

ISSUE DATE:

JULY 20, 2004

DECISION/ORDER NO:

1212



PL020384

Ontario Municipal Board

Commission des affaires municipales de l'Ontario

Paletta International Corporation 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 Burlington to redesignate land bounded by Mainway, Burloak Drive, Upper Middle Road, and Sheldon Creek from Office Business Park to Residential Low Density and Residential Medium Density with schools, parks, open space and commercial uses to permit the development of low density and medium density residential development with schools, parks, open space and commercial uses

City's File No. 505-01/99

O.M.B. File No. O020070

Paletta International Corporation 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 2020 for the City of Burlington to rezone lands respecting 5164, 5366 and 5470 Upper Middle Road from OP1, H-OP1, H-OP2, H-OP3, O2 and O3 to R02, MXE, O2, and P to permit the development of low density and medium density residential development with schools, parks, open space and commercial uses

City's File No. 520-11/02

O.M.B. File No. Z020044

Paletta International Corporation has appealed to the Ontario Municipal Board under subsection 53(34) of the *Planning Act*, R.S.O. 1990, c. P.13, as amended, from failure of the City of Burlington to make a decision respecting a proposed plan of subdivision on land composed of Part of Lots 1, 2, 3, and 4, Concession 2 in the City of Burlington

City File No. 510-06/02 (24T-02006/B)

O.M.B. File No. S020032

APPEARANCES:

Parties

The City of Burlington

Paletta International Corporation

The Regional Municipality of Halton

Halton District School Board

Halton Catholic District School Board

Counsel

Bruce C. Ketcheson
R. Andrew Biggart
Nancy Shea-Nicol

Herman Turkstra
Scott A. Snider

Jeffrey J. Wilker
Stan Floras

William Thatcher

Rick F. Coburn

DECISION DELIVERED BY R. A. BECCAREA AND ORDER OF THE BOARD

Introduction

Paletta International Corporation (Paletta) owns a large vacant parcel of land, called Bronte Creek Meadows that is bounded by Upper Middle Road, Mainway, Burloak Drive and the Sheldon Creek, in the City of Burlington that they wish to develop as a residential subdivision. To do that, an amendment to the City's Official Plan, a zoning by-law and a plan of subdivision are necessary, all of which are before the Board.

This decision of the Board results from a Phase 1 hearing which dealt with Paletta's appeal of its proposed official plan amendment to redesignate the subject lands from an Office/Business Park designation to a Residential Low Density and a Residential Medium designation with schools, parks, open space and commercial uses, that the City of Burlington refused to adopt.

The applications made by Paletta include a City owned woodlot of approximately 9 hectares (22 acres) in size and a woodlot within Paletta's ownership of approximately 9.7 hectares (24 acres) in size.

Both the Regional Municipality of Halton (the Region) and the City of Burlington (the City) in particular, oppose the Paletta applications. The City and the Region maintain that the current amount of land designated residential within the City's existing urban area is sufficient to meet Burlington's future needs to the year 2021. Both are also of the view that the subject site should be retained for future employment development.

The Bronte Creek Meadows according to Paletta's land use planner comprise 133.30 gross hectares (329.4 gross acres) and 111.36 net hectares (275.08 net acres) of developable lands.

The City, calculating the subject lands as having a net developable area of 247 acres (100 hectares), maintains that it represents the largest single holding of serviced employment land, available for development in the City. Bronte Creek Meadows

represents, according to the City, approximately 23% of the current supply of serviced employment land or 16% of the total supply if one factors in the unserviced employment lands with the Alton and Tremaine areas of the City. On a Regional level, Bronte Creek Meadows represents 8% of the total serviced and vacant employment lands in the Region of Halton.

The Region maintains that Paletta's residential land use applications represent a major large-scale land use conversion proposal so as to engage Regional concerns.

The evidence for this Phase of the Board's hearing was divided into several components which included a general overview of the history and characteristics of the site; market issues pertaining to land supply and economic forecasts of employment and residential land needs; planning issues pertaining to suitability and policy conformity; transportation and environmental issues pertaining to traffic, noise and dust; and fiscal impact issues pertaining to both the employment and the residential impacts.

Nineteen witnesses were called and recalled by the Parties, eight members of the public were heard at an evening session and a total of 171 exhibits were received, including written argument from Paletta, the City and the Region.

Suitability of Bronte Creek Meadows for Residential Uses

The developable portions of Bronte Creek Meadows present no constraints to residential development. The site is well serviced by arterial roads and can be integrated into the City's public transit system.

Bronte Creek Meadows is within the City's urban boundary and contains woodlots, valley lands and stream corridors that would provide amenities for residential uses.

Bronte Creek Meadows would be well served with retail uses. A large-scale shopping centre is located at the northwest corner of Upper Middle Road and Appleby Line.

To the north of Bronte Creek Meadows is the residential community of Orchard. Approximately 75% of the lots within Orchard are registered.

To the west is the Sheldon Creek Valley that is a well-treed, incised valley feature. West of that valley is the Sheldon Creek residential neighbourhood that is planned for semi-detached, street townhouses and low-rise apartments.

East of Burloak Drive is the Bronte Creek Provincial Park, which contains amenities and activities suitable for residential development.

There is an existing employment area to the south. The Mainway portion of this area has been subdivided into lot sizes ranging from approximately 1 acre to 3.2 acres and is only partially developed with lighter industrial uses with no outside storage and generally with the corporate office portion of the buildings facing Mainway. Approximately 500 metres west of the subject site, located approximately 200 metres south of Mainway, is the only "heavier" industrial use; namely, a waste transfer facility operated by Norjohn.

The Board heard from Paletta International Corporation's president, Angelo Paletta, who until recently was also a licensed real estate broker. The family has long term interests in the City of Burlington and holds both residential and employment lands, builds employment buildings and leases employment space. The Paletta's food processing company is a major employer in the City. Paletta itself holds approximately 1 million square feet of industrial/commercial space from Hamilton to Toronto.

Mr. Paletta indicated that the Bronte Creek Meadows' lands are immediately needed to satisfy current market demand for residential uses and if designated, would be built out promptly and occupied by homeowners and their families. He advised the Board that he gets approximately one call each day from builders, agents and others looking for residential lots. In terms of the Bronte Creek Meadows lands, he has been approached by three homebuilders: Greenpark, Mattamy Homes and Monarch. All three were interested in purchasing the entire site

The suitability and attractiveness of Bronte Creek Meadows for residential uses was also highlighted by Anthony Martelli of Greenpark. Greenpark is one of Canada's largest homebuilders. He noted that the woodlots, ravine and Bronte Creek Provincial Park would all be attractive to residential buyers. If approval was granted and if Greenpark was able to secure the site, he indicated that he would be ready to sell homes in the late summer or early fall of the year of approval.

Mr. Martelli indicated that there is strong interest in ground related units in Burlington. Realtors frequently called asking for “move up product”. He noted that the prices for single-family homes in particular are being driven up in Burlington in his opinion by the lack of supply. Mr. Martelli indicated that the lands are in a strategic and appropriate location for residential development.

With the exception of the issue of compatibility with existing employment uses to the south, Mr. Allan Ramsay, the City’s senior planner, was of the opinion that some of the characteristics that make the subject lands suitable for employment uses are also applicable to the development of the site for residential uses.

Mr. Ramsay agreed that a residential community at Bronte Creek Meadows would contribute to some of the objectives of the City’s Official Plan in terms of providing a diverse range of housing types.

Suitability of Bronte Creek Meadows for Employment Uses

Services are available at the boundaries of the property and the site has ready access to a network of major roads. Easy access is available to two provincial expressways, Highway No. 407 and the Queen Elizabeth Way. A full movement intersection onto the QEW is located approximately 1.5 kilometers to the south of the property, from Burloak Drive.

The site is well buffered from the existing Sheldon Creek community to the west, by the valley of the Sheldon Creek. To the north is the Orchard Community, which is separated from the subject property by Upper Middle Road that is a four-lane arterial road and by a wide utility corridor located north of the road. To the east is the Bronte Creek Provincial Park. To the south is an emerging employment area that contains several large prestige offices/industrial uses.

While Paletta’s position is premised upon the proposition that the site is suitable to accommodate residential development, the evidence before the Board also supports the proposition that the property can equally offer a wide range of employment opportunities in a form compatible with the existing development located around the site. The flexibility afforded by the site’s size and location to accommodate a wide range of employment options was illustrated by the concept plans submitted on behalf

of the City to demonstrate that the lands can be developed for employment purposes, with a variety of different configurations and uses.

The City is in the process of determining whether the uses currently permitted on the Bronte Creek Meadows site may be expanded in the near future as part of the City's current Official Plan review.

The suitability of the lands for employment was demonstrated by its selection by Woolworths to be the site for its head office. The failure of this site to be developed for that purpose was owing to the sale of Woolworths to Walmart. The Board was advised that this corporate reorganization and not any deficiency in the lands, is what caused the head office to be abandoned.

The Board agrees with the Region's submission that from 1998, the lands were effectively taken off the market for employment land uses, save and except for the efforts by the City and Paletta to secure a semiconductor manufacturer on the lands. In November 1998, the then owner, Richview Investments Limited, filed an official plan amendment application for a residential redesignation.

Paletta did not list the lands with any commercial brokers nor was the property signed. The message to the market place was that these lands were going to be developed for residential land uses. The City's Economic Development Corporation's Information Guide 2002 shows that Paletta was advising the market place that these lands were being converted for residential purposes indicating, "Bronte Creek Meadows Proposed fully planned residential community fall 2002."

The Board does not accept the suggestion that the lack of QEW frontage compromises the suitability of the site for employment lands. ABB, previously a tenant in one of Paletta's buildings on the south frontage of the QEW, relocated to a new site at Harvester Road and Walker Line that does not have QEW frontage.

Bronte Creek Meadows is approximately 1 to 2 km from the QEW. The distance to the subject lands from the QEW is similar to the distance that employment land uses situated along the frontage of the QEW would have to travel for lands that were midpoint between the QEW/ Burloak Drive exit and the QEW/Appleyby Line exit.

Bronte Creek Meadows has the availability of airfreight services from John C. Munro (Hamilton) Airport, in addition to Pearson Airport to service employment uses. Bronte Creek Meadows also has from the QEW connections to Highway 403, which allows for access to the London – Windsor 401 Corridor and connections to I-75.

Findings with Respect to Site Suitability

Strictly from a site suitability perspective, the Board finds that Bronte Creek Meadows is equally suitable for either residential or employment uses.

To the south of Bronte Creek Meadows is an existing employment area that with appropriate mitigation on either or both properties can interface with the residential uses proposed by Paletta.

Similarly, Bronte Creek Meadows can, if developed as an employment area similar to its current designation or similar to the suggested scenarios developed by the City compliment that existing employment area.

The Board agrees with the Region's submissions that many of the locational attributes that make Bronte Creek Meadows attractive for residential purposes are the same attributes that commend it for employment uses.

There are not, in the Board's view, any significant or inherent incompatibility concerns with Bronte Creek Meadows developing for either use.

Environmental Issues

The Board does not find that the Paletta applications will result in land use compatibility problems with existing or new employment uses south of Mainway Drive that cannot be appropriately mitigated and also comply with the applicable MOEE guidelines.

The Board heard from two air quality experts, Michael Lepage who was called by Paletta and Paul Complin who was called by the City.

Mr. Lepage advised the Board that from an air quality perspective, the proposed draft plan of subdivision adequately addresses the potential for adverse effects from

dust and odor in residential areas and the potential to limit the development of the existing employment lands in the area. The proposal adopts transitional land uses like the existing woodlot and mixed-use employment zones in a 150-meter wide zone between the proposed residential lands and the existing employment lands south of Mainway Drive. He was not of the opinion that additional mitigation was needed to be incorporated into the design of the proposed development.

Mr. Complin was of the opinion that a provision of a 300 or more meter buffer from the industrial lands would allow for a broader range of industrial uses to develop throughout the industrial land south of Mainway Drive and maximize the potential uses of those industrial lands.

The Board heard from Michael Millard who has had extensive experience in land development particularly in the ICI market. Mr. Millard reviewed the development that currently exists south of Mainway and their remaining vacant parcels and concluded that it would be improbable that a heavy industrial user would locate there.

Mr. Ramsay conceded that the more likely uses on the south side of Mainway would be Class II industrial uses.

The Board heard from two noise consultants Dr. A. D. Lightstone who was called by Palletta and Mr. Brian Howe who was called by the City.

Dr. Lightstone concluded that the Paletta proposal, with standard noise mitigation measures, would be appropriate to and would result in compliance with MOEE noise guidelines and would not jeopardize existing future non-residential uses on other nearby sites.

Mr. Howe advised the Board that he agreed that the existing industries south of Mainway would not pose a problem for the Paletta proposal. He also acknowledged that while it was true there is a theoretical possibility that Class III industries could locate on vacant lots south of Mainway, the indications of that happening were quite unlikely. His expectation was that there would be more of the same uses locating on those vacant parcels.

No industries or landowners south of Mainway came forward to express land use compatibility concerns or to oppose the Paletta proposal.

The Board prefers the evidence of Paletta's experts and finds that there are no land use compatibility issues that cannot be mitigated, by the redesignation of Bronte Creek Meadow for residential uses.

The Board found no evidence to support the City's submission that the environmental issues raised at its hearing demonstrate a risk to the economic prosperity of the City. The Board agrees that separation distances are necessary but finds that the ones proposed by Paletta are adequate to prevent any adverse impacts on the surrounding land uses.

Transportation Issues

The Board heard from two traffic experts, Dan Cherepacha, who was called by Paletta and Claudio Covelli, who was called by the City.

Both Mr. Cherepacha and Mr. Covelli agreed that the Bronte Creek Meadows lands and the surrounding road network, with some modification, can accommodate the traffic that would be generated either by Paletta's residential development proposal or by an employment development proposal. Both traffic experts also agreed that it would not be appropriate to eliminate Corporate Drive from Sheldon Creek to Burloak Drive.

Mr. Covelli was of the opinion that the traffic generated from a residential designation will add to an already existing lopsided peak period up and down Bronte Creek Road. He believed a residential development would exacerbate the exiting problem whereas if Bronte Creek Meadows is developed as an employment site, the current lopsided traffic flow would more likely even out as commuters departing from their homes travel to the site, rather than away from it in the morning rush hour.

Mr. Cherepacha advised the Board that Mr. Covelli's criterion of a balanced peak hour traffic flow was not in common use and not appropriate. He indicated that the ultimate issue was whether or not the external boundary roads could accommodate the traffic, whether or not a balance of traffic in both directions occurs at any given time. Mr. Cherepacha was satisfied the external roads could accommodate that traffic.

Mr. Cherepacha also advised the Board that the intersections servicing Bronte Creek Meadows can operate at acceptable levels of service with the Paletta residential proposal in place.

The Board has considered the evidence of both Mr. Covelli and Mr. Cherepacha and prefers Mr. Cherepacha's opinion that there are no substantial transportation concerns that cannot be easily accommodated.

The Board finds that the traffic impact study of Mr. Cherepacha's demonstrates that there would be no issue regarding the road capacity or the intersections operating at an acceptable level of service, if Paletta's development proposal is approved.

Fiscal Impact Issues

The City's Official Plan provides a policy regarding fiscal management in relation to new development by indicating that financial impact analyses shall be used as an evaluation factor when considering major land use development proposals.

Without agreeing that the above policy applies, Paletta retained Mr. Randy Grimes, who provided the Board with his opinion. The Board also heard from Mr. Cam Watson, the City's expert.

Both Mr. Grimes and Mr. Watson addressed the issue as to whether the Paletta proposal would have a positive or negative effect on the net operating position of the City and what the fiscal implications of the Paletta development proposal would be.

Mr. Watson concluded that an employment designation would result in a positive net operating position for the City that depending on which development concept that was proposed by the City as set out in Exhibit 107, Tab 7, ranged from \$1,666,430 at a 4% present value to \$9,041.340 at a 2% present value.

Mr. Watson concluded that Paletta's residential proposal forecasts a net operating position in 2002 dollars ranging from a loss of \$1,175,290 discounted at 4% to a loss of \$3,638,050 discounted at 2%.

Mr. Grimes examined two residential development options and two employment development options, namely an office business park scenario and an industrial

scenario. Except for an office business park scenario that achieved a density of 70 employees per acre, both the residential and employment designations produced positive net operating positions for the City at mature states.

Both Mr. Watson and Mr. Grimes were cross-examined by Paletta and the City on their respective methodology. Mr. Grimes for instance was challenged on his decision to calculate the capital from current budget rate at 6% when Mr. Watson assumed that the City's net annual contribution to capital and other funds from the operating budget would be 25% of other expenditures to cover the costs of repairs, replacements and upgrades for development related works.

Mr. Watson was confronted with the fact that his office had completed an analysis for the City of alternatives in the Alton area where the total number of homes was of nearly the same number as Paletta proposes for Bronte Creek Meadows, which project he acknowledged was approved by the City.

Mr. Grimes was challenged over the fact that his methodology failed to adequately consider Development Charge Shortfalls that most cities face while Mr. Watson included in his analysis, Development Charge Funding Gaps of \$1,000 per residential unit and \$.70 to \$1.00 for non-residential units.

Mr. Grimes, disagreeing with Mr. Watson's approach, was of the view that the spread between the capital costs of new development and the amount to be paid by new home buyers through the developer should be absorbed in the overall financial picture of a city and be borne by all taxpayers. His approach, he advised the Board is in accordance with the philosophy of the Development Charges legislation that makes it clear that 0% to 10% (depending on the service) of the cost attributable to new developments should be borne by all municipal taxpayers, not just new home buyers.

The Board finds that Mr. Grimes' analysis is preferable to Mr. Watson's approach. Mr. Watson's approach might be more attractive to some municipalities, but does not reflect what most cities, and in particular Burlington, are currently doing.

As the Paletta submissions point out, the fiscal impact of the Paletta proposal is not different from other similar recent developments that Burlington's council has recently approved. It is the Board's view that Paletta should be assessed with the same

standards as others until a specific change in policy occurs. There is no reason that the Board heard to distinguish the Paletta proposal from the already approved proposals on fiscal grounds.

The Board after reviewing the evidence of both Mr. Grimes and Mr. Watson does not find that the Paletta proposal will have a negative effect on the net operating position of the City.

Market Issues – Land Supply and Economic

The Board heard from Mr. Randy Grimes and Audrey Jacobs of 1B1 Group on behalf of Paletta; Mr. Russell Mathew of Hemson Consulting, on behalf of the Region; and Mr. Doug Annand of Price Waterhouse Coopers and Mr. Thomas McCormack and Mr. Robert Lehman of MKI/CSE on behalf of the City. The Board heard market evidence during 18 hearing days of the Board's hearing time.

These market consultants addressed the issues as to whether the Bronte Creek Meadows lands are required for employment uses over the planning period to 2021 taking into consideration the economic objectives of the City and whether the Bronte Creek Meadows lands are required for residential uses over the planning period to 2021.

The Parties agreed that for the purposes of assessing the Paletta applications that a planning horizon of 2021 would be used.

The planning horizon contained in the City's current official plan is 2011. The Official Plan anticipates that the City's population will not exceed 180,000 by then and that the expected employment level then will be 85,000.

The Regional Official Plan Amendment No. 8 (ROPA8) sets out the year 2016 as its approved time frame at which time the population targets for the Region are anticipated to be 538,000 with the allocated population share for the City being 178,900. The employment targets for the Region are anticipated to be 257,800, with the City being allocated 88,500. The increases in both population and employment are, according to ROPA8 to be accommodated by an additional 113,000 persons within the current urban areas and the designation of new urban areas to accommodate an

additional 87,000 persons and 1,800 net hectares of employment land in the Milton centered area and the north Oakville area, by 2016. These lands in both Milton and Oakville are anticipated to further intensify so that each will be able to accommodate about 50,000 new persons and about 900 net hectares of new employment land by then. Within the Town of Halton Hills, a 300-hectare corridor of land along the north side of the 401 is also expected to develop.

The Region prepares, on a regular basis, the Best Planning Estimates Research Paper (BPE). The May 2000 BPE estimated the City's population for 2011 to be 172,200, for 2016 to be 178,900 and for 2021 to be 184,500. The updated June 2003 BPE included employment estimates, which the previous May 2000 BPE version did not. The June 2003 BPE estimated the employment in Burlington to be 91,000 in 2011, 97,700 in 2016 and 106,400 in 2021.

The IBI Group, in consultation with the other consultants prepared two road maps that showed a comparison of all four-market consultants of their respective residential needs studies and a comparison of their respective employment land needs studies.

The population forecasts each market consultant made and the forecasts contained in the above mentioned documents were referenced in the road maps for the years 1996, 2001, 2011, 2016, and 2021.

A Residential Land Needs Forecast

The relevant policy documents do not specifically provide that an Applicant seeking to redesignate employment lands to non-employment uses must demonstrate that there is a particular need for that proposed use. Section 3.2.2(d), Part III of the City's Official Plan does require a consideration of employment needs in the City but does not specifically state that Paletta prove that additional residential lands are needed, in order for Bronte Creek Meadows to be approved for those uses.

The City's Official Plan also does not have specific criteria for the designation of new residential lands like it has for the redesignation of lands to General Industrial.

There was agreement among the market consultants that there would be a shortfall of residential land through the planning period to 2021. There continued to be

differences among the consultants as to the quantum of the shortfall and the timing of the shortfall up to 2021.

Both the City and the Region emphasized that the City of Burlington can, without the redesignation of the Bronte Creek Meadows site, meet both the short term and long term housing requirements contained in both the Provincial Policy Statement and the City and Regional Official Plans with respect to providing an appropriate range of housing. The details of those positions are contained in the planning section of this decision.

Hemson Consulting (Russell Mathew)

Using a population projection of 176,300 for 2021, Mr. Mathew projected a “shortfall” of 1,700 housing units. He denied that this was specifically a shortfall but rather reflected an anticipated demand for high-density units not currently identified within the available supply.

In the context of the “housing market area” as defined by the Provincial Policy Statement, Mr. Hemson advised the Board that, while there might be a shortage of grade related housing in the City, there was no shortage of such housing in the Region.

Mr. Mathew forecasted a total of 76,200 households in Burlington in 2021 which is the same household forecast used by IBI Group.

There is a gap, according to Mr. Matthew, between the average age in Burlington and the average age in the GTA that is increasing and will continue. This will cause a greater demand for apartments and smaller housing, freeing up the supply of existing low-density housing.

Price-Waterhouse Coopers (Doug Annand)

Mr. Annand following the release of the June 2003 BPE, updated his residential land needs analysis.

Using a population forecast of 184,500 and a forecast of 74,000 households in 2021, Mr. Annand advised the Board that a short fall of 174 total housing units would occur, without the Bronte Creek Meadows becoming residential.

Mr. Annand in his March 2003 study had projected a surplus of 2,800 housing units without Bronte Creek Meadows becoming residential.

Mr. Annand advised the Board that Burlington, over the past 12 years, has had an average unit production of 1,066 units per year and in that context, a shortfall of 174 units represents about 2 months supply at the end of a 20 year period.

IBI Group (Randy Grimes and Audrey Jacobs)

IBI group, following the release of the City's Status of Residential Applications in June 2003, revised its earlier study.

IBI Group projected, using an anticipated population of 184,500 and a total of 76,000 total households in 2021, a shortfall of total housing units of 3,597 as early as 2015 if Bronte Creek Meadows is not redesignated.

IBI group projected that a shortfall in singles and semi-detached units would occur in 2011 and a shortfall in medium density row units would occur in 2012.

MKI/CSE

MKI/CSE was not asked to conduct a residential land needs study. MKI/CSE projected a larger population for the City of 203,257 in 2021. Mr. Lehman and Mr. McCormack did provide opinions about the City's employment needs.

B Employment Land Needs Forecast

This area of the market evidence posed the greatest disagreement among the market consultants and was the subject matter of lengthy cross-examination even on the smallest of detail of their methodology and opinion.

The market experts produced by the City and the Region provided the same recommendation to the Board, namely that the lands should not be redesignated for residential purposes. Paletta's market experts recommended that the lands be redesigned for residential.

Hemson Consulting

Mr. Mathew advised the Board that it would be premature to consider the redesignation of Bronte Creek Meadows at the beginning of the current planning period for the Region that does not end until 2016.

Mr. Mathew advised the Board that Bronte Creek Meadows is needed to ensure that there is sufficient supply and choice in the employment land supply market. He predicted that the total residual land supply for employment land needs without Bronte Creek Meadows would nearly be exhausted by 2021. He forecasted a deficit of 2 net acres if Bronte Creek Meadows is redesignated and a surplus of 65 net acres, if it is not redesignated in 2021.

Mr. Mathew advised the Board that the Bronte Creek Meadows site was among the highest quality and best located employment land supply in the Region.

Price-Waterhouse Coopers

Mr. Annand was of a similar opinion that the Bronte Creek Meadows lands represent a significant employment generation opportunity.

Mr. Annand indicated there should be a balance of both policy considerations and market considerations when considering the merits of the Paletta proposal. It would be wrong to merely look at the market considerations, which predict a shorter term view, as it would be equally wrong to look just at policy considerations, which predict a longer term view.

Mr. Annand's findings indicated that Burlington's competitive vacant employment land supply falls below 25% in the medium term (2012-2014). In his opinion, when vacant supply falls below this level, economic development initiatives are constrained by a land base that cannot adequately address the myriad of locational needs demanded by the market.

The loss of Bronte Creek Meadows as an employment area would not only diminish the City's capacity to effectively generate new investment and job creation locally, it would also directly undermine the City's "Smart Growth" planning agenda which seeks among other things, to move the City away from being a bedroom

community. The City wants to improve the live-work commuting patterns of its residents, and at the same time contain growth within its existing boundary, in order to avoid the consequences of urban sprawl. The City, at the this stage of its official plan policy thinking, does not want to entertain or be forced to entertain an expansion of its urban planning area into its rural planning area.

Mr. Annand, in his revised August 2003 analysis, forecasted a shortfall in the total residual land supply for employment land needs in 2021, after allowing for a market contingency factor of 25%, if Bronte Creek Meadows was not redesignated, of 408 net acres. If Bronte Creek Meadows was redesignated Mr. Annand forecasted the shortfall to be 665 net acres in 2021.

Based on information that he obtained from the City's economic development corporation, Mr. Annand advised the Board that out of the 2.24 million square feet of new industrial space and 0.93 million square feet of office space built since 1997, the employment areas surrounding Bronte Creek Meadows represented 84% of all new space added in the City. This according to Mr. Annand was clear evidence of the significance of the Burloak and Q E W area, including the Bronte Creek Meadows site, being able to develop as a major employment node within the City. He advised the Board that future employment growth potential would ultimately spill over across Mainway into the Bronte Creek Meadows lands.

MKI/CSE

MKI/CSE used a different methodology than the other market consultants, by using two scenarios based upon Burlington, maintaining its share of export – based jobs in the GTA or increasing its share of those jobs as opportunities in Toronto are exhausted or become less attractive.

Mr. Lehman and Mr. McCormack predicated a population of 203,257 for the City and a total employment of 102,115 if the City increases its shared export related jobs in the GTA. If the Bronte Creek Meadows lands are not redesignated, MKI/CSE predicated in 2021 a surplus of 213.5 net acres and a shortfall of 34 net acres if it is for that scenario.

If, as is more likely according to Paletta, the City only maintains its share of

export jobs, MKI/CSE predicted that the total employment would be 91,168 jobs as opposed to 102,115 jobs. In this scenario, MKI/CSE predicted that the total residual land, after allowing for a market and vacancy factor, to be a surplus of 560.6 net acres if Bronte Creek Meadows is redesignated and a surplus of 807.6 net acres if it is not redesignated, in 2021.

Mr. Lehman, as part of the City's Official Plan review process, prepared an Employment Land Study. Mr. Lehman advised the Board that the conclusions of that study indicate that the City's economy should remain very strong over the next 20 years. It is anticipated that there will be a push for new employment to locate in areas on the fringe of the GTA. As such, Mr. Lehman anticipates that the City will experience employment growth by as much as 32,000 new jobs between 2001 and 2021. The job growth is expected to be in the manufacturing, transportation, utilities, storage and communications sectors. Mr. Lehman anticipates there will be a need for about 1209 acres of vacant employment lands in the City over the next 20 years and larger parcels of land will be required for larger firms to locate to.

Mr. Ramsay advised Mr. Lehman that the current supply of vacant lands designated for employment in the City is 1373 acres. He believed however that a small excess of only 164 acres was insufficient.

Mr. Lehman was asked by Mr. Turkstra what surplus threshold he would consider appropriate, before he would support the redesignation of employment land.

Mr. Lehman advised the Board that if a municipality had twice the amount of employment land it actually needed, a municipality would then be expected to look at its inventory, conduct an analysis of it to indicate which parcels would be best to have a change in designation over a 20 year period.

Mr. Lehman could see no reason for the City to take the risk of running out of employment land and losing the opportunity to foster its economic base. He saw no need to redesignate Bronte Creek Meadows at this time, advising the Board that the issue should be revisited in 5 years time.

IBI Group

Mr. Grimes and Ms Jacobs were far less charitable than the other market consultants, about the marketability of the Bronte Creek Meadows lands for employment purposes.

Mr. Grimes described the Bronte Creek Meadows site as “sticking out as a sore thumb” in terms of its locational characteristics. He acknowledged that the site, in the long term, being located on the eastern side of the City could attract new employment from the GTA , but indicated it was “kind of an orphan” being located on the northern part of the City, north of the QEQ.

Mr. Grimes did acknowledge that the Bronte Creek Meadows lands could add 17.87% to the likely total potential supply of employment land in the City. He did however advise the Board that, in the short term, more often the industrial market is looking for existing “spec built “space as opposed to new but yet unbuilt space. He also pointed out that the City has about 2.9 million square feet of office space and recorded extremely high office vacancy rates in 2001 and 2002.

Mr. Grimes admitted that his analysis and that of Ms Jacobs, focussed on a market based analysis and did not address in detail the various policy documents. He agreed with Mr. Ketcheson that the market based forecasting he conducted must be balanced with the policy and public interest considerations expressed in the various policy documents.

Mr. Grimes and Ms Jacobs did not believe that the City needed Bronte Creek Meadows lands to meet its employment land supply market to 2021. IBI Group forecasted that in 2021 there would be a surplus of between 261 and 533 net acres if Bronte Creek Meadows is not redesignated, and between 14 to 286 net acres if it is redesignated.

IBI Group, looked at both the absorption rate method, which uses historical absorption rates and forecasts this into the future, and the employment forecast method, which estimates the demand for employment lands in the future based on the projected future employment that is likely to be accommodated on those lands.

IBI using both methods derived an estimate of the likely demand for employment land in the City to 2021 on an incremental growth basis over that forecast period. The projected demand over the period was then assessed by IBI in terms of the existing and likely future supply of employment land within the City.

Mr. Grimes advised the Board that the land presently vacant in the City could accommodate 58% of the anticipated employment to 2021, without Bronte Creek Meadows, and without including the existing vacant space and without including the mixed use areas, in the City.

Mr. Grimes unlike Mr. Lehman, saw no compelling public interest in the City having a great deal more land designated than it needed.

Both Mr. Grimes and Ms Jacobs stressed that their forecasts, after exercising judgment, for both the residential and employment needs were conservative. Mr. Grimes pointed out to the Board that IBI's estimates of the surpluses of employment land contained a frictional vacancy factor of 15% of the total employment land inventory, which translates into a contingency of 534 net acres of land in 2021.

IBI Group chose a range of employment densities to determine the number of employees that are likely to be located per net acre of land, whereas the other market consultants did not. IBI Group estimated that employment densities in the 22.75 to 34.04 employees per net acre range were likely.

Mr. Grimes did however stress that IBI ran 7 scenarios that tested employment densities between 16.9% and 34.04%. Mr. Grimes advised the Board that IBI preferred the employment density of two scenarios that projected employment densities of 23.31 and 22.75 employees per net acre. These two scenarios produced a remaining supply of land of 676 acres and 665 acres in 2021 respectively.

Mr. Grimes calculated the remaining supply of land for these two scenarios on the basis of a total land inventory of some 3560 net acres, to arrive at an implicit vacancy for the 670 acres of 19%, and for the 665 acres of 18.7% in 2021.

Using the employment forecast method, IBI's analysis determined that the potential employment land surplus was between 550 and 820 net acres in 2021, which

translated into an implicitly vacancy of between 15.4% and 23.0% if Bronte Creek Meadows was redesignated.

Using the absorption rate method as a check, IBI's analysis produced a surplus of between 390 and 700 net acres, which translated into an implicit vacancy of between 10.9% and 19.6%, if Bronte Creek Meadows was redesignated.

Mr. Grimes advised the Board that based on the experience of other municipalities, a long-term frictional vacancy rate of 15% is considered appropriate.

Mr. Grimes indicated that it is generally recognized that due to frictional demand/supply factors not all of the employment lands at mature state will likely be absorbed. A portion of the supply will remain vacant because of the inability to match the demand for specific types, sizes and locational preferences of employment needs with the available supply.

If the residual implicit vacancy rate is significantly below 15%, there is according to Mr. Grimes a chance that the long-term supply of employment lands might start to be constrained towards the end of the period.

IBI's analysis of the employment needs of the City indicate that the surplus will likely be in the range of 665 to 820 net acres, reflecting an implicit vacancy of 18.7% to 23.1%, which according to IBI exceeds 15% even with the redesignation of the Bronte Creek Meadows lands.

C The Parties Submissions concerning the Market Consultants

Counsel for the City and the Region urged the Board to prefer the opinions of their own market consultants. Counsel for Paletta urged the Board to find that the work undertaken by IBI was the most balanced and reliable among the various market studies.

Counsel for Paletta also submitted that the Board need not go so far as to prefer IBI's opinion to that of the other consultants. Paletta submits that the IBI results are generally consistent with the studies undertaken by Hemson and MKI/CSE that show

there will be sufficient employment land including a market/vacancy factor to accommodate the expected employment growth through 2021 without the Bronte Creek Meadows lands.

With respect to the residential land needs forecasts, Paletta submits that other than differences over the quantum and timing of a shortfall, there was agreement of all of the market consultants that there will be a shortfall of residential land through the planning period to 2021 and at least a part, if not all of the Bronte Creek lands could be used to meet that shortfall.

The Region submits that of the four market consultants, only IBI recommend that the Board release the Bronte Creek Meadows lands for residential uses. Counsel for the Region submits that population and economic forecasting by its very nature is not an exact science. The forecasts contain many variables that each market consultant readily admitted could alter the forecasts.

The Region submits that as the forecasting horizon is lengthened, the likelihood of change in the variables is increased and the further out the forecast goes, the less predictable the forecasts become. The Board, even if it agrees that the differences in the projections are minor, should be cautious in deciding on the conversion of such a major piece of land early in the planning period on the basis of projections stretching out to 2021.

The City submits that the use of market forecasts to assess the need for employment land and the need for residential land are important tools to assist with the evaluation of the planning issues of a particular matter before the Board. The City submits however that the consideration of those forecasts should inform the planning decision, but the forecast numbers should not in and of themselves, determine the issue.

The City submits that it has a clear vision as to how it wishes to grow and that vision is contained in its planning policies and actions. The vision is according to the City's submissions, one that affords a strong priority to economic prosperity over the need to provide additional opportunities for housing. To achieve that vision the City wishes to maintain a healthy and even a generous supply of employment land within its boundaries.

The Parties in their written submissions provided the Board with detailed critiques of their opposing market consultant's evidence. Some of the observations are as follows:

After factoring in a frictional vacancy adjustment, the City argues IBI forecasts only a small range of between 14 to 286 net acres of vacant available employment land by 2021, which the City says is unacceptable when the City has had an absorption rate of 43.1 net acres over the last 19 years.

The City points out that the survey that Mr. Grimes referred to in support of his employment density forecast of 18.20 to 31.85 employees per net acre clearly shows that the actual employment density of the firms surveyed in Burlington was 13.99 employees per acre. The 13.99 employees per acre are significantly lower than the densities that are forecasted by PWC, Hemson or MKI.

The City argues that the employment density forecasted by IBI is also wildly optimistic and it is this increase in employment density that allows IBI to predict a sufficient supply of employment land based on low rates of land absorption.

The Region points out that Mr. Grimes admitted that the City is currently able to satisfy both the 3-year and 10-year residential land requirements as set out in the Provincial Policy Statement. Mr. Grimes' opinion that a potential shortfall of 174 residential units in the year 2021 justifies the redesignation, today, of 23% of the designated and serviced vacant employment land in Burlington, the City argues, should not be relied on especially when there is no public interest served, or no policy interest served.

The total number of infill units that will be constructed in Burlington is a significant difference between the forecasts of IBI and PWC. IBI forecasts a total of 2,312 infill units between 2003 and the year 2021. PWC forecasts a total of 4,361 infill units between 2003 and the year 2021. The forecast of PWC was based upon information received by Mr. Ramsay and Mr.

Annand's own analysis of the sites identified by Mr. Ramsay and, according to the City, should be preferred.

With respect to Mr. Annand, Paletta argues that the two assumptions that render the PWC analysis unreliable relate to the percentage of employment on employment lands and the market contingency factor. In both cases, the approach to these issues by PWC is unique to PWC and serves to drastically overstate the need for employment lands. PWC's inconsistent approach to calculating employment on employment lands and the market contingency make the analysis unreliable according to Paletta.

Only PWC, Paletta argues assumes an increase in the share of employment on employment lands from 53% to 60%. By increasing the share of employment on all employment lands to the year 2021, PWC must allocate 84% of total employment growth from 2002 to 2021 on employment lands. On an incremental basis, PWC's estimate far exceeds the estimates of any of the other market experts.

Within a period of three years, Paletta maintains PWC changed its approach to the percentage of employment on employment lands for the City of Burlington four times. In reports prepared for the City of Burlington in August 2000 and February 2002, PWC kept the share of employment on employment lands constant - first at 60% and then in the second report at 54%. These were final reports submitted to the City of Burlington and the Board as input into the Alton Secondary Plan.

PWC demands by far the largest contingency/frictional vacancy at 25% of total employment land. On that basis, it is PWC's position that in 2021 the City of Burlington should provide for almost 1,000 acres of vacant employment land for a "market contingency". Paletta argues that such a large contingency is unreasonable and represents an inefficient use of land in any municipality.

PWC's approach to market contingency results in setting aside 450 more acres than IBI, 550 more acres than Hemson and 850 more acres than MKI/CSE.

Planning Issues

The Board heard from Mr. Michael Goldberg on behalf of Paletta; Mr. Allan Ramsay and Mr. Robert Lehman on behalf of the City; and Ms Nancy Friedday on behalf of the Region.

These land use planners addressed the issues as to whether the proposed official plan amendment has regard to the Provincial Policy Statement and whether it conforms to the Official Plan for the City and the Region. The land use planners also addressed the issues as to whether the proposed development constituted good planning, what public interest if any would be served by the proposed change in the land use designation and what circumstances not contemplated by the City's current official plan if any would be addressed by the proposed official plan amendment.

Two additional issues, namely whether it is appropriate to introduce a new land use designation into the City's Official Plan that combines the Residential Low Density and Residential Medium Density designations; and whether the proposed official plan amendment ensures an appropriate mix of housing will be provided, that were initially identified as concerns, were not seriously pursued by either the City or the Region. Revisions were made to the development proposal that satisfactorily addressed these two matters.

As mentioned earlier in the market issues section of this decision the Parties agreed that a planning horizon of 2021 would be used to assess the Paletta applications.

A concern was raised by Mr. Ketcheson and Mr. Wilker during the Board's hearing that while the 2021 time frame was agreed upon, that did not mean that the City or the Region agreed that the time frames set out in the Provincial Policy Statement and in the Region and City Official Plans were to be considered by the Board as being overridden or disregarded.

Both Mr. Ketcheson and Mr. Wilker submitted that the time frames set out in those policy documents, namely the year 2016 for the Region's Official Plan and the year 2011 for the City's Official Plan and the provisions of the Provincial Policy Statement must also be used to measure the official plan conformity of the Paletta

proposal and also its regard for provincial policy.

The Board agrees with the submissions of the Region and the City that the Paletta proposal cannot be simply referenced by a straight line to the year 2021. The Board also agrees however that the City and the Region, in view of their agreement, cannot simply maintain that they have satisfactorily provided an answer to the Paletta proposal by indicating that the City has sufficient employment and residential land for the next 10 years.

The Evidence of Mr. Goldberg

The City's Official Plan designates the Bronte Creek Meadows lands as Employment Lands in Schedule A, City Structure, and as Office/Business Park, Greenlands and Watercourse in Schedule B, Comprehensive Land Use Plan-Urban Planning Area. The City's Zoning By-law 2020 map for the subject site, implements those portions of the site designated Watercourse and Greenlands, and zones the developable areas OPI, OP2 and OP3 to implement the Office/Business Park designation.

The permitted uses in the Office Park zones of By-law 2020 have a limited range of employment uses. It was generally agreed by all of the planners that the Office/Business Park designation for Bronte Creek Meadows, if the redesignation is not approved by the Board needs to be expanded and/or changed. The current designation and zoning was designed to accommodate a particular user at the time, and as Mr. Goldberg pointed out, even the City has agreed that it is no longer appropriate.

Mr. Goldberg advised the Board that some type of change is anticipated in the Bronte Creek Meadows site. It was not, in Mr. Goldberg's opinion a matter of preserving the status quo, but rather determining what would be the appropriate change in land use designation for the site. To Mr. Goldberg the appropriate change is to a residential designation.

Paletta presented two options to the Board for its consideration, both of which require an amendment to the City's Official Plan and its Zoning By-law. Option 1, which is the preferred option, is predominately residential in nature. Option 2 arises from the City's release of its Employment Lands Review Final Report prepared by Mr. Lehman

on December 4, 2002 that identified a 20-year requirement for employment lands of 1210 acres. The available supply is 1373 acres (which includes all of Bronte Creek Meadows), leaving a balance of 165 net acres. Option 2 provides for about 163 net acres of residential land and provides for the opportunity for employment uses at the east end of the site in a consolidated 94.9 gross acre employment block.

Option 1 provides for a total of 2,329 residential units of which 1,368 are low-density units, 343 of which are medium density and 618 of which are high-density units. Option 2 provides for a somewhat similar mix of housing types that total 1526 units.

Mr. Goldberg, in advancing the proposed residential redesignation, indicated that Paletta has an obligation to show that there are sufficient employment lands and once Paletta satisfies that obligation, then the Board should direct itself as to what is a good land use for the Bronte Creek Meadows site and whether that use constitutes good land use planning for the site.

Mr. Goldberg, in evaluating the Paletta proposal in the context of the Provincial Policy Statement, directed the Board to Policies 1.1.2, 1.1.3 and 1.2. He advised the Board that the important consideration for the Paletta application arise from the PPS provisions that require a municipality to have:

- (a) sufficient industrial (employment) land be provided for a time horizon up to 20 years or 2021.
- (b) sufficient residential land be provided, which includes an appropriate range and mix of housing, up to the same time period.
- (c) at least a 10-year supply of housing be designated and maintained of new residential development with a full range of housing types and different densities.

Mr. Goldberg agreed that the supply notion contained in Policy 1.1.3 was tied to the concept of economic prosperity and to a time horizon so that a municipality has a sufficient supply of various categories of land over the long term up 20 years.

Mr. Goldberg was of the opinion that providing too much residential land would not be a problematic issue in the test of sufficiency contained in the P.P.S.

Mr. Goldberg advised the Board that in his opinion the Paletta proposal advances the policy themes of the P.P.S. Relying on Mr. Grimes, a sufficient quantity and quality of employment land will continue to be provided for in both the Region and the City without the Bronte Creek Meadows. The residential redesignation of Bronte Creek Meadows will contribute to an appropriate mix and range of housing within the City and within the site, and assist in what Mr. Goldberg believes to be a short fall of housing within the City in the long term up to 2021.

With respect to the Regional Official Plan and ROPA8, Mr. Goldberg, again relying on Mr. Grimes, advised the Board that the Paletta proposal would not compromise the Regional targets for population and employment set out in Table 1 of the Official Plan. The goals of providing an appropriate live-work relationship with the Region would be satisfied and not compromised.

Mr. Goldberg advised the Board that the consequence of not developing the Bronte Creek Meadows site into the foreseeable future is creating a gap in the urban fabric of the City. Developing the site as residential would bring residential uses in close proximity to existing employment areas to the south.

With respect to the City's Official Plan, Mr. Goldberg directed the Board to Part III, Section 3.2.2(d), which he advised was the only policy that provided specific direction about the redesignation of employment land.

The Policy provides that:

Redesignation of employment lands for non-employment uses shall be conditional on consideration of both short term and long-term employment needs.

Mr. Goldberg was of the opinion that this policy set out a single sided test or obligation that the Paletta application must satisfy. In order for the Paletta application to be successful, Paletta need not demonstrate that there is a demand for residential land, but rather that there is a sufficient supply of employment lands.

Mr. Goldberg advised the Board that had it been an important policy direction to also require the demonstration of need for alternative non-employment land use, then that specific policy would have been differently worded.

Being under supplied with residential land is, according to Mr. Goldberg, a circumstance a municipality should be concerned with from a planning perspective. Being over supplied with residential land, from the same perspective, however, potentially carries the public benefits of choice and a lower housing cost.

There should, according to Mr. Goldberg, be a notion of a balance between the sufficiency of residential land and the sufficiency of employment land and that sufficiency is to be tested up to the horizon year of 2021, in this particular case.

Mr. Goldberg advised the Board that on the employment side of the equation from the numerical conclusions of all but one market expert, there would be sufficient land. On the residential side of the equation all market experts concluded to various degrees or housing categories, that there will be shortfalls within that horizon.

Mr. Goldberg believes that the desires of property owners are also related to the public interest. Adopting what he termed the “store wars thinking” of being loathe to interfere with the market place, in the “absence of extraordinary public interest”, for example a shortage to 2021, a land owner should be able to pursue its demands and fulfil an admitted market demand.

Mr. Goldberg advised the Board that the Paletta official plan amendment was in conformity with the City's Official Plan. The analysis of Mr. Grimes considered both the short term and long-term needs of the City. From a quantitative perspective and qualitatively in terms of allowing for choice of locations, size of property and servicing needs, the redesignation of the Bronte Creek Meadows site to residential, will still allow the City to continue to provide for a significant supply of designated land for employment uses.

Notwithstanding that Mr. Goldberg did not believe Paletta should be required to provide a residential land needs study, Mr. Goldberg advised the Board that Mr. Grimes had examined the residential land needs of the City and concluded that well within the period extending to 2021, additional residential land will be needed.

Mr. Goldberg discussed at some length the risks to the City of not supporting the redesignation of the Bronte Creek Meadows lands, at this time.

Based upon the numeric conclusions of three out of the four market consultants, there did not appear to Mr. Goldberg that a risk presents itself of an employment shortfall arising until after 2021. He further indicated that the shortfall of employment land would also arise if and only if the current policy of the City to keep its urban area boundary fixed is maintained.

If the City decides to continue with its current policy of a fixed urban boundary, Mr. Goldberg believes it is assuming a risk that will have an effect on the supply of both employment and residential land. He advised the Board that the truth is that the City has both the opportunity and choice to deal with hundreds of acres north of the 407 that are not encumbered by environmental constraints and to build itself out to its boundary if it wishes to make that choice.

Mr. Goldberg advised the Board that it was not appropriate, in the circumstances where on a numeric basis the risk of a shortfall in employment lands does not arise until after 2021, to place the burden on Paletta with that contingent risk which may only arise after 2021, and which would be based on future policy decisions by the City.

It seemed to Mr. Goldberg that the City was suggesting the risk analysis should be moved forward onto Paletta, which he described as imposing an additional test that is not found in the policy documents.

The live work relationship notion that is contained in both the Region and City Official Plans strives to create a balance in the sufficiency of both residential and employment land.

Mr. Goldberg concluded from the evidence he relied on, that the City is currently in balance, but there is a risk that it will not be in balance due to the projected residential shortages, within the 2021 horizon. If the City's employment growth continues and the residential land supply is constrained, the City will be faced with more commuting and become less self-contained. Faced with no residential supply, the market will seek out residential land elsewhere, resulting in more employees commuting into the City, which is contrary to the stated goals of the City to promote the notion of live work.

Mr. Goldberg advised the Board that it has sufficient information to make a decision and should not accept the suggestion of Mr. Lehman that there is a need for a

comprehensive study to be completed which would analyse whether there are other lands or a combination of other lands within the City that would be more appropriate to redesignate residential

Mr. Goldberg provided the Board with a chart that set out the timing implications of delaying a decision on Bronte Creek Meadows until the next 5 year Official Plan review by the City, as suggested by Mr. Lehman.

The current official plan reviews of the Region and the City began in 2003. It is anticipated that the Region and City official plan amendments will be adopted in 2005, with the Region's approval of the City's Official Plan in 2006. The final approval of the City's Official Plan amendment, including the resolution of appeals would occur in 2007-2008. The next 5-year Official Plan review would begin in 2012-2013, with final approval in 2016-2017.

Mr. Goldberg advised the Board that even if Mr. Annand's estimate of a residential shortfall occurring in 2018 is correct, the process of waiting would put the City out of compliance with the short term housing obligations contained in the P.P.S.

Proceeding with the Paletta development would bring specific public interest benefits. It was not disputed that the Bronte Creek Meadows site, as a residential one, would develop rapidly. Mr. Martelli indicated that a June 2005 occupancy date was realistic. Mr. Annand anticipated the site would be fully absorbed by 2008.

The Halton Catholic District School Board is looking for a high school site in the area and may choose the Bronte Creek Meadows site for its location. The Sheldon Creek neighbourhood was not planned with elementary schools, which the Bronte Creek Meadows site could provide. The earlier development of the site would also complete the road system and accommodate the realignment of Burloak Drive and Upper Middle road. A significant amount of open space lands would be brought into public ownership.

The Evidence of Ms Frieday

Ms Frieday, relying on the information of others, particularly Mr. Mathew, advised the Board that the Bronte Creek Meadows site was not required for residential purposes; that it was required to be retained for employment purposes; and that she

was unable to conclude with any degree of certainty that the City would be able to meet or exceed its projected 2016 employment distribution set out in ROPA8 without those lands. She advised the Board that based upon the updated June 2003 BPE's that Paletta had not demonstrated that the City could meet the BPE employment projections for 2016 and 2021 without the Bronte Creek Meadows site either.

Ms Friday reviewed the Regional Official Plan and advised the Board that the Paletta proposal compromises Halton's planning vision as contained in Part II, Policies A1 to A7 and in the Part IV Section D Economic Development policies which seek to maintain and expand the economic competitiveness, employment growth and economic well being of the Region and achieve a diversified economical base within the Region.

Ms Friday, believed that Mr. Mathew's contingency of 422 acres with Bronte Creek Meadows for employment was something less than he would want, indicated she would not like to comment on whether 1,000 acres would be an appropriate surplus of employment land before she would support a redesignation of the Bronte Creek Meadows site.

The Evidence of Allan Ramsay

Mr. Ramsay has been a planner with the City in various capacities for 22 years. He was the lead person involved in the preparation of the City's new Official Plan and Zoning By-law 2020. Mr. Ramsay's involvement with the Bronte Creek Meadows site goes back to when the site was designated office/business park. He was also the lead planner in charge of the Alton Secondary Plan and was involved in the Secondary Plans for the Orchard and Sheldon Creek communities.

Mr. Ramsay prepared the staff report that recommended the refusal of the Paletta application and like Mr. Goldberg attended nearly all of the Board's hearing.

Mr. Ramsay advised the Board that he rejected Mr. Goldberg's approach concerning the test to be applied when considering the Paletta application. He disagreed with Mr. Goldberg's notion that "residential is permitted by default". The single sided test of Mr. Goldberg's, according to Mr. Ramsay, goes against the idea of obtaining a balance between employment and residential lands.

The City maintains that if there is too much residential supply the City is not balanced. If Paletta wished to advance that its application constitutes good planning, the City believes that Paletta needed to provide evidence that the proposal will maintain or improve the balance between employment and residential land. Mr. Ramsay advised that this evidence was particularly important because of the size of the Bronte Creek Meadows site. Mr. Ramsay agreed that what Paletta was proposing was not a secondary planning study exercise, but emphasized it did resemble one because of its magnitude.

Relying on the evidence of Mr. Annand, Mr. Mathew and Mr. Lehman and McCormack, Mr. Ramsay was of the opinion that, without Bronte Creek Meadows, there would not be a sufficient supply of employment lands.

Mr. Ramsay was also of the opinion that the lands are not required for residential purposes up to 2021. Mr. Ramsay defended his use of the Region's BPE's in his witness statement's estimates of housing demand, advising the Board that they are used consistently across the City and the Region and are considered as containing a reliable mix of housing types.

Mr. Ramsay was critical of the infill calculations that Ms Jacob presented. He advised the Board that his calculations of 4361 units was very conservative, whereas Ms Jacob's initial calculations of 2312 units unreasonably excluded sites that were real and possible intensification sites. Ninety-five lots for instance were excluded by Ms Jacob simply because they contained a dwelling unit. He advised the Board that 616 units that were previously in the City's potential infill category in the past year, are now in the active applications category. 4361 units over the horizon to 2021, in view of this, was to Mr. Ramsay more than achievable.

Mr. Ramsay advised the Board that based on the BPE forecast that the demand for a total of 74,000 dwelling units to accommodate the City's expected population of 184,500 at 2021 can be accommodated with the approvals already in place and with those under application and with those lands designated but not under application.

The expected population in 2021 would reside in a housing mix of 54.4% low density, 21% medium density and 24.6% high density. The BPE estimates and the evidence of Mr. Mathew predict a change in the lifestyles of the City's residents over

time. The low-density units currently in 2003 make up 59.8% of the density units. The medium density units make up 17.1% and the high-density units make up 23.1%.

Mr. Ramsay agreed that the low and medium density supply might be exhausted by mid year 2019 but advised the Board that there was no need to make an immediate decision on increasing that potential shortfall to 2021.

Mr. Ramsay provided the Board with calculations as to the City's 3 year and 10 year supply of housing, indicating that there is a sufficient supply of registered draft approved and designated land to meet the time frames set out in the PPS without the Bronte Creek Meadows designation being changed.

Mr. Ramsay did concede that the BPE's proposed housing mix is not a policy of either the Region or the City. He conceded that about 500 residential units of what is proposed for Bronte Creek Meadows could be used to accommodate the residential shortfall beyond 2019 but emphasized that it was not necessary to decide that now.

He did not agree that Policy III, Section 3.2.2(d) sets up "a pass/fail" for the Paletta proposal. There were many other policies within the City's Official Plan that the Paletta proposal did not meet. He further advised the Board that there will be plenty of opportunity to fine tune and monitor over the next 18 years if shortfalls in either residential or employment lands occur. While he would prefer to deal with the Bronte Creek Meadows site as part of a comprehensive review, there is nothing to prevent the City from initiating an earlier review if it believed the situation warranted it. There may be according to Mr. Ramsay a better site over that time to accommodate a demand shortfall if it occurs.

The Evidence of Robert Lehman

Mr. Lehman presented his employment lands review to City council on December 9, 2002 which recommended that the City not reduce the supply of employment lands, that it undertake another review in 5 years, and that it consider making the City's intent to maintain a twenty year inventory of employment lands clear in its Official Plan.

Mr. Lehman was also retained in February 2003 to provide specific comments on the Paletta application which he did in his April 3, 2003 Witness Statement.

Mr. Lehman reviewed the Provincial Policy Statement, the Regional Plan and the City's Official Plan. He concluded that these policy documents all have a central theme of placing a priority of employment opportunities over residential uses, although he conceded he could not point to any sections that specifically say that. He advised the Board that the P.P.S. provides a structure to foster economic prosperity by providing sufficient employment lands in the right locations for jobs. After reviewing the provisions of both the Regional and City Official Plans, Mr. Lehman indicated that there was no question in his mind that providing employment opportunity was more important than providing housing.

Mr. Lehman agreed that there seems to be in the current economic times an inexhaustible demand for residential land but not employment land. He believed that no municipality should want to have a shortfall of either residential or employment lands, but if there is to be a choice, it is much more serious for a municipality to have a shortfall in employment lands, especially for Burlington.

Burlington is located on the western edge of the G.T.A. adjacent to a number of existing and proposed 400 series highway linking the area with Ontario, the rest of Canada and the United States. Mr. Lehman expects Burlington to see continued growth pressures as consequence of its location. He believed that there is a strong possibility that the City will not have sufficient employment lands to meet that anticipated demand within the 20 year planning horizon if the Bronte Creek Meadows lands are redesignated. He did however agree that there was no clear-cut answer from the market evidence including his own, how significant that the employment shortfall would be.

Mr. Lehman however indicated that based on the range of market evidence, it appeared to him that there is a risk that the redesignation of Bronte Creek Meadows lands could result in the City not meeting its long-term employment needs. As such according to Mr. Lehman the application did not satisfy one of the conditions for redesignation specified in Part III, Section 3.2.2. (d) of the City's Official Plan, namely of meeting the City's long-term employment needs. In his view the risk should not be taken.

Findings Respecting Market and Planning Issues

All counsel agreed that the market evidence, which was lengthy and complex, is but one input into the Board's decision, which should be based on planning grounds, especially when the forecasting horizon in this case was up to the year 2021. There are however certain findings with respect to the market evidence that the Board wishes to make.

With respect to the employment land needs forecasts, those forecasts ranged from a deficit, of 665 net acres to a surplus of 14 to 286 net acres if Bronte Creek Meadows is redesignated.

With respect to the residential land needs forecast, the updated projected shortfalls ranged from a low of 174 units to a high of 3597 units in 2021.

Paletta maintains the direction of the residential market is clear. If Bronte Creek Meadows is approved for residential purposes, conventional market forces will result in houses being built to satisfy what was described as a current inexhaustible demand.

Paletta repeatedly throughout the Board's hearing and in its submissions, asks the question as to whether there is a compelling reason for the Board to intervene in the allocation of resources by these market forces.

The City and the Region answer that question by indicating that the future demands placed upon its employment lands are far less certain than the residential demands. The City submits that the prudent approach when faced with conflicting market forecasts in the employment land needs forecasts is to stay the course and not permit the redesignation.

The Board has carefully considered the evidence of the various market consultants and prefers the submissions of the City and the Region that the conversion from residential to employment should be viewed as a permanent change. If the redesignation is permitted, the Bronte Creek Meadows site must be viewed as having been lost forever as a potential employment site by the City and the Region.

The Board agrees with Paletta that after allowing for a market/vacancy factor, three of the four consultants show that there will be sufficient employment lands to 2021

if Bronte Creek Meadows is redesignated. Except for IBI however, none of those three consultants recommend a change in designation. It is the opinion about the amount of land that is prudent for a municipality to be set aside where PWC and MKI/CSE differ from IBI.

The Board understands that Mr. Grimes has set aside a significant contingency in his calculations. The Board however is not satisfied that Mr. Grimes' methodology is to be preferred. The Board in particular does not accept IBI's discounting of the number of infill units that are available within the City. The Board prefers Mr. Ramsey and Mr. Annand's evidence as to the City's infill potential.

The Board is also not satisfied that IBI's forecasted surplus in the range of 14 to 286 net acres to 2021 is sufficient enough even if the Board was to accept its methodology over that of the other consultants. The Board shares the City's concern that its expressed desire to become something more than a bedroom community could be put to a public interest risk. As the City has argued, it has had an absorption rate of 43.1 net acres over the last 19 years. Bronte Creek Meadows represents a significant portion of the available employment land within the City and the Region.

The Board carefully listened to the evidence of Mr. Annand and did not find, as Paletta argues, that his opinion was unreliable. Mr. Annand's estimates, as subsequently revised, do on an incremental basis, exceed the estimates of the other consultants. He did however advise the Board that the City's competitive vacant employment land supply falls below 25% in the medium term to 2015. Mr. Annand advised the Board that falling to that level, would constrain economic development initiatives, especially when compromising the redesignation of Bronte Creek Meadows would reduce its employment land base by 20% of its existing supply.

Mr. Annand reviewed the relevant policy documents in providing his market opinion to the Board. He indicated that the redesignation of Bronte Creek Meadows lands would not be in keeping with the economic objectives of the PPS, the Region's Official Plan or the City's Official Plan.

The Board heard Mr. Goldberg's comment that he believed Mr. Annand and Mr. Lehman were providing planning opinions. The Board found the market consultant's comments on those policy documents in the context of the expressed economic and

employment goals contained in them helpful.

The amount of surplus employment land that the City needs to maintain is very much a municipal decision, which in the absence of policy or unreasonableness, should be carefully weighed by the Board. The Board should also when dealing with appeals of planning matters, as has recently been stated by Ms Wyger in Jannock Properties Limited, OMB Decision/Order 0363 on February 19, 2004, give little consideration, if any, to the landowners ability to achieve a specific level of profit on a particular proposal.

The Board is also of the view that a municipality should not as Mr. Krushelnicki indicated in 940887 Ontario Ltd. v Oakville (Town) (2003) OMBD No. 53, be expected to lessen its sense of good planning in order to accommodate a proponents redesignation of a site because of an apparent inability to market and develop a site in accordance with its designation.

In the case of Bronte Creek Meadows there is no satisfactory evidence before the Board that the site no longer can be developed as an industrial/employment site. The site as the Board has earlier found can be suitably developed for industrial/employment uses. The Board is satisfied after hearing the evidence advanced by Paletta and in particular Mr. Angelo Paletta, that it made the decision that there was a better market for residential uses than industrial/employment uses.

Paletta moved quickly after it acquired all of the Bronte Creek Meadows lands to seek a redesignation of the site to residential, which the Board takes no issue with, provided that the proposal does not prejudice the public interest and provided it constitutes good land use planning.

None of the market consultants took issue with the fact that there exists in the City a 3 and 10 year supply of residential units that are required to be provided in accordance with Sections 1.2 (a) and 1.2 (b) of the Provincial Policy Statement and Policy 2.3.2(a) and 2.3.2(b) of the City's Official Plan.

None of the market consultants except Mr. Grimes took issue with the fact that the Bronte Creek Meadows site is a significant employment land area that could be used to accommodate the long-term employment needs of the City.

With respect to the planning evidence, the Board agrees with Mr. Lehman, that the City's intent to maintain its employment lands could have been made clearer in its Official Plan. The Board however does not agree with Mr. Goldberg that the City has imposed an erroneous onus of proof on Paletta to support the redesignation of the Bronte Creek Meadows lands.

The Board must give a broad and liberal interpretation to both the Region and City Official Plans. The Board prefers the evidence of Mr. Ramsay, that taken as an entire document, the City's Official Plan does not impose a single sided test that would permit residential by default. The Board further finds that even if Part III, Section 3.2.2 (d), did impose a "pass/fail", the Paletta proposal does fail in satisfying the Board that the long term employment needs of the City would not be compromised by the redesignation of the Bronte Creek Meadows lands.

The Board does not agree with Mr. Goldberg that a gap in the urban fabric will be created by not permitting the Bronte Creek Meadows site to develop as residential. The Board furthermore does not accept the implication that the City is attempting a land banking exercise by opposing the redesignation of the subject site. Permitting a site to remain idle is contrary to one of the goals of the P.P.S. of promoting the cost effective use of land and infrastructure. The Bronte Creek Meadows site has up until now, never been considered by the City as a residential site and the Board is of the view that properly marketed, has a reasonable opportunity of attracting employment opportunities. No witness suggested that the Bronte Creek Meadows site is functionally obsolete for industrial or employment uses.

The City brought forward alternative proposals for employment uses for the site and indicated a desire to work with Paletta to achieve them. Those alternative proposals might require significant refinement, but they did not appear to the Board to be unreasonable suggestions. There was no serious position taken by Paletta that the City's suggestions would introduce a number of unacceptable impacts or create incompatibilities with the existing residential uses.

The Board prefers the evidence of Mr. Ramsay, Ms Frieday and Mr. Lehman and finds that the redesignation of the Bronte Creek Meadows site would not be in conformity with the P.P.S., the Region and City's Official Plans and as such does not

represent good planning and is not in the public interest.

The Board further finds that the Bronte Creek Meadows lands are required for employment uses and not required for residential uses over the period to 2021.

The Board is satisfied that the City has put forward a bone fide and a reasonable position that the continued designation of the Bronte Creek Meadows lands for a use other than residential is a valid and appropriate one. The City has assured Paletta that it intends to review the designation of the subject site from time to time, in the context of a wider review of all of the other lands within its boundaries. The Board heard no evidence or suggestion that the City will not do so, when it considers it to be in the public interest.

Order

1. The Board Orders that the proposed official plan amendment to redesignate the Bronte Creek Meadows lands contained in the Official Plan of the City of Burlington is refused.
2. The Board further Orders that the appeal by Paletta, in view of the foregoing, respecting its proposed amendment to Zoning By-law 2020 of the City of Burlington is dismissed and its proposed draft plan of subdivision is not approved.

“R. A. Beccarea”

R. A. BECCAREA
MEMBER