

ISSUE DATE:

Nov. 03, 2010

By-Law No. 10-323



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 Parkside/Landmart matters.

Mr. Pizzoferrato is a Participant in these proceedings. Following discussion between the Parties, including extensive continuations to facilitate possible settlement, the Board was advised that these matters now come to the Board on consent. The Board directed Parkside/Landmart and the City to meet with Mr. Pizzoferrato to ensure that he is fully aware of any changes to the proposed development and is able, as a result, to advise the Board whether any of his concerns have been met. Mr. Pizzoferrato subsequently advised the Board that his concerns had not been met and that he still wished to address the Board.

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.

The Board heard from Mr. Joe Muto, a full member of the Canadian Institute of Planners and a Registered Professional Planner in Ontario. The Board also heard from Mr. Gavin Norman, a professional engineer with the City of Hamilton.

Parkside/Landmart wishes to develop a residential subdivision on a 17.62 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 single detached dwellings, street townhouses and condominium townhouses on 171 lots with a total of 318 residential units. 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.

Of the three proposed developments in this neighbourhood, the Parkside/Landmart lands are furthest to the north. They stretch from slightly east of First Road West, along Mud Street to a bit west of Upper Centennial Parkway. Existing residences are scattered along Mud Street and the Parkside/Landmart proposal fills in around these residences. First Road West has a combination of residences and vacant residential lots that abut the Parkside/Landmart lands. Mr. Pizzoferrato's lot is the largest of these and is located at the southeast corner of First Road West and Mud Street.

The Paletta lands have an irregular shape and are located approximately in the middle of the block, generally south of the Parkside/Landmart lands. The UCD lands are on the east, fronting on Upper Centennial Parkway. 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 the west side of First Road West, which is the western boundary of the block.

The City has placed a high priority on ensuring that there are appropriate vehicular and pedestrian connections between all three developments proposed in this area and that each development is, in turn, appropriately connected to the fabric of the existing surrounding neighbourhood.

The Felker Neighbourhood Plan is not a Secondary Plan but it was adopted by Council to set out the vision for the neighbourhood and assist in guiding development proposals. The lots on the east side of First Road West are quite deep and the City is of the view that they may be appropriate for division. With the Parkside/Landmart development east of these lots, the City wished to preserve the possibility that the rear of these lots might be separated and accommodate residential development. Such development would face roughly east and have frontage on internal cul-de-sacs that would connect into the Parkside/Landmart neighbourhood streets. Parkside/Landmart

has now agreed to make appropriate provision in its lotting and road patterns to accommodate this possible future development.

Isaac Brock Drive is an east-west road that currently ends at the west side of First Road West. It will now be continued easterly through the Paletta lands to connect to the UCD lands that front on Upper Centennial Parkway. This major extension is designed to accommodate both vehicular traffic and a generous and appropriate pedestrian realm. Following lengthy discussions and continuances, the road pattern for the Parkside/Landmart now makes appropriate connections to the road pattern in Paletta to connect the neighbourhoods but also to ensure safe and accessible pathways from Parkside/Landmart to the existing school and park located to the south and around which the Paletta development will be built.

The original proposal from Parkside/Landmart included about 2.72 hectares of land east of the current draft plan of subdivision. These lands are open space and a natural area that is to be protected. A detailed environmental report established the need for a 10m wide buffer between this natural area and any development. The proposed condominium townhouse block that abuts this natural open space area will be subject to site plan control.

The draft plan of subdivision includes a storm water management [SWM] pond at the northeast corner of the subject lands. The SWM pond abuts an internal street on the east, Mud Street on the north, residential units in the proposed subdivision to the south and existing lots to the west. These lots to the west front on First Road West. The lot at the southeast corner of First Road West and Mud Street is the lot owned by Mr. Pizzoferrato.

Mr. Pizzoferrato testified that the land was bought about 21 years ago by three couples who intended to build their retirement homes on this site. For a variety of reasons, the land remains vacant and in agricultural use. Mr. Pizzoferrato is concerned that the SWM pond will limit the use of his property and make it generally undesirable for residential development. He cites his understanding, confirmed by Mr. Gavin Norman of the City, that the pond is likely to have year round surface water at the lowest elevations of the pond. To Mr. Pizzoferrato this signals what he feels is a real

possibility that the pond will be infested with mosquitoes and attract rats and other pests. Mr. Pizzoferrato feels that these conditions are incompatible with residential development.

Mr. Norman testified that the SWM pond will have extensive naturalized landscaping with trees and pedestrian trails. A sidewalk will be built along the Mud Street frontage and along the internal subdivision street adjacent to the east. A 1.8m fence will separate the SWM pond lands from adjacent residential. The SWM pond has been designed to specifically prevent any flooding or related impact on neighbouring properties such as Mr. Pizzoferrato's land. The design is based on the City's 2008 design guidelines which are, in turn, based on the 2003 Ministry of the Environment design guidelines. The SWM pond will be assumed and maintained by the City. Mr. Norman then observed that there is an existing landfill to the north of Mud Street and the likelihood is that the pests that concern Mr. Pizzoferrato are already in the area and subject to appropriate pest control measures.

The evidence before the Board is also that the location of the SWM pond has been identified on relevant planning instruments for decades and is not new. Specifically, the site of the SWM pond was identified in the Felker Neighbourhood Plan adopted by Council on July 23, 1989. The site was designated as a Detention Pond in Official Plan Amendment 23 to the City of Stoney Creek Official Plan, which came into effect December 15, 1993.

The Board finds that the site of the SWM pond is reasonable, appropriate, and long known. The Board further finds that the design of the SWM pond implements appropriate environmental guidelines while also creating an attractive naturalized area for public enjoyment. And finally with respect to the SWM pond, the Board finds that the proposed sidewalks and fencing provide an appropriate balance between public accessibility and privacy for adjacent landowners. In order to further allay Mr. Pizzoferrato's concerns, the City has agreed to include Mr. Pizzoferrato in discussions regarding the landscaping buffer for the SWM pond adjacent to his land.

Mr. Pizzoferrato's second concern related to the anticipated closing of part of First Road West just south of Mud Street. This possible closing is unrelated to the

Parkside/Landmart draft plan of subdivision and must still go through the usual procedures prior to being effected. Mr. Pizzoferrato, as any other affected adjacent land owners, will then have an opportunity to exercise his rights in that process if he chooses to do so.

There are four items before the Board in these proceedings:

- 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 1 to the Decision;
- a draft plan of subdivision, found at Attachment 2 to this Decision; and
- a list of the conditions of draft plan approval, found at Attachment 3 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 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 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 Parkside/Landmart 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 1 to this Decision.

The Board finds that the proposed zoning by-law amendments conform to the City of Stoney Creek Official Plan and the West Mountain Area Heritage Green Secondary Plan.

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 2 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 3 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 Parkside/Landmart development.

The appeals are allowed in part.

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 1 this Decision.

The draft plan of subdivision found at Attachment 2 to this Decision is approved, subject to the conditions of draft plan approval found at Attachment 3 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

Authority:

Bill No. [REDACTED]

CITY OF HAMILTON

BY-LAW NO. [REDACTED]

**To Amend Zoning By-law No. 05-200 Respecting Lands Located at Part of Lots
25 and 26, Concession 7 (Mud St), Stoney Creek**

WHEREAS the City of Hamilton has in force several Zoning By-laws which apply to the different areas incorporated into the City by virtue of the City of Hamilton Act, 1999, Statutes of Ontario, 1999, Chap. 14;

AND WHEREAS the City of Hamilton is the lawful successor to the former Municipalities identified in Section 1.7 of By-law No. 05-200;

AND WHEREAS it is desirable to enact a new Zoning By-law to comprehensively deal with zoning throughout the City;

AND WHEREAS the first stage of the Zoning By-law, being By-law No. 05-200, came into force on May 25, 2005;

AND WHEREAS this By-law is in conformity with the Official Plan of the City of Hamilton (the Official Plan of the former City of Stoney Creek), in accordance with the provisions of the Planning Act.

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

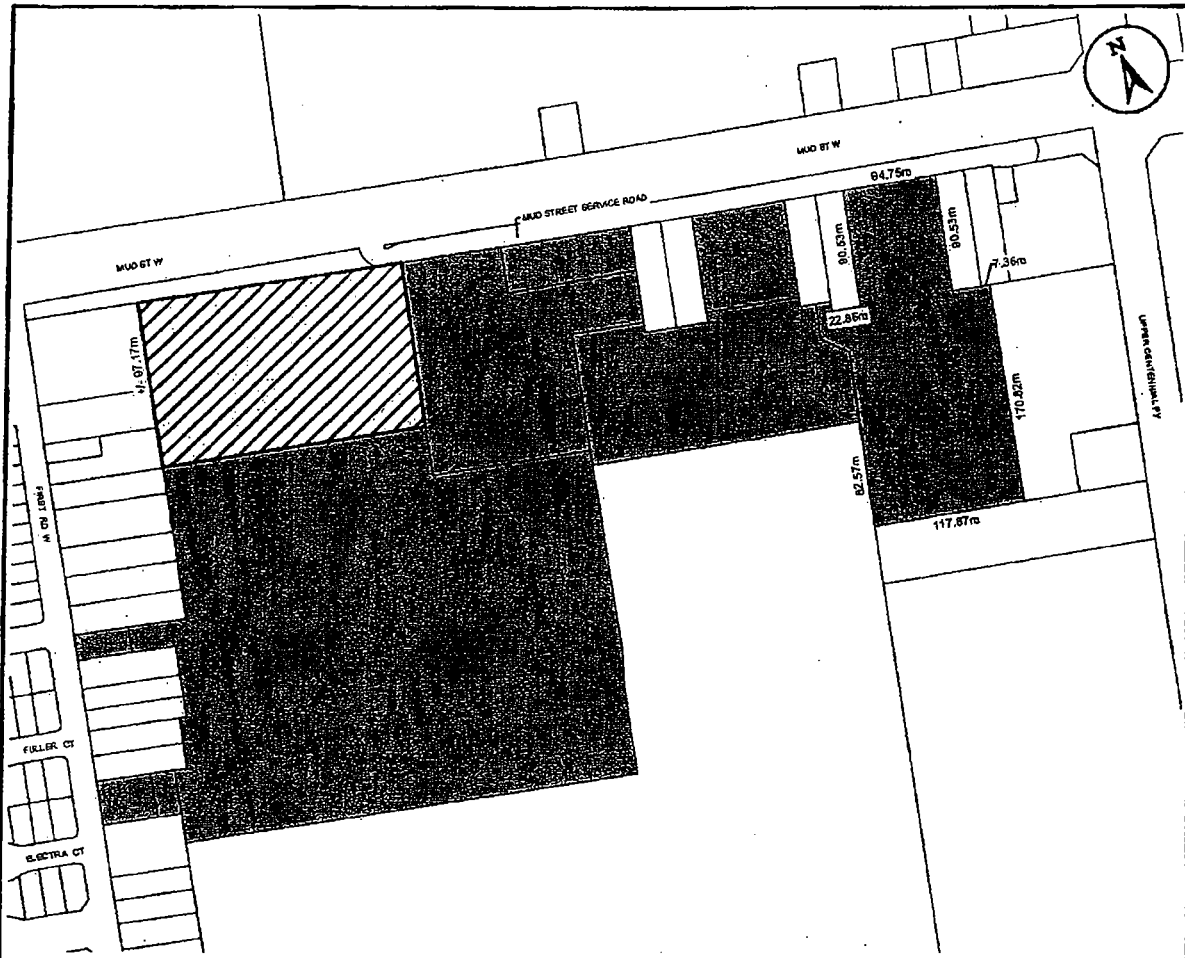
1. That Schedule "A", Map No. 1505 of By-law 05-200, is amended by zoning the lands Conservation/Hazard Lands "P5", the extent and boundaries of which are shown as "Block 1" on a plan hereto annexed as Schedule "A".
2. That the Clerk is hereby authorized and directed to proceed with the giving of notice 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

Rose Caterini
Clerk

ZAC-08-077



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. 05-200
 (Map 1505)

Subject Property

Part of Lot 25 & 26, Concession 7, Stoney Creek



Block 1 - Lands to be zoned Conservation/Hazard Lands (P5) Zone



Refer to By-law No. 3692-92

Scale:
 N.T.S.

File Name/Number:
 ZAC-08-077 / 25T200808

Date:
 August 18, 2010

Planner/Technician:
 JW/AL



Hamilton

PLANNING AND ECONOMIC DEVELOPMENT DEPARTMENT