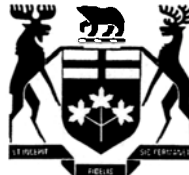


ISSUE DATE:

Jun. 17, 2005

DECISION/ORDER NO:

1583



Ontario

Ontario Municipal Board

Commission des affaires municipales de l'Ontario

PL050065

Oxnard Development Inc. 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 1784 of the Town of Whitby to rezone lands respecting Part Lot 26, Concession 3, from R2B and R2C to R3C to permit the development of fourteen common-wall semi-detached dwelling units
OMB File No. Z050006

APPEARANCES:

Parties

Oxnard Development Inc.

Town of Whitby

Counsel

F.J.F. Handy

R. Arblaster

DECISION DELIVERED BY J.P. ATCHESON AND G.C. O'CONNOR AND ORDER OF THE BOARD

This is a hearing of the Board in the matter of an appeal by Oxnard Development Inc. (Oxnard) from the Council of the Town of Whitby's refusal or neglect to rezone lands known as Part Lot 26 Concession 3 from R2B and R2C to R3C to permit the development of fourteen common wall semi-detached dwelling units.

The Context

The property in question is a site of approximately 6 acres situated east of Brock Road and south of Woodlawn Avenue in the Town of Whitby. The property is subject to a registered plan of subdivision and is made up of ten single family lots with frontages varying from 11 to 10 metres in width found at the south end of the plan and backing on to low density single family homes that were built on large lots in the late forties on Hillcourt Avenue. The remaining parts of the subdivision plan consist of 52 street

townhouse lots that have been recently constructed. The lands were registered as plan of subdivision 40M-2218 on September 13, 2004.

The plan that was registered was the end result of a draft plan application process that commenced in 2002. The entire plan of subdivision is a "P" loop design that exits to the north to Woodlands Drive, a road designated as a collector road in the Whitby Official Plan. The Board heard uncontradicted planning evidence that the original draft plan submission proposed street townhouses for the entire development but that during the review process the residents of Hillcourt Avenue, the Town of Whitby and the then developers, Labanovich and Victory Estates, agreed that the lots along the south limit of the development would remain as single family detached lots with frontages of 11 metres and 10 metres. The agreement reached by the parties in and of itself was never registered; however, there is no evidence that this understanding was not reached and the agreement found expression in a zoning by-law passed by the Town of Whitby and the subdivision plan that was registered by Oxnard.

In 2003, prior to the registration, the draft plan was sold by Labanovich and Victory Estates to Oxnard who proceeded to carry the draft plan forward with marketing and sales in January of 2004. In April 2004, prior to the registration of the plan of subdivision, Oxnard applied to the Town of Whitby to rezone the 10 single detached dwelling unit lots to permit the development of 14 common wall semi-detached units.

The Board heard evidence from Mr. Bryce Jordan, a qualified land use planner, who was retained to prepare the original draft plan and other subdivision plans in the immediate area. It was his evidence that the original use of the lands under appeal should be for street townhouses and that this was consistent with the Official Plan designations for the area. While he did not participate in the discussions that led to the settlement, he was aware of the agreement reached and his firm prepared the revised plans which created the detached single-family dwelling lots. It was his evidence that street townhouse development was still appropriate and that the proposal for semi-detached units was at the low end of the medium density range found in the Official Plan. It was his evidence that the new proposal would have little or no impact on the surrounding neighbourhood and that the proposed built form would not impact the Hillcourt Avenue residents.

The Board heard from Ms. Lajaevardi, a principal with Oxnard, who indicated that they had not been able to attract any buyers for the single-family product in the subdivision. During the period that they attempted to market the single family product there were rezoning signs posted on the property creating a degree of uncertainty as to what might occur with the rezoning application before the Town. Due to the uncertainty associated with the final uses that might occur on the subject lands the Board cannot give any serious weight to the evidence that the lots cannot be marketed for single-family use.

The Board heard from Mr. John Austin, the manager of Design and Technical Services, who is responsible for current development with the Town of Whitby. It was his evidence that the present zoning is acceptable and conforms to the existing Official Plan policies and represents good planning for the area. It was also his evidence that the proposed zoning would conform to the Town of Whitby Official Plan as the medium density designation is permitted to float within the residential designation. He did not share the opinion that because the existing street townhouses were constructed that single detached housing could not be marketed and developed in this area. In this regard he directed the Board to other locations in the Municipality (Exhibits 11 & 12) where single detached units are found on streets that require passage through higher density areas. He also pointed out to the Board that in the development of the lands to the immediate east of the subject property single detached lots were placed next to the Hillcourt Avenue properties with street townhouse development occurring to the immediate north and that this area has been totally built out.

The Board heard from Mr. Riley, a resident of Hillcourt Avenue, who spoke on behalf of the area residents. He indicated that as a result of the agreement reached with the previous developer and the Town of Whitby, the residents of Hillcourt Avenue withdrew their objections to the development. He indicated that they had not felt that the agreement needed to be registered as the Town had passed the zoning amendment restricting the form of development next to the Hillcourt residences to single family dwelling unit lots and the plan had been registered in a form consistent with the agreement.

It is clear to the Board after careful consideration of all of the evidence and the submissions made that both the common wall semi-detached development being

proposed and the existing single family detached dwelling lots currently zoned and in place are permitted under current planning policies. It is equally clear to the Board that either proposal will have little or no adverse planning impact on the surrounding area. The Board is satisfied that the current single-family lots development is not significantly different from other situations in Whitby and can be marketed within the urban context of Whitby. In any event marketability should not be the sole determinate of land use.

The Board is satisfied that the Council for the Town of Whitby has acted properly within its jurisdiction and that its decision as reflected in the current zoning and registered plan is based upon good planning within the development context of the Town of Whitby.

The present development scheme is within the Official Plan policies currently in place and implements understandings recently reached regarding the appropriate development for this area. The Board has no evidence before it that allowing the appeal would provide a better or more appropriate planning solution.

THE BOARD ORDERS the appeal is dismissed

The Board so Orders.

"J.P. Atcheson"

J.P. ATCHESON
MEMBER

"G.C. O'Connor"

G.C. O'CONNOR
MEMBER