

ISSUE DATE:

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Ontario Municipal Board

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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 "1"

(Page 1 of 5)

Schedule "1"

Amendment No. [REDACTED]

to the

Official Plan for the former City of Stoney Creek

The following text, together with Schedule "A" (Schedule A - General Land Use Plan), and Schedule "B" (Schedule A3, Secondary Plan - West Mountain Planning District (Heritage Green), of the Official Plan of the former City of Stoney Creek, attached hereto, constitute Official Plan Amendment No. [REDACTED].

Purpose:

The purpose of this Amendment is to redesignate the subject lands on Schedule A, General Land Use Plan, as follows:

1. "Residential" to "Open Space"

and to redesignate the subject lands on Schedule A3 Secondary Plan - West Mountain Planning District (Heritage Green), as follows:

1. "Low Density Residential" to "Elementary School"
2. "Medium Density Residential" to "Elementary School"
3. "Elementary School" to "Community Park"
4. "Low Density Residential" to "Community Park"
5. "Community Park" to "Medium Density Residential"
6. "Low Density Residential" to "Medium Density Residential"
7. "Medium Density Residential" to "Medium - High Density Residential"
8. "Low Density Residential" to "Medium - High Density Residential"
9. "Medium Density Residential" to "Low Density Residential"
10. "Medium Density Residential" to "Detention Pond"
11. "Low Density Residential" to "Detention Pond"

The effect of the amendment will be to permit a residential development which includes single detached dwellings, semi-detached dwellings, apartment and townhouse units, an elementary school, a community park, and a stormwater management facility.

Location:

The lands affected by this Amendment are known municipally as 198 First Road West in Stoney Creek, with an area of 25.78 hectares.

Basis:

The intent of the Amendment is to permit the development of single detached dwellings, semi-detached dwellings, townhouse units, and apartment units. The basis for the redesignation is as follows:

- The proposed development is consistent with the Provincial Policy Statement;
- The proposed development offers an opportunity for development with an increased density consistent with the intent of the Places to Grow Plan;
- The proposed development conforms with the Hamilton-Wentworth Official Plan and the intent of the City of Stoney Creek Official Plan;
- The proposed location along a future rapid transit corridor in conjunction with higher densities is a prime example of good planning; and,
- The proposed development is compatible with the existing and planned development in the immediate area, and is in keeping with the character for the surrounding neighbourhood.

Actual Changes:

1. Schedule "A", General Land Use Plan, be revised by redesignating the subject lands from:
 - (i) "Residential" to "Open Space", and identifying the subject lands as OPA No. [REDACTED], as shown on the attached Schedule "A" to this Amendment.
2. Schedule "A3", Secondary Plan West Mountain Planning District (Heritage Green), to be revised by redesignating the subject lands from:
 - (i) "Low Density Residential" to "Elementary School";
 - (ii) "Medium Density Residential" to "Elementary School";
 - (iii) "Elementary School" to "Community Park";
 - (iv) "Low Density Residential" to "Community Park";
 - (v) "Community Park" to "Medium Density Residential";
 - (vi) "Low Density Residential" to "Medium Density Residential";
 - (vii) "Medium Density Residential" to "Medium - High Density Residential";
 - (viii) "Low Density Residential" to "Medium - High Density Residential";
 - (ix) "Medium Density Residential" to "Low Density Residential";
 - (x) "Medium Density Residential" to "Detention Pond"; and,
 - (xi) "Low Density Residential" to "Detention Pond", and identifying the subject lands as OPA No. [REDACTED], as shown on the attached Schedule "B" to this Amendment.

Implementation:

A Zoning By-law Amendment and Draft Plan of Subdivision will give effect to this Amendment.

This is Schedule "1" to By-law No. [REDACTED], passed on the [REDACTED] day of [REDACTED], 2010.

**The
City of Hamilton**

Fred Eisenberger
Mayor

Kevin C. Christenson
Clerk



