

ISSUE DATE:

Nov. 03, 2010

By-law No. 10-320



Ontario

Ontario Municipal Board

Commission des affaires municipales de l'Ontario

PL090520

PL091188

PL100232

Upper Centennial Developments Ltd. 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 City of Hamilton to redesignate lands known legally as Part of Lots 25 and 26, Concession 7 (formerly in the Township of Saltfleet) from Low Density Residential, Medium Density Residential and Institutional to General Commercial in order to permit various commercial/retail and residential uses

Municipal File No. OPA-06-26

OMB Case No. PL090520

OMB File No. PL090520

Upper Centennial Developments Ltd. 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 3692-92, as amended of the City of Hamilton to rezone lands known legally as Part of Lots 25 and 26, Concession 7 (formerly in the Township of Saltfleet) from "ND - Neighbourhood Development Zone" to "SC2 - Community Shopping Centre" in order to permit a variety of commercial uses on the proposed commercial block

OMB Case No. PL090520

OMB File No. PL090511

Parkside Developments (Albion) Limited and Landmart Realty Corp. have 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 3692-92 of the City of Hamilton to rezone lands respecting Lots 25 and 26, Concession 7 from Neighbourhood Development "ND" zone to Single Residential "R4" modified, Multiple Residential "RM2" and RM3" modified, and Open Space "O2" zone, in order to implement the proposed draft plan of subdivision

OMB Case No. PL091188

OMB File No. PL091188

Parkside Developments (Albion) Limited and Landmart Realty Corp. have appealed to the Ontario Municipal Board under subsection 51(34) of the *Planning Act*, R.S.O. 1990, c. P.13, as amended, from the failure of the City of Hamilton to make a decision respecting a proposed plan of subdivision on lands composed of Lots 25 and 26, Concession 7, in the City of Hamilton

Approval Authority File No. 25T-200808

OMB Case No. PL091188

OMB File No. PL091198

Paletta International (2000) 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 City of Hamilton to redesignate lands composed of Part of Lots 25 & 26, Concession 7 (Stoney Creek) from Low Density Residential; Medium Density Residential; Open Space - Community Park; Elementary School to permit the

proposed development composed of low, medium and medium-high density residential uses, a park, school and stormwater detention pond
Approval Authority File No. OPA 09-008
OMB Case No. PL100232
OMB File No. PL100232

Paletta International (2000) 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 90-145-Z of the City of Hamilton to rezone lands composed of Part of Lots 25 & 26, Concession 7 (Stoney Creek) from Neighbourhood Development "ND" Zone to R3, R4, R5X, RM2, RM4, OS, P, IS to permit the proposed development of low, medium and medium-high density residential uses, a park, school and stormwater detention pond
Approval Authority File No. ZAC 09-031
OMB Case No. PL100232
OMB File No. PL100233

Paletta International (2000) Inc. has appealed to the Ontario Municipal Board under subsection 51(34) of the *Planning Act*, R.S.O. 1990, c. P.13, as amended, from the failure of the City of Hamilton to make a decision respecting a proposed plan of subdivision on lands composed of Part of Lots 25 & 26, Concession 7 (Stoney Creek) in the City of Hamilton
Approval Authority File No. 25T-200908
OMB Case No. PL100232
OMB File No. PL100504

APPEARANCES:

Parties

Counsel

City of Hamilton

M. Kovacevic

Upper Centennial Developments Ltd.

S. A. Zakem and
P. J. Harrington

Paletta International (2000) Inc.

M. Noskiewicz and
J. Drake

Parkside Developments (Albion) Limited and
Landmart Realty Corp.

R. D. Cheeseman

**DECISION DELIVERED BY SUSAN de AVELLAR SCHILLER AND ORDER
OF THE BOARD**

Three cases, representing three adjacent development proposals, form these proceedings. The proponents are Upper Centennial Developments Ltd. [UCD], Paletta International (2000) Inc. [Paletta], and Parkside Developments (Albion) Limited and Landmart Realty Corp. [Parkside/Landmart]. Although these three cases have been consolidated, discussions between the Parties and the City have moved at different paces for each case. This Decision deals with the Paletta matters.

Prior to the start of the hearing, 660439 Ontario Inc., doing business as M & M Tables and represented by Counsel W. Thatcher at pre-hearings in these matters, advised the Board that all issues of concern to 660439 Ontario Inc. had now been resolved and 660439 Ontario Inc. sought leave of the Board to withdraw as a Party to these proceedings. The Board was advised by Counsel Thatcher that the request to withdraw came to the Board on consent of all other Parties. The Board was satisfied that the written request to withdraw was appropriate and sufficient and did not require 660439 Ontario Inc. to attend further at these proceedings.

At the outset of the hearing, the Board was advised by Participant Elaine Kowalyshyn that the refinements to the proposed Paletta plan of subdivision had met her concerns and those of her neighbours. Since Ms Kowalyshyn had no further concerns, she advised the Board that she would be attending only to observe the proceedings and would not be addressing the Board in this matter.

The Board heard from Messrs. Peter De Iulio and Joe Muto, both full members of the Canadian Institute of Planners and a Registered Professional Planners in Ontario. The Board also heard from Mr. Gavin Norman, a professional engineer with the City of Hamilton.

Paletta wishes to develop a residential subdivision on a 26 hectare site within the East Felker Neighbourhood of the former City of Stoney Creek, now the City of Hamilton. The proposal is for a mix of low, medium, and medium-high density residential units with a school, a park, and appropriate storm water management facilities. The site is within the West Mountain Secondary Plan Area, known as Heritage Green. The East Felker Neighbourhood is a block generally bounded by Mud Street

West on the north, Upper Centennial Parkway on the east, Highland Road West on the south and First Road West on the west.

The Paletta lands have an irregular shape and are located approximately in the middle of the block. The Parkside/Landmart lands are adjacent to the north and wrap around a small part of the Paletta lands at the northeast corner of the site. Also adjacent to the east is the UCD site and some existing commercial uses. To the south, tucked within the irregular U shape of the Paletta lands is an existing neighbourhood park and existing secondary school. Existing residential uses are also along Highland Road West, which is the southern boundary of the block, and along First Road West, which is the western boundary of the block.

Highbury Drive is a short road, travelling north-south from Highland Road West into the block. Paletta's irregular shape has a frontage of 26m on Highbury Drive. The proposal before the Board contemplates the extension of Highbury Drive north to connect with other internal roads planned for the proposed subdivision.

Paletta also has an 18m frontage on First Road West. This frontage is across from the current termination of Isaac Brock Drive, which now ends on the west side of First Road West. The proposal before the Board contemplates an extension of Isaac Brock Drive easterly across the Paletta lands to connect with the UCD lands that front on to Upper Centennial Parkway.

The road pattern in the proposed subdivision, including these extensions of existing roads, is designed to connect the Paletta lands to the existing and proposed fabric of surrounding properties. While the connections to the UCD lands have not been in dispute, the connection point of one of the proposed Paletta roads to the proposed Parkside/Landmart subdivision has been a matter of dispute between the Parties. As a result of continuing discussions between the Parties, a settlement of these connection points, and resulting road pattern, has finally been reached. The connections now provide for appropriate vehicular and pedestrian walkway connections to knit together the fabric of these subdivisions as they develop into this new neighbourhood.

There are five items before the Board in these proceedings:

- an amendment to the Official Plan for the former City of Stoney Creek, found at Attachment 1 to this Decision;
- two zoning by-law amendments: an amendment to the City of Stoney Creek zoning by-law and an amendment to the City of Hamilton zoning by-law, both of which are found at Attachment 2 to the Decision;
- a draft plan of subdivision, found at Attachment 3 to this Decision; and
- a list of the conditions of draft plan approval, found at Attachment 4 to this Decision.

The Provincial Policy Statement and the provincial Growth Plan for the Greater Golden Horseshoe both direct development to settlement areas, encourage intensification with an efficient use of infrastructure, support the development of complete communities with a range and mix of housing, appropriate community facilities, and provision of employment opportunities. While the commercial and employment element of this neighbourhood is strengthened more directly by the proposed UCD commercial development, the UCD, Paletta and Parkside/Landmart proposed developments all interconnect and interact to create a more balanced neighbourhood.

The Board finds that the proposed official plan amendment, zoning by-law amendments and draft plan of subdivision, subject to the conditions of draft plan approval, are consistent with the Provincial Policy Statement and conform to the provincial Growth Plan for the Greater Golden Horseshoe.

The City of Stoney Creek Official Plan and the West Mountain Area Heritage Green Secondary Plan both also emphasize the need to monitor population and traffic flows to ensure that new development fits comfortably within, and is appropriately connected to, surrounding areas.

The Board finds that the proposed official plan amendment conforms to the policy regime of the City of Stoney Creek Official Plan and the policy regime of the West Mountain Area Heritage Green Secondary Plan.

The City of Hamilton has been working on a new zoning by-law to knit together the zoning by-laws of the former municipalities that now make up the City of Hamilton. Rather than create a single zoning by-law that covers all uses, the City of Hamilton has elected to pass the new zoning by-law in segments that deal with particular topics. As such, the zoning by-law amendment to permit the Paletta proposed development is actually two zoning by-law amendments: one to amend the zoning by-law of the former City of Stoney Creek and one to amend the zoning by-law of the City of Hamilton. These by-law amendments are found at Attachment 2 to this Decision.

The Board finds that the zoning by-law amendments conform to the City of Stoney Creek Official Plan, as modified by the proposed official plan amendment.

Section 51(24) sets out criteria to which the Board must have regard when considering a draft plan of subdivision:

"...In considering a draft plan of subdivision, regard shall be had, among other matters, to the health, safety, convenience, accessibility for persons with disabilities and welfare of the present and future inhabitants of the municipality and to,

(a) the effect of development of the proposed subdivision on matters of provincial interest as referred to in section 2;

(b) whether the proposed subdivision is premature or in the public interest;

(c) whether the plan conforms to the official plan and adjacent plans of subdivision, if any;

(d) the suitability of the land for the purposes for which it is to be subdivided;

(e) the number, width, location and proposed grades and elevations of highways, and the adequacy of them, and the highways linking the highways in the proposed subdivision with the established highway system in the vicinity and the adequacy of them;

(f) the dimensions and shapes of the proposed lots;

(g) the restrictions or proposed restrictions, if any, on the land proposed to be subdivided or the buildings and structures proposed to be erected on it and the restrictions, if any, on adjoining land;

- (h) conservation of natural resources and flood control;
- (i) the adequacy of utilities and municipal services;
- (j) the adequacy of school sites;
- (k) the area of land, if any, within the proposed subdivision that, exclusive of highways, is to be conveyed or dedicated for public purposes;
- (l) the extent to which the plan's design optimizes the available supply, means of supplying, efficient use and conservation of energy; and
- (m) the interrelationship between the design of the proposed plan of subdivision and site plan control matters relating to any development on the land, if the land is also located within a site plan control area designated under subsection 41 (2) of this Act ..."

The Board finds that the proposed plan of subdivision, found at Attachment 3 to this Decision, satisfies the criteria set out in section 51(24) of the *Planning Act*.

Section 51(25) of the *Planning Act* permits the imposition of:

"...such conditions to the approval of a plan of subdivision as in the opinion of the approval authority are reasonable, having regard to the nature of the development proposed for the subdivision..."

The Board finds that the proposed conditions of draft plan approval, found at Attachment 4 to this Decision, are reasonable and appropriate, having regard to the nature of the proposed development.

Section 2.1 of the *Planning Act*, directs the Board to have regard to the decision of the municipal council in these matters. Counsel for the City advised the Board that, following extensive discussion, these matters now come to the Board on consent and the City appears in support of the proposed Paletta development.

The appeals are allowed in part.

The amendment to the City of Stoney Creek Official Plan, found at Attachment 1 to this Decision, is approved.

The City of Stoney Creek By-law 3692-92 and the City of Hamilton By-law 05-200 are amended as set out in Attachment 2 to this Decision.

The draft plan of subdivision found at Attachment 3 to this Decision is approved, subject to the conditions of draft plan approval found at Attachment 4 to this Decision.

In accordance with section 51(56.1) of the *Planning Act*, and on the request of the Parties, the Board provides that the final approval of the plan of subdivision, for the purposes of section 51(58) of the *Planning Act*, is given to the City of Hamilton as the approval authority within which the subject lands are situate.

Having regard to section 51(56.2), and at the request of the Parties, this panel of the Board remains seized of the consideration of any changes proposed to the conditions of draft plan approval prior to approval of the final plan of subdivision by the approval authority.

So Orders the Board.

"Susan de Avellar Schiller"

SUSAN de AVELLAR SCHILLER
MEMBER

ATTACHMENT "2"

Authority:

Bill No.

CITY OF HAMILTON

BY-LAW NO. _____

To Amend Zoning By-law No. 3692-92 (Stoney Creek), Respecting the Property Located at 198 First Road West (Stoney Creek)

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

AND WHEREAS the City of Hamilton is the successor to certain area municipalities, including the former area municipality known as "The Corporation of the City of Stoney Creek" 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 of the former area municipalities 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. 3692-92 (Stoney Creek) was enacted on the 8th day of December, 1992, and approved by the Ontario Municipal Board on the 31st day of May, 1994;

AND WHEREAS the Council of the City of Hamilton, in adopting Item [REDACTED] of Report 10- [REDACTED] of the Economic Development and Planning Committee, at its meeting held on the [REDACTED] day of [REDACTED], 2010, recommended that Zoning By-law No. 3692-92 (Stoney Creek) be amended as hereinafter provided;

AND WHEREAS this by-law will be in conformity with the Official Plan of the City of Hamilton (formerly the City of Stoney Creek Official Plan) upon the approval of Official Plan Amendment No. _____;

NOW THEREFORE the Council of the City of Hamilton enacts as follows:

1. That Map No. 16 of Schedule "A", appended to and forming part of By-law No. 3692-92 (Stoney Creek), is amended as follows:
 - (a) by changing the zoning from the Neighbourhood Development "ND" Zone to the Multiple Residential "RM2-23" Zone, on the lands comprised of Blocks 1 and 2;

- (b) by changing the zoning from the Neighbourhood Development "ND" Zone to the Single Residential "R5-10" Zone, on the lands comprised of Blocks 3 and 4;
- (c) by changing the zoning from the Neighbourhood Development "ND" Zone to the Multiple Residential "RM4" Zone, on the lands comprised of Block 5;
- (d) by changing the zoning from the Neighbourhood Development "ND" Zone to the Single Residential "R4" Zone, on the lands comprised of Block 6; and,
- (e) by changing the zoning from the Neighbourhood Development "ND" Zone to the Single Residential "R3" Zone, on the lands comprised of Block 7;

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

2. That Subsection 6.9.6, "Special Exemptions", of Section 6.9 Multiple Residential "RM2" Zone, of Zoning By-law No. 3692-92, be amended by adding a new Special Exemption, "RM2-23", as follows:

"RM2-23" 198 First Road West, Schedule "A", Map No. 16

Notwithstanding the provisions of Paragraph (a) of Subsection 6.9.3 of the Multiple Residential "RM2" Zone, on those lands zoned "RM2-23" by this By-law, the following shall apply:

- (a) Minimum Lot Area
Corner Unit: 240 square metres

3. That Subsection 6.6.3, "Special Exemptions", of Section 6.6 Single Residential "R5" Zone, of Zoning By-law No. 3692-92, be amended by adding a new Special Exemption, "R5-10", as follows:

"R5-10" 198 First Road West, Schedule "A", Map No. 16

Notwithstanding the provisions of Paragraphs (a) and (b) of Subsection 6.6.3 of the Single Residential "R5" Zone, on those lands zoned "R5-10" by this By-law, the following shall apply:

- (a) Minimum Lot Area:
 - 2. Divided Semi-Detached Lot
 - Interior Lot 225 square metres
 - Corner Lot 290 square metres
- (b) Minimum Lot Frontage:
 - 2. Divided Semi-Detached Lot
 - Interior Lot 6.5 metres
 - Corner Lot 8.5 metres

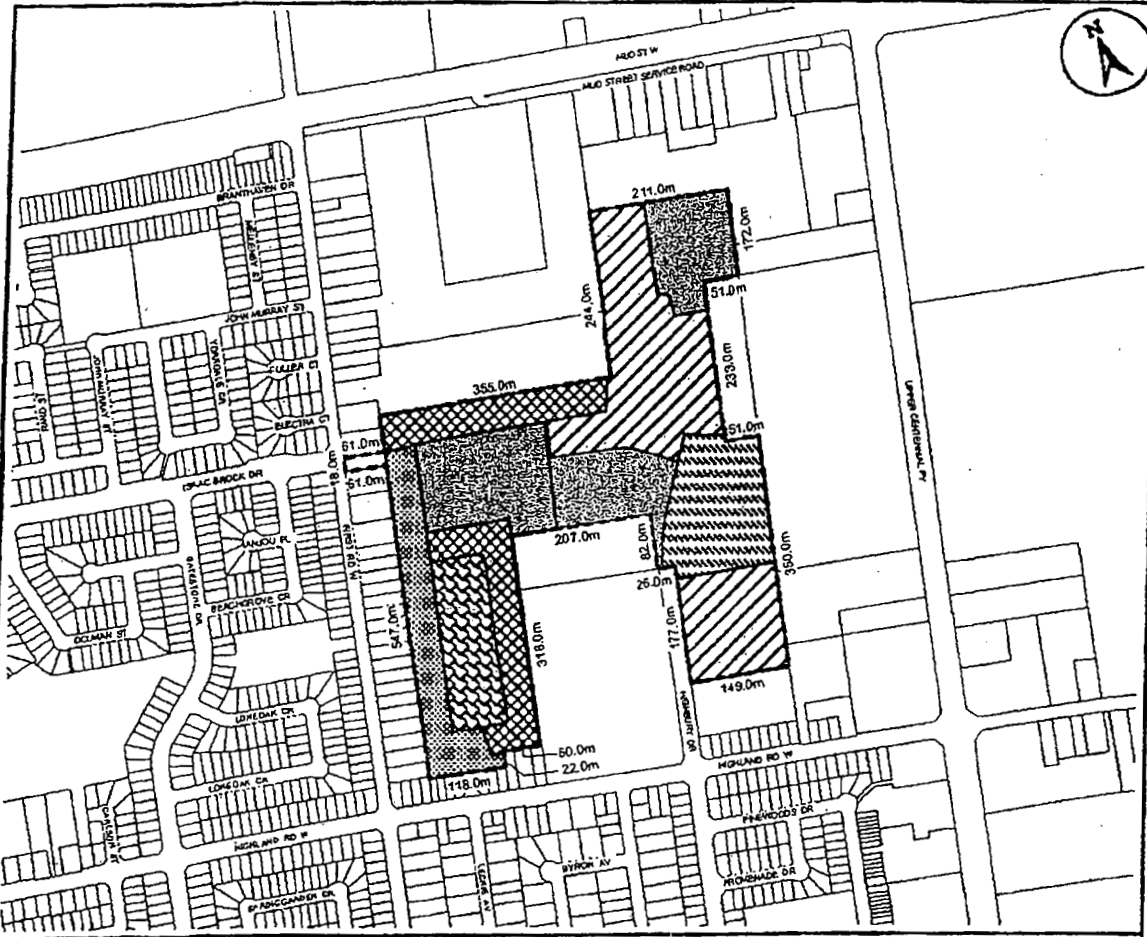
4. That no building or structure shall be erected, altered, extended or enlarged, nor shall any building or structure or part thereof be used, nor shall any land be used, except in accordance with the Multiple Residential "RM4" Zone, the Single Residential "R4" Zone, the Single Residential "R3" Zone, the Single Residential "R5" Zone, and the Multiple Residential "RM2" Zone, subject to the special requirements referred to in Sections 2 and 3.
5. 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 [REDACTED] day of [REDACTED], 2010.

FRED EISENBERGER
MAYOR

KEVIN C. CHRISTENSON
CLERK

ZAC-09-031
OPA-09-008
25T-200803



This is Schedule "A" to By-Law No. 10-

Passed the day of, 2010

Clerk


Mayor


Schedule "A"


Map Forming Part of
By-Law No. 10-


to Amend By-law No. 3692-92


Subject Property


 Blocks 1 and 2 - Change in Zoning from Neighbourhood Development "ND" Zone to the Multiple Residential "RM2-23" Zone.

 Blocks 3 and 4 - Change in Zoning from Neighbourhood Development "ND" Zone to the Single Residential "R5-10" Zone.

 Block 5 - Change in Zoning from Neighbourhood Development "ND" Zone to the Multiple Residential "RM4" Zone.

 Block 6 - Change in Zoning from Neighbourhood Development "ND" Zone to the Single Residential "R4" Zone.

 Block 7 - Change in Zoning from Neighbourhood Development "ND" Zone to the Single Residential "R3" Zone.

 Refer to By-law 05-200

Scale:
N.T.S.

File Name/Number:
ZAC-09-031, 25T-200908

Date:
March 8, 2010

Planner/Technician:
JMN/B



Hamilton

PLANNING AND ECONOMIC DEVELOPMENT DEPARTMENT