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Ontario Municipal Board

IN THE MATTER OF Section 35
of The Planning Act (R.S.O.
1970, c. 349),

- and -

IN THE MATTER OF an application
by The Corporation of the Town-
ship of Pakenham for approval
of its Restricted Area By-law
78-9

C O U N S E L :

Arthur A. McLean

- for The Corporation of the
Township of Pakenham

Alan D. Sheffield

- for Mount Pakenham Limited
and William Gallagher

DECISION OF THE BOARD delivered by P. G. WILKES

The Board heard an application by the Township of
Pakenham for approval of its establishing By-law 78-9,
passed by Council on August 15, 1978.

The Township, located in the northern part of Lanark
County comprises an area of approximately 6400 acres, and
has a population of about 1350 people. It is predominantly
rural in nature with the Village of Pakenham, near its
easterly boundaries, being the sole urban settlement area.
Good agricultural land borders the Mississippi and Madawaska
Rivers along the easterly side of the Township, whereas the
land to the west is typical of the Canadian Shield, characterized
as having a thin layer of topsoil with rocky outcroppings,
and some hilly sections which have already provided the site
for one ski resort.

The planning evidence indicated that the purpose of
the establishing by-law before the Board is to provide
controls on land use in accordance with the policies of the

North Lanark Planning Area, approved by the Minister on July 27, 1978. Except for certain infilling situations in the Village of Pakenham, and one large area to the south-east of the Village, the lands in the Township were not rezoned. Instead, the lands were zoned primarily for existing uses in accordance with Official Plan policies.

A number of people expressed concerns about certain aspects of the by-law and their objections are set out below:

1. Mr. Robert BARRIGAR resides on a farm he owns in part of the north-east quarter of Lot 12 and the south-east quarter of Lot 13, Concession II, in the Township. His lands are zoned RU-Rural, permitting agricultural use and residential use, but not permitting a "law office" use. He would like to erect a legal office on his property sometime in the future, and the Township has expressed willingness to pass an amending by-law to permit this specific additional use on his lands. The Board agreed to adjourn sine die the hearing of the by-law as it relates to the Barrigar lands to give the municipality the opportunity of passing such an amendment. The amending by-law will require normal circulation before being submitted to the Board for approval. A description of the Barrigar lands is filed as Exhibit 8. Council should also deal with the matter of whether or not an Official Plan amendment is required prior to the passing of an amending by-law.
2. Mount Pakenham Limited operate a ski resort on parts of Lots 12, 13 and 14 in Concession 9. The lands, comprising about 300 acres, contain three different uses, and have three different zoning categories in accordance with these uses. The ski lodge itself is

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zoned VC-Commercial Resort. A 73-lot subdivision is zoned VR-Residential Seasonal, and the remaining lands, including the ski-hill are zoned RU-Rural.

Approximately 26 lots have been sold, nine of which were developed prior to the passing of the by-law, some for year round residences.

The owner of the resort is concerned that Seasonal Residential zoning will substantially reduce the value of both the unsold lots, and those already sold. He is also concerned that the by-law provision requiring frontage on a public highway will preclude development for permanent homes if the subdivision were to be rezoned to permit permanent residential use. Finally, he notes that there is a mapping error in the location of the lands zoned VC-Commercial Resort. The municipality expressed willingness to pass an amending by-law to overcome all of these concerns provided that a change to permanent residential zoning would permit only single family dwellings.

Since there was consent of both parties the Board has decided:

- (a) To adjourn the hearing sine die as it relates to the zoning of the lands zoned VC-Seasonal Residential in Part of Lot 13, Concession 9. This will give the municipality the opportunity of passing an amending by-law, rezoning the VC lands to RI-Residential General, restricting such use to single family dwellings, and amending Section 4.7 as it applies to these VC lands so as to require "access to" an improved street instead of "frontage" on it.

Such an amending by-law will require normal circulation before being submitted to the Board.

Council should also deal with the matter of whether or not an Official Plan amendment is required prior to the passing of an amending by-law.

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In spite of argument to the contrary the Board has decided to approve Section 4.7 of the By-law as it applies to all of the remaining land in the Township. The Board has concluded that Council should give this matter further consideration in the light of Official Plan policies.

- (b) To withhold approval of the Mount Pakenham lands shown as zoned VC on Schedule A to allow the municipality the opportunity of passing an amending by-law correcting a mapping error. When this amending by-law is submitted to the Board it will be approved without further notice or hearing.
- (c) To withhold approval of the definition of RECREATION FACILITY, Section 2.83 to allow the municipality the opportunity of passing an amending by-law adding: "skiing facilities and trails" after the word, "trails" in the fifth line. This amending by-law will be approved, after it has been submitted, without further notice or hearing.
3. Robert Ironside, owns about 26 acres in parts of Lot 11, Concession II and Concession 12. He plans to subdivide about 20 acres of this land, and has prepared a draft plan that appears to have had a favourable response from the North Lanark Planning Board. He is about to submit the plan to the Ministry of Housing. However, he wants the zoning of lands which he proposes to subdivide to be changed from RU-Rural to RI-Residential to permit development.

The evidence indicated that the Township require submission of the proposed draft plan for its scrutiny before considering such an amendment. In any event Council cannot pass this amendment until an Official

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plan amendment has been approved by the Minister.
The Board will therefore, approve the establishing by-law as it applies to the Ironside lands. This will not preclude an application for a zoning by-law amendment by Mr. Ironside after the Official Plan amendment has been approved.

4. Kenneth Musclove is a representative of the Mississippi Valley Conservation Authority. The Authority is concerned that there are sections of the banks of the Mississippi River south of the Village of Pakenham which are unstable. He was unable to identify the seriousness or extent of the problem, but felt that some restriction could possibly be included in the zoning by-law. He agreed that his concerns had been put to rest with regard to consents and subdivisions because of Official Plan policies. However, there did not appear to be anything to prevent a landowner from constructing a building up to within 66 feet of the river on properly zoned land.

Without more specific information, the Board can only urge council to seek further information from the Authority and the Ministry of Natural Resources in a form that is useful to the township planners. Once such information is available, it should be transmitted to the planners to be translated in some form of zoning controls.

In the interim it may be possible for council to caution people seeking building permits that serious problems might arise if buildings are constructed too close to the water's edge.

Approval of the by-law will not be withheld because of this concern.

5. Mr. Keith Miller who owns property in the east half of

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Lot 13, Concession 3, asked the Board if it were possible to exempt his lands from all of the provisions of the zoning by-law. He is opposed to any form of planning control in the Township, and believes that an owner should be able to use his land as he pleases.

In view of the legislation in place, and the thorough and workmanlike actions of the municipality, the Board was not persuaded by Mr. Miller's arguments that his lands should be left uncontrolled.

The Board will, therefore, approve the by-law as it applies to the Miller lands.

6. The Ministry of Housing submitted comments on the by-law to the Board in a letter dated December 3, 1979. Planning evidence and argument were heard on the matters contained in these comments with the Board reaching the following conclusions:

Comment A1

The Ministry's concerns over the zoning of hazard lands has been dealt with under item 4 above.

Comment A2

The municipality agreed that multiple family dwellings, boarding, lodging and rooming houses were not appropriate uses in a rural zone. The Board will therefore adjourn sine die the hearing of the by-law as it relates to residential uses permitted in an RU-Rural zone. This will allow the municipality to pass a by-law setting out specific residential uses in the RU zone. Such an amending by-law will require circulation in the normal way.

Comments A3, A4, A5, A6 and A7

The Board is satisfied from the planning evidence.

that the Official Plan policies are sufficiently broad to support the uses set out in Sections 6.1, 6.2, 7 and 8 of the by-law.

Comment A8

The municipality acknowledges that although the Agricultural Code of Practice will be brought to bear on matters dealing with consents and subdivisions through Official Plan policies, there is the possibility that a permit could be granted for the construction of a building closer to a specialized farm use than the code recommends where lots are zoned appropriately. The Board suggests that the municipality give further consideration to this matter in an effort to find some way of incorporating controls of this nature in the zoning by-law. Approval will not be withheld because of this concern.

Comment A9

The large RI zone in the southeast portion of the Village has been rezoned in accordance with the Official plan designation and is therefore approved.

Comment B1

Section 4.4 of the by-law includes provisions for development control which no longer apply. The Board will, therefore, not approve Section 4.4 of the By-law in its entirety.

Comment B2 and B3

With the consent of the municipality the Board will withhold approval of Section 4.12(c) and Section 4.21 to permit the municipality to pass an amending by-law to:

- add the words "or structure which is a permitted use", after the words "where a building..."

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- in Section 4.12(c)
- correct the reference "5.4(c)" to "5.4(e)" in Section 4.21.

When the amending by-law is submitted to the Board, it will be approved without further notice or hearing.

Comments B4, B5 and B6

The Board agrees that the municipality should consider the following additions to the by-law:

- a definition of the word "frontage"
- minimum lot area and frontage of a lot in rural zone
- converting to metric units as soon as possible.

Approval of the by-law will not be withheld because of these concerns.

With the exception of the matters which the Board has adjourned sine die, withheld its approval, and has not approved, as noted above, By-law 78-9 will be approved.

DATED at Toronto this 24th day of January, 1980.

DECISION OF THE BOARD OF THE CITY OF PETERBOROUGH

P.G. WILKES
MEMBER

By-law 1979-13 of the City of Peterborough, as passed by Council on February 5, 1979, amends By-law 1978-120 to the extent that it reserves a parcel of land on the north side of Lansdowne Street West near the west end of the city from a D1 zone to an S1 zone to permit the development of a food store (supermarket). The subject parcel is situated at Block P on Exhibit E to these proceedings and comprises 3.24 acres.

By-law 1979-14 of the City of Peterborough, as passed by Council on February 5, 1979, also amends By-law 1978-120 to the extent that it reserves a parcel of land on the north side of Lansdowne Street West immediately to the east of the parcel referred to above in By-law 1979-13 from a D1 zone to a C-1 zone to permit the development of a



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C O U N S E L :

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AMENDING DECISION OF THE BOARD delivered by P.G. WILKES

The decision of the Board dated January 24, 1980, in
the above-noted matter is hereby amended by deleting the
word "frontage" in the third line on page 8, under the
heading "Comments B4, B5 and B6" and substituting therefore
the word "flankage" so that the sentence following the
heading "Comments B4, B5 and B6" shall now read:

" The Board agrees that the municipality
should consider the following additions to
the by-law:

- a definition of the word "flankage"

- minimum lot area and frontage of a lot
in rural zone

- converting to metric units as soon as
possible. "

DATED at TORONTO, this 12th day of March, 1980.

P.G. WILKES
MEMBER