



PLANNING AND BUILDING SERVICES

Town of Newmarket

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January 21, 2016

DEVELOPMENT AND INFRASTRUCTURE SERVICES/PLANNING & BUILDING SERVICES REPORT 2016-03

TO: Committee of the Whole

SUBJECT: Proposed Zoning By-law Technical Amendment
Copper Hills (Goldstein) Subdivision 19T-90064
East side of Leslie Street south of Mulock Drive

ORIGIN: Planning and Building Services

RECOMMENDATIONS

THAT Development and Infrastructure Services/Planning and Building Services Report 2016-03 dated January 21, 2016 regarding a technical amendment to the Town's comprehensive Zoning By-Law 2010-40 be received and the following recommendation(s) be adopted:

THAT the proposed zoning amendment for the subject lands re-establishing the 45 metre setback be approved and that staff be directed to prepare the necessary Zoning By-law Amendment.

COMMENTS

Location

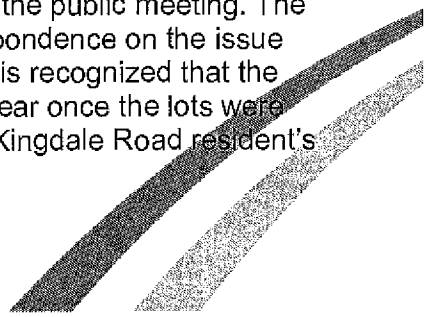
The subject lands are located within the Copper Hills (Goldstein) subdivision, on the east side of Leslie Street, south of Mulock Drive. Specifically the lots affected are 105, 106, 107, 118, 119, 120, 140, 141, 142, 157 and 158 on Registered Plan 65M-4378. (See Location Map attached)

Proposal

Comprehensive zoning By-Law 2010-40 is proposed to be amended to include an increased setback for lots within the Copper Hills Plan of Subdivision that abut existing Kingdale Road properties. This setback is being proposed due to an unintentional omission in the comprehensive by-law for this development. Detailed background information on the OMB/Minutes of Settlement/Order is provided in the Planning Department's preliminary report 2015-37 which is attached to this report. Report 2015-37 referred the matter to the required statutory public meeting which was held on October 20, 2015.

Residents impacted by this proposal attended the public meeting and indicated that it is important that the 45 metre setback, agreed to by all parties at the time of the subdivisions approval, be re-established as it creates an appropriate buffer between the residential uses.

The owners of the subject lands or their consultants did not make submissions at the public meeting. The planning consultant representing the Copper Hills developer has provided correspondence on the issue after the public meeting which is attached to his report. They indicate that while it is recognized that the setback was agreed to at the time, the implications of the setback only became clear once the lots were being developed, which only began recently and are requesting a setback to the Kingdale Road resident's rear property line of 30 metres.



The submission continues to provide a rational point for their requested 30m setback. They indicate that the 45m setback, if implemented, will not leave enough space to construct estate homes that are appropriately sized for the lots. They wish to construct dwellings on these lots with floor areas of 5,000 to 6,000 square feet. The house sizes, if the 45m setback is reinstated, would be limited to approximately 3,000 square feet. They also indicate that the 45m setback would cause the building envelope to be close to the road allowance resulting in a built form that will be a streetscape comprised mainly of garage doors. The attached letter continues by suggesting there is no planning basis for the 45 metre setback.

Finally, the letter discusses accessory structures and the limitations imposed by the original by-law approved by the Ontario Municipal Board and the apparent discrepancy with the Minutes of Settlement. The way the by-law approved by the Board was worded required all structures to be setback from the mutual property line a minimum of 45m including accessory structures. The planning consultant asserts that there is no basis for this restriction in the Minutes of Settlement.

Discussion

The purpose of the rear yard setback, in general terms is to provide private outdoor amenity space for the homeowner. In cases where new development is being constructed adjacent to existing development, the depth of the rear yards can also act as a buffer for adjacent uses. A 20 metre landscaped and bermed buffer strip along the entire northern most limit of the subdivision zoned Open Space and restricted to private passive open space uses was also a requirement of the OMB through the Minutes of Settlement. No structures are permitted to be erected within this 20m buffer strip.

The existing rear yard setback for the Kingdale Road properties (zoned R1-C) is 15 metres however the actual dwellings are built between 45 and 75 metres from the rear property line.

While buffering is encouraged from an Official Plan perspective and is an established planning tool to address incompatibilities between uses, the amount of buffering and mitigation techniques required to address an issue are somewhat subjective.

It is the Planning Departments position that, as this amendment is a technical amendment to the Comprehensive Zoning By-law to correct a transcription error that occurred while drafting the new comprehensive by-law, the appropriate course of action is to approve a by-law that includes the 45 metre setback.

With regard to the issue of accessory structures, planning staff agree with the comments of the developers planning consultant in that the setback is intended for the main dwelling and would not impact the ability to site accessory structures closer the property line than the 45 metres. There is already a prohibition of structures within the Open Space zone being 20 metres in width and traverses the entire mutual property line between subdivisions.

If Council chooses to pass a by-law that reinstates the 45 metre setback, the options of the developer of the Copper Hills subdivision will be to build dwellings that meet the requirement, appeal the approval of by-law to the Ontario Municipal Board or, once the by-law is approved, submit an application to the Planning Department to request a lesser setback (either Minor Variance or Zoning By-law Amendment).

Comprehensive Zoning By-law 2010-40

Council adopted Zoning By-Law 2010-40 on June 1, 2010 as the Town's new comprehensive zoning by-law. The new By-law 2010-40 replaced the previous Zoning Bylaw 1979-50 and is a set of regulations

governing land uses, buildings, and structures within the Town. As Council are aware, a zoning bylaw is a prescriptive document that inherently has little flexibility.

As the setback was based on Minutes of Settlement and approved through the Ontario Municipal Board, it is appropriate to amend the comprehensive zoning by-law to re-establish the 45m setback.

Official Plan Considerations

The subject lands are designated Emerging Residential in the Town's 2006 Official Plan which permit this form of dwelling unit. The Official Plan does not provide details on standards for specific zones, but rather recognizes that the zoning by-law regulates the use of land including the erection, location and use of buildings. The requested setback would conform to the general intent and purpose of the Official Plan.

Provincial Policy Statement

The Provincial Policy Statement supports improved land use planning and management, which contributes to a more effective and efficient land use planning system. The Provincial Policy Statement (PPS) provides policy direction on matters of provincial interest related to land use planning and development. Decisions affecting planning matters "shall be consistent" with this policy statement. This technical amendment is consistent with the PPS.

Departmental and Agency Comments

No concerns or objections were received by internal departments and external agencies on this proposal.

Conclusion

The purpose of this zoning by-law amendment is to correct a transcription error in Comprehensive By-Law 2010-40 as it relates to the building setback to the property line shared with Kingdale Road residents. It was on this basis that notice was provided. While we understand the rationale behind the justification for a lesser setback provided by the planning consultant for the Copper Hills subdivision, we must recommend that Council reinstate the agreed upon 45m building setback as provided for through the Minutes of Settlement. We do agree that the setback is for the main building and accessory structures may be sited closer than the 45m but may not encroach into the 20m landscaped buffer that is zoned Open Space and continues along the entire interface.

BUSINESS PLAN AND STRATEGIC PLAN LINKAGES

The continued development of this parcel of land is in accordance with the Newmarket Official Plan and has linkages to the Community Strategic Plan as follows:

Well Balanced: encouraging a sense of community through an appropriate mix of land uses and amenities.

Well-Planned & Connected: implementing the policies of the Official Plan

COMMUNITY CONSULTATION POLICY

The statutory public meeting was held on October 20, 2015. The comments from the community are discussed above in this report.

BUDGET IMPACT

N/A


CONTACT

For more information on this report, contact: Dave Ruggle, Senior Planner – Community Planning, at 905-953-5321, ext 2454; druggle@newmarket.ca

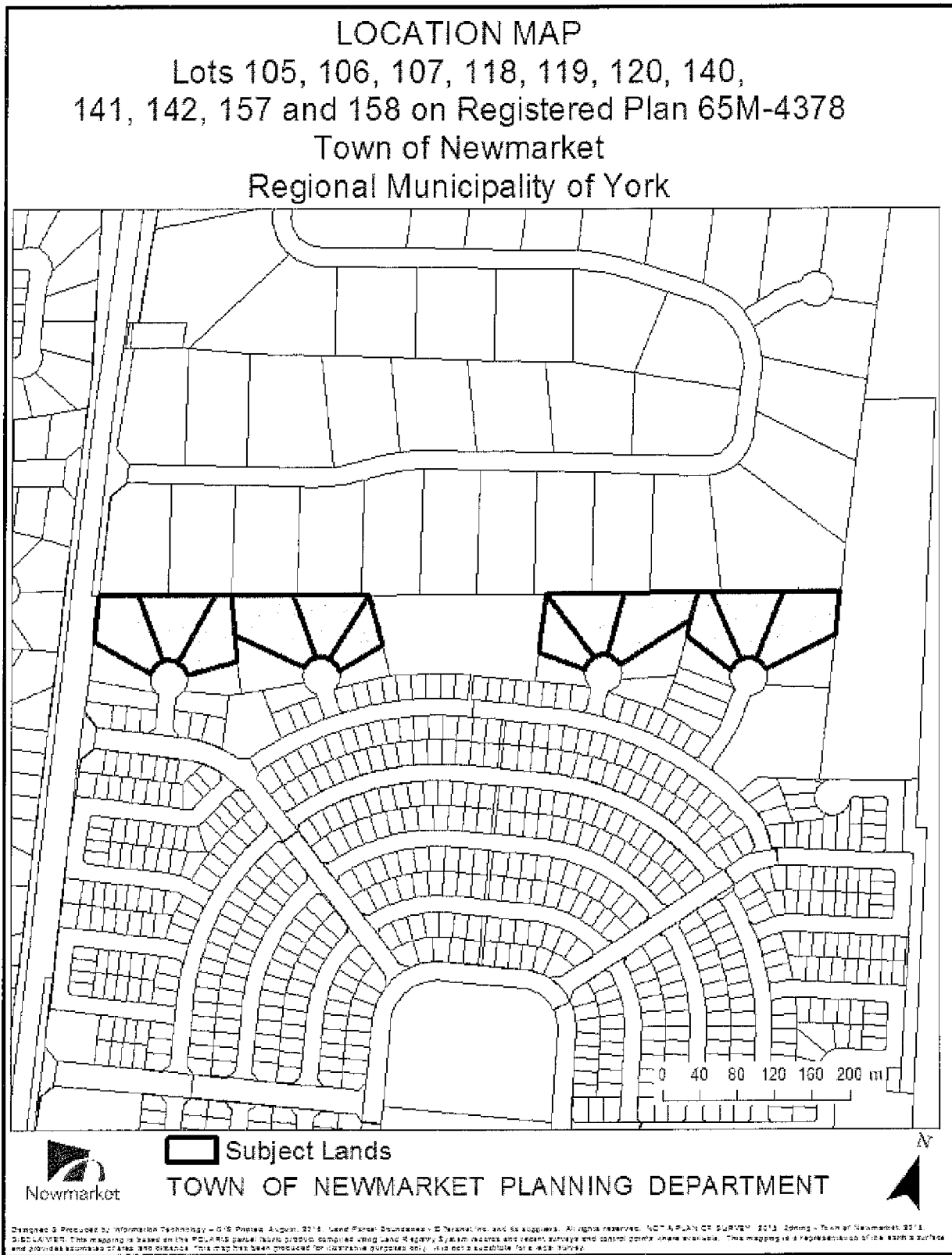
Attachments

1. Location Map
2. Report 2015-37
3. Letter from Goldberg Group

_____
Director of Planning and Building Services

_____
Commissioner of Development and Infrastructure
Services

_____
Senior Planner – Community Planning





PLANNING AND BUILDING SERVICES

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August 20, 2015

DEVELOPMENT AND INFRASTRUCTURE SERVICES/PLANNING & BUILDING SERVICES REPORT 2015-37

TO: Committee of the Whole

SUBJECT: Proposed Zoning By-law Technical Amendment
Copper Hills (Goldstein) Subdivision 19T-90064
East side of Leslie Street south of Mulock Drive

ORIGIN: Planning and Building Services

RECOMMENDATIONS

THAT Development and Infrastructure Services/Planning and Building Services Report 2015-37 dated August 20, 2015 regarding a technical amendment to the Town's comprehensive Zoning By-Law 2010-40 be received and the following recommendation(s) be adopted:

- 1. THAT the proposed technical amendment to comprehensive Zoning By-Law 2010-40 be referred to a public meeting;**
- 2. AND THAT following the public meeting, issues identified in this report, together with comments from the public, Committee, and those received through agency and departmental circulation, be addressed by staff in a comprehensive report to the Committee of the Whole, if required;**

COMMENTS

Location

The subject lands are located within the Copper Hills (Goldstein) subdivision, on the east side of Leslie Street, south of Mulock Drive. Specifically the lots affected are 105, 106, 107, 118, 119, 120, 140, 141, 142, 157 and 158 on Registered Plan 65M-4378. (See Location Map attached)

Background

Copper Hills (Goldstein) subdivision and zoning approvals

Applications for draft plan of subdivision and zoning by-law amendment were appealed to the Ontario Municipal Board by the developer, 724903 Ontario Inc. for the Copper Hills (Goldstein) subdivision on the east side of Leslie Street from Council's refusal to enact the proposed amendment in 2001.

As a result of a two day mediation effort with the Town, developer, the Kingdale Road Residents Group and the Region of York, Minutes of Settlement had been entered into by all parties. A zoning by-law was prepared and conditions of draft approval were drafted, as agreed to by all parties, and approved by the OMB through Order 1597 on November 15, 2002. Specifically, these Minutes of Settlement and Zoning By-law amendment included a provision that required a 45m setback to the northerly lot line of the subdivision adjacent to existing estate lots on Kingdale Road. Specifically item 13 of the Minutes of settlement read:

The Parties agree that the proposed zoning by-law for the subject property will be amended to provide the following siting specifications for proposed lots any parts of which are located within 45m of the northernmost limit of the subject property:

- (i) a rear yard (minimum) from any north rear lot line: 45m;*
- (ii) a side yard (minimum) from any north side lot line: 45m*

The site specific by-law included a provision that read:

Providing that notwithstanding any other provisions of the by-law to the contrary, no building or structure or any part thereof, save and except for any structures associated with stormwater management facilities, shall be located within 45 metres of the north boundary of the lands affected by this by-law and shown of Schedule "X" attached hereto.

Comprehensive Zoning By-law 2010-40

Council adopted Zoning By-Law 2010-40 on June 1, 2010 as the Town's new comprehensive zoning by-law. The new By-law 2010-40 replaced the previous Zoning Bylaw 1979-50 and is a set of regulations governing land uses, buildings, and structures within the Town. As Council are aware, a zoning bylaw is a prescriptive document that inherently has little flexibility.

In reviewing proposed sitings for a lot adjacent to the northerly property line of the subdivision, staff realized that the requirement for the 45m setback was inadvertently omitted from the Comprehensive Zoning By-Law 2010-40 and the normal and usual 9m setback would apply to these lands. As the setback was based on minutes of settlement and approved through the Ontario Municipal Board, it is appropriate to amend the comprehensive zoning by-law to re-establish the 45m setback.

However, it is our understanding that the owners of the land (Copper Hills) would prefer to have a lesser setback than the 45m to allow for a house design that the developer indicates would be better suited for the established lots that cannot be achieved with a 45m setback. We assume the owner of the lands will provide formal comments on this proposed technical amendment either at the recommended public meeting or otherwise.

Official Plan Considerations

The subject lands are designated Emerging Residential in the Town's 2006 Official Plan which permit this form of dwelling unit. The Official Plan does not provide details on standards for specific zones, but rather recognizes that the zoning by-law regulates the use of land including the erection, location and use of buildings. The requested relief would conform to the general intent and purpose of the Official Plan.

Provincial Policy Statement

The Provincial Policy Statement supports improved land use planning and management, which contributes to a more effective and efficient land use planning system. The Provincial Policy Statement (PPS) provides policy direction on matters of provincial interest related to land use planning and development. Decisions affecting planning matters "shall be consistent" with this policy statement. This technical amendment is consistent with the PPS.

Departmental and Agency Comments

Comments received from department and agencies will be addressed throughout this process.

BUSINESS PLAN AND STRATEGIC PLAN LINKAGES

The continued development of this parcel of land is in accordance with the Newmarket Official Plan and has linkages to the Community Strategic Plan as follows:

Well Balanced: encouraging a sense of community through an appropriate mix of land uses and amenities.

Well-Planned & Connected: implementing the policies of the Official Plan

COMMUNITY CONSULTATION POLICY

A statutory public meeting will be required as part of the Planning Act requirements for the proposed changes to the zoning bylaw.

BUDGET IMPACT

Should the technical amendment process be referred to a public meeting, there will be the typical costs associated with providing notice and holding the public meeting.

CONTACT

For more information on this report, contact: Dave Ruggle, Senior Planner – Community Planning, at 905-953-5321, ext 2454; druggle@newmarket.ca

Attachments

Location Map



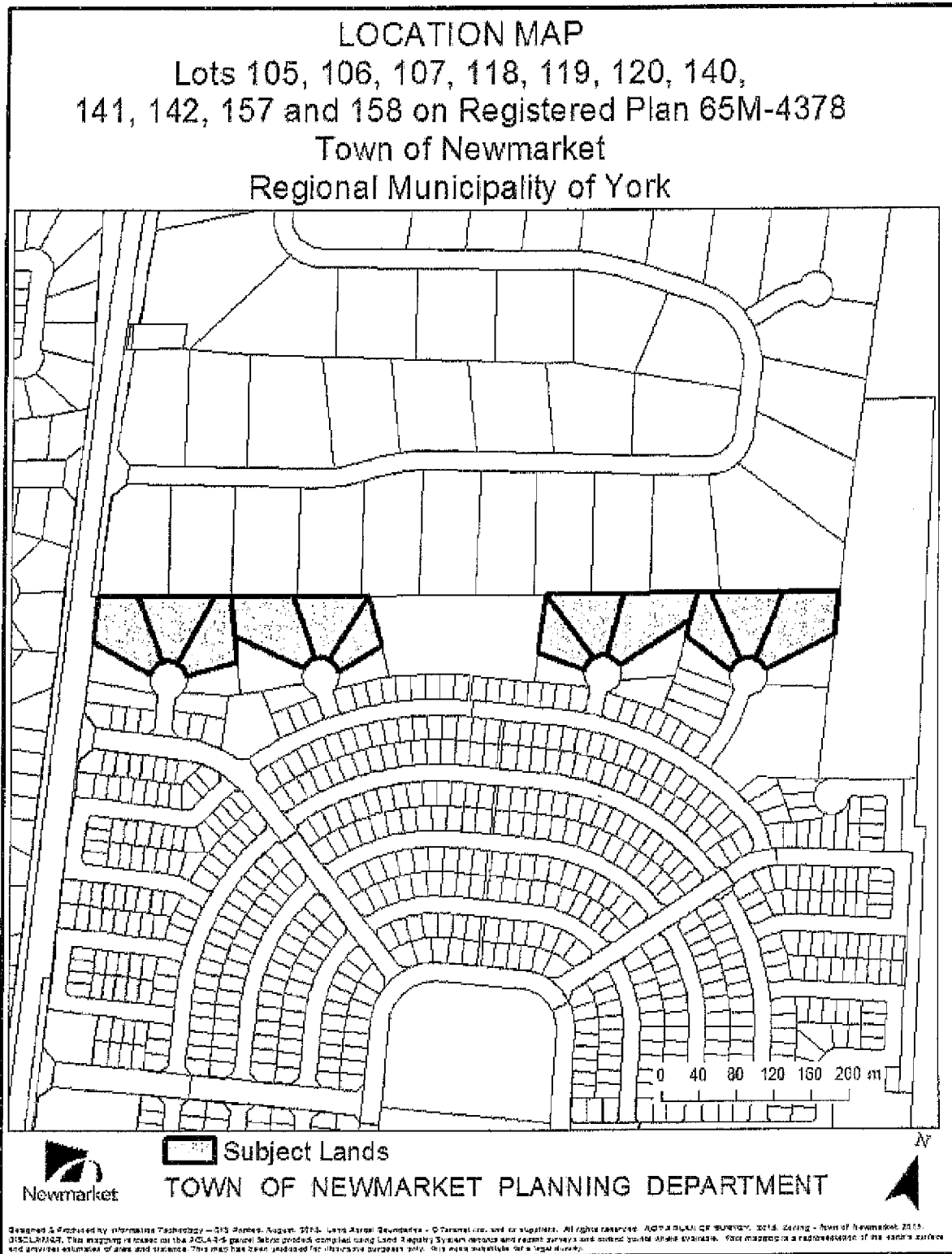
Director of Planning and Building Services



Commissioner of Development and Infrastructure
Services



Senior Planner – Community Planning



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JANICE A. ROBINSON MCIP RPP
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October 27, 2015

Planning and Building Services
Town of Newmarket
395 Mulock Drive
Newmarket, Ontario
L3Y 4X7

Attention: Mr. R. Nethery, Director of Planning and Building Services

Dear Mr. Nethery:

**Re: Proposed Zoning By-law Technical Amendment
Copper Hills (Goldstein) Subdivision 19T-90064
East Side of Leslie Street south of Mulock Drive**

We are the planning consultants representing 724903 Ontario Inc., also known as Preston Homes, developers and builders of the Copper Hills subdivision. Twelve lots located along the north boundary of the Copper Hills subdivision are subject to the above noted proposed zoning by-law that was the subject of a Public Meeting on October 20, 2015. This letter provides our comments on behalf of the owner in opposition to the proposed Zoning By-law.

As indicated in the staff report dated August 20, 2015, the Copper Hills subdivision was approved by an OMB Order in 2002 and subject to Minutes of Settlement executed by the Town, the Kingdale Road Residents Group, the Region of York and 724903 Ontario Inc. The Minutes of Settlement contain provisions regarding various matters related to the development, including the requirement for a 45m building setback from the north boundary and provisions for storm drainage improvements, well monitoring, zoning of the northerly 20m of the subdivision as Open Space and construction of a landscaped berm across the northerly boundary.

The requirement for side and rear yard setbacks a minimum of 45m from the north boundary of the property required by the Minutes of Settlement was incorporated into the site-specific zoning by-law for the subdivision. However, it was not included in Zoning By-law 2010-40 adopted on June 1, 2010 and therefore the 45m setback requirement does not apply at this time. The current situation is that the Town will not issue building permits that comply with the 9m rear yard setback in the zoning by-law and are enforcing the 45m setback by citing the Minutes of Settlement, leaving no mechanism for requesting relief at the Committee of Adjustment.

I note for your attention that the Minutes of Settlement do not include a clause that no buildings or structures, save and except for structures associated with stormwater management facilities, are allowed within the 45m setback. This clause was included in the subdivision zoning by-law (that is no longer in effect), but there is no authority for that restriction in the Minutes of Settlement. Including this clause in a zoning by-law in combination with the 45m setback would have the effect of preventing decks, accessory structures such as storage sheds, gazebos and cabanas as well as swimming pools in the rear yards of the dwellings. There is no basis for this restriction in the Minutes of Settlement, a restriction that amounts to prohibition of any structures in the rear yards of these lots. It is unreasonable and overly restrictive to include such a provision in the zoning by-law and is not what should be intended for future owners of these estate lots.

With respect to the 45m setback requirement, it is our position that it is unreasonable and overly restrictive, particularly given that there is a landscaped berm approximately 10m in width along the rear of these lots in accordance with the requirements of the Minutes of Settlement. The Minutes of Settlement that included the 45m setback requirement were signed 13 years ago in 2002. While it is recognized that the setback was agreed to at the time, the implications of the setback only became clear once the lots were being developed, which only began recently. The setback requirement is considerably higher than the 9m rear yard setback requirement in the Town's by-law and exceeds all rear yard setback standards known in the industry for residential interface situations. The setback does not leave enough space on the lots to construct estate homes that are appropriately sized for the lots. Estate homes are perhaps larger now than in 2002, with purchasers of lots in the range of 80 ft. frontage now expecting to have a home in the 5,000 to 6,000 sq.ft. range. The 45m setback allows for homes that are in the range of 3,000 sq.ft. and those homes would be considered deficient in size in the estate home category. The setback forces the building envelope very close to the road allowance, resulting in built forms that will be a streetscape comprised mainly of garage doors. A less restrictive setback will allow for design opportunities that will hide the garage doors, allowing for a much more attractive streetscape. In our view, it would be more advantageous for the Town and even the residents of Kingdale Road to allow development of these lots as true estate homes.

In considering the appropriateness of a 45m setback requirement on its planning merits, notwithstanding the earlier agreement to the setback, there is no justification for such an excessive setback. The 45m setback is an unprecedented setback for residential buildings next to other residential lots and much higher than required to "protect" the lots on Kingdale Road. There is no true planning basis for any buffering or additional setbacks between residential dwellings on Kingdale Road and Copper Hills. If the estate lots were built according to that standard, it imposes an unfair burden on future residents to seek variances at the Committee of Adjustment to permit rear additions such as solariums and rear yard amenities such as pools and accessory structures. It is unreasonable to zone these lots to include a 45m setback and there is no sound planning rationale to support the setback requirement. Furthermore, there is no basis for prohibiting decks, pools and accessory structures in the rear yards of these estate lots.

In recognition of the higher setback requirement that was intended for the benefit of the lots to the north, a setback of 30m is proposed for dwellings and a setback of 10m is

proposed for accessory structures and pools. These proposed setbacks are considerably higher than the 9m rear yard setback for dwellings and 1m setback requirement for accessory structures in the Town's zoning by-law. These setbacks, together with the berm that was constructed along the north boundary of these lots and will be maintained within the estate lots, will provide a substantial separation between the dwellings in Copper Hills and Kingdale Road.

Thank you for your consideration of our position on this matter and this alternative proposal for the zoning standards for the estate lots of Copper Hills. The setbacks proposed will provide a substantial setback from the lots on Kingdale Road, will allow for the development of appropriately sized estate homes that were originally envisioned for these lots and avoid placing an unfair burden on future residents to obtain minor variances for rear yard amenities that should be allowed as-of-right. The proposed 30m setback maintains the spirit of the setback agreed to in the minutes of settlement as it allows for a similar typology of built form, significant setback and a transition from the Kingdale neighbourhood to the Copper Hills neighbourhood. We strongly urge Council to consider the merits of the setbacks we are proposing and direct staff to incorporate those setbacks into the implementing by-law.

Yours truly,

GOLDBERG GROUP

A handwritten signature in dark ink, appearing to read 'JR', followed by a long horizontal line extending to the right.

Janice Robinson, MCIP, RPP
Senior Associate

Cc Mayor and Member of Council
Edward Goldstein