

Town of Oakville Memorandum

To: Councillors Elgar and Sandelowsky
From: Peter Cheatley, Director of Planning Services
Date: September 12, 2005
Subject: **2322, 2332 and 2362 Upper Middle Road West
Creebank Developments, File: Z.1529.02
Ward 4**

You have raised some comments and concerns regarding the Creebank Development Ltd. applications. By way of this memo, I hope to set the record straight with respect to the Official Plan, the Parkway Belt West Plan and the process we will be following to deal with the applications.

One application seeks to have lands removed from the Parkway Belt West Plan. That application is made to the Province, and the Town is a commenting agency. The other applications seek to amend the Town's Official Plan and Zoning By-law to permit the construction of a nine storey condominium apartment building.

The consideration of this proposal involves several technical issues, interpretations of new legislation and, in some situations, conflicting positions amongst the parties. I have to advise that the Official Plan doesn't provide a great deal of direction in this regard.

I have attempted to answer your questions below.

1. Is this proposal an expansion of an "area of settlement"?

This is an important distinction because, in 2004, an amendment to *The Planning Act* was made that limited the appeal rights on applications to expand an "area of settlement". *The Planning Act* defines "area of settlement" as:

"... an area of land designated in an official plan for urban uses including urban areas, urban policy areas, towns, villages, hamlets, rural clusters, rural settlement, urban systems, rural service centers or future urban use areas, or otherwise prescribed by regulation."

The Town's Official Plan does not identify an "area of settlement" nor does it delineate an "urban area" or "urban area boundary". The Official Plan refers only to urban areas in its policies on phasing, which essentially define the northern boundary of the urban

area. There is nothing in the plan that clearly marks the east and west urban boundaries. Most of the lands on the east and west edges of town are designated "Parkway Belt West", parroting the Provincial Parkway Belt designation.

While Town Staff generally consider lands within the Parkway Belt West Plan not to be urban lands, it can be argued that the current application to amend the Town's Official Plan is not an expansion of an "area of settlement". There are clearly urban lands both north and west of the subject lands, and there are several examples in the Town's Official Plan where Parkway Belt West lands have been included within urban residential communities or employment districts.

The applicant has taken the position that all of the lands found south of Highway 407 are part of the urban area. Accordingly, their Official Plan and Zoning amendment applications do not seek an expansion of an "area of settlement".

From a Regional Plan perspective, Regional Staff has taken the position that, with respect to its Official Plan, a proposal to re-designate the lands from Greenlands B to Urban Area does not constitute expansion of an "area of settlement". As well, it is likely the Region will request the Minister to modify the Regional Plan to create an Urban Area designation on this land rather than require Creekbank to apply to amend the Regional Plan.

A determination that the proposal is an expansion of an area of settlement would likely be challenged by the applicant, with some chance of success.

2. Can the applicant or the public appeal the Official Plan and Zoning applications to the OMB?

The ability of the applicant or the public to file an appeal on the approval or refusal of the Official Plan amendment application is directly related to the question "is this an expansion of an area of settlement?" Under the 2004 changes to *The Planning Act*, municipal council decisions on privately initiated Official Plan applications (i.e. Creekbank's application) cannot be appealed to the OMB if it is determined that the applications are an expansion of an area of settlement. That is, if Council rules on an application by Creekbank to expand the urban area, that decision cannot be appealed.

Conversely, a municipal council decision to amend the Official Plan to expand an area of settlement can be appealed should the municipal council initiate the change (i.e. as part of the Five Year Review process or in response to a Parkway Belt West Plan amendment). That is, if Council decides to include the lands in an urban boundary, that decision can be appealed by anyone opposed to the expansion of the settlement area.

It is also noted that if the property is within an area of settlement as determined by the Region of Halton's plan (which as noted above, is the position of the Region's planners) there could be an appeal even if the application would represent an expansion of the urban settlement area under the Town's plan.

3. Can the applicant or the public appeal the Parkway Belt application to the OMB?

The application to amend the Parkway Belt West Plan is made pursuant to the *Ontario Planning and Development Act*. Under this Act, the applicant, the public and the municipality have various appeal rights depending upon the Minister's decision on the requested amendment. Generally, the Minister has considerable discretion to refuse or approve the application or refer the matter to a hearing officer or the OMB.

The provincial decision on the Parkway Belt West application needs to be made before the Town can deal with the development applications. It should be noted that 3 of the 4 lots included in the subject lands have previously been removed from the Parkway Belt West by the province.

4. Future Reports to Town Council

Town Staff intend to report on these applications in a step wise fashion as follows:

- Report 1 (P&D/Council – October/05) – staff report recommending to Council that it advise the Province to remove the remaining lands from the Parkway Belt West Plan. This report will also discuss necessary revisions to the Town's Official Plan should the province remove the lands from the Parkway Belt West Plan.
- Report 2 (P&D /Council) – should the lands be removed from the Parkway Belt West Plan, a staff report recommending approval of an Official Plan Amendment confirming an appropriate designation to replace the current Parkway Belt West designation would be prepared. This amendment will occur at the same time as the removal of the lands from the Parkway Belt West Plan and could be appealed since it is an amendment initiated by Council.
- Report 3 (P&D /Council) – staff report responding to the Official Plan and Zoning amendment applications for a nine storey residential building.

Please feel free to contact me should you have any questions.



Peter Cheatley, MCIP, RPP
Director of Planning Services

- c. Mayor Ann Mulvale and Members of Council
M. Joann Chechalk, CAO
D. J. Cash, Commissioner, Planning and Development