

September 28, 2022

Hon. Steve Clark
Minister of Municipal Affairs and Housing
777 Bay Street - 17th Floor
Toronto, Ontario
M7A 2J3

Dear Minister Clark;

**Re: Halton Region Official Plan Amendment 49
Environmental Registry Posting Number 019-5684
Ministry Reference 21-OP-215006
Conversion Request - Bronte Creek Meadows
5164, 5366, 5470 & 5900 Upper Middle Road, and 5201 Mainway,
Burlington
Modification of Plan, or Referral to Tribunal**

We act for Penta Properties with respect to this matter. We are requesting that the lands at 5164, 5366, 5470, and 5900 Upper Middle Road, and 5201 Mainway, in the City of Burlington, in Halton Region be converted from employment area designation, to permit a mixed use development.

We are enclosing a planning report from MHBC Planning which provides a planning analysis which supports this conversion request.

We are asking that the Minister should approve this conversion by way of modification to Halton Region Official Plan Amendment 49.

Lands at 5164, 5366, 5470 and 5900 Upper Middle Road, and 5201 Mainway in Burlington Should be Converted From Employment to Mixed-Use By Modification to the Regional Official Plan, or the Matter Should be Referred to the Tribunal

The subject lands, despite being designated as “Employment Lands” for employment uses for over forty years, have never been developed for that purpose. Over that time, there have been continuous efforts to market the property for employment. It has been promoted both by the owners, and the municipality. A settlement agreement with Burlington in 2009 required the owners to attempt to actively market the lands for a further ten years for employment purposes.

Burlington has actively marketed the site in municipal brochures, websites and generally promoted the site in their economic development employment lands portfolio. It has been the subject of a number of specific proposals to potential users. In 2017, Burlington made a high profile pitch for the site as a location for Amazon, which did not succeed.

The market has spoken, and the lands are not seen as attractive for development under the current employment designation.

Undoubtedly, major considerations of potential businesses have been the proximity of residential neighbourhoods to the west and north, which will not welcome employment uses as neighbours, and the lack of access to 400 series highways.

The proposed conversion satisfies the Growth Plan criteria for its approval.

Under the Minister’s traditional approval powers, the Minister should modify the mapping of the land in the Halton Region Official Plan at 5164, 5366, 5470 and 5900 Upper Middle Road Road and 5201 Mainway so that it is no longer designated as employment.

In the alternative, the Minister should refer the question of the appropriate designation of the Bronte Creek Meadows lands to the Tribunal for a hearing - while approving the balance of the official plan. Such a partial referral would allow development to proceed elsewhere in the Region, while allowing the unusual and anomalous decision respecting the subject lands to be properly studied by the Tribunal.

Minister has the Jurisdiction to Modify, or to Refer the Subject Lands to the Tribunal for a Hearing

Under section 17 of the planning act, the Minister of Municipal Affairs is the approval authority for the Halton Region Official Plan resulting from its Municipal Comprehensive Review process. Under section 17 (34) (a) of the act, the Minister, in acting as the approval authority, may “approve, modify and approve as modified or refuse to approve a plan”. This would allow the Minister to modify the designation on the lands in question to remove the employment designation, without affecting the other aspects of the Regional Official Plan.

In the alternative, under the Minister’s new referral powers established by Bill 109, the Minister could refer the proposed employment designation for the lands at 5164, 5366, 5470 and 5900 Upper Middle Road Road and 5201 Mainway to the Ontario Land Tribunal for a hearing, together with the balance of the Official Plan, or on its own. Under section 17(55), the Minister may, “before making a decision under subsection (34), refer all or part of the plan to the Tribunal for a recommendation”. Taking the provisions of the planning act together, the Minister can refer the designation of 5164, 5366, 5470 and 5900 Upper Middle Road Road and 5201 Mainway (conversion) to the Tribunal, and then approve, with modifications, the balance of the official plan. Thus, a referral on the conversion can take place, without delaying the balance of the Official Plan from being modified and approved and coming into force.

Growth Plan Permits Conversions Only Through a Municipal Comprehensive Review


Under policy 2.2.5.9 of the Growth Plan for the Greater Golden Horseshoe, employment conversions “may be permitted only through a municipal comprehensive review”. (There are certain limited exceptions to this, but all depend upon the Region taking the initiative due to the Planning Act provisions on conversion, which appears unlikely to occur here).

Thus, if the conversion is not approved now, it will likely be a decade or more before it will be considered again.

Conversion of 5164, 5366, 5470 and 5900 Upper Middle Road Road and 5201 Mainway Would Create Residential and Mixed Use Opportunities, and Assist Halton and Burlington in Achieving their Ambitious Objectives for Growth



Data Source: First Base Solutions Aerial Floor 2016

Figure 5a Location Map	LEGEND Subject Lands		
	DATE: February 5, 2019	SCALE N.T.S.	
5164, 5366, 5470, 5900 Upper Middle Rd and 5201 Mainway Burlington, Ontario			

Through Intensification

The above photo approximately illustrates the location of the 5164, 5366, 5470 and 5900 Upper Middle Road Road and 5201 Mainway lands. Residential neighbourhoods are located to the west and north of the site. A school is notched out of the site at its north west corner - Corpus Christi Catholic Secondary School opened relatively recently, in 2008. Bronte Creek Park is located to the east. Only the lands south of Mainway have established employment uses.

As the recent establishment of the High School within the employment area demonstrates, there is a growing expectation that this area will progressively transition to residential and mixed use. In the context of other area uses, the result will be a positive mix of jobs, homes, commercial opportunities and community uses that would produce a complete community in this neighbourhood.

Halton’s Planning Direction of Focussing on Intensification Will Require Significant Land Supply for Intensification - 5164, 5366, 5470 and 5900 Upper Middle Road Road and 5201 Mainway Can Help

Halton Region has been, in its planning, banking heavily on the potential for intensification to achieve its population growth forecasts under the Growth Plan for the Greater Golden Horseshoe. However, based upon the rates of approvals and the pace of apartment housing starts in recent years, it will be very challenging for the Region and Burlington to fulfill the kind of intensification numbers they have used in their Land Needs Assessment calculations - even before Council opted for a “no settlement expansion” approach.

To have any reasonable prospect of achieving the intensification potential required, the amount of land available for intensification in the delineated built boundary needs to be increased significantly. There are few appropriate sites for such intensification in Burlington.

The 5164, 5366, 5470 and 5900 Upper Middle Road Road and 5201 Mainway lands represent an opportunity to make available a significant amount of such land for intensification, in an appropriate location. As such, the conversion of the site will provide some potential to address what is almost certainly going to be a shortfall on the intensification front - and to do so without eliminating a single existing business and without costing a single job on the site.

Bronte Creek Meadows Has Not Developed Under the Employment Designation - Residential and Mixed-Use Development Would be more likely to happen, and then to Attract Appropriate Employers and Jobs to this Site

Despite being identified for employment land for over forty years, such uses have not materialized on the site.

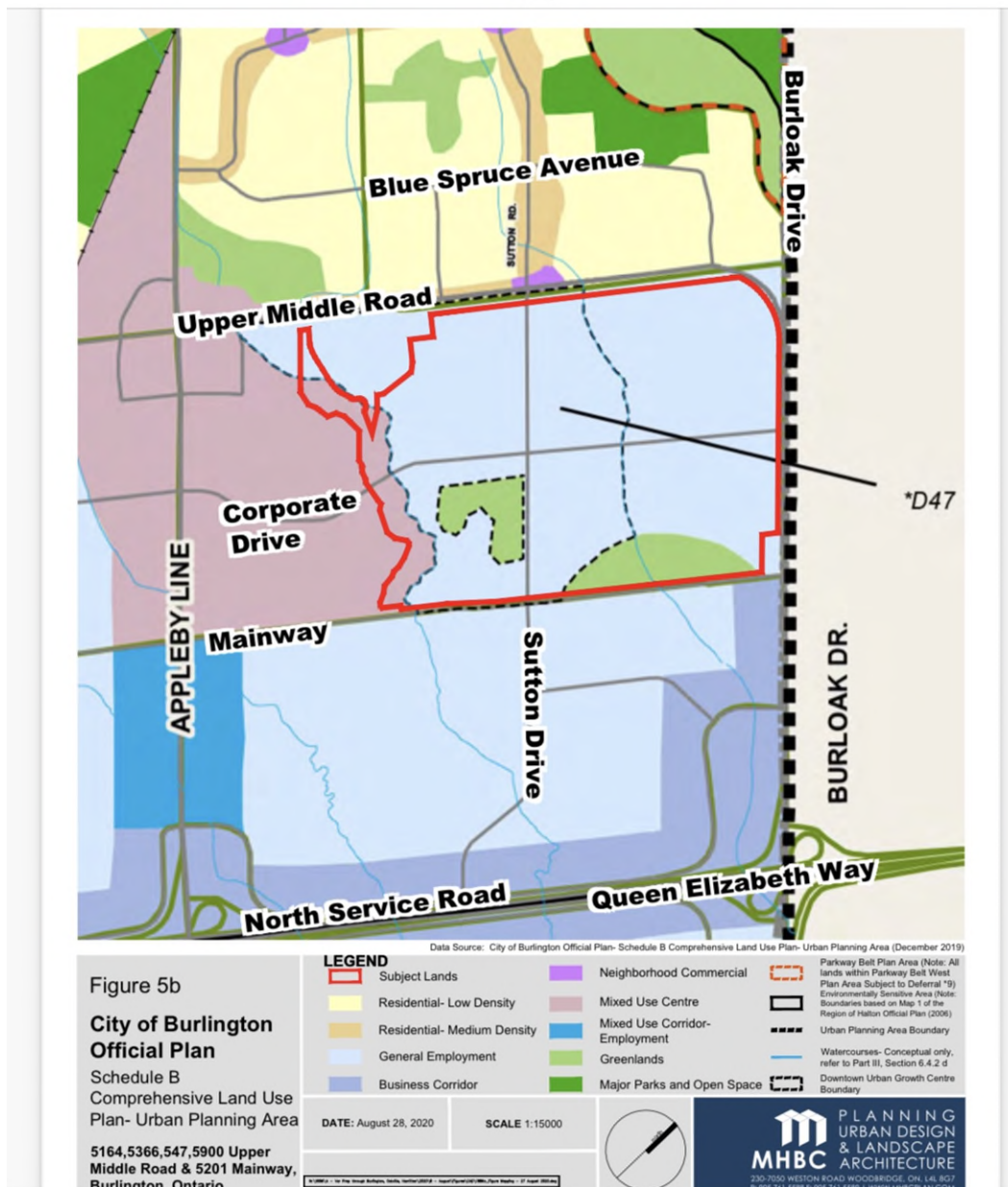
This is likely related to the location of the site. It has as neighbours to the north and west, residential communities, and a school. Traditional space extensive employers contemplated by the employment designation are warehouses and manufacturing. Such employment use businesses are well-aware that the proximity of the established existing neighbouring residential uses will undoubtedly result in complaints, and restrictions on their operations if they try to locate here - especially where the municipal Council takes an aggressive posture resisting change.

In addition, the site lacks the essential locational attribute of visibility from, and access to 400 series highways.

Thus, it is not surprising that, after decades of being marketed for employment, Bronte Creek Meadows remains vacant and undeveloped.

A mixed use or residential development designation, similar to those west and north of the site, will be more likely to result in development that creates jobs, in workplaces compatible with the existing context.

The map below illustrates the employment land designation that has applied to the site for several decades now, without any employment uses establishing in Bronte Creek Meadows.



The Site Satisfies the Growth Plan Policy Requirements for Approval of a Conversion

In policy 2.2.5.9, the Growth Plan for the Greater Golden Horseshoe sets out the tests for approval of a conversion:

- A) need
- B) lands not required for purpose designated
- C) sufficient lands maintained in municipality for forecast employment growth
- D) proposed uses will not affect the overall viability of employment area
- E) Infrastructure and public services are available

The 5164, 5366, 5470 and 5900 Upper Middle Road Road and 5201 Mainway site satisfies the required criteria for approval of conversion.

NEED - There is a clearly demonstrated need for additional housing. Ontario is undergoing a serious housing supply crisis - which is reflected in escalating housing prices. According to data from the Toronto Region Real Estate Board, housing price increases have been higher over the past decade (Feb. 2012 to Feb. 2022) in Halton (301.4%) than is the average in the Toronto area. Prices for homes in Burlington have risen even more severely (327.1%) demonstrating the depth of the supply crisis in Burlington. Halton Region and Burlington face particular challenges in delivering an adequate supply of approved sites for residential intensification. This site, as a logical extension of residential neighbourhoods to the north and west, is ideally located to contribute to satisfying that need for housing.

LAND NOT REQUIRED FOR EMPLOYMENT - The subject lands have been identified in the Burlington planning documents as “Employment Land” for over 40 years. Throughout those forty years, despite continuous marketing efforts by the owners and the municipality, this site has sat vacant, waiting for employment users to step forward, to no avail. An agreement with Burlington in 2009 required the owners to actively market the lands for a further ten years for employment purposes, which they have done without success. Burlington has also actively marketed the site in their economic development employment lands portfolio, continuously, going back to the 1980’s, in brochures, and more recently on websites. The site has been the focus of a number of special proposals aimed at specific end users seeking potential locations for their operations, all without success. In 2017, Burlington made a high profile pitch for the site as a location for Amazon, which did not succeed. The market has spoken. For over forty years, not a single job has been created on this site under the employment designation. As a result, conversion will not displace a single business or job. The market has clearly spoken that the lands are not required for the employment purpose designated.

SUFFICIENT OTHER LANDS MAINTAINED FOR EMPLOYMENT - It is noteworthy that there are still several large vacant, never developed sites in the employment area to the south - including sites fronting directly on Mainway. As such, significant employment land will remain available in the neighbouring employment area. While the subject lands have not been appealing to prospective employers, there are abundant lands that can satisfy that purpose in the Region. The Halton Planning Staff recommendations in the municipal comprehensive review identified additional lands that could be designated for employment to the horizon. In fact, Halton Staff went well beyond the planning horizon in their February 2021 Growth Concepts Discussion Paper, and identified a very significant amount of land as “Future Strategic Employment Areas”, that could accommodate employment land beyond the horizon of the plan. Thus, there is more than enough land available to meet employment needs to the Growth Plan 2051 horizon and beyond. In their decision to not add any new employment lands through the current municipal comprehensive review, Halton Council indicated their view that there are sufficient employment lands designated to maintain an adequate supply.

NO IMPACT ON VIABILITY OF OTHER EMPLOYMENT AREA - Since the subject site has been vacant for the entire time it has been designated employment, its conversion in no way will destabilize any other employment uses in the vicinity. In addition, there are few nearby industries that would face land use compatibility issues if the subject lands were converted. The only employment uses in the area are located south of Mainway. Most are already buffered by a natural area on the north side of Mainway that will ensure no compatibility issues arise. There is no prospect of a “domino” effect from the conversion. The lands have been vacant for decades, without adversely affecting employment uses south of Mainway.

SUFFICIENT INFRASTRUCTURE AND PUBLIC SERVICES - The Bronte Creek Meadows area is well-served by infrastructure. It has available water and sewer servicing. John William Boich PS, Alexanders PS, St. Christopher Catholic School, St. Elizabeth Seton Catholic School, Corpus Christi Catholic School, and Glenn Arbour Academy are all in close proximity to the site. Numerous community parks serve the area, as well as the Bronte Creek Provincial Park across the street to the east, . There is an abundant availability of retail and service uses including supermarket, pharmacy and restaurant uses on nearby Appleby Road, as well as community retail uses on Upper Middle Road, Mainway and generally in the area.

The site is served by Burlington Transit routes on abutting roads - Upper Middle, and Mainway - both of which connect to the Appleby GO Station. Overall, the site is well-served by infrastructure, and by public services required by residents.

In conclusion, it is clear that the proposed conversion satisfies the tests under policy 2.2.5.9 of the Growth Plan for the Greater Golden Horseshoe to allow conversion from employment land to other uses including residential.

The Minister Should Recognize the Failure of the Existing Employment Designation to Deliver Employment, the Need for Housing, and Approve the Conversion of 5164, 5366, 5470 and 5900 Upper Middle Road Road and 5201 Mainway

The existing designation of Bronte Creek Meadows as Employment has left the lands vacant for over forty years. There is no reason to expect that to change.

Conversion will deliver much needed housing in an area where supply is especially constrained, and demand is high. The location of the site is well-suited to support residential intensification. Such residential development can proceed and integrate well with neighbours, with no negative impact on existing stable neighbourhoods.

The Minister should modify the Halton Region Official Plan to ensure that 5164, 5366, 5470 and 5900 Upper Middle Road Road and 5201 Mainway are NOT designated as employment, approving the conversion of the site as good planning. In the alternative, the Minister should refer the question of the appropriate designation of the land at 5164, 5366, 5470 and 5900 Upper Middle Road Road and 5201 Mainway to the Ontario Land Tribunal.

Sincerely,

AIRD & BERLIS LLP



Hon. Peter Van Loan
Partner

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