

ADDENDUM

REGULAR MEETING OF CITY COUNCIL

2011 07 18

4:30 P.M.

COUNCIL CHAMBERS

3. APPROVE AGENDA AS PRESENTED

Mover: Councillor P. Christian

Seconder: Councillor J. Krmpotich

Resolved that the Addendum for the 2011 07 18 City Council meeting as presented be approved.

PART ONE – CONSENT AGENDA

5. COMMUNICATIONS AND ROUTINE REPORTS OF CITY DEPARTMENTS, BOARDS AND COMMITTEES

- e) Additional correspondence has been received for the consideration of Council

Mover: Councillor P. Christian

Seconder: Councillor F. Manzo

Whereas the tick-borne illness known as Chronic Lyme Disease, which mimics many catastrophic illnesses, such as Multiple Sclerosis, Crohn's, Alzheimer's, arthritic diabetes, depression, Chronic Fatigue and Fibromyalgia is increasingly endemic in Canada, but the scientifically validated diagnostic tests and treatment choices are currently not available in Ontario, forcing patients to seek these in the USA and Europe; and

Whereas the Canadian Medical Association informed the public, governments and the medical profession in the May 30, 2000 edition of their professional journal that Lyme Disease is endemic throughout Canada, particularly in Southern Ontario; and

Whereas the Ontario Public Health system and the Ontario Health Insurance Plan do not currently fund those specific tests that accurately serve the process for establishing a clinical diagnosis, but only recognize testing procedures known in the medical literature to provide false negatives 45% to 95% of the time;

Therefore Be It Resolved that the Council of the City of Sault Ste. Marie petition the Legislative Assembly of Ontario to request the Minister of Health to direct the Ontario Public Health system and OHIP to include all currently available and scientifically verified tests for Acute and Chronic Lyme diagnosis, to do everything necessary to create public awareness of Lyme Disease in Ontario and

to have internationally developed diagnosis and successful treatment protocols available to patients and physicians.

- bb) **Superior Development Corp. (Carmen Coccimiglio Formerly 2252927 Ontario Inc.) – 622 Great Northern Road By-law 2011-16)**

A report of the City Solicitor is attached for the consideration of Council.

Mover: Councillor S. Butland
Seconder: Councillor J. Krmpotich

Resolved that the report of the City Solicitor dated 2011 07 18 concerning Superior Development Corp. (Carmen Coccimiglio Formerly 2252927 Ontario Inc.) – 622 Great Northern Road By-law 2011-16) be accepted as information.

PART TWO – REGULAR AGENDA

6. REPORTS OF CITY DEPARTMENTS, BOARDS AND COMMITTEES

(6) PLANNING

- a) **Application No. A-15-11-Z.OP – Sar-Gin Developments (Sault) Limited – 671, 671A and 683 Great Northern Road**

Additional correspondence is attached for the consideration of Council.

7. UNFINISHED BUSINESS, NOTICE OF MOTIONS AND RESOLUTIONS PLACED ON AGENDA BY MEMBERS OF COUNCIL

- c) Mover: Councillor F. Fata
Seconder: Councillor M. Bruni

Whereas one-way signs on Bloor Street West (west of Lyons Ave.) have been a concern to residents in the area; and

Whereas exiting Bloor Street at Lyons Ave. can be quite dangerous, especially if you are making a left hand turn; and

Whereas it would be safer if vehicles could travel west on Bloor Street and use Patrick Street to exit on the traffic lights,

Therefore Be It Resolved that the appropriate staff review this matter and report back to Council.



Corporation of the
COUNTY OF HURON

COUNTY CLERK, Barbara L. Wilson, CMO
1 Court House Square, Goderich, Ontario N7A 1M2
bwilson@huroncounty.ca

519-524-8394 (ext. 257)
Fax 519-524-2044

July 6th, 2011.

The Hon. Dalton McGuinty,
Premier of the Province of Ontario,
Room 281, Main Legislative Building,
Queen's Park,
Toronto, ON M7A 1A1

Honourable Premier:

The Council of the Corporation of the County of Huron recently heard a presentation from Christine Heffer, an Ontario resident living with Lyme Disease. The following Motion was passed by Council at their July 6th, 2011 Council meeting:

WHEREAS:

The tick-borne illness known as Chronic Lyme Disease, which mimics many catastrophic illnesses, such as Multiple Sclerosis, Crohn's, Alzheimer's, arthritic diabetes, depression, Chronic Fatigue and Fibromyalgia is increasingly endemic in Canada, but the scientifically validated diagnostic tests and treatment choices are currently not available in Ontario, forcing patients to seek these in the USA and Europe;

AND WHEREAS:

The Canadian Medical Association informed the public, governments, and the medical profession in the May 30, 2000 edition of their professional journal that Lyme Disease is endemic throughout Canada, particularly in Southern Ontario;

AND WHEREAS:

The Ontario Public Health system and the Ontario Health Insurance Plan currently do not fund those specific tests that accurately serve the process for establishing a clinical diagnosis, but only recognize testing procedures known in the medical literature to provide false negatives 45 to 95% of the time;

The Hon. Dalton McGuinty,
Premier of the Province of Ontario.
Re: Lyme Disease

July 6th, 2011.
Page 2 of 2.

NOW THEREFORE BE IT RESOLVED THAT:

The Council of the County of Huron petition the legislative assembly of Ontario to request the Minister of Health to direct the Ontario Public Health system and OHIP to include all currently available and scientifically verified tests for Acute and Chronic Lyme diagnosis, to do everything necessary to create public awareness of Lyme Disease in Ontario, and to have internationally developed diagnosis and successful treatment protocols available to patients and physicians.

Your attention to this very distressing disease that is affecting the livelihood of residents in Ontario is greatly appreciated.

Sincerely,



Barbara L. Wilson, CMO,
County Clerk,
County of Huron.

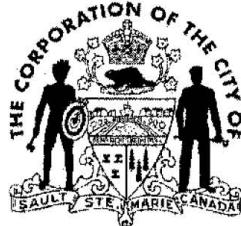
c.c. The Hon. Deborah Matthews, Minister of Health and Long-Term Care
The Hon. Carol Mitchell, MPP Huron-Bruce
Bob Bailey, MPP Sarnia-Lambton
Christine Heffer, cheffer@cogeco.ca

5(bb)

NUALA KENNY
CITY SOLICITOR

MELANIE BOROWICZ-SIBENIK
SOLICITOR / PROSECUTOR

LORIE BOTTOS
CORPORATE COUNSEL



LEGAL
DEPARTMENT

REPORT TO: Mayor Debbie Amaroso
and Members of Council

REPORT FROM: Nuala Kenny
City Solicitor

DATE: 2011 07 18

SUBJECT: **SUPERIOR DEVELOPMENT CORP. (CARMEN COCCIMIGLIO FORMERLY 2252927 ONTARIO INC.) – 622 GREAT NORTHERN ROAD BY-LAW 2011-16**

As Council may recall Mr. Fausto Ditommaso appealed Zoning By-law 2011-16. This by-law rezoned two small parcels of land located at 616 Great Northern Road and 628 Great Northern Road from R2 (Single Detached Residential) zone to C4 (General Commercial) zone to allow for future commercial development. The subject property is owned by Superior Development Group whose principal is Mr. Carmen Coccimiglio.

Superior Development Group brought a preliminary motion to dismiss the appeal on the grounds that the appeal did not disclose any authentic or apparent land use planning ground. The motion was heard on June 22, 2011 in Sault Ste. Marie with Mr. Chair Christou presiding. Superior Development Group was represented by Mr. Carmen Coccimiglio and Mr. Fausto Ditommaso was represented by Mr. Robert Paciocco. I attended on behalf of the City.

Upon hearing testimony of Don McConnell and Bill Wierzbicki (who provided expert planning evidence) for Fausto Ditommaso and upon hearing the submissions of counsel, the Board rendered its decision in writing on July 13, 2011.

The decision of the Board is to grant the motion and the appeal is dismissed. Accordingly By-law 2011-16 is in full force and effect.

Respectfully Submitted,


Nuala Kenny
City Solicitor
NK:cf

Staff/Zoning/OMB/2252927 ontario inc/cf

The Corporation of the City of Sault Ste. Marie
P.O. Box 580 ~ 99 Foster Drive ~ Sault Ste. Marie, ON P6A 5N1
Telephone: (705) 759-5400 ~ Fax: (705) 759-5405
www.cityssm.on.ca

5(bb)

Issue Date:

July 13, 2011



PL110326

Ontario Municipal Board
Commission des affaires municipales de l'Ontario

IN THE MATTER OF subsection 34(25) of the *Planning Act*, R.S.O. 1990, c. P.13, as amended

Motion By: 2252927 Ontario Inc.
Purpose of Motion: Request for an Order Dismissing the Appeal
Appellant: Fausto DiTommaso
Subject: By-law No. 2011-16
Municipality: City of Sault Ste. Marie
OMB Case No.: PL110326
OMB File No.: PL110326

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

Appellant: Fausto DiTommaso
Subject: By-law No. 2011-16
Municipality: City of Sault Ste. Marie
OMB Case No.: PL110326
OMB File No.: PL110326

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JUL 15 2011
NO.: 51982
DIST:

APPEARANCES:

Parties

Superior Development Corp.

City of Sault Ste. Marie

Fausto DiTommaso

Counsel

Carmen Coccimiglio

N. Kenny

Robert Paciocco

**DECISION DELIVERED BY A. CHRISTOU ON JUNE 22, 2011 AND ORDER
OF THE BOARD**

Superior Development Corp. (Superior), the Applicant, formerly 2252927 Ontario Inc., has brought a Motion for Dismissal, the Appellant, without holding a full hearing of the Appeal by Fausto DiTommaso against By-law No. 2011-16 of the City of Sault Ste.

Marie and served the Motion Record, including Motion, Affidavit and supporting materials on June 13, 2011.

On March 7th, 2011, City of Sault Ste. Marie Council enacted By-law No. 2011-16, approving a Zoning By-law Amendment application, under subsection 34(19) of *the Planning Act*, and rezoned two small parcels of land (Blocks A & B) at the rear of 616 and 622 Great Northern Road from "R.2" to "C.4" for future commercial development in conjunction with the Applicant's other commercial land, with a special exception limiting the uses on these Blocks to vehicular and pedestrian access only. The parcels are:

- Block A which is a portion (91 m by 21 m) of the unopened road allowance of Linda Road and is owned by the City; and
- Block B which is approximately 52 m by 12.2 m from the applicant's other holdings at 50 Linda Road.

Fausto DiTommaso, a neighbouring land owner, has appealed Council's Decision alleging that:

"Any easement agreement or access onto Home Depot Property will have direct traffic impact onto property owned by appellant of this application"; and

"Appellant has existing agreement with Linda Road property and Block A, B & C development/zoning will have direct [SIC] on easement agreement".

According to Mr. Paciocco, Counsel for DiTommaso, his client has an easement for access over Block A and the appeal was based on the use of Linda Road by the proponent. His concerns are with traffic flow through the various commercial properties in the mega commercial area and the impact the proposed LCBO development may have. He asserted this constitutes planning reasons for the appeal.

The City appeared in support of the Motion to dismiss the appeal without a hearing. Ms Kenny, Counsel for the City, submitted that the Appellant's concerns were

not raised previously; and that the access agreement to Linda Road has been done by way of an easement agreement.

Donald McConnell, the City's Planning Director provided planning opinion evidence. He located the property on the east side of Great Northern Road north of Second Line East, both of which are part of the Trans-Canada Highway. He testified that the area contains large commercial parcels and includes "big box" retail such as Walmart, Home Depot, Leon's Furniture and a proposed Michael's store. Other uses include a car dealership, Brewers Retail, office buildings and other retail. Both Walmart and Home Depot are on large parcels of land, but situated behind other commercial establishments which front on the public streets, although the "big box" stores have long and narrow driveways to Great Northern Road. The Official Plan (OP) encourages shared access between commercial development and internal circulation in the whole "mega commercial" is handled by private agreements between the business owners. The City will retain ownership of Linda Road because there are existing sewers that service the "big box" retail. He concluded the By-law conforms to the OP and represents good planning.

Carmen Coccimiglio, Counsel for and president of Superior, submitted that the Appellant's reasons are legal, not planning related. The Notice of Appeal does not disclose any apparent land use planning ground upon which the Board could allow all or part of the appeal; the appeal is not made in good faith, is frivolous and vexatious; and the appeal has been made only for the purpose of delay. He provided his own evidence in support of his Motion, including unsuccessful attempts to discuss the matter with the Appellant and the Appellant's efforts to attract the LCBO development to his property.

Bill Wierzbicki is a consulting land use planner, who worked for 39 years with the City, and he provided planning evidence on behalf of Mr. DiTommaso, including a recent planning report discussing the merits of the rezoning. He testified that the Applicant's property has a car dealership with a proposed LCBO store on the south.

Access to the commercial property is not signalized and left turns are not permitted onto Great Northern Road. He opined the reason for the rezoning of Block B was to provide for potential access to the Home Depot property to the south and there is a Site Plan in the City's file that shows a possible connection. In his view, the By-law raises traffic and connection concerns for abutting land owners. In allowing the rezoning, the City did not consider the implications on other land owners. He opined that the Zoning By-law is premature and it should have a Holding (H) provision subject to a traffic study. The planning issues require a full hearing.

Discussion and Reasons

Subsection 34(25) of the *Planning Act* provides for:

Dismissal without Hearing

- (25) Despite the *Statutory Powers Procedure Act* and subsections (11.0.2) and (24), the Municipal Board may dismiss all or part of an appeal without holding a hearing, on its own initiative or on the motion of any party, if,
- (a) it is of the opinion that,
 - (i) the reasons set out in the notice of appeal do not disclose any apparent land use planning ground upon which the Board could allow all or part of the appeal;
 - (ii) the appeal is not made in good faith or is frivolous or vexatious;
 - (iii) the appeal is made only for the purpose of delay, or
 - (iv) the appellant has persistently and without reasonable grounds commenced before the Board proceedings that constitute an abuse of process;
 - (a.1) Repealed: 2006, c.23, s.15(15).
 - (b) the appellant has not provided written reasons for the appeal;
 - (c) the appellant has not paid the fee prescribed under the *Ontario Municipal Board Act*; or

The Board has carefully reviewed the submissions and evidence presented in support and in opposition to the Motion. The City's aerial photo exhibit shows at least

23 commercial properties on the east side of Great Northern Road and north side of Second Line East, some of which appear to share the three private accesses to the arterial roads and access to parking areas via internal driveways, while others have their own direct access to the arterial roads. This includes Walmart and Home Depot, both of which have large parking areas in the interior of this large commercial area and narrow frontages for access. Since the City, in its wisdom, chose not to provide or require internal public streets for this development, it would appear that this extensive commercial area relies on other, possibly private mutual or reciprocal arrangements that allow for the orderly flow of traffic and access to parking. This scenario appears to have worked sufficiently well for some years and it is supported by policy in the OP, which according to both planners encourages shared access between commercial developments.

Mr. DiTommaso's appeal, as indicated earlier, appears to be referring to private easement agreements, and particularly the agreement he may have with the City for the benefit of his tenant, Leon's, to access its loading dock by using the Linda Road alignment. Although this unopened road is also subject to the rezoning Mr. DiTommaso appealed, there was no indication Superior intends to interfere with it and the City will continue to have ownership of the road. The Board also notes that Mr. Wierzbicki's planning report is new evidence and it was not presented to Council for consideration before the By-law was adopted and no other planning evidence was proffered at that time. Similarly, Mr. Wierzbicki is not a traffic expert and his evidence, although sincere, appears to be hypothetical that there may be unspecified traffic impacts. Both the City's Engineering and Public Works Departments reviewed the application but did not provide any comments on internal traffic, presumably because such things have been operating satisfactorily with private agreements in this municipality.

What appears to be of concern to Mr. DiTommaso is the potential access from the Applicant's property (Block B) to the Home Depot property and eventually to two of the driveways leading to the arterial roads that he owns. Since these two driveways

may be the only signalized intersections serving this large commercial area, the addition of the LCBO outlet would potentially attract a lot of traffic that could be using these accesses, and the cost of maintaining and improving them must be shared.

Home Depot was not an Appellant and did not appear at this hearing. It would appear that mutual or reciprocal private agreements will be required should Superior seek access through other people's property. If Home Depot does not wish to allow access over its property to Superior, then it will have to take appropriate action. Parenthetically, the Board notes that the concern raised by the Appellant may be exaggerated, since there would be an access from Superior's land onto Great Northern Road and traffic can travel via Terrance Avenue and Old Garden River Road south to Second Line East, thus possibly bypassing the internal circulation route.

The Board therefore finds that the appeal does not disclose any authentic or apparent land use planning ground upon which the Board could allow all or part of the appeal. This large commercial area has operated for many years with private agreements in place and there was no evidence adduced that such can not be replicated for the benefit of Superior. It would appear that the matters raised in the appeal are of private commercial nature and can be dealt with through private legal agreements. This Board can not be used as a forum for competing commercial interests in the absence of legitimate land use planning issues.

The Motion is granted and the appeal of Fausto DiTommaso against By-law No. 2011-16 of the City of Sault Ste. Marie is dismissed without a full hearing.

The Board so Orders.

"A. Christou"

A. CHRISTOU
MEMBER

6(6)(a)



Sault Search & Rescue Inc.

P.O. Box 961, Sault Ste. Marie, Ontario
Canada P6A 5N5

Mac Nicholson Rescue Centre
Telephone 705-759-5878

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NO.:	51971
DIST.:	Planning, Engineering Agenda

July 9, 2011

City Clerk
PO Box 580
Sault Ste. Marie
ON P6A 5N1

Re: Zoning application A-15-11-Z.OP

Sault Search and Rescue(SSAR) occupies the land immediately west of the subject property and adjacent to another Sar-Gin building on Industrial Park Crescent.

Sault Search and Rescue has a concern with potential water run-off from the proposed development. Since SSAR has a water run-off issue from the existing Sar-Gin building at 218 Industrial Park Crescent, we do not want to have water from the proposed development to have an impact on our property. SSAR has spent considerable time and effort to repair water damage to our parking lot, drainage ditch, and storage area.

SSAR does not have an objection to the proposed development but, by way of this letter, we put the City on notice that we request any and all information as to how run-off from the proposed development will be directed away from our property.

Yours truly;

David Gooderham
Secretary-Sault Search and Rescue.