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NEWMARKET – OFFICIAL PLAN AMENDMENT AND SUBDIVISION APPLICATIONS BY MADEMONT INVESTMENTS INC.

The Planning and Economic Development Committee recommends the adoption of the recommendations contained in the following report dated June 11, 2008, from the Commissioner of Planning and Development Services:

1. RECOMMENDATIONS

It is recommended that:

1. The Ontario Municipal Board (OMB) be advised that, in respect to the local Official Plan amendment and the draft plan of subdivision proposed by Mademont Investments Inc. in Newmarket, the policies of the Town of Newmarket Official Plan can be more restrictive than the policies of the Oak Ridges Moraine Conservation Plan and the York Region Official Plan and, in the case of a conflict, the more restrictive policies apply.
2. Regional staff be authorized to appear at the OMB, if required, in support of the Regional position.
3. Staff be authorized to hire planning consultants to support Council's position, as applicable.
4. A maximum of \$30,000 be funded in year from the capital reserve for external consultants and other costs associated with the OMB hearing.

2. PURPOSE

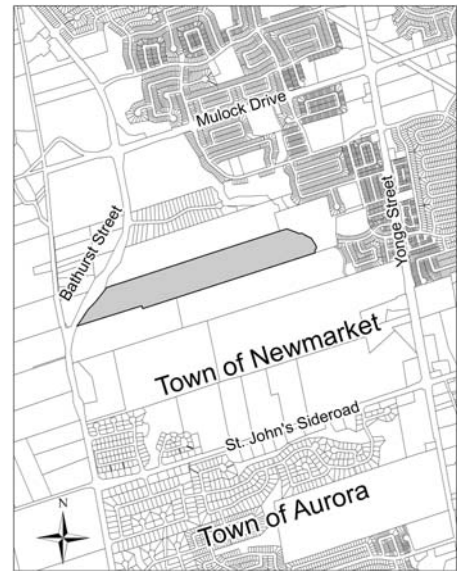
This report seeks Council's authorization to advise the Ontario Municipal Board (OMB) that, in respect to the local Official Plan amendment and the draft plan of subdivision by Mademont Investments Inc. in Newmarket, the policies of the Town of Newmarket Official Plan can be more restrictive than the policies of the Oak Ridges Moraine Conservation Plan and the York Region Official Plan and, in the case of a conflict, the more restrictive policies apply.

3. BACKGROUND

Applications submitted for a residential subdivision

The application to amend the Town of Newmarket Official Plan and the draft plan of subdivision were received in November, 2006. The applications are located on the east side of Bathurst Street, in the south-west quadrant of Newmarket (Figure 1). The applications propose 182 single detached units, 60 semi-detached units, 104 townhouse units, and 102 condominium apartment units, for a total of 448 units (*Attachment 1*). In addition, the plan includes a 2.05 hectare (5.08 acre) commercial block abutting Bathurst Street.

Figure 1



Applications appealed to the OMB

In early 2008, the applications were appealed by the owner to the OMB. As stated in the appellant's letter, the reason for the appeal is "the failure of the Council of the Town of Newmarket to make a decision" respecting the applications within the prescribed timeframe.

OMB Pre-hearing Conference occurred on May 14, 2008

On May 14, 2008, an OMB Pre-hearing Conference was held to establish the parties, participants, and issues with respect to the subject appeals. The Town of Newmarket and York Region appeared before the Board and identified themselves as parties. This was done to ensure that York Region reserved its right to identify issues, lead evidence, and cross-examine witnesses if required.

The Board ordered that the first phase of the hearing begin in August 2008, at which time, the Board will adjudicate the principle of development.

Chronology of the applicable land use designations

The following is a brief review of the chronology of land use designations that apply to the subject lands.

The subject lands were included within the "Urban Area" of the York Region Official Plan (ROP) when the ROP was approved in 1994 (*Attachment 2*). In 1996, the Town of Newmarket Official Plan was approved and the subject lands were designated "Oak Ridges Moraine", which did not permit residential or commercial development. In 2001, the Oak Ridges Moraine Conservation Plan (ORMCP) came into force and the majority

of the lands were designated “Settlement Area” in the ORMCP (*Attachment 3*). It is noted on *Attachment 3* that the eastern tip of the subject lands are outside of the ORMCP; however, access to this portion of the property is proposed to be obtained through the lands that are within the ORMCP.

All municipalities were required to modify their Official Plans to conform to the ORMCP and on December 6, 2004, the Ministry of Municipal Affairs and Housing approved the Town of Newmarket’s Oak Ridges Moraine Conformity Amendment (OPA 28). The lands are designated “Environmental Protection Area – Oak Ridges Moraine” by OPA 28, as illustrated on *Attachment 4*. OPA 28 does not permit residential or commercial development.

4. ANALYSIS AND OPTIONS

The following section identifies the format of the upcoming OMB hearing, examines the land use designations, and concludes that the Town of Newmarket can be more restrictive than either the Region’s Official Plan or the Oak Ridges Moraine Conservation Plan. There are clear and comprehensive policies within the ORMCP and the ROP identifying that a local municipality can be more restrictive in the land uses that are applied to the subject lands. In the case of a conflict, the more restrictive policies apply. In this case, the “Environmental Protection Area – Oak Ridges Moraine” designation, as approved by the Province through the Town’s conformity exercise, is the most restrictive and it does not permit residential or commercial development.

Ontario Municipal Board - First Phase of Hearing to determine principle of development

Prior to examining the details of the proposal, as a first phase of the OMB Hearing, the OMB will establish whether or not development should be permitted, in principle, on the subject lands. At issue is the environmental designation of the Town of Newmarket Official Plan, notwithstanding that the ROP and the ORMCP designate the lands as “Urban Area” and “Settlement Area” respectively.

The Town can be more restrictive than the “Settlement Area” designation of the Oak Ridges Moraine Conservation Plan

As shown on *Attachment 3*, the majority of the subject lands are within the “Settlement Area” designation of the ORMCP. However, the Implementation Section of the ORMCP states the following:

“Nothing in the Plan is intended to prevent municipalities from adopting official plan policies and zoning by-law provisions that are more restrictive than the policies of this Plan, except where prohibited by the Plan. The Ontario government encourages municipalities to develop additional

policies for the Oak Ridges Moraine that support, complement, or exceed the policies of this Plan.”

The ORMCP states that the Implementation Section is to be read along with the Oak Ridges Moraine Conservation Act, 2001, and the ORMCP, to help users of the plan understand how to apply the Plan and legislation. It is clear, from the above noted quotation, that the Town of Newmarket can have policies within its Official Plan that are more restrictive than the ORMCP.

In addition to the above, the ORMCP states that “With respect to land in Settlement Areas, all uses permitted by the applicable Official Plan are permitted ...”. This clause logically means that only the uses currently permitted for the subject lands by the local Official Plan are permitted; otherwise, any use could be permitted anywhere within the Settlement Area.

For the subject lands, the local Official Plan states that the permitted uses within the Environmental Protection Area – Oak Ridges Moraine designation include fish, wildlife and forest management; conservation projects and flood and erosion control projects; non-motorized trail uses; transportation, infrastructure and utilities, and legally existing uses. Therefore, development of residential or commercial uses is not permitted on the subject lands and therefore, the proposal does not conform to the ORMCP.

The Town can be more restrictive than the “Urban Area” designation of the Regional Official Plan

As shown on *Attachment 2*, the ROP designates the subject lands as “Urban Area”. However, Policy 2.5.35 of the ROP states the following:

“Nothing in this Plan prevents area municipal official plans and zoning by-laws from being more restrictive than this Plan or the Oak Ridges Moraine Conservation Plan, except in-so-far as agricultural uses, mineral aggregate operations and wayside pits are concerned. In the event of a conflict the more restrictive policies shall apply.”

In addition to the above, Policies 7.2.3 and 7.2.4 d) of the “The Planning Process” section of the ROP include further policy direction allowing municipal official plans and secondary plans to be more restrictive than the ROP.

As noted previously, development of residential or commercial uses is not permitted in the local Official Plan and therefore these more restrictive policies of the local Official Plan apply.

The policies of both the ORMCP and the Region Official Plan, allow the Town’s “Environmental Protection Area – Oak Ridges Moraine” designation, which is the most restrictive, to apply.

OTHER ISSUES

Conformity with Provincial Policy

The applicant will be required to demonstrate further conformity with respect to the Provincial policy including the 2005 Provincial Policy Statement (PPS), the Provincial Growth Plan, and the Oak Ridges Moraine Conservation Plan (ORMCP). The Region may be able to assist the Town in the review of the applicant's environmental impact statement, landform conservation report, and hydrogeological report in a limited capacity. The Lake Simcoe Region Conservation Authority (LSRCA) will also be involved in the review.

ROP Conformity

Similarly, if the Board determines that development is allowed on the lands, the applicant will be required to demonstrate that the applications conform with the policies of the Region of York Official Plan (ROP), including the community building provisions of Policy 5.2.7.

Conditions of Subdivision Approval

Lastly, if development is allowed and conformity with the ORMCP and ROP can be satisfied, York Region will provide a set of conditions of subdivision approval.

These "other issues" may materialize as part of a second phase of the OMB hearing, if the principle of development is established as noted in Section 4.1 of this report.

5. FINANCIAL IMPLICATIONS

Due to scheduling issues, the OMB has directed that the full hearing with respect to this matter begin in August, 2008. Given the short notice, summer scheduling, and that Regional staff are involved in other OMB matters at that time, it is recommended that staff be authorized to hire planning consultants to support Council's position, as applicable. It is also recommended that \$30,000 be funded in year from the capital reserve for external consultants and other costs associated with this OMB hearing.

6. LOCAL MUNICIPAL IMPACT

The Council of the Town of Newmarket has directed local staff to defend against the appeals. The recommendation of this report will support the Town's position at the Ontario Municipal Board.

7. CONCLUSION

The subject applications for Official Plan Amendment and plan of subdivision propose residential development consisting of 448 units in total. The applications have been appealed to the OMB and during the first phase of the OMB hearing, the principle of development will be adjudicated.

Notwithstanding the fact that the ORMCP and the ROP designate the lands “Settlement Area” and “Urban Area” respectively, there are clear and comprehensive policies within each document identifying that a local municipality can be more restrictive in the land uses that are applied to the lands. In the case of a conflict, the more restrictive policies apply. In this case, the “Environmental Protection Area – Oak Ridges Moraine” designation, as approved by the Province through the Town’s conformity exercise, applies and it does not permit residential or commercial development.

It is recommended that the Ontario Municipal Board (OMB) be advised that, in respect to the local Official Plan amendment and the draft plan of subdivision by Mademont Investments Inc., the policies of the Town of Newmarket Official Plan can be more restrictive than the policies of the Oak Ridges Moraine Conservation Plan and the York Region Official Plan and, in the case of a conflict, the more restrictive policies apply. In addition, given the short notice with respect to the hearing date, summer scheduling, and other OMB matters proceeding in August involving staff, it is recommended that staff be authorized to hire consultants to support Council’s position, as applicable and that \$30,000 be funded in year from the capital reserve for external consultants and other costs associated with the OMB hearing.

For more information on this report, please contact Michael Mallette, Senior Planner, Community Planning at Ext. 1506, or Heather Konefat, Director of Community Planning at Ext. 1502.

The Senior Management Group has reviewed this report.

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