

AIRD & BERLIS LLP

Barristers and Solicitors

Steven A. Zakem

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E-mail: szakem@airdberlis.com

December 14, 2011

BY FACSIMILE and COURIER

Our File No. 104079

Ministry of Municipal Affairs and Housing
Municipal Services Office - Central Ontario
777 Bay St., 2nd Floor
Toronto, ON M5G 2E5

RECEIVED
MUNICIPAL SERVICES OFFICE

Attention: Andrew Doersam, Senior Planner

DEC 15 2011

Dear Mr. Doersam:

CENTRAL REGION
MINISTRY OF MUNICIPAL AFFAIRS
AND HOUSING

**Re: Appeal of Halton Region Official Plan Amendment No. 38
Newmark Developments Limited &
Rosko Investment and Development Limited**

We are counsel to Newmark Developments Limited and Rosko Investment and Development Limited. We write to provide your office with our clients' appeal of Halton Region Official Plan Amendment No. 38 as approved by the Ministry of Municipal Affairs and Housing on November 24, 2011 (ROPA 38).

Our clients previously provided a written submission to Halton Regional Council in advance of the statutory public meeting on ROPA 38. A copy of this written submission is attached for your convenience.

As indicated in our prior written submission, our clients own 3069 Dundas Street West in the Town of Oakville, which generally comprises the majority of the northwest quadrant of the intersection of Regional Road 25 (Bronte Road) and Dundas Street West, extending up to (and beyond) Highway 407 (the "Site"). The Site is proposed to be subject to the North Oakville West Secondary Plan, which is currently before the Ontario Municipal Board on an appeal filed by our clients and others.

Our clients are proposing to develop the Site for a full range of employment, living, entertainment, recreation and other uses as part of a comprehensively planned and integrated mixed-use community. Our clients' interest in this appeal is in ensuring that ROPA 38 does not unreasonably or unjustifiably constrain the development potential of the Site.

In reviewing ROPA 38 as approved by the Minister, it is clear that the concerns outlined in our previous letter to Regional Council were not addressed. Specifically, our clients' remain concerned that proposed policies 77(21), 77.4 and 80 would overly and unnecessarily restrict the mixed-use development potential of the Site. Further, our clients have additional concerns, including the potential limitations imposed by the following proposed policies: 72(10.1), 77(5), 77.1, 77.4(2), 77.4(4), 77.4(6) and 169(1.4).

December 14, 2011

Page 2

Our clients also have a general concern with the "Employment Area" overlay proposed by Map 1 to ROPA 38 (as well as policies 74 and 77.2, which reference such overlay). Our clients do not believe an Employment Area designation with concomitant policy restrictions is warranted in an upper-tier official plan.

Accordingly, our clients hereby place the entirety of ROPA 38 under appeal as it affects the Site. Our client also places under appeal the "Employment Area" overlay indicated on Map 1 to ROPA 38, including all maps and policies that impose and support such overlay.

Should you have any questions or require clarification, please contact the undersigned directly.

Yours truly,

AIRD & BERLIS LLP

Original signed by

Steven A. Zakem
SAZ

Enclosures

cc. Regional Clerk's Office, Regional Municipality of Halton
Newmark Developments Limited
Rosko Investment and Development Limited
P. Smith, Bousfields Inc.

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AIRD & BERLIS LLP

Barristers and Solicitors

Steven A. Zakem
Direct: 416.865.3440
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November 27, 2009

BY FACSIMILE and E-MAIL

Regional Council
Regional Municipality of Halton
c/o Halton Legislative and Planning Services
1151 Bronte Rd., Oakville, ON L6M 3L1

Attention: Perry Vagnini, Senior Planner

Dear Mr. Vagnini:

**Re: Written Submission regarding Regional Official Plan Amendment No. 38
Newmark Developments Limited &
Rosko Investment and Development Limited**

We are counsel to Newmark Developments Limited and Rosko Investment and Development Limited. We write to provide our clients' written submissions with respect to proposed Regional Official Plan Amendment No. 38 (ROPA 38).

We note that ROPA 38 is coming before Regional Council for its statutory public meeting on December 2, 2009. We ask that this written submission be provided to Regional Council and form part of the public record in advance of any final decision being made with respect to the approval of ROPA 38. We also ask that you provide our office with notice of any future meetings, proceedings or decisions pertaining to ROPA 38.

Our clients own 3069 Dundas Street West in the Town of Oakville. Their site comprises the majority of the northwest quadrant of the intersection of Regional Road 25 (Bronte Road) and Dundas Street West, extending up to (and beyond) Highway 407. As Regional Council is aware, this area is poised to be subject to the North Oakville West Secondary Plan, which was recently approved by Oakville Town Council. The North Oakville West Secondary Plan is currently before the Ontario Municipal Board on an appeal filed by our clients and others.

Our clients are proposing to develop their site for a full range of employment, living, entertainment, recreation and other uses as part of a comprehensively planned and integrated mixed-use community. Accordingly, our clients' interest is ensuring that ROPA 38 does not unreasonably or unjustifiably constrain the development potential of their lands.

ROPA 38 proposes to designate our clients' lands as *Employment Area*. Of primary concern to our clients is proposed policy 77.4(1), which reads as follows:

77.4(1) Prohibit residential and other non-employment uses, including major retail uses in the *Employment Areas*, except to recognize uses permitted by specific policies of the Local Official Plan on the date of adoption of Council of this Plan;

Our clients submit that the above-noted policy is overly restrictive. ROPA 38 does not define "non-employment" uses. Further, the permission to develop non-employment uses within designated employment areas, including major retail uses, should be left to the local municipalities. Local council is best able to determine whether such uses meet and enhance the objectives of the local official plan.

Neither the 2005 Provincial Policy Statement nor the *Growth Plan for the Greater Golden Horseshoe* prohibit the presence of mixed use development permissions within an employment area. Yet as currently drafted, ROPA 38 would prevent, on a go forward basis, local municipalities from including permissions for mixed uses within their designated employment areas.

To address this concern, we propose that the words "*...on the date of adoption of Council of this Plan*" be deleted from proposed policy 77.4(1). This revision would ensure that a mixed-use development could occur on our client's lands if approved through the North Oakville West Secondary Planning process. In the alternative, a designation other than *Employment Area* should be considered for our clients' lands to better reflect its key locational attributes and its mixed use development potential.

Our clients have additional concerns with proposed policy 77(21), which prescribes criteria for the approval of large-scale retail uses that may have primary trade areas extending beyond the boundary of the relevant local municipality. Similar to policy 77.4(1), policy 77(21) is overly restrictive and effectively does not permit local councils to address the location of "large-scale retail uses" (not defined) within their own municipalities. The Region should not become an independent approval authority wherever a large-scale major retail use is proposed to be developed in conformity with a local official plan.

Our clients also seek clarification to the *Intensification Areas* policies of ROPA 38. In particular, proposed policy 80(3) indicates that *Intensification Areas* "*...include Intensification Corridors as identified in local official plans, which consist of areas along Higher-Order Transit Corridors and selected Arterial Roads.*"

Pursuant to Oakville's approved Official Plan, our clients' lands are at the intersection of two arterial roads, being Bronte Road and Dundas Street West. The latter is recognized as a "High-Order Transit Corridor". The wording of proposed policy 80(3) does not clarify how "*selected Arterial Roads*" must be identified within a local official plan before adjacent lands are considered to be within an *Intensification Area* for purposes of ROPA 38. Given the location of our clients' lands at the intersection of two *Arterial Roads* comprising a gateway into the new North Oakville West Secondary Plan Area, we submit that it would be appropriate for our clients' lands to be considered an *Intensification Area* pursuant to ROPA 38.



November 27, 2009
Page 3

We ask that Region Council direct its staff to give further consideration to the above-noted policies. Our office is available for consultation with staff where needed. Should you have any questions or require clarification, please contact the undersigned directly.

Yours truly,

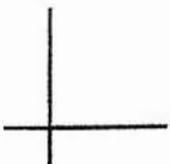
AIRD & BERLIS LLP

Original signed by

Steven A. Zakem
SAZ

cc. Regional Clerk's Office, Regional Municipality of Halton
Newmark Developments Limited
Rosko Investment and Development Limited

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Environment and Land Tribunals Ontario
Ontario Municipal Board
 655 Bay Street, Suite 1500 Toronto, Ontario M5G 1E5
 TEL: (416) 212-6349 or Toll Free: 1-866-448-2248
 FAX: (416) 326-5370
 www.elto.gov.on.ca

**APPELLANT FORM (A1)
 PLANNING ACT**

**SUBMIT COMPLETED FORM
 TO MUNICIPALITY/APPROVAL AUTHORITY**

Date Stamp - Appeal Received by Municipality

Receipt Number (OMB Office Use Only)

Part 1: Appeal Type (Please check only one box)

SUBJECT OF APPEAL	TYPE OF APPEAL	PLANNING ACT REFERENCE (SECTION)
Minor Variance	<input type="checkbox"/> Appeal a decision	45(12)
Consent/Severance	<input type="checkbox"/> Appeal a decision	53(19)
	<input type="checkbox"/> Appeal conditions imposed	
	<input type="checkbox"/> Appeal changed conditions	53(27)
	<input type="checkbox"/> Failed to make a decision on the application within 90 days	53(14)
Zoning By-law or Zoning By-law Amendment	<input type="checkbox"/> Appeal the passing of a Zoning By-law	34(19)
	<input type="checkbox"/> Application for an amendment to the Zoning By-law – failed to make a decision on the application within 120 days	34(11)
	<input type="checkbox"/> Application for an amendment to the Zoning By-law – refused by the municipality	
Interim Control By-law	<input type="checkbox"/> Appeal the passing of an Interim Control By-law	38(4)
Official Plan or Official Plan Amendment	<input checked="" type="checkbox"/> Appeal a decision	17(24) or 17(36)
	<input type="checkbox"/> Failed to make a decision on the plan within 180 days	17(40)
	<input type="checkbox"/> Application for an amendment to the Official Plan – failed to make a decision on the application within 180 days	22(7)
	<input type="checkbox"/> Application for an amendment to the Official Plan – refused by the municipality	
Plan of Subdivision	<input type="checkbox"/> Appeal a decision	51(39)
	<input type="checkbox"/> Appeal conditions imposed	51(43) or 51(48)
	<input type="checkbox"/> Failed to make a decision on the application within 180 days	51(34)

Part 2: Location Information

Northwest quadrant of Bronte Road and Dundas Street West, extending up to (and beyond) Highway 407. Known municipally as 3069 Dundas Street West in the Town of Oakville.

Address and/or Legal Description of property subject to the appeal:

Municipality/Upper tier: Region of Halton

Part 3: Appellant Information

First Name: _____ Last Name: _____

Newmark Developments Limited and Rosko Investment and Development Limited

Company Name or Association Name (Association must be incorporated – include copy of letter of incorporation)

Professional Title (if applicable): _____

E-mail Address: _____

By providing an e-mail address you agree to receive communications from the OMB by e-mail.

Daytime Telephone #: _____ Alternate Telephone #: _____

Fax #: _____

Mailing Address: _____

Street Address

Apt/Suite/Unit#

City/Town

Province

Country (if not Canada)

Postal Code

Signature of Appellant: _____ Date: _____

(Signature not required if the appeal is submitted by a law office.)

Please note: You must notify the Ontario Municipal Board of any change of address or telephone number in writing. Please quote your OMB Reference Number(s) after they have been assigned.

Personal information requested on this form is collected under the provisions of the *Planning Act*, R.S.O. 1990, c. P. 13, as amended, and the *Ontario Municipal Board Act*, R.S.O. 1990, c. O. 28 as amended. After an appeal is filed, all information relating to this appeal may become available to the public.

Part 4: Representative Information (if applicable)

I hereby authorize the named company and/or individual(s) to represent me:

First Name: Steven

Last Name: Zakem

Company Name: Aird & Berlis LLP

Professional Title: Lawyer

E-mail Address: szakem@airdberlis.com

By providing an e-mail address you agree to receive communications from the OMB by e-mail.

Daytime Telephone #: 416 863 1500

Alternate Telephone #: _____

Fax #: 416 863 1515

Mailing Address: 181 Bay Street 1800 Toronto

Street Address

Apt/Suite/Unit#

City/Town

Ontario

Canada

M5J 2T9

Province

Original signed by

Postal Code

Signature of Appellant: _____ Date: DECEMBER 14, 2011

Please note: If you are representing the appellant and are NOT a solicitor, please confirm that you have written authorization, as required by the Board's Rules of Practice and Procedure, to act on behalf of the appellant. Please confirm this by checking the box below.

I certify that I have written authorization from the appellant to act as a representative with respect to this appeal on his or her behalf and I understand that I may be asked to produce this authorization at any time.

Part 5: Language and Accessibility

Please choose preferred language: English French

We are committed to providing services as set out in the *Accessibility for Ontarians with Disabilities Act, 2005*. If you have any accessibility needs, please contact our Accessibility Coordinator as soon as possible.

Part 6: Appeal Specific Information

1. Provide specific information about what you are appealing. For example: Municipal File Number(s), By-law Number(s), Official Plan Number(s) or Subdivision Number(s):

(Please print)

Region of Halton Official Plan Amendment No. 38 (ROPA 38).

2. Outline the nature of your appeal and the reasons for your appeal. Be specific and provide land-use planning reasons (for example: the specific provisions, sections and/or policies of the Official Plan or By-law which are the subject of your appeal - if applicable). **If more space is required, please continue in Part 9 or attach a separate page.

(Please print)

Please see enclosed covering letter.

THE FOLLOWING SECTIONS (a&b) APPLY ONLY TO APPEALS OF ZONING BY-LAW AMENDMENTS UNDER SECTION 34(11) OF THE *PLANNING ACT*.

a) DATE APPLICATION SUBMITTED TO MUNICIPALITY: _____
(If application submitted before January 1, 2007 please use the O1 'pre-Bill 51' form.)

b) Provide a brief explanatory note regarding the proposal, which includes the existing zoning category, desired zoning category, the purpose of the desired zoning by-law change, and a description of the lands under appeal:
**If more space is required, please continue in Part 9 or attach a separate page.

Part 7: Related Matters (if known)

Are there other appeals not yet filed with the Municipality? YES NO

Are there other planning matters related to this appeal? YES NO
(For example: A consent application connected to a variance application)

If yes, please provide OMB Reference Number(s) and/or Municipal File Number(s) in the box below:

(Please print)

Part 8: Scheduling Information

How many days do you estimate are needed for hearing this appeal? half day 1 day 2 days 3 days
 4 days 1 week More than 1 week – please specify number of days: _____

How many expert witnesses and other witnesses do you expect to have at the hearing providing evidence/testimony?
Three.

Describe expert witness(es)' area of expertise (For example: land use planner, architect, engineer, etc.):
Land use planning, economic impact, market impact.

Do you believe this matter would benefit from mediation? YES NO
(Mediation is generally scheduled only when all parties agree to participate)

Do you believe this matter would benefit from a prehearing conference? YES NO
(Prehearing conferences are generally not scheduled for variances or consents)

If yes, why? Hearing organization in terms of dates, issues list, parties, potential phasing, etc.

Part 9: Other Applicable Information **Attach a separate page if more space is required.

Part 10: Required Fee

Total Fee Submitted: \$ 125.00

Payment Method: Certified cheque Money Order Solicitor's general or trust account cheque

- The payment must be in Canadian funds, payable to the Minister of Finance.

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