

1 of 1 DOCUMENT

Case Name:

1066517 Ontario Inc. v. Grey Highlands (Township)

1066517 Ontario Inc. has appealed to the Ontario Municipal Board under subsection 22(7) 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 the Official Plan for the Township of Grey Highlands to redesignate land at 103 and 105 Toronto Street S from Neighbourhood Area to Employment Area to permit retail commercial use

1066517 Ontario 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 2004-50 of the Township of Grey Highlands to rezone lands respecting 103 and 105 Toronto Street S from Residential (R) and Residential Multiple (RM) to Residential (R), Residential Multiple (RM) and Highway and Service Commercial (C2) zones to permit residential and a retail commercial use

IN THE MATTER OF subsection 53(14) of the Planning Act, R.S.O. 1990, c. P.13, as amended

Applicant and Appellant: 1066517 Ontario Inc.

Subject: Consent - Failure of council to make a decision on the application

**Property Address/Description: 103 and 105 Toronto Street S
Municipality: Township of Grey Highlands**

[2011] O.M.B.D. No. 308

Approval Authority File No. OP02.2008,

OMB File No. PL100771, Municipal File

No.: B-06/2008, OMB Case No.: PL100770, OMB File No.: PL100772

Ontario Municipal Board

Panel: A. Christou, Member

Decision: April 28, 2011.

(13 paras.)

Appearances:

1066517 Ontario Inc.: E. Treslan, counsel.

Township of Grey Highlands: E. Veldboom, counsel.

Roman Catholic Diocese of Hamilton & St. Joseph Catholic Church: H. Elston, counsel.

Participants

Raymond Dawe, John May, Brenda Orchard, Ashley Chapman, Leann Shaw, Richard Kavanaugh, Sally D'Alessandro, Daphne Bertram, Bernice Chittenden, Lisa & Shawn McIntosh.

DECISION DELIVERED BY A. CHRISTOU
AND ORDER OF THE BOARD

1 This was the first Prehearing Conference (PHC) to consider procedural matters for the hearing which will deal with appeals filed by 1066517 Ontario Inc. on Council's refusal to approve its applications for Official Plan Amendment (OPA), rezoning and Consent, seeking to permit a commercial enterprise including a Tim Horton's restaurant and other commercial uses at a 1.4 ha parcel at 103 and 105 Toronto Street S. in the Town of Markdale.

2 About 100 people from the community were in attendance. Seven persons requested Participant status for the hearing and further clarification on the issues to be tried. The Board also received written requests from three individuals requesting Participant status. A list of those in attendance

and of people seeking Participant status has been drawn and distributed to the Parties.

3 Mr. Treslan, Counsel for 1066517 Ontario Inc. (Applicant/Appellant) advised the Board that there is a draft approved residential plan of subdivision to the east of the subject lands and there will be a public street serving the residential area and the proposed commercial development, which will front onto Toronto Street (Highway 10). The Consent application is required to create the commercial parcel. The local Official Plan (OP) permits convenience stores, but not restaurants and other commercial uses. The current zoning is residential. The proposed OPA and rezoning would be appropriate for the development of the proposed uses.

4 He plans to call evidence from the following experts: the Township planner, the County planner, a private planner, a transportation expert and the municipality's engineer.

5 Mr. Veldboom, Counsel for the Township of Grey Highlands, advised the Board that the proposal does not conform to the County and to the Township OP and the Provincial Policy Statement. He plans to call evidence from one private planner and a traffic engineer.

6 Mr. Elston, Counsel for the Roman Catholic Diocese of Hamilton and for St. Joseph Catholic Church in Markdale, which is situated to the north of the proposed development, advised the Board that there are other churches and grand heritage homes and buildings in the immediate area. The Township's new OP provides policies for the protection and preservations of historical and heritage buildings. It also has a commercial hierarchy that provides for the proposed uses in other areas of the town. The proposal for the Appellant's property does not maintain the intent of the OP and the severance does not conform either. Because the property fronts on a highway with heavy truck traffic and is near the crest of a hill, it provides for difficult access and safety concerns. This is not the right place for a drive through restaurant.

7 Mr. Elston identified a number of issues such as access, land use compatibility and appropriateness, traffic, safety, noise, impact on existing uses and potential conflicts. He will be calling evidence from a planner, a transportation expert and the Parish priest.

8 The Parties will be meeting to agree upon and consolidate the issues list and will share them with Mr. Treslan, who has agreed to submit them to the Board together with the Procedural Order in the next few weeks. The Parties also agreed that it would be useful for the experts to meet and discuss possible resolutions. They have also agreed to consider if Mediation proceedings may be of assistance in narrowing the issues.

9 Mr. Veldboom advised the Board that given the issues, the experts involved and the number of Participants, the Parties have agreed that five (5) hearing days will be required for this matter and requested the Board to set time on the calendar for the hearing.

DISPOSITION

10 Having heard from the Parties and the Participants, the Board sets the following:

1. The Parties and Participants are as identified in this Order.
2. The hearing will start on Monday, August 15, 2011, at 11:00 a.m. at the Centre Grey Recreation Complex, Markdale Arena, Markdale Hall (Upper Level) 75 Walker Street, Markdale, Ontario, for a period of five (5) hearing days.
3. The Board will set aside appropriate time to hear the views of the community, at the start of the hearing.
4. Mr. Veldboom is to explore the availability of more appropriate hearing venue and advise the Board, the Parties and the participants accordingly.
5. The Parties are to perfect the Issues List and draft the Procedural Order and submit same to the Board by May 15, 2011.

11 No further notice is required.

12 I am not seized of the hearing.

13 This is the Order of the Board.

A. CHRISTOU
MEMBER

qp/e/qlas