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Ontario Municipal Board

**IN THE MATTER OF** Section 35 of The Planning Act (R.S.O. 1970, c. 349),

- and -

**IN THE MATTER OF** an application by The Corporation of the Town of Pelham for approval of its Restricted Area By-law 450(1978) as amended by By-law 718(1981)

**C O U N S E L :**

G.F. Brooks, Q.C. - for the Corporation of the Town of Pelham  
Donald G. Humphries, Q.C. - for Donald and Sally Young  
Glynn R. Green - for Margaret Faragalli

**DECISION OF THE BOARD delivered by W.H.J. THOMPSON**

The Board was advised by a planning consultant who testified on behalf of the applicant that By-law 450(1978) as amended by By-law 718(1981) applied to rural areas of the Town of Pelham which had hitherto not been subject to control by a land use by-law. This witness also stated that the by-laws conformed to the intent of the local Official Plan and the approved Regional Policy Plan.

Three owners of landholdings in Lot 16 of the 1st Concession of the Town ranging in area from seven to ten and one-half acres testified in opposition to that part of the subject by-laws which zoned their properties "Hazard Land". These objections related not to the total area of their properties zoned Hazard Land but only to the extent of such coverage.

The planning consultant stated that the Hazard Land zoned boundaries conformed to the boundaries of the Hazard Land designation in the approved Official Plan (Exhibit 5).

One of these objectors produced a sketch of land which included the properties of these objectors and which was said to have been produced by the

local conservation authority. This sketch revealed that a lesser amount of the lands of these three objectors was subject to Hazard Land zoning and the three objectors stated that they would be happy with this amount of coverage of such a zone. The planning consultant stated that the first five-year review of the local Official Plan was now overdue and that the Council of the municipality had commenced this review. The consultant stated that there would be a study of the amount of Hazard Land zoning in the area of the Town in which the objectors' lands lie and if convinced that a smaller area required to be zoned Hazard Land then the Official Plan and the conforming by-laws would be amended to provide for such lesser coverage. The Board notes that Section 1.35 of the Official Plan states in part that:

"When more detailed mapping becomes available, the municipality will amend this plan and the implementing zoning by-law, as required."

Should such reduction of the Hazard Land zone not be forthcoming in the future then these objectors have the right to take advantage of the provisions of the Planning Act of Ontario regarding Official Plan amendments and zoning by-law amendments.

The Board will approve the said by-law insofar as the provisions thereof affect the lands of these three objectors.

A son of the owner of Lot 17 in the 9th Concession of the Town testified that his father objected to the "A1" zoning of the easterly one-half of this lot and that he desired an "A2" zone so that the whole of his property would bear one zoning designation.

The planning consultant agreed that an A2 zone for Lot 17 would be appropriate in that any agricultural use of this property would be subject to the minimum distance separation provisions of the Agricultural Code of Practice. The consultant had no objection to such a change of zoning.

The Board will reserve its decision herein regarding the zoning of said Lot 17. Should the Municipal Council amend the subject by-laws by zoning

said Lot 17 for an A2 zone, then such amendment will be approved without further notice or hearing.

Mr. and Mrs. Donald Young object to the provisions of said by-laws which zone their property, being part Lot 19 in the 3rd Concession of the Town, to an "A2" zone. They wish an "Open Space" zoning.

The Board was advised that the Council of the Town is prepared to enact an amendment to rezone this property accordingly. The planning consultant stated that an Open Space zoning would reflect an existing use and would therefore conform to the Official Plan.

The Board will reserve its decision in regard to the by-laws before it for approval insofar as they affect that part of Lot 19 owned by Mr. and Mrs. Young. Should the Council of the Town enact a by-law rezoning this part of the Young landholding from an A2 zone to an Open Space zone, the Board will approve such an amendment without further notice or hearing.

Mrs. Margaret Faragalli testified that she owned some 38 acres of land being that part of Lot 20 in the 9th Concession of the Town situate north of the Toronto, Hamilton and Buffalo railway property. She stated that some 14.57 acres of her property were used as an automobile wrecking yard which business commenced sometime in the years 1965 or 1966. About two acres of her property is zoned "M2" but does not relate to the existing wrecking yard business. The balance of her property is zoned "A2". She wished the land which relates to the wrecking yard business be rezoned "M2". She had no objection to the balance of her property being zoned "A2".

Exhibit 7 is a sketch of her landholding indicating that part thereof which relates to the wrecking yard business.

Exhibit 6 is a certified copy of a resolution dated October 19, 1981, of the Council of the Corporation of the Town of Pelham which indicates, inter alia, that Council is prepared to rezone this objector's land in accordance with her wishes subject to certain safeguards.

The Board will reserve its decision herein in regard to the objection of Mrs. Faragalli. When Council of the Town has enacted an amendment to the subject by-laws the same shall be circulated in accordance with this Board's standing rules in regard to such applications. The Board will be informed in the usual course as to the results of such circulation at which time the Board will determine its course of action in regard to this objection.

The Board was advised that the Regional Planning and Development Committee of the Regional Municipality of Niagara had adopted a recommendation of the Regional planning staff that Section 8 of By-law 718(1981) be amended by deleting the said section and substituting therefore the following -

"That the minimum acceptable separation distance determined in the application of the MDS Formula I shall be the greater of the distance generated by MDS Formula I or 300 metres."

The Board agrees. When By-law 718(1981) is amended accordingly, the amendment will be approved without further notice or hearing.

The Board notes that By-law 450(1978) contains imperial measurements. In accordance with existing legislation, these measurements should be in metric. Should By-law 450(1978) be amended to provide for the equivalent metric measurements, such amendment will be approved without further notice or hearing.

Save as aforesaid, the said by-laws are approved.

DATED at TORONTO this 26th day of October, 1981

W.H.J. THOMPSON  
VICE-CHAIRMAN

W.E. DYER  
MEMBER