

CITY OF HAMILTON

PLANNING AND ECONOMIC DEVELOPMENT DEPARTMENT
Economic Development and Real Estate Division

TO: Mayor and Members General Issues Committee	WARD(S) AFFECTED: WARD 12
COMMITTEE DATE: March 22, 2011	
SUBJECT/REPORT NO: Declaration of Surplus and Sale of Part of 306 Woodworth Drive, Ancaster to Benemar Construction Inc. (Mark and Robert DeBenedictus) (PED11056) (Ward 12)	
SUBMITTED BY: Tim McCabe General Manager Planning and Economic Development Department	PREPARED BY: Frank Albrecht (905) 546-2424 Ext. 2656
SIGNATURE:	

RECOMMENDATION:

- (a) That the subject land, being a portion of 306 Woodworth Drive in the former Village of Ancaster and described as Parts 4 and 5 on Plan 62R-18331, comprising an area of 7,820 square metres (1.93 acres) more or less, forming part of PIN 17436-0151 (LT) and part of PIN 17436-0137 (LT), and part of Roll No. 250310011017400 (as shown on Appendix "A" attached to Report PED11056) be declared surplus to the requirements of the City of Hamilton in accordance with the Procedural By-law for the Sale of Land, By-law 04-299;
- (b) That an Offer to Purchase executed by Benemar Construction Inc., on February 4, 2011, and scheduled to close on or before June 15, 2011, for the lands described in recommendation (a) be approved and completed, subject to the conditions described in recommendation (e) and the sale proceeds of \$1,668,070 be credited to Grange School Project ID 47702-4400556595; minus the administrative, legal and advertising expenses in the amount of \$70,337 to be deposited into account 45408-3560150200; and that demolition costs in the amount of \$80,000 be charged to Grange School Project ID 4400556595.

Furthermore, the net sale proceeds after disbursements are to be transferred from Grange School Project ID 4400556595 and credited to the Ancaster Capital Reserve - Account No. 108030;

- (c) That the required deposit cheque in the amount of \$166,807, being 10% of the purchase price, be held by the General Manager of Finance pending acceptance of this transaction;
- (d) That the sale price of \$1,668,070 does not include the Harmonized Sales Tax (HST); should the HST be applicable and collected by the City, that the HST amount be credited to Account No. 22828 009000 (HST Payable);
- (e) That the sale is subject to the following conditions included in the Offer to Purchase Part of 306 Woodworth Drive;
 - (i) This Offer to Purchase shall be conditional for a period of sixty (60) days from the date of acceptance of this Offer to Purchase by the City (“the Conditional Period”), to allow the Purchaser to enter upon the subject lands for the purposes of carrying out physical and environmental inspections (hereinafter the “Environmental Assessment”), investigations and testing pursuant to the Authority to Enter provided by the City to the Purchaser, which Authority to Enter is attached as Schedule “C”. An executed copy of Authority to enter shall be delivered to the City concurrently with the delivery to the Purchaser of an executed copy of this Agreement.
 - (ii) It is further understood and agreed by the Purchaser that in the event the City grants the Purchaser’s request to extend the conditional period for a further 60 days, the closing date of this transaction will automatically be extended by 60 days.
 - (iii) The Transferee shall apply for and receive final approval of a site plan and draft plan of condominium in accordance with the desired design concept herein attached as Schedule “B”, for the said land with the City of Hamilton, if required by the City of Hamilton, at its own cost.
 - (iv) The Transferee shall commence construction of a building(s) by not later than twelve (12) months from the Closing Date, subject to force majeure and delays attributable to the Transferor. Construction is considered commenced when the foundations have been installed as determined by the City of Hamilton Building Services Division.
 - (v) The Transferee shall complete construction of the said building(s) not later than two (2) years from the Closing Date subject to force majeure and delays attributable to the Transferor. The building(s) are considered

completed upon the satisfactory final inspection by the City of Hamilton Building Services Division.

- (f) That the Mayor and Municipal Clerk be authorized and directed to execute and issue a Certificate of Compliance in the form prescribed pursuant to Section 268 of the Municipal Act, if required, incorporating the following:
- (i) That as required by Section 3 (a) of By-Law 04-299, the subject lands be declared surplus by inclusion in this Report to City Council;
 - (ii) An internal appraisal of the fair market value of the real property intended to be sold was completed on December 8, 2010 and the sale price falls in the range of value of the appraisal; and,
 - (iii) That in accordance with the approved method of providing notice in the City of Hamilton By-Law No. 04-299 “Procedural By-Law for the Sale of Land”, Section 12 (a) (1) by publication of the notice in a newspaper having general circulation within the municipality in which the land is located, Section 12 (a) (3) by posting a “For Sale” sign on the land proposed to be sold, and Section 12 (a)(6), notice to the public of the proposed sale of land is given by inclusion of the recommendation by City Council to approve the sale of surplus lands.

EXECUTIVE SUMMARY:

The purpose of this Report is to request City Council's approval to declare the subject property surplus and accept an Offer to Purchase executed by Benemar Construction Inc. (Mark and Robert DeBenedictus), at fair market value of \$1,668,070. This conveyance will facilitate the development of nine (9) residential units on a private road as in the preferred design concept adopted by Committee and Council (PED09079) attached as Appendix “B” to Report PED11056.

Alternatives for Consideration – Page 5

FINANCIAL / STAFFING / LEGAL IMPLICATIONS: (for Recommendation(s) only)

Financial: The sale of the subject property will offset a portion of the acquisition cost of the former school site and will provide additional tax revenue from the proposed nine (9) residential units that are to be developed.

Council has directed that any revenue from the sale of 306 Woodworth Drive be credited back to the former Ancaster Capital Reserve Account No.108030. (Item 1(e) of Report PED05017).

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Staffing: There are no staffing implications from this recommendation.

Legal: Legal Services will assist Real Estate Staff in completing the sale.

HISTORICAL BACKGROUND: (Chronology of Events)

The information and recommendation contained in this Report primarily affect Ward 12.

The subject property is part of the former Grange School site that was acquired from the Hamilton-Wentworth District School Board in 2005 to alleviate parkland deficiency in the Perth Neighbourhood. As the whole school site was larger than required, Council directed staff to investigate the prospect of selling a portion of the site to recapture part of the acquisition and demolition costs, while still maintaining a passive neighbourhood park of 0.97 hectares (2.4 acres). Further, as the property was acquired through the Ancaster Capital Reserve Account, Council has directed that any revenue from the sale of 306 Woodworth Drive be credited back to the former Ancaster Capital Reserve Account No.108030.

To garner innovative conceptual designs for redevelopment of the school site, Expression(s) of Interest were sought by the City in 2006. Of the six (6) conceptual designs presented for public consultation, the preferred design as developed by staff (attached as Appendix "B" to Report PED11056) shows nine (9) residential lots on a private road, with a pedestrian connection from Robina Avenue to future Perth Park.

In March 2009, Council adopted Item 17 of the Seventh Planning and Economic Development Committee Report to rezone the former school site to permit development as envisioned in the conceptual plan. Three local residents appealed this zoning amendment to the OMB on the basis that the entire school site should be retained for parkland. The Ontario Municipal Board Report PL090430 dismissed the appeal on September 23, 2009. It's decision is attached as Appendix "C" to Report PED11056.

Subsequently, the school building was demolished and on December 8, 2010, the property was placed on the market. Marketing efforts included placing three newsprint ads, advertisement on the City of Hamilton's Real Estate Section website, and a "For Sale Sign" on the subject property. Seven (7) offers were received ranging from \$960,000 at the low end to the highest offer being \$1,668,070.

Staff is recommending acceptance of the offer executed by Benemar Construction Inc., (Mark and Robert DeBenedictus) of \$1,668,070. To facilitate this conveyance it is further being recommended that the subject lands be declared surplus in accordance with the City's Procedural By-law 04-299.

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ANALYSIS / RATIONALE FOR RECOMMENDATION:

(include Performance Measurement/Benchmarking Data, if applicable)

Approval of the recommendation by Committee and Council will facilitate residential intensification. Upon its development, the property will generate additional property tax revenue and relieve the City from liability and maintenance associated with this property.

ALTERNATIVES FOR CONSIDERATION:

(include Financial, Staffing, Legal and Policy Implications and pros and cons for each alternative)

Should Council not approve the Offer to Purchase, the Offer will become null and void; the City of Hamilton would not receive additional tax revenue or facilitate residential intensification.

CORPORATE STRATEGIC PLAN: (Linkage to Desired End Results)

Focus Areas: 1. Skilled, Innovative and Respectful Organization, 2. Financial Sustainability, 3. Intergovernmental Relationships, 4. Growing Our Economy, 5. Social Development, 6. Environmental Stewardship, 7. Healthy Community

Financial Sustainability

- ◆ Generate assessment growth/non-tax revenues

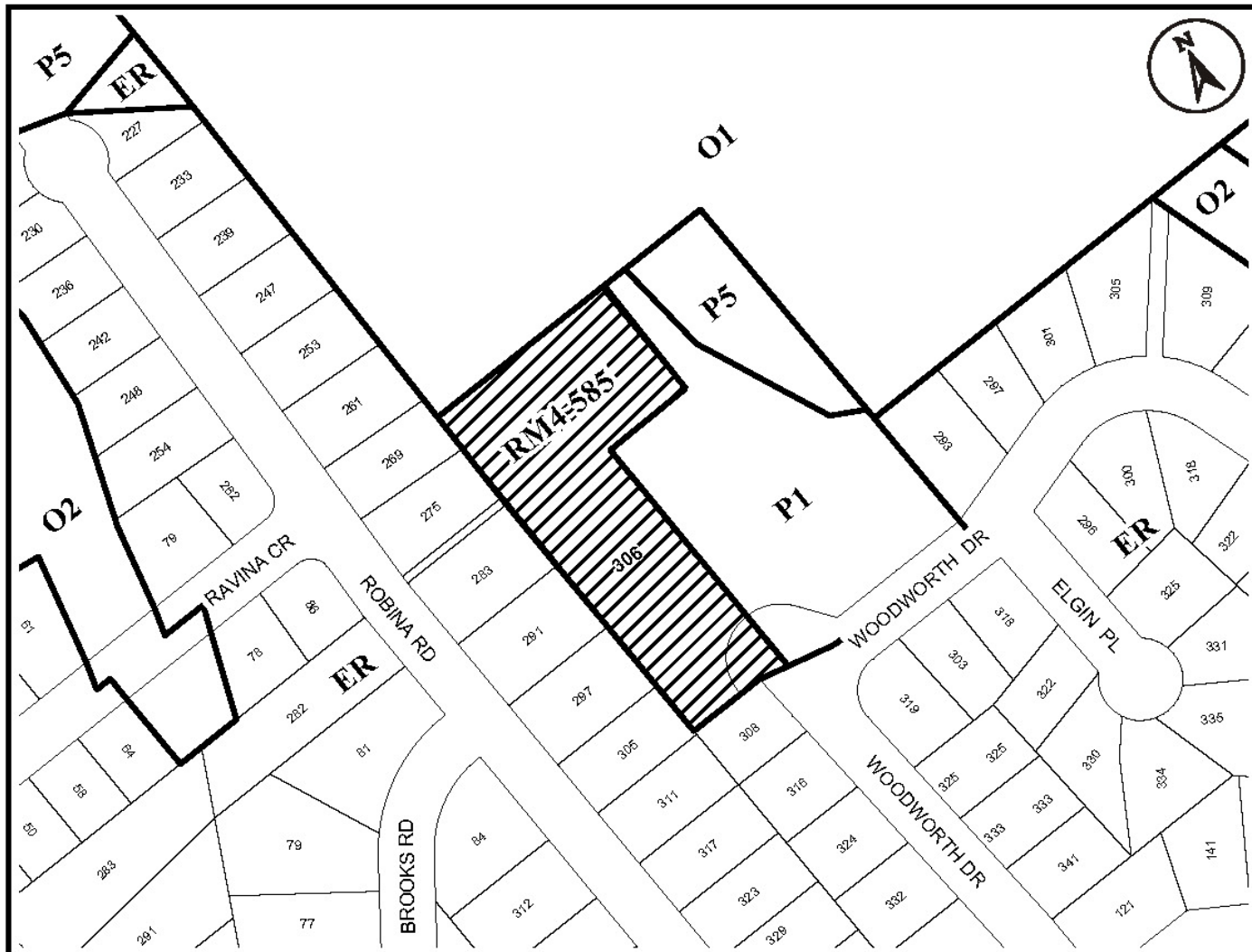
Growing Our Economy

- ◆ Newly created residential development – employment growth

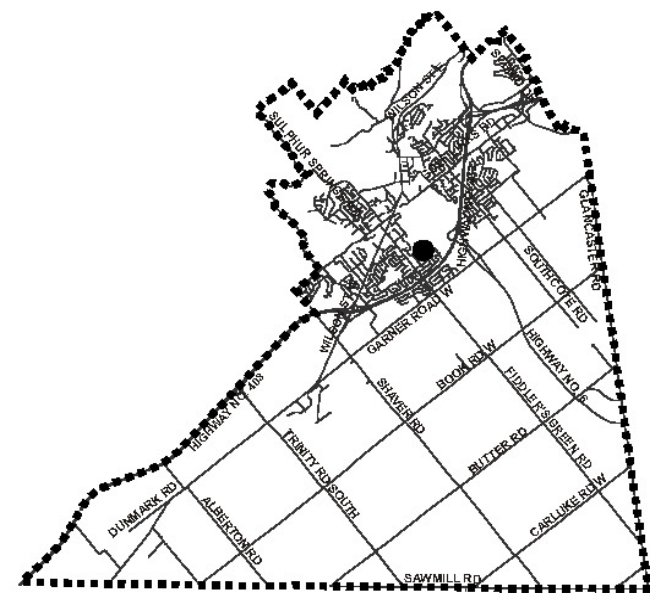
APPENDICES / SCHEDULES:

Appendix “A” to Report PED11056 - Location Map
Appendix “B” to Report PED11056 - Preferred Design Plan
Appendix “C” to Report PED11056 - Ontario Municipal Board Report PL090430

FA/sd



● Site Location



Ward 12 Key Map

N.T.S.

Location Map



PLANNING AND ECONOMIC DEVELOPMENT DEPARTMENT

File Name/Number:
306 Woodworth St

Date:
February 9, 2011

Appendix "A"

Scale:
N.T.S.

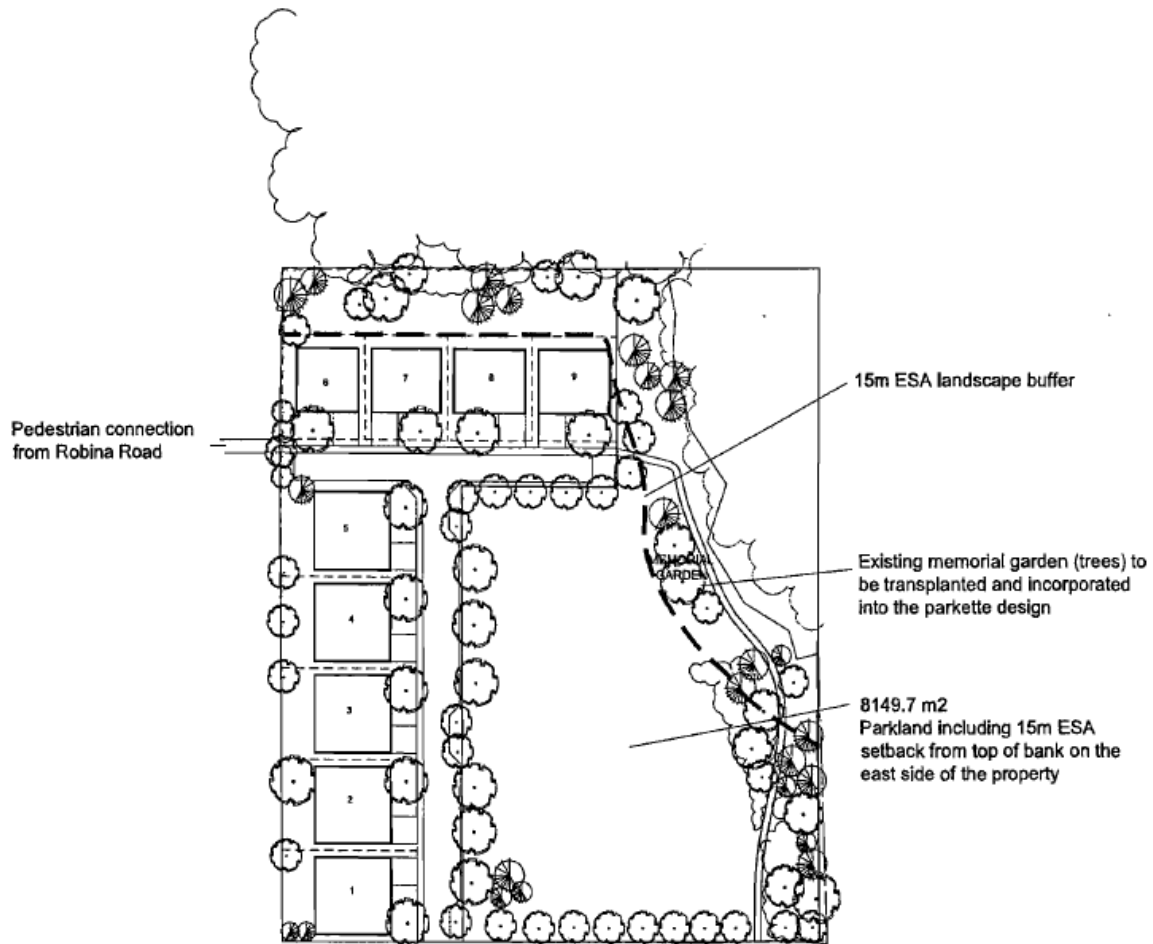
Planner/Technician:
FAMS

Subject Property



306 Woodworth Drive

Design Concept



Former Grange School Site

PREFERRED CONCEPT A
 January 14, 2008

- Nine 2 Storey individual houses with garages accessed via a private road.
- 10 visitor parking spaces (parallel parking spaces)
- 15m ESA buffer along north & east property line
- 8149.7 m2 parkland

APPROXIMATE SITE AREAS
 August 19, 2008

Park/ESA	10209.0 m2
Development	7813.2 m2

ISSUE DATE:

Sept. 23, 2009



Ontario

Ontario Municipal Board
Commission des affaires municipales de l'Ontario

PL090430

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

Appellant: Jim Enos
Appellant: Joe Taibi
Appellant: David Pentland
Subject: By-law No. 09-064
Municipality: City of Hamilton
OMB Case No.: PL090430
OMB File No.: PL090430

APPEARANCES:

Parties

Jim Enos
Joe Taibi
David Pentland

The City of Hamilton

Counsel*/Agent

H. Merling

A. Zuidema*

DECISION DELIVERED BY J.P. ATCHESON AND ORDER OF THE BOARD

This was a hearing of the Board in the matter of an appeal to the Council of the City of Hamilton's passing of Zoning By-law Amendment 09-064 to Zoning By-law 87-57 of the former Town of Ancaster, now in the City of Hamilton, by Jim Enos, Joe Taibi, and David Pentland (the Appellants). The purpose of the Zoning By-law Amendment is to amend the zoning on a property known as 306 Woodworth Drive from Institutional "I" Zone to Residential Multiple "RM4-585" Zone to permit up to nine single detached dwellings along a private condominium road. The Residential Multiple "RM4-585" Zone would permit site specific regulations to address maximum density, parking, maximum lot coverage, minimum setbacks and minimum landscape open space in the area set out on Schedule "A" to the Zoning By-law Amendment (Exhibit 3, Tab 68, page 308).

The Context

The subject property is located in the former Town of Ancaster, as shown at Exhibit 2, Tab 56, page 206, and is the site of the former Grange Public School. The site is within a developed residential area of Ancaster that is situated north of Highway #403 and bounded by Fiddlers Green Road on the west and Wilson Street and Golf Links Road on the north. The area is designated as "Urban" in the Hamilton-Wentworth Official Plan. The Official Plan of the former Town of Ancaster designates the school site as "Institutional". These designations are still in force and effect and would sanction the recent changes in zoning that have occurred on part of the site and the Zoning By-law Amendment now before the Board. In particular Section 4.7.9 of the former Town of Ancaster Official Plan allows for residential developments within the "Institutional" designation "provided they are compatible with the surrounding area and are in keeping with the policies of this Plan".

The subject lands abut the Hamilton Golf and Country Club on the North and east. The Golf course lands are zoned Open Space "O1". The remainder of the site abuts single family development that is zoned "ER" Existing Residential. The City in 2005 acquired the school site when it was deemed surplus to the School Board's needs, and subsequently began a public process with the neighbourhood to determine a new use for a portion of the site. The school site is some 1.78 ha in size. The eastern portion of the site has already been rezoned by By-law No. 09-071. This By-law Amendment zoned about .771 ha. "P1" Neighbourhood Park Zone and about .256 ha. "P5" Conservation and Hazard Land Zone, both zones are open space zones and are shown on Exhibit 4, Tab 6, page 165. The Zoning By-law Amendment now before the Board would rezone the remaining some .78 ha. of the school site for nine single family dwelling units based upon a condominium road pattern. The design concept upon which the proposed zoning is based is found at Exhibit 4, Tab 6, page 168. The Zoning By-law Amendment has been structured such that the northern 4 units that back onto the golf course have a 17.5 metre rear yard of which the rearmost 10 metres must be left in a nature state. The western unit of the four northern units that flanks the rear yard of the Taibi property must have a 7.5 metre side yard. All the other units whose rear yards abut the rear yards of the existing single family development on Robina Road must have 7.5 metre rear yards according to the proposed by-law. The condominium road widths and the required off street parking spaces are the same size and dimensions as

found in the Ancaster Zoning By-law. However, the parking space ratio for the proposal is slightly higher than that of the "ER" Existing Residential zone. The other regulations of the proposed Zoning By-law Amendment mimic or are greater than the regulations of the "ER" Existing Residential Zone. The property of Appellant, Pentland, at 293 Woodworth Drive abuts the subject property to the east. The former school lands that abut his property have already been zoned "P1" Neighbourhood Park Zone "P1". The property of Appellant, Enos, at 325 Woodworth Drive is a single family dwelling to the south and does not abut the school property. The rear yard of Appellant, Taibi, property abuts the proposed 7.5 metre side yard of a proposed unit as described earlier. The parties agreed that there were no consistency issues with the Places to Grow Legislation for the Greater Golden Horseshoe Area.

These facts are not in dispute.

THE EVIDENCE

The Board, during the course of the hearing, heard from the following witnesses:

1. T. Horzelenberg, a qualified land use planner who is employed by the City of Hamilton as a senior planner and who prepared a planning report on the Zoning By-law Amendment now before the Board.
2. Mr. L. Ferguson, the Municipal Councillor for Ward 12 in which the subject lands are located, provided his perspective on the intent of the By-law now before the Board.
3. Mr. Jim Enos gave evidence on his own behalf.
4. Mr. David Pentland gave evidence on his own behalf.
5. Mr. H. Merling endorsed the evidence of Mr. Enos and Mr. Pentland and spoke on behalf of Mr. Taibi.

The Appellants raised a long list of concerns regarding the proposed developments and the actions of the municipal council in dealing with the matter now

before the Board. However, in the Board's findings, the salient concerns expressed by the residents to be addressed may be summarized as follows:

1. The lands should have been zoned in their entirety for parkland purposes to meet a neighbourhood parkland deficiency in the area.
2. The City by rezoning a portion of the lands for residential development did not meet the intent of the Official Plan for the former Town of Ancaster as set out in section 4.3 and in particular the neighbourhood park standards found in section 4.3.2.9.
3. The City did not share in a timely fashion during the public meeting process information regarding parkland deficiency in the area.
4. The Zoning By-law Amendment is not consistent with the 2005 Provincial Policy Statement.
5. The City's planning appraisal was incomplete with respect to tree preservation and the Environmentally Sensitive Area (ESA) that abuts the property and the need to conduct an archaeological assessment as set out in the Hamilton-Wentworth Official Plan and that until these studies were completed the Zoning By-law Amendment should not have gone forward or, at the very least, the lands should have been placed in a "H" holding zone until these studies were done.

The ward councillor, in his testimony, advised the Board that when the Town of Ancaster was amalgamated with the City of Hamilton, it brought with it a special reserve account to be used specifically for the benefit of the residents of the former Ancaster area. It was this reserve account that provided the opportunity to acquire the school site when it became surplus to the Board of Education needs. His uncontradicted evidence was the City Council acquired the property to gain control over its ultimate development and to secure some additional parkland for this area. He put forward the position that it was never the intent of Council to use almost the entire Ancaster reserve in this one area but that instead a portion of the site was to be developed and the funds from the sale of the development lands was to be returned to the Ancaster reserve account to assist other parts of the Ancaster community. This direction is clear in the planning

report of July 15, 2005, which formed the basis of City Council's direction to acquire the property in the first instance.

Mr. Horzelenberg in his evidence reviewed his very comprehensive planning report found at Exhibit 2, Tab 56. He opined that the PPS encourages the intensification and redevelopment of areas within an urban settlement area such as Ancaster and that the Public Space policies of section 1.5 of the PPS are normally secured through Official Plans or more detailed Secondary Plans. He put forward the proposition that the Natural Heritage policies of the PPS as set out in section 2.16 had been met through the Environmental Impact Study (EIS) that had been undertaken by the Municipality and reviewed and supported by the Hamilton Conservation Authority and the Environmentally Significant Area Impact Evaluation Group (ESAIEG) of the City of Hamilton. He noted that the "P5" Conservation and Hazard Land Zone was in place and the setbacks proposed in the proposed Zoning By-law Amendment for the northern lots were consistent with the recommendations of the ESI report and with the policy direction of the 2005 Provincial Policy Statement and the policies of Section C-1.2.2 of the Hamilton Wentworth Official Plan.

He confirmed for the Board that when the property was sold by the City the purchase and sale agreement would require that an archaeological assessment be undertaken as part of the Draft Plan of Condominium review and approval and that this would meet the policy directions of Section B-9.2 of the Hamilton Wentworth Official Plan.

He freely admitted that in earlier planning reports the staff had determined that this area of Ancaster had a parkland deficiency of some 2.17 ha. and that this deficiency had been estimated on the policies found in the City of Hamilton Official Plan as there were no standards at that time in the Town of Ancaster Official Plan. He noted that subsequently the Ancaster Official Plan was amended in 2006 establishing park standards as set out in section 4.3.2.9. He opined through Exhibit 10a that based upon the Planning Units now used by the City of Hamilton that Planning Unit (3108) in which the subject property is located would in fact have a slight surplus of neighbourhood park land and that with the addition of the 0.77 ha. of neighbourhood parkland now zoned on part of the former Grange school site that there would be a surplus of some 0.87ha of neighbourhood parks within this Planning Unit. He also opined that the addition of this

parkland would also improve the walking radius to neighbourhood parks as set out in the Ancaster Official Plan (800 metre radius). It was his opinion this was a very favourable parkland condition compared to other Planning Units within the City of Hamilton as shown on Exhibit 10b. He advised the Board that the development of the site as set out in the design concept would be subject to site plan control and that, in his opinion, there were adequate controls in place to ensure the orderly development of the site, that there would be no negative impacts on any adjacent land uses, that there was appropriate municipal infrastructure in place to service the proposed development, and that, in his opinion, the Zoning By-law Amendment would sanction orderly development and represented good planning for this part of Hamilton.

FINDINGS AND CONCLUSIONS

The Board, after carefully reviewing the evidence, the exhibits filed, and the submissions made by the Parties, makes the following findings.

The Board recognizes and has made allowance that the Appellants are not learned counsel or planning professionals, and, as such, may not be as conversant with planning matters, but rather they are concerned property owners and citizens of Ancaster concerned about their property and the impacts of a proposed new development on their immediate community. That being said, the Board must decide the appeal before it, based upon the planning policy regime in place, the legislative directions of the various Acts applicable to this property and the evidence adduced during this hearing.

The Board finds that there are no consistency issues with Provincial Planning Policies resulting from the rezoning application, and that the matters of the land use designations on the subject property are clearly articulated by Official Plan for the former Town of Ancaster which is in full force and effect. Nor does the Board find any conformity issues with the Hamilton-Wentworth Official Plan or the other policy directions of the Official Plan for the former Town of Ancaster articulated to the Board by the Appellants. It is clear to the Board that a full reading of these Official Plans encourages the type and form of redevelopment within this Settlement Area of the

Municipality known as Ancaster and as contemplated by the Zoning By-law Amendment before the Board.

The Board would note that at no time has this site been designated for Neighbourhood Park and that the lands set aside by the Municipality and currently zoned will help alleviate the distance issue (800 metre radius) with respect to the existing Pinecrest Park.

It is unfortunate that the Appellants were lead to believe that a parkland deficiency of some 2.7 ha. existed in their area as this appears to be the substantive basis for their appeal, and while the Appellants may see a need to retain all or some of the open space afforded them when the property was a school site. This matter was not carried forward when the school site was deemed to be surplus as no change in the Official Plan designation for the site was undertaken and the directions of the Municipal Council were clear as to what they intended to do with the school property at the time of its purchase. The Board finds the more compelling and contemporary evidence to be that of the municipal planner, as set out at Exhibit 10a. Namely, that there is a slight surplus of neighbourhood parkland within this Planning Unit based upon the standards found in the Ancaster Official Plan. It is also clear to the Board from the evidence that this school site has never been designated in any Official Plan as an open space area and as such there is no planning policy obligation on City Council to designate the entire site now under its ownership and control for open space purposes. Parkland and open space deficiencies especially in older established urban areas are common. The Board finds no mandate in the Planning documents of the Municipality that City Council must correct all Parkland deficiencies within the Planning units of the new Municipality. The Board finds that the Municipal Council in this case has balanced the public need for additional parkland with its other fiscal obligation.

City Council's intentions have been clear as far back as 2005 when they gave directions to staff to acquire the property, that a portion of the site would be sold for development in order to recover a portion of the monies spent from the Ancaster reserve.

The Board has reviewed the public consultation record with respect to how the site might be developed and the specific regulations of the *Planning Act* with respect to

notice. There is no evidence that the Municipal Council or its staff failed to meet their obligation in this regard. It is also equally clear from the record that a number of development options were considered and discussed with the resident over a three year period and that the preferred development concept of the resident group is the one that would be sanctioned by Zoning By-law Amendment now before the Board.

The Board heard no compelling evidence that there would be any adverse impacts resulting from the proposed Zoning By-law Amendment on any abutting properties or the municipal infrastructure.

The Board accepts the uncontradicted evidence of the municipal planner that there are adequate controls in place through an agreement of purchase and sale, the Condominium Draft Plan Approval process, and the City's Site Control By-law to ensure that the necessary archaeological assessments, tree preservation plan, and final servicing studies are completed and on this basis there is no need to withhold approval of the Zoning By-law Amendment or to place a "H" holding provision in the By-law.

Mr. Merling in his submissions suggested that a walkway from Robina Road that provided a pedestrian access to the school property was not in the public domain and as such would make access to the recently zoned parkland difficult. The municipal planner could provide no clarity on the ownership issue of the walkway other than to state that the intention of the Municipality was to secure a pedestrian easement through the proposed development to maintain access to the Parkland from Robina Road.

It is the finding of the Board that the ownership and or existence of the walkway described by Mr. Merling is not determinative of the matters the Board must decide, and further the City's intentions to require the appropriate easements to integrate the existing walkway into the proposed development are appropriate.

In conclusion the Board finds that the Zoning By-law Amendment put forward by the Municipality is good planning and should be approved.

It is the decision of the Board for the reasons contained in this decision that:

THE BOARD ORDERS that the appeals against Zoning By-law Amendment 09-064 to Zoning By-law 87-57 of the former Town of Ancaster now in the City of Hamilton are dismissed.

This is the Order of the Board.

"J.P. Atcheson"

J.P. ATCHESON
MEMBER