoning to Highway Commercial but it is not persuaded that adequate safeguards for the protection of others are to be found within the planning controls. This is particularly so as it relates to Mrs. Hines. Accordingly, having taken into account the siting of the Hines' home, and, to a lesser extent, that of Mr. King, the Board is of the opinion that the minimum rear yard setback in the case of Kaiser property alone should be 46 metres from the rear lot line. The Board therefore allows the appeals of Mrs. Hines and Mr. King in part and directs the Town to amend By-law 1261 to reflect a minimum rear yard setback of 46 metres in the case of the Kaiser property.

Such setback would still provide a development envelope with a depth of 271 feet. With such amendment development could occur on up to 29,810 square feet of the lot which translates into a coverage of 50 percent.

It may well be that once a concrete development proposal is put forward Mrs. Hines and Mr. King's basic objections could be resolved. If such were to occur the Board can foresee the possibility of Mr. Kaiser or whoever the developer is obtaining relief from rear yard set back provision. Until such proposal is forthcoming part of the regulations of By-law 1261 pertaining to the Kaiser property can be considered to be premature.

Although no measurement of the two Highway 20 lots were provided, the Board using Exhibit 47, Schedule "A" to By-law 1261, was able to scale off the approximate measurements. The combined frontage on Highway 20 is 200 feet and the depth ranges from 150-200 feet. Using the bylaw's standards these lots are capable of being developed without the inclusion of 1445 Station Road as part of the site. Reference to Exhibit 42, a map of existing land uses disclosed a property zoned Industrial, but used commercially which measures 100 x 150 feet. It is located about 1000 feet east of Station Road on the north side of Highway 20.

With this information in mind the Board cannot accept the planner's sweeping contention that development of the two lots alone is difficult. It might well be for a use as intensive as the abandoned proposal that Mr. Barger on has already faced. However the by-law permits in excess of 35 uses in the Highway Commercial zone. The Board has no doubt that some of these myriad of uses could develop without serious problems on the two lots. There is no danger of sterilizing the two Highway 20 lots if 1445 Station Road is not similarly rezoned.

Once again as with the Kaiser property it may well be that given a concrete development proposal and the existence of site plan control, albeit a process in which he is not entitled to participate, Mr. Barger on might have no qualms about the inclusion of 1445 Station Road in any redevelopment scheme. Until such occurs its inclusion in By-law 1261 is premature.

The Board therefore allows the appeal of Mr. Barger on and directs the Town to amend By-law 1261 to exclude 1445 Station Road therefrom.

In summary, the Board in allowing the appeals from By-law 1261 in whole or in part hereby directs the Town to amend the By-law as follows:

covered by By-law 1261 were rezoned to Highway Commercial following the hearing on that by-law then Mr. Kaiser's appeals against the comprehensive by-law both for himself and on behalf of John Hajcman (o/a Olympic Plumbing) and Star Tile and Decorating would be withdrawn.

As a result of the Board's decision in the matter of By-law 1261 which has the effect of rezoning the lands west of Hurricane Road to Highway Commercial instead of Light Industrial-M1, as By-law 1136 originally contemplated, then the Board considers the appeals of Mr. Kaiser et al against By-law 113⁶ to have been withdrawn and hereby dismisses said appeals.

As to the other four matters referred to in Schedule B of the Board's earlier decision, counsel for the Town has addressed all but the first one. Broadly speaking, these matters relate to certain lands zoned open Space (OS) and Airport (AR) and certain lands situate within the Niagara Escarpment Plan area. Both the Town and the Niagara Escarpment Commission have suggested that these three matters be deferred. The problem with proceeding thusly is that no part of the comprehensive zoning by-law will come into effect since all matters under appeal must be disposed of before the by-law takes effect.

The Board does not believe that this is what the Town intends. From the Board's perspective it seems that what is requested of us is to delete those sections of and schedules to the by-law dealing with the three categories described previously. The lands in question will remain zoned as they are under By-law 279. Accordingly the Board hereby directs the Town to amend By-law 1136 by deleting therefrom the following:

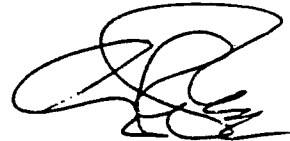
1. Section 29 entitled "Airport AR Zone", and
2. The Airport AR Zone of the lands illustrated on Schedule "A-6" to By-law 1136.

execution of the development agreement in File C 890341, the Town will have the opportunity to make written representations to the Board if it so chooses, regarding the Board's decision with respect to the M3-Extraction Industrial zoning.

The Board's Order on By-law 1136 (1987) will not issue until the directions in this decision are completed and a revised copy of the by-law has been forwarded to and accepted by this Board as being in compliance with this decision.

In summary, subject to the changes made by the Board in its earlier decision or those directed to be made by the Town in both that decision and this decision, the appeals against By-law 1136 (1987) are otherwise dismissed.

DATED at TORONTO this 14th day of May, 1991.



S.R. COLE
MEMBER

"W.R.F. Watty"

W.R.F. WATTY
MEMBER