

Local Planning Appeal Tribunal
Tribunal d'appel de l'aménagement
local



19-110-LPAT
Attachment 1

19-111-LPAT
Attachment 2

ISSUE DATE: May 07, 2019

CASE NO(S): PL171001

The Ontario Municipal Board (the "OMB") is continued under the name Local Planning Appeal Tribunal (the "Tribunal"), and any reference to the Ontario Municipal Board or Board in any publication of the Tribunal is deemed to be a reference to the Tribunal.

PROCEEDING COMMENCED UNDER subsection 22(7) of the *Planning Act*, R.S.O. 1990, c. P.13, as amended

Applicant and Appellant: Losani Homes (1998) Ltd.
Subject: Request to amend the Official Plan - Failure of the City of Hamilton to adopt the requested amendment
Existing Designation: Mixed - Medium Density - Pedestrian Predominant (Binbrook Secondary Plan)
Proposed Designated: Site – specific to be determined
Purpose: To permit the construction of two mixed-use buildings each with a partial fourth storey, with commercial uses at grade and residential units above.
Property Address/Description: 3100-3140 Regional Road 56
Municipality: City of Hamilton
Approval Authority File No.: UHOPA-16-019
OMB Case No.: PL171001
OMB File No.: PL171001
OMB Case Name: Losani Homes (1998) Ltd. v. Hamilton (City)

PROCEEDING COMMENCED UNDER subsection 34(11) of the *Planning Act*, R.S.O. 1990, c. P.13, as amended

Applicant and Appellant: Losani Homes (1998) Ltd.
Subject: Application to amend Zoning By-law No. 6593 - Refusal or neglect of City of Hamilton to make a decision
Existing Zoning: Existing Residential - "ER" Zone, (parcel 3100 - 3120)

Proposed Zoning: Restricted Agricultural - "A2" Zone, (parcel 3140)
 General Commercial – "C3"
 General Commercial "H-C3-304" Zone, Modified, with a Holding

Purpose: to permit the construction of two mixed-use buildings each with a partial fourth storey, with commercial uses at grade and residential units above.

Property Address/Description: 3100-3140 Regional Road 56
 Municipality: City of Hamilton
 Municipality File No.: ZAC-16-054
 OMB Case No.: PL171001
 OMB File No.: PL171002

Heard: July 6, 2018 by telephone conference call

APPEARANCES:

Parties

Losani Homes (1998) Ltd.

City of Hamilton

Counsel

William Liske

Michael Kovacevic

MEMORANDUM OF ORAL DECISION DELIVERED BY STEFAN KRZECZUNOWICZ ON JULY 6, 2018 AND ORDER OF THE TRIBUNAL

INTRODUCTION

[1] This was a hearing into appeals by Losani Homes (1998) Limited ("Losani") of the failure of the City of Hamilton (the "City") to make decisions on applications for official plan and zoning by-law amendments for lands located at 3100-3140 Regional Road 56, in Glanbrook (the "site"). A pre-hearing conference in these matters was held on March 19, 2018 last.

[2] The applications relate to a development for the site that, in its original form, comprised two four storey buildings with flat roofs, approximately 1,946 m² of ground

floor commercial uses, and 90 dwelling units on the upper floors. The buildings would have been 13.2 metres (“m”) high.

[3] The proposed building height, location, and uses, as well as the driveway access and surface parking on the site, have since been modified. The revised proposal is for a single three storey building with a partially sloped roof, a height of about 11 m, and 109 dwelling units and no commercial uses. The building would front Regional Road 56, with driveway access at the front and surface parking to the rear.

[4] As a result of the revisions, the two parties have settled their points of difference about the proposal.

[5] The Tribunal heard evidence from a Professional Planner, James Webb, whom the Tribunal qualified to give expert opinion evidence in matters of land use planning. Mr. Webb supported Losani’s revised proposal and recommended that the appeals be allowed. His views were uncontested.

LEGISLATIVE TESTS

[6] In reaching its decision, the Tribunal must consider whether the Official Planning Amendment (“OPA”) and Zoning By-law Amendment (“ZBLA”) applications have sufficient regard to the Provincial interests listed in s. 2 of the *Planning Act* (the “Act”), whether they are consistent with the Provincial Policy Statement 2014 (“PPS”), and whether they conform to the Provincial Growth Plan for the Greater Golden Horseshoe (the “Growth Plan”).

[7] In considering the ZBLA, an additional adjudicative test to be applied is whether the amendment conforms to the City’s Official Plan (“OP”).

[8] The Tribunal must also have regard to the decisions of City Council on the applications and the information Council has in making its decisions. In this respect,

counsel for the City made submissions in support of Losani's proposal at the hearing.

DISPOSITION

[9] The Tribunal accepts Mr. Webb's opinion that the Losani proposal is consistent with the PPS and conforms to the Growth Plan. The redevelopment represents appropriate intensification in the Binbrook settlement area, which is itself within the built up area of the City where the full range of municipal services is available. The density and form of development being proposed would contribute to increasing the range and mix of housing on the site as well as in the broader community. There are no conflicts with PPS policies that seek to protect natural heritage, cultural heritage, or archaeological resources.

[10] The site is designated "Mixed Use Medium Density" in the OP and "Mixed Use–Medium Density–Pedestrian Predominant" in the Binbrook Village Secondary Plan. The proposed OPA would maintain these designations but would expand the permitted uses to allow for ground floor residential uses in a building that faces a pedestrian predominant street.

[11] The proposed ZBLA would rezone the site to a General Commercial zone that would allow a stand-alone residential apartment building or a mixed use building with local commercial uses at grade. Site specific provisions would modify front and side yard setback, landscaping, and parking requirements to accommodate the proposal. Maximum building heights would be set at 11 m.

[12] The ZBLA also includes a Holding Provision for the site that would remain in place until necessary upgrades to the Binbrook Sanitary Sewer Pumping Station have been completed to the satisfaction of the City's Senior Director of Growth Management. According to Mr. Webb, these upgrades are anticipated to be completed by June 2019.

[13] The Tribunal accepts Mr. Webb's opinion that the revised proposal conforms to

the Intensification, Urban Design, and Land Use Policies of the OP in respect of Mixed Use Medium Density land uses as well as related policies in the Binbrook Village Secondary Plan. Specifically:

- a. The proposed building height respects the currently permitted height.
- b. The orientation of the building along the main street and its proposed design elements, including direct access from the main street to ground floor dwelling units, is consistent with policies that seek to promote a pedestrian friendly streetscape.

[14] It is noted that although located in an area where the OP encourages mixed use development, the proposal contemplates only residential uses. That said, having considered Mr. Webb's testimony, the Tribunal is satisfied that a suitable range of commercial uses is within walking distance of the site. Moreover, the proposal represents the natural extension of the pattern of redevelopment that is already occurring in the area.

[15] Finally, the Tribunal is satisfied that the proposal has undergone a thorough review by the necessary public bodies and has had sufficient regard to the concerns raised by the City during the planning process. As such, the requirements of s. 2 (m) and (n) of the Act have been met.

ORDER

[16] The Tribunal orders that the OPA and ZBLA appeals are allowed in part and the draft OPA and ZBLA set out in Attachments 1 and 2 respectively are approved.

"Stefan Krzeczunowicz"

STEFAN KRZECZUNOWICZ
MEMBER

If there is an attachment referred to in this document,
please visit www.elto.gov.on.ca to view the attachment in PDF format.

Local Planning Appeal Tribunal

A constituent tribunal of Tribunals Ontario - Environment and Land Division
Website: www.elto.gov.on.ca Telephone: 416-212-6349 Toll Free: 1-866-448-2248

Amendment No. 106 to the Urban Hamilton Official Plan

The following text, together with Appendix "A" – Volume 2: Map B.5.1-1 – Binbrook Village Secondary Plan Land Use Plan attached hereto, constitutes Official Plan Amendment No. 106 to the Urban Hamilton Official Plan.

1.0 Purpose and Effect:

The purpose and effect of this Amendment is to amend Policy E.4.3.4 d), Policy E.4.6.9, Policy E.4.6.19 and Map B.5.1-1 – Binbrook Village Secondary Plan Land Use Plan by establishing a Site Specific Policy Area in order to permit residential uses on the ground floor of a multiple dwelling.

2.0 Location:

The lands affected by this Amendment are known municipally as 3100-3140 Regional Road 56 and Block 131 of Registered Plan of Subdivision 62M-1062, in the former Township of Glanbrook.

3.0 Changes:

3.1 Mapping Changes

3.1.1 Map B.5.1-1 – Binbrook Village Secondary Plan Land Use Plan is amended by identifying the subject lands as Site Specific Policy – Area P, as shown on Appendix "A", attached.

3.2 Text Changes:

3.2.1 Volume 2: Chapter B, Glanbrook Secondary Plans, Section B.5.1 – Binbrook Village Secondary Plan, is amended by:

a) Adding a new Site Specific Policy – Area P to read as follows:

"Site Specific Policy – Area P

B.5.1.13.16 For the lands located at 3100-3140 Regional Road 56 and Block 131 of Registered Plan of Subdivision 62M-1062, designated "Mixed Use – Medium Density – Pedestrian Predominant" on Map B.5.1-1 – Binbrook Village Secondary Plan Land Use Plan, the

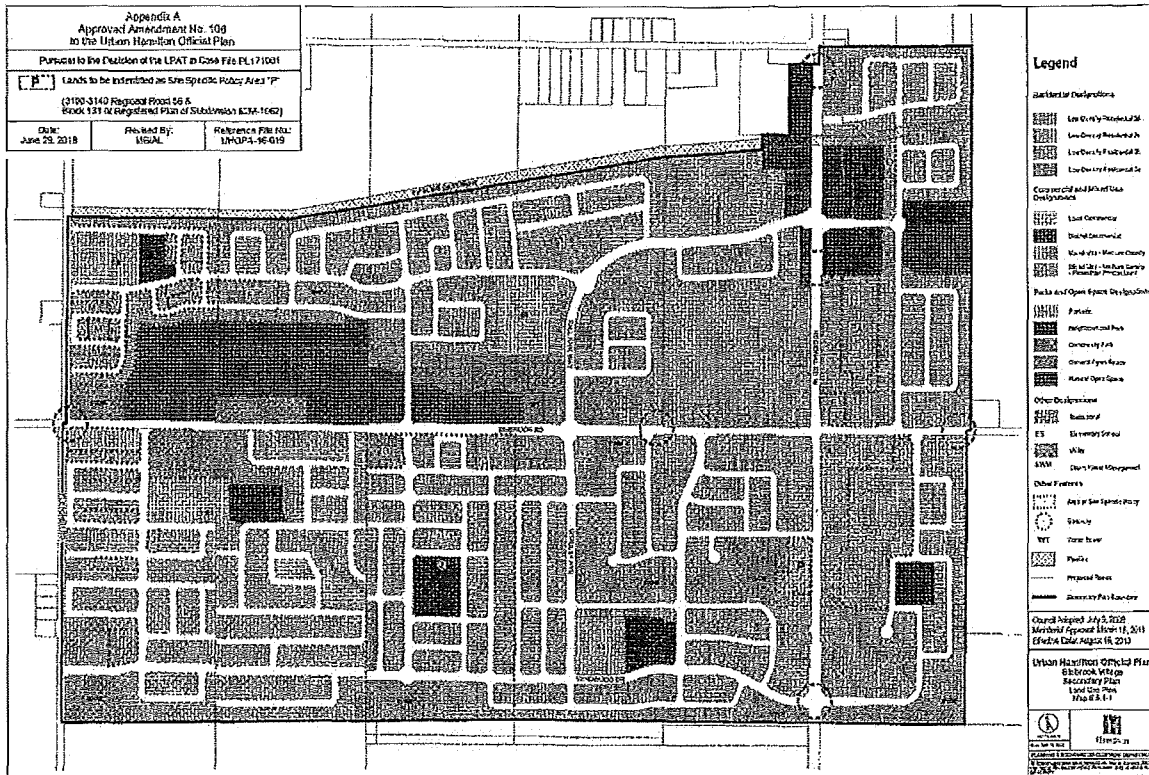
following policy shall apply:

- a) Notwithstanding Policy E.4.3.4 d), Policy E.4.6.9 and Policy E.4.6.19 of Volume 1 – Urban Systems and Designations, residential uses shall be permitted on the ground floor of a building facing onto a pedestrian predominant street.”

4.0 Implementation:

An implementing Zoning By-Law Amendment and Site Plan will give effect to the intended uses on the subject lands.

This Official Plan Amendment is Schedule “1” to By-law No. pursuant to Decision/Order of the Local Planning Appeals Tribunal issued in Case No. PL171001.



ATTACHMENT 2

CITY OF HAMILTON

BY-LAW NO.

To Amend Zoning By-law No. 464 (Glanbrook)
Respecting Lands located at 3100-3140 Regional Road 56 and Block 131 of
Registered Plan of Subdivision 62M-1062 in the former Township of Glanbrook, now
in the City of Hamilton

WHEREAS the *City of Hamilton Act, 1999*, Statutes of Ontario, 1999 Chap. 14, Sch. C. did incorporate, as of January 1, 2001, the municipality "City of Hamilton";

AND WHEREAS the City of Hamilton is the successor to certain area municipalities, including the former municipality known as the "The Corporation of the Township of Glanbrook" and is the successor to the former regional municipality, namely, "The Regional Municipality of Hamilton-Wentworth";

AND WHEREAS the *City of Hamilton Act, 1999* provides that the Zoning By-laws and Official Plans of the former area municipalities, and the Official Plan of the former regional municipality, continue in force in the City of Hamilton until subsequently amended or repealed by the Council of the City of Hamilton;

AND WHEREAS Zoning By-law No. 464 (Glanbrook) was enacted on the 16th day of March, 1992, and approved by the Ontario Municipal Board on the 31st day of May, 1993;

AND WHEREAS this by-law is in conformity with the Urban Hamilton Official Plan, upon approval of Official Plan Amendment No.

NOW THEREFORE the Local Planning Appeal Tribunal orders:

1. That Schedule "H", appended to and forming part of By-law No. 464 (Glanbrook), is amended by changing the zoning from the:
 - (a) Existing Residential "ER" Zone to the General Commercial – Holding "H-C3-304" Zone, Modified;
 - (b) Restricted Agricultural "A2" Zone to the General Commercial – Holding "H-C3-304" Zone, Modified; and,
 - (c) General Commercial "C3" Zone to the General Commercial – Holding "H-C3-304" Zone, Modified.

the extent and boundaries of which are shown on a plan hereto annexed as Schedule "A".

2. That Section 44, "Exceptions to the Provisions of this By-law", of Zoning By-law No. 464 (Glanbrook), be amended by adding Special Exception "H-C3-304", as follows:

"H-C3-304" – 3100, 3110, 3120 and 3140 Regional Road 56 and Block 131 of Registered Plan of Subdivision 62M-1062, Schedule "H"

Notwithstanding SECTION 25: GENERAL COMMERCIAL "C3" ZONE, Subsection 25.1, PERMITTED USES, only the following uses shall be permitted on lands zoned "H-C3-304":

- (a) Banks and financial institutions, Brewer's Retail stores, commercial schools, commercial recreation, day nurseries, Liquor Licence Board of Ontario stores, medical centres, offices, personal service shops, photographic studios, post offices, printing establishments, private or commercial clubs, professional and business offices, retail stores, fast food restaurants (excluding an outdoor patio and drive-thru), take-out restaurants (excluding an outdoor patio and drive-thru), standard restaurants (excluding an outdoor patio and drive-thru), and uses, buildings and structures accessory to the above permitted uses.
- (b) Residential uses ancillary to the uses permitted in Paragraph (a) of this Subsection.
- (c) Apartment Building.
- (d) The uses permitted in Paragraph (a) of this Subsection shall only be permitted on the ground floor.

Notwithstanding the definition of "Landscaped Area" in SECTION 4: DEFINITIONS, for the purpose of this By-law, "Landscaped Area" means "an area that shall not be built upon and shall not be used for any purpose other than as an area of landscaping, which may include grass, shrubs, flowers, trees and similar types of vegetation, and paths, walks, patios, fences, hydro transformers and similar appurtenances, but shall exclude parking areas, loading areas, driveways or ramps".

Notwithstanding the definition of "Lot Line, Front" in SECTION 4: DEFINITIONS, for the purpose of this By-law, the Front Lot Line shall be deemed to be the lot line adjacent to Regional Road 56.

The lots known as 3100, 3110, 3120 and 3140 Regional Road 56 and Block 131 of Registered Plan of Subdivision 62M-1062 shall be considered one lot for zoning purposes.

SECTION 25: GENERAL COMMERCIAL "C3" Zone, Subsection 25.2 REGULATIONS FOR USES PERMITTED IN PARAGRAPH (a) OF SUBSECTION 25.1 shall also apply to Paragraphs (b) and (c) above for the purposes of the lands zoned "H-C3-304".

Notwithstanding the regulations of SECTION 25: GENERAL COMMERCIAL "C3" ZONE, Subsection 25.2 - REGULATIONS FOR USES PERMITTED IN PARAGRAPH (a) OF SUBSECTION 25.1, Clauses (f), (i), and (l), the following regulations shall apply to the lands zoned "H-C3-304":

- (f) Minimum Front Yard.....3.0 metres
- (i) Maximum Height.....11.0 metres
to the highest point of the roof surface.
- (l) Minimum Landscaping Requirements
 - (i) A landscaped area in the form of a planting strip having a minimum width of 6.0 metres and a fence having a minimum height of 1.8 m shall be provided and thereafter maintained adjacent to every portion of any lot line that abuts a Residential use.
 - (ii) A landscaped area shall not be required for the portion of a lot line that abuts Regional Road 56.

In addition to the regulations of SECTION 25: GENERAL COMMERCIAL "C3" ZONE, Subsection 25.2 - REGULATIONS FOR USES PERMITTED IN PARAGRAPH (a) OF SUBSECTION 25.1, Clause (g), the following regulation shall apply to the lands zoned "H-C3-304":

- (g) Minimum Side Yard 0.2 m abutting
a daylight triangle

SECTION 25: GENERAL COMMERCIAL "C3" ZONE, Subsection 25.3 - REGULATIONS FOR USES PERMITTED IN PARAGRAPH (b) OF SUBSECTION 25.1, shall not apply to the lands zoned "H-C3-304".

Notwithstanding the regulations of SECTION 7: GENERAL PROVISIONS FOR ALL ZONES, Subsection 7.35 - MINIMUM PARKING REQUIREMENTS, Clauses (a)(vii), (a)(xv)(B), (a)(xii), and (b) and SECTION 25: GENERAL COMMERCIAL "C3" ZONE, Subsection 25.2 - REGULATIONS FOR USES PERMITTED IN PARAGRAPH (a) OF SUBSECTION 25.1, Clause (j), the following regulations shall apply to the lands zoned "H-C3-304":

- (a) General Provisions
 - (vii) Each parking space for ninety (90) degree perpendicular parking shall have a minimum width of 3.0 metres and a minimum length of 5.8 metres.
 - (xv)(B) Each space shall have a minimum width of 4.4 metres and a minimum length of 5.8 metres, except where two (2) handicapped parking spaces are located together, a minimum width of 3.5 metres for each space shall be permitted.

- (xii) Where a parking area which is required to provide for more than four (4) vehicles abuts any Residential use or where the adjoining land is used for a residential purpose, a landscaped area consisting of a permanently maintained planting strip with a minimum width of 6.0 metres shall be provided and shall also include fencing to provide a solid and effective screen. A transformer is permitted within this landscaped area.

(b) Off-Street Parking Space Requirements

- (i) Apartment Building.....1 space for each dwelling unit plus 0.5 visitor parking spaces for each dwelling unit
- (ii) Dwelling Unit in a commercial building.....1 space for each dwelling unit plus 0.5 visitor parking spaces for each dwelling unit
- (iii) The minimum number of parking spaces shall be one (1) parking space for each 30 square metres, or fraction thereof, of ground floor area devoted to commercial uses.

Notwithstanding the regulations of SECTION 7: GENERAL PROVISIONS FOR ALL ZONES, Subsection 7.26 – ENCROACHMENTS INTO YARDS, Clauses (a) and (b), the following regulation shall apply to the lands zoned "H-C3-304":

- (a) Sills, belt courses, cornices, eaves and gutters, chimneys, bay windows, or pilasters, which may project into any required yard a distance of not more than 3.0 metres;
- (b) Balconies, canopies, fruit cellars or unenclosed porches which may project into any required front, rear or side yard a distance of not more than 3.0 metres.

Notwithstanding the regulations of SECTION 7: GENERAL PROVISIONS FOR ALL ZONES, Subsection 7.36 – MINIMUM LOADING REQUIREMENTS, Clause (b)(a)(i), the following regulation shall apply to the lands zoned "H-C3-304":

- (i) One loading space shall be provided.

That the "H" symbol applicable to the lands zoned "H-C3-304" may be removed by a further amendment to this By-law at such time that the necessary upgrades to the Binbrook Sanitary Sewer Pumping Station are completed to the satisfaction of the Senior Director of Growth Management.

- 3. That no building or structure shall be erected, altered, extended or enlarged, nor shall any building or structure or part thereof be used, nor shall any land be

used, except in accordance with the General Commercial "C3" Zone provisions, subject to the special requirements referred to in Section 2.

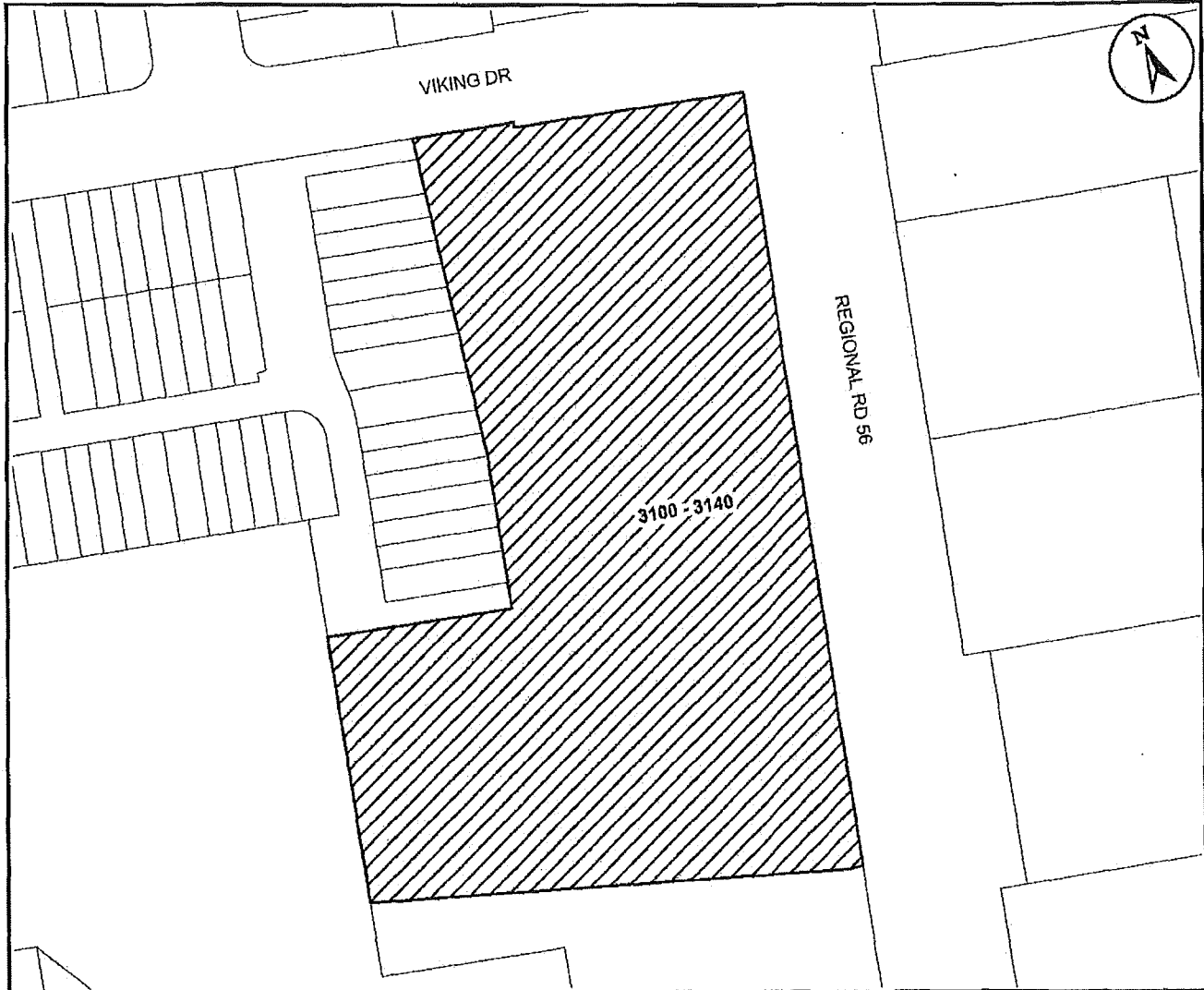
4. That the Clerk is hereby authorized and directed to proceed with the giving of notice of the passing of this by-law, in accordance with the *Planning Act*.

PASSED and ENACTED this day of , 2018.

F. Eisenberger
Mayor

Clerk

ZAC-16-054
UHOPA-16-019



This is Schedule "A" to By-law No. 18-
Passed the day of, 2018

Mayor


Clerk


Schedule "A"

Map Forming Part of
By-law No. 18-_____

to Amend By-law No. 464

Subject Property
3100 - 3140 Regional Road 56
& Block 131, Plan 62M-1062

 Change in zoning from Existing Residential "ER" Zone, Restrictd Agricultural "A2" Zone and General Commercial "C3" Zone to General Commercial "H-C3-304" Zone, Modified, Holding

Scale: N.T.S.	File Name/Number: ZAC-16-054 & UHOPA-16-019	 Hamilton
Date: February 8, 2018	Planner/Technician: MG/AL	
PLANNING AND ECONOMIC DEVELOPMENT DEPARTMENT		

For Office Use Only, this doesn't appear in the by-law - Clerk's will use this information in the Authority Section of the by-law

Is this by-law derived from the approval of a Committee Report? Yes

Committee: Chair and Members

Report No.: PED17140

Date: 09/05/2017

Ward(s) or City Wide: Ward 11

(MM/DD/YYYY)

Prepared by: Madeleine Giroux, Planner II

Phone No: 905-546-2424 ext.2664

For Office Use Only, this doesn't appear in the by-law