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WESTHILL (AURORA OPA) ONTARIO MUNICIPAL BOARD APPEALS

(Regional Council at its meeting on January 24, 2008 referred the following Clause to private session for legal advice and subsequently adopted without amendment.)

The Planning and Economic Development Committee recommends the adoption of the recommendations contained in the following report dated December 20, 2007, from the Commissioner of Planning and Development Services:

1. RECOMMENDATIONS

It is recommended that:

1. The Ontario Municipal Board (OMB) be advised that York Region supports the local Official Plan amendment, the draft plan of subdivision, and the draft plan of condominium by Westhill Redevelopment Company Limited in Aurora, subject to the resolution of any outstanding issues and any housekeeping modifications to the Official Plan Amendment as required.
2. Regional staff be authorized to prepare conditions of draft approval that ensure all municipal policies and standards are met in the related plan of subdivision and plan of condominium including the requirement for the applicant to execute a Responsibility Agreement with York Region. Regional staff will continue to work with local staff to resolve any outstanding issues.
3. Regional staff be authorized to appear at the OMB to submit conditions of draft approval for the plan of subdivision and condominium in support of the Regional position.

2. PURPOSE

The purpose of this report is to recommend support for the approval of an Official Plan Amendment, a plan of subdivision, and a plan of condominium in Aurora by Westhill Redevelopment Company Limited, subject to the resolution of any outstanding local issues and any housekeeping modifications to the Official Plan Amendment as required, in accordance with approved Regional and local plans. In addition, the report seeks Council's authorization to prepare conditions of draft approval for the related plan of subdivision/condominium and Responsibility Agreement for the communal water and

wastewater facilities, and to appear at the OMB Hearing commencing April, 2008 in support of the Regional position.

3. BACKGROUND

This section provides the legacy of the initial Regional and local policies that establish the process to permit this specific alternative rural development, including a brief description, location, and history of the applications on the lands.

3.1 Description, Location, and History of the Applications

The subject lands are located on the east and west sides of Leslie Street, just north of Bloomington Road in the Town of Aurora (*Attachment 1*). The lands are located on the Oak Ridges Moraine and are approximately 80.7 hectares (200 acres) in size.

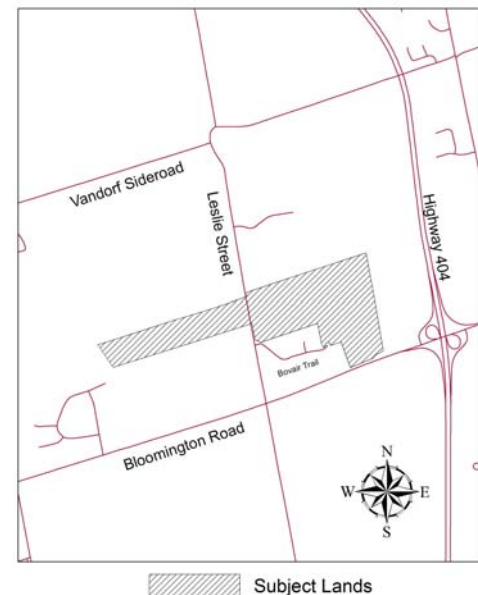
In December of 1988, the applicant filed a draft plan of subdivision for 95 detached residential lots on the subject lands (19T-88105). In February of 1990, the subdivision plan was revised to 59 lots and on December 19, 1991, the applicant appealed the subdivision plan to the OMB. However, matters were held in abeyance pending a review of the Aurora's Official Plan.

3.1.1 ROPA 3 – Urban Expansion For Aurora Includes Westhill Lands As An Alternative Community

One of the results of the Official Plan review was that an urban expansion was deemed necessary, which in turn required an amendment to the York Region Official Plan. The implementing Regional Official Amendment No. 3 (ROPA 3) came into effect on July 27, 1998. This included a site specific policy (5.9.11), permitting the Westhill lands to be developed for residences in a cluster arrangement and condominium ownership. This policy (5.9.11) states that this development will be serviced by a privately owned and operated communal wastewater treatment system and a water supply system in accordance with specific criteria as noted in *Attachment No. 5* to this report, including the requirement for a site specific amendment to the Town of Aurora Official Plan.

3.1.2 Applications Submitted by Westhill as per Regional Plan

On July 15, 1999, the applicant filed a site specific Official Plan Amendment with the Town of Aurora to redesignate the subject lands from “Rural” to “Estate Residential” and “Private Open Space” to facilitate, in accordance with policy 5.9.11, the development of a residential/golf course community. At the same time, the applicant filed a draft plan of



condominium on the lands to permit 75 residential detached condominium units and common elements. The Town held a Public Meeting in January of 2001, however, in May of 2001, the Province placed a moratorium on development on the Oak Ridges Moraine and in, November of 2001, the Oak Ridges Moraine Conservation Act was approved by the Province.

On October 1, 2003, the owner (Westhill Redevelopment Company Limited) appealed the subject applications to the Ontario Municipal Board (OMB) due to a lack of decision by Aurora Council within 90 days. Over the last few years, the owner has been working towards resolving the environmental issues with respect to conformity with the Oak Ridges Moraine legislation, which permits the use (grandfathered), and residual issues related to meeting the prescribed provisions.

The draft plan of subdivision (19T-88105) has recently been revised to show five blocks of land (*Attachment No. 2*) and the draft plan of condominium proposes a condominium development of 75 single detached residential units on Block 3 of the subdivision plan (*Attachment No. 3*). The clubhouse and the first seven holes of the golf course are proposed on the west side of Leslie Street, while the other eleven holes and the houses are proposed on the east side of Leslie Street (*Attachment No. 4*).

3.2 Similar Developments Approved in York Region

Regional Official Plan Amendment No. 2 (ROPA 2) was approved in 1996, the purpose of which was to provide for a very limited amount of resort recreational development in the Rural Policy Area of the Region of York, subject to certain criteria or performance standards. Subsequently, the King Valley, and Emerald Hills resort recreational developments and the Ballantrae golf course/residential development were built (see *Attachment 6*). These developments are serviced by privately owned and operated wastewater treatment plants and the King Valley and Emerald Hills developments are also serviced by privately owned and operated water treatment plants. Applicants of all three developments entered into Responsibility Agreements with York Region for the servicing systems.

Section 3.1.4 of the Greenbelt Plan prohibits any further estate, and adult or lifestyle retirement communities in the “Rural Area” which are typically serviced by private communal systems. Therefore, the Westhill development should be the last residential proposal in the “Rural Area” in York Region to be serviced by a private communal system requiring a Responsibility Agreement.

4. ANALYSIS AND OPTIONS

As discussed in the following sections, the proposed Official Plan Amendment, draft plan of subdivision, and draft plan of condominium conform to Provincial and Regional policy and represent good planning. There are financial, administrative, and technical matters

with respect to the private communal servicing that will be included in the conditions of draft approval for the plans of subdivision and condominium.

4.1 Provincial Policy

4.1.1 The 1997 Provincial Policy Statement Applies

The Provincial Policy Statement (PPS) provides policy direction on matters of provincial interest related to land use planning and development. The 1997 PPS is applicable to the subject applications and the applications have been reviewed against the policies. As required by the PPS, appropriate regard has been had to the 1997 policies with respect to development in rural areas, environmental or public health and safety, housing types and densities, and communal servicing.

4.1.2 The Provincial Growth Plan Does Not Apply

The policies of the Provincial Growth Plan do not apply to the subject applications because they were submitted prior to June 16, 2006.

4.1.3 The Oak Ridges Moraine Conservation Plan

Given that the applications were commenced before November 17, 2001, under the transitional provisions section of the Oak Ridges Moraine Conservation Act, the applications are required to conform to the “prescribed provisions” under Section 48 of the Oak Ridges Moraine Conservation Plan (ORMCP). Development is permitted, subject to certain sections of the ORMCP requiring no development occurs in Key Natural Heritage Features or Hydrologically Sensitive Features.

The Toronto and Region Conservation Authority (TRCA) has commented that it is generally satisfied the current Master Environmental Servicing Plan (MESP) document conforms to the ORMCP from a policy perspective; however, it defers to the Town to ensure conformity of the applications with the ORMCP. The Town has hired its own peer review consultant, who has identified some hydrogeological and environmental issues with the applicant’s proposal. While, the Region supports the approval of the OPA, it is subject to the resolution of the issues concerning the ORMCP.

4.2 Regional Official Plan

Policy 5.9.11 permits the subject lands to be developed for high quality residences in a cluster arrangement and condominium ownership, subject to several criteria as noted in *Attachment 5* to this report. As the proposal is proceeding by way of a local Official Plan Amendment, plan of subdivision, and plan of condominium, Regional staff relies on the Town of Aurora to ensure conformity of the applications with Policies 5.9.11 a) to c).

The Region has determined conformity of the subject applications with Policies 5.13.4 and 5.13.5 (b) and (c) (*Attachment 5*), as discussed in the following sections.

4.2.1 Conformity to Policy 5.13.4 – Fiscal Impact & Risk Analysis

Policy 5.13.4 of the Region Official Plan (ROP) states that an economic/fiscal impact analysis shall be completed to confirm the financial viability of the proposal, the proposed economic benefits to the Region and to ensure that the local and Regional financial impacts are accounted for in keeping with Policy 7.3.8 of the ROP.

In response to policy 5.13.4, a Fiscal Impact Analysis was submitted to the Region on November 8, 2007. The document has been reviewed and Staff has concluded that the proposed development will not adversely impact the Regional tax rate.

The applicant also submitted a Risk Analysis Report to the Region that identifies potential financial risks that might arise should the Region have to take over the operation of communal water and wastewater treatment facilities. The report concludes that, “while the Region cannot entirely insulate itself from risk because of the MOE [Ministry of the Environment] requirements under the Responsibility Agreement, this risk will be limited as long as the necessary safeguards are put in place.” The “safeguards” referred to in the report include technically sound design of the systems, reciprocal agreements, cross-easements, and a letter of credit or other financial security. Transportation and Works and Infrastructure Planning Staff has reviewed the report, and subject to some increased operational cost estimates, they concur with the report’s findings.

The water treatment facility is not intended to provide firefighting capacity. Water for firefighting purposes is proposed to be drawn from the Stormwater Management Ponds and the Central York Fire Services Department has confirmed that this proposal is satisfactory.

The conditions of draft approval for the plans of subdivision and condominium will ensure that infrastructure is designed to municipal standards.

4.2.2 Conformity to Policy 5.13.5 b) – Class Environmental Assessment

In response to Policy 5.13.5 b), the applicant has held Public Information Centres in March and May of 2007 and has submitted a Master Environmental Servicing Plan and an Environmental Assessment Report. These documents were reviewed by the Region and several comments were provided to the applicant. A reply to our comments was submitted by the applicant on September 20, 2007 and was reviewed by staff from the Transportation and Works Department. Staff is satisfied that the primary issues have been resolved.

The Town of Aurora has retained the firm of North-South Environmental Inc. to review several of the reports submitted by the applicant. The hydrogeologist, Mr. Norbert Woerns, has identified several matters that should be addressed by the applicant prior to the OMB Hearing in April. While the Region concurs with the concerns of the Town, the Region’s interests with respect to the protection of the Yonge Street Aquifer have been satisfactorily addressed.

Prior to the execution of the Responsibility Agreement discussed below, the applicant will prepare a maintenance, monitoring and system failure contingency plan in accordance with Policy 5.13.5 b) v). The requirement for a maintenance, monitoring and system failure contingency plan will be a condition of draft approval for the draft plan of subdivision.

4.2.3 Conformity to Policy 5.13.5 c) – Responsibility Agreement

With respect to 5.13.5 c), the requirement for the Owner to enter into a Responsibility Agreement with the Region will be a condition of draft approval for the draft plan of subdivision. The Responsibility Agreement will be very similar to Responsibility

Agreement for the Clublink – Emerald Hills development in Whitchurch-Stouffville and will include, among other requirements, the following:

- Procedures for operation and maintenance of the communal systems and remedies in the event of a default.
- Financial assurance provisions and guarantees that ensure that no public funds will be required in the event of a malfunction, default or other unforeseen event.
- Easements, rights of entry and inspection.
- Monitoring systems.

The execution of the Responsibility Agreement with the Region will be required prior to the Town entering into a subdivision agreement with the Owner.

York Region has previously entered into a Responsibility Agreement with respect to the Ballantrae, King Valley, and Emerald Hills developments noted in Section 3.2 of this report.

4.3 Proposed Modifications

A marked up version of the applicant's draft Official Plan Amendment has been sent to the Town of Aurora and to the applicant. Several housekeeping modifications have been identified and Staff will ensure that these modifications are made and submitted to the OMB for approval.

4.4 Relationship to Vision 2026

Goal 5 of Vision 2026 states that "*York Region residents will have access to a variety of housing options that are safe, affordable and responsive to their diverse and changing needs*". The proposed OPA and draft plan of condominium is designed to offer an alternative house form and lifestyle to that which is typically found in existing neighbourhoods in the Town of Aurora. The proposed OPA and draft plan of condominium are therefore consistent with the above noted goal of Vision 2026.

5. FINANCIAL IMPLICATIONS

A summary fiscal impact for the Westhill Redevelopment Company Limited project indicates that the proposed development within the plan will not adversely impact the Regional tax rate (tax levy). The road infrastructure required within the area is part of the broader system of Regional service improvements that have been identified in long term servicing master plans. The cost of these Regional roads works are scheduled to be recovered through the uniform Region wide development charges, based on the growth anticipated to occur within the Region.

The proposed water distribution and wastewater collection system and treatment facilities for the full build out of the Westhill Redevelopment area are proposed to be privately owned and operated by a third party entity. Therefore, the Westhill Redevelopment condominium development, which will be serviced by the private system, will not generate any water and wastewater Regional development charge revenues.

The owner must enter a Responsibility Agreement with York Region, and the Agreement shall contain financial assurance provisions and guarantees that ensure that no public funds will be required in the event of a malfunction, default or other unforeseen event with respect to the communal servicing facilities.

6. LOCAL MUNICIPAL IMPACT

The Town of Aurora brought the applications forward to a Council Public Meeting on November 29, 2007. Town Council resolved that local staff report back to Council for direction on the applications and that local staff engage the applicant and the solicitor representing several residents in discussions to address the issues raised by the residents' representative.

In the conventional development approval process, prior to the Region preparing a report for Regional Council, the Town would adopt the OPA and forward it to the Region. However, in this case, since the development requires private communal treatment facilities for water and wastewater, and since these facilities are dependant on the Region's acceptance of the proposal, the Town requires a Region position on the matter before the Town can move forward. The recommendations of this report will enable the Town of Aurora to proceed with its review of the applications and report back to its Council.

As a result of the need for the Region to bring forward a report in advance of consideration of the matter by the Town of Aurora, it is important to note that the Region's general support for the development concept does not imply that all local issues have been resolved. Therefore, it is recommended that Regional Staff proceed with the preparation of the conditions of draft approval for the draft plans of subdivision and

condominium in consultation with local municipal staff, ensuring that all municipal policies and standards are met.

7. CONCLUSION

The proposed OPA, draft plan of subdivision, and draft plan of condominium propose a cluster of 75 residential units, to be serviced by privately owned and operated communal water and wastewater treatment systems.

Regional staff considers the proposed OPA to be in keeping with Provincial and Regional policy. Therefore, it is recommended that the Ontario Municipal Board (OMB) be advised that York Region supports the Official Plan amendment, the draft plan of subdivision, and the draft plan of condominium by Westhill Redevelopment Company Limited, subject to the resolution of any outstanding local issues and the housekeeping modifications to the Official Plan Amendment as required.

In addition, it is recommended that Regional staff be authorized to prepare conditions of draft approval for the related plan of subdivision and plan of condominium, including the requirement for the applicant to execute a Responsibility Agreement with York Region, ensuring that all municipal policies and standards are met, and present them to the OMB and that Regional staff be authorized to appear at the OMB, as required, in support of the Regional position.

For more information on this report, please contact Michael Mallette, M.C.I.P., R.P.P., Senior Planner, Community Planning Branch, at 905-830-4444 ext 1506 or michael.mallette@york.ca.

The Senior Management Group has reviewed this report.

(The six attachments referred to in this clause are attached to this report.)