

Landrex Holmes Ltd. v. Eramosa (Township)

IN THE MATTER OF Section 22(1) of the Planning Act, 1983

AND IN THE MATTER OF a referral to this Board by the Honourable John Eakins, Minister of Municipal Affairs, on a request by Landrex Homes Inc. for consideration of a proposed amendment to the Official Plan for the Township of Eramosa to redesignate the lands comprising part of Lot 5, Concession IV, from Rural to Residential to permit the development of 19 townhouse units, Minister's File No. 23-OP-3775-A02

AND IN THE MATTER OF Section 34(11) of the Planning Act,
1983

AND IN THE MATTER OF an appeal to this Board by Landrex

Homes Inc. for an order amending Zoning By-law 14-1977 of the Corporation of the Township of Eramosa to rezone the lands comprising Lot 5 Concession 4 in the Township of Eramosa from "Zone 1" to "Zone 9A" to permit the development of 19 townhouse units

Ontario Municipal Board Decisions: [1989] O.M.B.D. No. 2009
File Nos. O 890087, Z 880238

Ontario Municipal Board
D.W. Middleton, J.R. Mills
November 27, 1989
(5 pp.)

COUNSEL:

R. Arblaster, for Landrex Homes Inc.
A. Braida, for Township of Eramosa.

MEMORANDUM OF ORAL INTERIM DECISION delivered by D.W.

MIDDLETON:--

The Board is offering its comments prior to hearing the arguments of counsel. My colleague and I have spent some time in discussing where we are in this particular hearing. At the end of my comments if either counsel want to present their arguments the Board will hear them, but we have some proposals and dispositions to make at this hearing at this time.

We feel that it would be unfair and costly to both parties to simply say there are deficiencies and deny the amendment to the Official Plan and allow the appeal against the zoning by-law. The Board is generally agreed that this is an extension of the Village and in that sense that part of the planning is appropriate. It represents on the evidence of the planner for the municipality a rounding out of the designation. We do not, however, have a definitive line as to where the boundary should

be. Based on Exhibit 34 it would appear we might even landlock some land that would be designated for a use for which there would be no access. So in that sense we need a definitive line. Although the one prepared by Mr. Barber is very neat, it may not reflect the ownership of the lands as they exist between the Village and the subject land.

The Board has identified through the hearing a number of items that in our opinion should be dealt with, and given further consideration by the parties:

1. Substantial reduction in the number of units. The density as proposed is just too great.
2. The treatment of the easement which exists on the property and the obtaining of the necessary approvals and undertakings from the Ministry of the Environment as to what the easement can be used for.
3. We need a definitive answer on the front yard setback as required by the Ministry of Transportation.
4. The Board has indicated there is a need to reduce the number of units. Reducing the number of units may reduce the required sound proofing and we need definitive plans for any proposed sound proofing.
5. On the issue of parking, we think there should be further consideration of the setback of the parking from the proposed housing whatever number that may be. Further consideration as to how many spaces are actually required when you think in terms of people who buy these units and will require automobiles to travel to and from work. The size of the units that are eventually proposed, the number of bedrooms will affect how many potential parking spaces will be required.
6. The evidence that the Board obtained at its own request and the evidence given by Mr. Long certainly leaves us in the position of not knowing what should be built next to the pumping station. It may be a modest problem to deal with and may not be as bad as it was presented but the Board does not know at this point in time. If modifications need to be made the Board needs to know, and who has to pay for it.
7. There is the issue of pedestrian access to the Village. Should sidewalks be a part of this development.

Throughout the hearing the Board has heard from the parties that it can be looked after in the draft development agreement or it can be part of the site plan. The Board, would say colloquially, it is just not prepared to accept "a pig in a poke". We want to know what we are approving and what is likely to appear on this site. My colleague and I based on the evidence are convinced that it is probably not a location for a

single family house, considering the topography and everything else. We are also equally convinced at this point that it is not an appropriate site for a 19 unit townhouse building based on the constraints that are on the site.

It is our proposal therefore to adjourn this hearing sine die. That will avoid the business of both of you having to go through the whole process again. It may be necessary for you to hold a further public meeting and it may be necessary, of course, for you to go back to Council and discuss what should happen. We obviously will remain seized. If it is your wish for us to pick a date now when you think you can come before us again with the resolution of the issues that we have raised, we will try and get that date for you now. If you want it to be adjourned sine die we would do that. But we would like to make sure that it gets back on. That allows for the information of the Official Plan study being in place, at least the background information will be available, and some policy may evolve by the beginning of the new year. It is indicated that the study on the sewage and water will be in place. I think I should also add that based on the evidence the Board does not see any real issue in terms of supplying services to this site.

That is the Board's proposal. We will hear from each counsel. You may well want to make your submissions after what we have said and let us make the decision on the hearing we have had.

The Board provided time for consultations between counsel and the parties. Off the record discussion occurred and the Board concluded its oral decision as follows:

We are adjourning this hearing until 11:00 a.m. to commence in this building on March 19, 1990 and will continue until completed. In the event that either of the parties are not prepared to proceed at that time the Board requests that the Board be advised 30 days prior to that, so that the time may be used for other hearings. Our thanks to both counsel and to the participants for helping us.

D.W. MIDDLETON, Member

J.R. MILLS, Member

Re Eramosa (Township) Official Plan Amendment

IN THE MATTER OF Section 22(1) of the Planning Act, 1983

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Ontario Municipal Board Decisions: [1990] O.M.B.D. No. 544
File Nos. O 890087, Z 880238

Ontario Municipal Board
D.W. Middleton, J.R. Mills
March 26, 1990

COUNSEL:

Aldo Braidia, for the Township of Eramosa.
Richard R. Arblaster, for Landrex Homes Inc.

MEMORANDUM OF ORAL DECISION delivered by D.W. MIDDLETON:--

The Interim Oral Decision of the Board on November 27, 1989 set out a list of 7 limitations or problems the Board found existed in the Proposal to develop the townhouses on the subject lands. In that decision, the Board did not deal in any detail with the concerns of the Township of Eramosa. Council had refused to approve the official Plan Amendment and to pass a zoning by-law which would have permitted the proposed development.

Counsel's reasons for refusal were based on a number of concerns raised by the Board in its previous Decision and more particularly, counsel felt that this lot was created as a single family lot and should be used as such. Counsel held that the risk of precedent for extending the town boundary might be used by other owner developers to make applications to extend the village boundary in conflict with the official plan and to create a demand for services outside the existing boundary. The Board was advised that in fact, 3 such applications are pending.

The Board in the previous Decision, made a number of findings. Those included:

- (a) the site has services immediately available to it;
- (b) the location represented infilling;
- (c) the lands were not suitable for a single family home;

(d) the housing proposed for the site represented a housing form not available in Rockwood; and

(e) would provide 25 percent affordable housing.

The Guidelines of the Provincial Housing Policy as well as the housing mix referred to in the official Plan of the County and Township of Eramosa are all met by this proposal.

In the time between the hearings, the parties negotiated in good faith to make changes that would take cognizance of the Board's concerns. Those negotiations resulted in changes to the Proposal for Development as set out in the letter of March 1, 1990, (part of the Board's file). In support of those changes, the Board heard the planning evidence of David Butler. The revised proposals accomplished the following changes:

(1) There is an increased setback from Highway 7 from 25 feet to 45 feet.

(2) With the increased setback, the impact of highway noise will be reduced, and if the speed limit in front of the site is reduced from 80 km to 50 km per hour, the noise level will be within the Provincial standards. The Ministry of Transportation indicated that they would respond to such a request, if made by the Township of Eramosa.

(3) The density of the development has been reduced from 19 units to 15 units and this meets the density requirements of the Zone 9 category of the Township Zoning By-law and is, in fact, the zoning as now requested.

(4) With the reduced density, the parking arrangement is changed to provide 2 spaces for each unit, 1 in an enclosed garage and 1 tandem space on the garage apron of each unit.

(5) The developer obtained permission to use the MOE easement on the property subject to certain conditions as set out in Exhibit 39.

A full review of the treatment plant odours was conducted and modifications in operation were proposed. If this fails to control the odour problems, then the cost of further modifications to the plant would be paid for by the applicant. This undertaking is to be supported with a Letter of Credit for \$80,000.00.

The applicant also agreed to extend, at its expense, the asphalt sidewalks to the site.

The Board is satisfied that the concerns raised by the Board in the previous decision have been dealt with by the parties. The Board understands the Township's main concern was the precedent this development might be for other lands outside the

defined Rockwood boundary. The Board is satisfied from the evidence that there are no similar lands that can be immediately serviced from existing services and that are located on a public road and that represent a natural infilling situation with a development that represents good planning.

The Township planner, John Cox, a party to the negotiations, testified that he has reservations still with the compatibility of the development. The Board would observe that at this continued Hearing, no members of the public expressed concern about the proposed development, including the immediate neighbour who had appeared at the previous hearing. This neighbour did not oppose the development at that time, but was concerned with odours from the sewage treatment facility. In the opinion of Mr. Cox, the land should be subject to site plan control for purposes of designing appropriate drainage and landscaping for the site. On the issue of site plan control, the Township Council has the authority to make the land subject to site plan control if they so choose. In the alternative, Mr. Cox agreed these two matters could be dealt with satisfactorily in the Development Agreement.

Services had been an issue, but the evidence indicates there is adequate sewer service in this area of Rockwood with the system only being used at 34 percent of capacity.

On the issue of water service, the evidence was that there is uncommitted capacity. It was only an issue whether it should be committed to this site or whether the capacity should be reserved for other development. The evidence reveals that additional wells could be dug and reserve funds have been set aside for such purpose if required. The capacity is only limited by the MOE limitation on the pumping levels in the existing wells. This development in and of itself will not

RANK 49 OF 55, PAGE 8 OF 14, DB OMBC seriously impact the capacity for development in Rockwood.

Based on all of the evidence, the Board finds there is a single issue not resolved that would stand in the way of this proposal and that is the issue of precedent. The Board finds on the evidence that the Proposal represents good planning, it provides a housing mix as contemplated by the Provincial Housing Policy, the County and Township Official Plans and represents an efficient use of the lands already adjacent to adequate services. The lands have no agricultural potential because of location, topography and size. The proposal represents infilling and is the natural extension of Rockwood. The Board cannot find on the evidence, that there is any risk of precedent, nor does the Board consider that this decision offers any precedent to other lands outside of the Rockwood boundary. The evidence is uncontradicted that no lands at this time are adjacent to Rockwood that have similar potential for development and have services immediately available to the site.

The Board finds the Official Plan Amendment appropriate to provide for the development of 15 units of townhouse dwellings and finds the proposal meets the general policies of the County and Township Official Plan for Housing and does not offend on the policies which protect the agriculture uses in the Township. The proposed Zoning By-law permits the development of 15 townhouse units in conformity with the Official Plan and within the general standards set out in the Section 9 zoning category.

The Board therefore approves the Official Plan Amendment and allows the Zoning By-law Appeal. The Official Plan Amendment and Zoning By-law Amendment shall be in the form of Exhibit 47 which are attached and form part of this Decision as Schedules A and B. The approval of the Official Plan Amendment and the granting of the Zoning Appeal shall be subject to the Board's order not issuing until the Board is advised that a satisfactory Development Agreement has been entered into between the parties. If such agreement has not been achieved within 60 days, the Board may be spoken to for the purpose of withdrawing this condition.

D.W. MIDDLETON, Member
J.R. MILLS, Member

* * * * *

SCHEDULE A

DETAILS OF AMENDMENT

1. Change to Rockwood Policy

Section 9 of the Official Plan is amended by adding the following after Section 9.3.1:

"For the purposes of this Plan and the application of its land use policies and special policy consideration, the limits of Rockwood shall be deemed to be the Village Limits as shown on Schedule 'D' to this Plan, notwithstanding the fact that the actual Police Village limits of Rockwood may not always coincide with the Village Limits shown on Schedule 'D'."

2. Change to Schedule A

Schedule A to the Official Plan is amended by changing the box labelled: "ROCKWOOD SCHEDULE 'D'" so that it represents the changed shape of Rockwood as extended on Schedule A to this Amendment.

3. Changes to Village Limits

Schedule 'D' to the Official Plan is amended by changing the

VILLAGE LIMITS of Rockwood as shown on Schedule A to this Amendment.

4. Change to Land Use Designation

Schedule 'D' to the Official Plan is amended by changing to Residential the designation of the lands shown as "CHANGE TO RESIDENTIAL" on Schedule A to this Amendment.

IMPLEMENTATION OF AMENDMENT

This Amendment shall be implemented according to the policies of Section 10 of the Official Plan of the Township of Eramosa.

APPENDIX 2

THE CORPORATION OF THE TOWNSHIP OF ERAMOSA
BY-LAW NO.-.....
A BY-LAW TO AMEND ZONING BY-LAW NO. 14-1977

1. Section 5 of By-law No. 14-1977 is amended by adding the following:

"5.5.3 USES PERMITTED IN ZONE 9-SP1

Within any Zone 9-SP1, no land shall be used and no building or structure shall be erected or used except for one or more of the following:

- (a) row housing dwellings

5.5.4 SPECIAL REGULATIONS FOR ZONE 9-SP1

Within any Zone 9-SP1, no land shall be used and no building or structure shall be erected or used except in conformity with the applicable regulations in Sections 6 and 16.2.3 of this By-law, as modified by the following special regulations:

- (a) Minimum Lot Area (for all dwelling units):
- 0.4 hectares (1.0 acres)
- (b) Minimum Building Line (from Highway 7):
- 14.5 metres (44.3 feet)
- (c) Maximum Number of Dwelling Units:
 - (i) per building - 7 units
 - (ii) per lot - 15 units
- (d) Minimum Parking Spaces: - 2 for each unit with at least 1 parking space provided in a private garage and 1 parking space provided in a driveway leading to a private garage
- (e) Main buildings, driveways, and parking spaces in

driveways shall be located only within the envelopes shown on the attached Schedule B, and all remaining area shall be for landscaping."

2. Part 1 of Schedule 'A' to By-law No. 14-1977 is amended by adding the lands shown on the attached Schedule A and by changing to Zone 9-SP1 the zoning on the lands designated "ZONE CHANGE TO ZONE 9-SP1" on the attached Schedule A."

3. Schedules A and B are made part of this By-law.