

Stratford (City) Official Plan Amendment No. 5 (Re)

Elizabeth Mountain has 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 Stratford to approve Proposed Official Plan Amendment No. 5 to the Official Plan for the City of Stratford OMB File Number: O000020 and

Elizabeth Mountain has 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 166-99 of the City of Stratford OMB File Number: R000026

[2000] O.M.B.D. No. 362  
File Nos. PL000120, O000020, R000026

Ontario Municipal Board  
D.R. Granger  
April 12, 2000

COUNSEL:

R. Arblaster, for City of Stratford.  
A.R. Patton, for Loblaw Properties Limited and Zehrs Markets.  
E. Mountain, on her own behalf.

DECISION DELIVERED BY D.R. GRANGER AND ORDER OF THE BOARD:--

[para1] Elizabeth Mountain (appellant) has appealed from decisions of the Council of the City of Stratford (City) to approve Official Plan Amendment No. 5 (OPA 5) and enact Zoning By-law 166-99 (By-law) on December 20, 1999.

[para2] OPA 5 changes the designation of a 4.5 hectare parcel of land, located on the south side of Ontario Street between the existing Stratford Mall and the existing F.A.G. Bearings plant, from "Industrial Area" and "Commercial Area" and changes the zoning from Industrial "I" to General Commercial Special "C2-14-H." OPA 5 and the By-law will only permit a supermarket to be constructed on the subject lands. A holding provision will be in place until a site plan and agreement are approved by the City.

[para3] B. Dembek, on behalf of the City, provided professional land use planning evidence in support of the amendments. H. Kircher, on behalf of Loblaw Properties Limited and Zehrs Markets (applicants), provided professional market impact evidence in support of the amendments. R. Zelinka, on behalf of the applicants, provided professional land use planning evidence in support of the amendments. R. Shaw, Chief Administrative Officer for the City, was summoned

by the appellant and provided evidence regarding the processing of the applications.

[para4] E. Mountain, J. Chapryk, J. Cowling, T. Harbar, D. Redfern, L. Green, G. Allison, G. Fowler, K. Mistruzzi, E. Eberhardt, W. Munnely, A. Lockwood, E. Payne, A. Morris and M. Scott provided evidence in opposition to the amendments. Their issues were primarily focused on the potential for negative impact on the downtown core if Zehrs moves to the subject lands.

[para5] This was a two-day hearing with ten exhibits presented.

[para6] On all of the evidence presented, the Board dismisses the appeals by E. Mountain. The reasons follow.

[para7] On the planning evidence presented, the Board finds that the downtown core of the City is intended to be a compact, multi-use and multi-functional area located at the historic and geographical centre of the City. The compactness and the intensity of development facilitate the pedestrian circulation and activity and serves to strengthen the identity of the core. It is the primary retail focus as well as the centre of government, business, public gathering and entertainment. It was uncontested that the present downtown core is healthy. While food stores are a permitted use anywhere in the downtown core, uses which do not make an intensive use of the land are explicitly discouraged as set out in subsections 6.2.1 and 6.2.2 in the Official Plan.

[para8] The applicant has determined that it cannot continue to provide for a regional food store market and maintain the intent of the Official Plan. In order for the existing Zehrs store to expand to meet its identified market, it would be necessary to purchase and demolish existing buildings in the historically designated downtown core to increase the size of its building and its already extensive parking area. On the planning evidence presented, the Board finds that an expanded supermarket at this location in the downtown core would not meet the intent of the Official Plan.

[para9] The applicant has provided a written commitment to the City that it would not restrict the future use of its own downtown property from accommodating up to 15,000 square feet as a food store, determined in the planning evidence to be a reasonable size to serve a neighbourhood market similar to the Knechtels store located in the southern area of the City. In addition, the applicant has provided a written commitment to work with the City or any other party who wishes to purchase the site for a farmers market. These commitments are set out in Exhibit No. 3.

[para10] On the uncontradicted planning evidence, the Board finds that the present Zehrs site can be developed more intensively for other uses more compatible with the downtown

core including a more local serving food store. Other food related businesses exist in the downtown core and may well be enhanced by the removal of a land extensive regional level supermarket.

[para11] On the evidence presented, the Board does not find this to be a case of the City causing the removal of the only large food store presently located in the downtown core. It is a corporate business decision of the applicant to leave. This hearing is not about the existing lands located in the downtown core but the merits of designating and zoning a new site for a regional level supermarket which the Board will now address.

[para12] On the planning evidence presented, the Board finds that the lands subject to the amendments are located immediately adjacent to the existing commercially zoned lands of the Stratford Mail to the east and commercially zoned lands across Ontario Street to the north. This east area of Stratford is the focus of other existing regional commercial facilities including the mail, which includes an A & P owned supermarket and a Zellers retail store, and a Canadian Tire retail and automotive store to the further east.

[para13] The subject lands are industrial lands of F.A.G. Bearings which have remained unused for industrial purposes. Private soccer fields are presently located on the site. This site was identified as a potential commercial reserve in the 1982 City Commercial Needs Study presented as Exhibit No. 7. While it is now proposed to remove the lands from the industrial designation, they will still constitute employment lands albeit in commercial use. This site is located to the west of the existing regional commercial uses, closer to the City downtown core. It was the uncontradicted planning evidence that the proposed commercial use of this site would be more compatible with the commercial, residential and gateway nature of Ontario Street than another industrial use.

[para14] The applicant was required to undertake the market impact study presented as Exhibit No. 5. It concluded that a significant portion of expenditure made by Stratford residents in other communities could be recaptured. It also concluded that the largest portion of their sales would be derived from the existing store being closed. It recommended the relocation and expansion of Zehrs in Stratford. The study was circulated by the City to A & P and Sobeys who presently have food store interests in the community. They have not appealed the applicant's proposed amendments. OPA 5 provides that the site is restricted to a supermarket only. Prior to the adoption of any zoning by-law amendment to allow additional commercial uses, other than service or automotive based commercial uses which are less than a total of 1,000 square metres (ie. a gas station and donut shop), a retail impact of the additional commercial development and whether it will adversely affect the economic viability of the downtown core or other commercially designated areas will be required.

[para15] On the planning and marketing evidence presented, the Board finds that the establishment of a supermarket on the subject lands will not undermine the planned function of the downtown core and that any impact on competitive retailers will be moderate and of short duration.

[para16] A traffic impact study was undertaken by the applicant. It was uncontested that sufficient capacity and safe access can be provided for the subject lands and use. Site details will be subject to site plan approval by the City.

[para17] The applicant has committed their willingness to work with the City and its Gateway Committee to address the need for the provision of architectural and landscape architectural enhancements complimentary to this entry corridor leading to a recognized world class tourist related community in Ontario. The holding provision in the By-law will not be removed until the City has approved the site plan and agreement.

[para18] Environmental concerns were expressed by some opposed to the amendments related to the increased use of automobiles that the proposed site might generate. No independent study was undertaken. Approximately 20 percent of the existing Zehrs store customers do not arrive at the present site by automobile. The proposed site is on an existing bus route and discussions with the transit authority will consider the provision of a more convenient bus access to the site.

[para19] On the planning evidence presented, the Board finds that the redevelopment of the present site, and other downtown core sites, to incorporate local food store services and other more intensive downtown core uses, including high density residential, is encouraged. These initiatives would enhance the opportunity of facilitating an improved live-work-recreation proximity in the downtown core. A regional, land extensive supermarket will continue to rely on automobile transportation from City and hinterland residents regardless of its location within the community. One continues to hope that new and improved conservation technologies related to automobile use will continue to be developed and demanded.

[para20] Concerns were expressed by some opposed to the amendments with the process followed by the City in the approval of the amendments. On the evidence presented, the Board finds that all statutory requirements have been met in the processing of these applications. The statutory public meeting was held February 15, 1999. Many issues were raised by the public, competitors and Council. Over the course of the next ten months required reports were completed and the City planning staff completed their report and recommendations for approval of the amendments. This was presented to Council

December 13, 1999. Notice was given to all participants of the February public meeting that the matter was to be dealt at the December 13, 1999 meeting. Having considered the staff report and representations made, Council refused to approve and enact the December 13 amendments. The applicant appealed Council's refusal on December 17, 1999. Representations were subsequently made to Council by F.A.G. Bearings regarding the importance of the sale of their property to the future expansion of their industrial facilities within Stratford.

[para21] The Board notes that there was no evidence to suggest that representations were made by the applicant to have Council reconsider the matter. The Council met again December 20, 1999, heard further representations, reconsidered the matter and approved and enacted the amendments. The Board cannot presume to know why the position of Council changed except that on the evidence presented, the Board finds it clear that this was a most intense issue with strong support and pressure on both sides of the issue. Councils must balance many diverse interests within a community and ultimately decide in favour of what they deem to be the overall public interest. The right to change a decision is fundamental in our society. No one can always be right.

[para22] At least two of those who presented evidence in opposition to the amendments at this hearing of the Board acknowledged that they are now registered as candidates in the upcoming municipal elections. The recourse to disagreeing with elected officials is well known in our democratic society. On the evidence presented, the Board finds that an open public process was followed in the processing of these applications, including this full and fair hearing by the Board. All who wanted to be heard were heard.

[para23] Having considered all of the evidence presented including the uncontradicted professional land use planning evidence and the uncontradicted market impact evidence, in the context of a fiercely competitive market for food sales, the Board finds that Official Plan Amendment No. 5 is appropriate, represents good planning and is in the overall public interest of the community. On the same basis, the Board finds that By-law 166-99 implements Official Plan Amendment No. 5 and in doing so is appropriate, represents good planning and is in the overall public interest of the community.

[para24] In conclusion, with respect to Official Plan Amendment No. 5, the Board approves the amendment. With respect to By-law 166-99, the Board dismisses the appeal.

[para25] The Board so Orders.

D.R. GRANGER, Member