

ISSUE DATE:

**SEPT. 13, 2006**

DECISION/ORDER NO:

**2584**



Ontario

Ontario Municipal Board

Commission des affaires municipales de l'Ontario

PL041198

Flamborough Chamber of Commerce, Waterdown Business Improvement Area and Westdale Village Business Improvement Area have appealed to the Ontario Municipal Board under subsection 17(24) of the *Planning Act*, R.S.O. 1990, c. P.13, as amended, from a decision of the City of Hamilton to approve Proposed Amendment No. 21 to the Official Plan for the Region of Hamilton-Wentworth now the City of Hamilton to redesignate land at Part of Lots 12 and 13, Concession 3 (East Flamborough) to add a Specific Policy Area to permit department stores

OMB File No. O050051

OMB Case No. PL041198

Trinity Development Group Inc., Rosart Properties, Waterdown Business Improvement Area and others have appealed to the Ontario Municipal Board under subsection 17(24) of the *Planning Act*, R.S.O. 1990, c. P.13, as amended, from a decision of the City of Hamilton to approve Proposed Amendment No. 98 to the Official Plan for the Town of Flamborough now the City of Hamilton to redesignate land at Part of Lots 12 and 13, Concession 3 (East Flamborough) from General Industrial Commercial to Prestige Industrial Commercial to permit "big-box" retail development

OMB File No. O050052

OMB Case No. PL041198

Trinity Development Group Inc., Rosart Properties, Waterdown Business Improvement Area and others have appealed to the Ontario Municipal Board under subsection 34(19) of the *Planning Act*, R.S.O. 1990, c. P.13, as amended, against Zoning By-law 05-021 of the City of Hamilton

OMB File No. R050063

OMB Case No. PL041198

Trinity Development Group Inc. has appealed to the Ontario Municipal Board under subsection 51(39) of the *Planning Act*, R.S.O. 1990, c. P.13, as amended, from a decision of the City of Hamilton to approve a proposed plan of subdivision on lands composed of Part of Lots 12 and 13, Concession 3 (East Flamborough), in the City of Hamilton

25T200404

OMB File No. S040107

OMB Case No. PL041198

## **APPEARANCES:**

### **Parties**

Flamborough Power Centre Inc.

Patsy Rosart, Minority Shareholder of

### **Counsel**

Dennis Wood

John Wolf

2034902 Ontario Inc.

Martin Van Lirope,  
President of 2034902 Ontario Inc. and  
Minority Shareholder

Graydon Sheppard

**DECISION DELIVERED BY D. L. GATES ON A MOTION FOR COSTS  
AND ORDER OF THE BOARD**

Flamborough Power Center Inc., "FPCI" is requesting costs in this matter in the amount of \$125,000. The conduct of 2034902 Ontario Inc. "the Company" is well documented in the Board's earlier decisions. In those proceedings the Board found that the Company's conduct was unreasonable. Subject to clarification below, the Company's position is that costs are not appropriate in these circumstances but if the Board should award costs, that award should not exceed \$25,000.

Upon a request for costs, the Board has broad powers including the right to fix an amount.

Having carefully considered all of the submissions, the Board will award costs in the amount of \$25,000 against the Company. It is to be noted that most of the work was in the preparation of the documents and preparation for the return of the original motion in July 2005. Most, but not all of the work after that involved the duplication of materials produced earlier. Upon return of the July materials the Company was one of a few respondents. Throughout the summer and fall of 2005 all of the other litigants settled with FPCI.

The Board is persuaded here that an award of \$25,000 against the Company is fair and reasonable given all of the circumstances. There were numerous parties to this complex matter and many of the expenses sought would have been payable in any event.

The internal matters of the Company are of no concern to the Board. What matters to the Board is the Company's conduct and bona fides in its planning appeal before the Board. Appellants, especially in commercial matters where competitive advantage may be obtained by the virtue of delay, are expected to proceed in a reasonable manner.

It should be noted for the record that the Company did not make any submissions on this motion for costs. When the Board referred to the Company above it was referring to the submissions made on behalf of a minority shareholder Patsy Rosart and adopted by the President of the Company, also a minority shareholder who both in total represent 36% of the Company.

The Board was advised by Patsy Rosart that the Company takes no position on the costs motion. Notice of this Motion appears to have been properly given to the Company and the Company was given ample time to respond.

Costs in the amount of \$25,000 are awarded against the Company in favour of FPCI. It is so Ordered.

“D. L. Gates”

D. L. GATES  
MEMBER