

ISSUE DATE:

January 31, 2013



PL110883

Ontario Municipal Board
Commission des affaires municipales de l'Ontario

IN THE MATTER OF subsection 34(19) of the Planning Act, R.S.O. 1990, c. P.13, as amended

Appellant: Snelgrove Plaza Inc.
Subject: By-law No. 2011-095
Municipality: Town of Caledon
OMB Case No.: PL110883
OMB File No.: PL110883

APPEARANCES:

Parties

Counsel

Valleywood West Developments
Ltd.

M. Bull
S. Mahadevan

Town of Caledon

P. Gross

Snelgrove Plaza Inc.

J. Alati

**MEMORANDUM OF ORAL DECISION DELIVERED BY JAMES R. McKENZIE
ON JANUARY 14, 2013 AND ORDER OF THE BOARD**

[1] On July 12, 2011, the Town of Caledon ("Town") adopted Zoning By-law No. 2011-095 ("By-law") to rezone lands owned by Valleywood West Developments Ltd. ("Valleywood"). The By-law introduced consistent commercial zoning across the Valleywood property ("subject lands") to facilitate its development as a shopping centre. Snelgrove Plaza Inc. ("Snelgrove"), the owner of a commercial plaza located a few kilometres south of the subject lands, appealed the By-law pursuant to s. 34(19) of the *Planning Act* ("Act").

[2] At the outset of the hearing, the Board was asked to stand down the proceeding for continued negotiations. Following a short recess, the respective counsel for Valleywood and Snelgrove collectively reported a resolution of differences and the proceeding reconvened as a settlement hearing.

[3] Also at the outset, Robert Harrison, a director with the Valleywood Resident Association (“Association”), requested participant status, which, following brief submissions from counsel, the Board granted. Parenthetically, the Association also appealed the By-law following its adoption. Its appeal, however, was subsequently dismissed without a hearing, pursuant to s. 34(25) of the Act, on the basis that it did not disclose apparent land use planning grounds upon which the Board could allow all or part of the appeal.

[4] In light of the settlement, the Board received evidence from two witnesses: Mr. Harrison, who provided lay testimony on behalf of the Association, and Michael Bissett, a professional land use planner, who provided expert testimony in support of the By-law.

[5] The subject lands are approximately 5.4 hectares, situated in the southwest quadrant of the Valleywood Boulevard-Snelcrest Drive intersection, with frontage of approximately 200 metres on each street. They maintain an irregular shape, with Highway No. 410 forming their southerly boundary. A municipal library and fire station are located at the southwest corner of the intersection, both fronting Snelcrest Drive. The Valleywood community, a residential subdivision, is situated principally on the north side of Snelcrest Drive and to a lesser extent on the east side of Valleywood Boulevard. The overall community, including the subject lands, is bounded on the west and south by Hurontario Street (Highway No. 10) and Highway No. 410 and on the north and east by natural features.

[6] The subject lands are designated General Commercial in the Mayfield West Secondary Plan, a component of the Town’s Official Plan. Prior to the adoption of the By-law, the subject lands maintained a split zoning: the majority zoned General Commercial-Exception 260 (C-260) and a small portion adjacent to Highway No. 410 zoned Highway Commercial (CH). The By-law rezoned the subject lands in their entirety to General Commercial-Exception 511 (C-511). The exception stipulates permitted uses and development standards.

[7] The settlement terms to which Valleywood and Snelgrove have agreed contemplate an amendment to the By-law to introduce a further provision to regulate the timing for opening a supermarket or a grocery store on the subject property to the

public. Their respective counsel requested the Board to amend the By-law to introduce a new term: "A supermarket or a grocery store shall not open to the public prior to November 1, 2014."

[8] Mr. Bissett testified in support of the By-law, amended to include the proposed term noted above. His evidence demonstrates the By-law's conformity with the Act, its consistency with the Provincial Policy Statement, its conformity with the Growth Plan, and its conformity with both the Region of Peel Official Plan and the Town's Official Plan. The By-law facilitates development of designated commercial employment lands, thus directing growth to a designated settlement area, and promotes efficient development by optimizing the use of existing infrastructure, thus minimizing sprawl.

[9] Mr. Bissett's evidence also demonstrates that development permitted under the By-law is compatible with surrounding land uses. The By-law implements a commercial designation that has existed in the Town's Official Plan for over 20 years. Moreover, the Valleywood subdivision was approved and registered with full public knowledge of the subject property's commercial land use designation.

[10] Mr. Bissett was not cross-examined; his professional land use opinions have not been impugned.

[11] Mr. Harrison raised three issues with the Board, any of which, he submitted, was grounds for the Board to repeal the By-law. The issues are:

1. that development allowed by the By-law will increase traffic, exacerbate existing traffic problems, and make the community "more unsafe;"
2. increased traffic will negatively interfere with fire department response times; and,
3. the Town did not conduct a "comprehensive planning process," thus rendering the By-law not in conformity with the Act and provincial interests.

[12] Ms. Bull submitted that the grounds raised by Mr. Harrison are the same as the grounds stated in the Association's appeal, which the Board, differently constituted, dismissed without a hearing.

[13] In spite of that earlier decision concerning the Association's appeal, the issues raised by Mr. Harrison have been carefully considered within the parameters of the Association's participant status. The Board concludes that none of the issues can be countenanced for the following reasons.

[14] First, the By-law's adoption was supported by a thorough traffic analysis summarised by Mr. Bissett and included in the comprehensive documentary evidence filed on consent as Exhibit 10. That analysis concluded that, with modest road improvements, sufficient capacity exists on the adjacent road network to accommodate development permitted by the By-law.

[15] Second, the Town Fire Department comment prior to the adoption of the By-law identified remedial action to maintain response times in accordance with Provincial Public Fire Safety Guidelines. Remedial actions include both a staffing response as well as certain road improvements identified in the traffic analysis noted above. The Board is satisfied that this issue will be positively addressed through the site plan approval process.

[16] Finally, Mr. Bissett reviewed the planning process undertaken by the Town culminating in the adoption of the By-law. In his professional opinion, all requirements of the Act, both procedural and, as noted above, substantive, were complied with.

[17] There is no question that Mr. Harrison and others within the Association maintain genuine concerns regarding the future development of the subject property and the impact they perceive it may have on their neighbourhood. The Board, however, is duty-bound to base its decisions on that evidence from which it derives the greatest confidence, eschewing speculation and conjecture. In this case, Mr. Bissett's professional opinions, including that the By-law as amended represents good planning and is in the public interest, stand as the only reliable evidence before the Board. The Board accepts Mr. Bissett's evidence as its basis for approving the By-law in an amended form.

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[18] The appeal is allowed to the extent necessary to amend the By-law by introducing a provision reflecting the Snelgrove-Valleywood settlement. In all other respects, the appeal is dismissed. By-law No. 2011-095, as amended, is approved and is appended as Attachment 1 to this decision.

“James R. McKenzie”

JAMES R. McKENZIE
VICE-CHAIR

Attachment 1

PL110883

(Revised, Monday, 14 January 2013)

THE CORPORATION OF THE TOWN OF CALEDON
BY-LAW NO. 2011-095

Being a by-law to amend Comprehensive Zoning By-law 2006-50, as amended, with respect to Part Lots 19 & 20, Concession 1, EHS (Chinguacousy), Part Blocks 71 & 72 on Plan 43M-1050, Parts 1 to 7 inclusive on Plan 43R-29065, Town of Caledon, Regional Municipality of Peel

WHEREAS Section 34 of the Planning Act, as amended, permits the councils of local municipalities to pass zoning by-laws for prohibiting the use of land or the erecting, locating or using of buildings or structures for or except for such purposes as may be set out in the by-law;

AND WHEREAS the Council of The Corporation of the Town of Caledon considers it desirable to pass a zoning by-law to permit the use of Part Lots 19 & 20, Concession 1, EHS (Chinguacousy), Part Blocks 71 & 72 on Plan 43M-1050, Parts 1 to 7 inclusive on Plan 43R-29065, Town of Caledon, Regional Municipality of Peel for commercial purposes.

NOW THEREFORE the Council of The Corporation of the Town of Caledon enacts that By-law 2006-50, as amended, being the Comprehensive Zoning By-law for the Town of Caledon, shall be and is hereby amended as follows:

- The following is added to Table 13.1:

| Zone Prefix | Exception Number | Permitted Uses | Special Standards |
|-------------|-----------------------------|---|--|
| C | 511 (By-law 2011-XXX) | <ul style="list-style-type: none"> - <i>Animal Hospital</i> - <i>Automotive Store</i> - <i>Business Office</i> - <i>Clinic</i> - <i>Communications Equipment Outlet</i> - <i>Drive-through Service Facility</i> - <i>Dry Cleaning or Laundry Outlet</i> - <i>Farmers Market</i> - <i>Financial Institution</i> - <i>Fitness Centre</i> - <i>Funeral Home</i> - <i>Grocery Store</i> - <i>Home Improvement Centre</i> - <i>Hotel</i> - <i>Laundromat</i> - <i>Medical Centre</i> - <i>Merchandise Service Shop</i> - <i>Motel</i> - <i>Motor Vehicle Gas Bar</i> - <i>Open Storage Area, Accessory</i> - <i>Outside Sales or Display Area</i> - <i>Outdoor Seasonal Garden Centre, Accessory</i> - <i>Personal Service Shop</i> - <i>Place of Assembly</i> - <i>Place of Entertainment</i> - <i>Private Club</i> | <p><i>Building Area</i> (maximum) 26%</p> <p><i>Yards, Interior Side</i> (minimum) 3m</p> <p><i>Yards, Exterior Side</i> (minimum) 5m</p> <p><i>Yards, Front</i> (minimum) 5m</p> <p><i>Building Setback</i> Notwithstanding applicable <i>yard</i> setbacks, all <i>buildings</i> must be setback a minimum of 14m from any Provincial Highway.</p> <p><i>Planting Strip Location/Width</i> (minimum)</p> <p>(a) from Valleywood Blvd or Highway 10 9m</p> <p>(b) from Snelcrest Drive 6m</p> <p>(c) where any open storage is located adjacent to a road 9m</p> <p>For the purposes of this zone all <i>accessory open storage</i> and loading areas shall be visually blocked from view from all roads and residential uses through the use of opaque screening.</p> <p><i>Building Height</i> (maximum)</p> <p>(a) hotel or motel 18m</p> <p>(b) all other uses 12m</p> <p>For the purpose of this zone, the maximum number of <i>supermarkets</i> permitted on the site shall be 1 only.</p> <p><i>Parking Spaces</i> (minimum) 1 for each 20m² of <i>Gross Floor Area</i> or portion thereof.</p> |

| Zone Prefix | Exception Number | Permitted Uses | Special Standards |
|-------------|------------------|--|-------------------|
| | | <ul style="list-style-type: none">- <i>Restaurant</i>- <i>Retail Store</i>- <i>Retail Store, Accessory</i>- <i>Sales, Service and Repair Shop</i>- <i>Supermarket</i>- <i>Training facility</i>- <i>Video outlet/rental store</i>- <i>Wellness Centre</i> | |

2. Schedule "A", Zone Map 7 of By-law 2006-50, as amended is further amended for Part Lots 19 & 20, Concession 1, EHS (Chinguacousy), Part Blocks 71 & 72 on Plan 43M-1050, Parts 1 to 7 inclusive on Plan 43R-29065, Town of Caledon, Regional Municipality of Peel, from General Commercial – Exception 260 (C-260) and Highway Commercial (CH) to General Commercial – Exception 511 (C-511) in accordance with Schedule "A" attached hereto.
3. A supermarket or a grocery store shall not be open to the public prior to November 1, 2014.

Read three times and finally passed in open Council on the 12th day of July, 2011.

Marolyn Morrison, Mayor

Karen Landry, Clerk

