

**Update Week 2002-19
Planning**

**Indexed as:
Oxford (County) Official Plan Amendment No. 44 (Re)**

**Robert Virtue, Siemen Bakker, Jan Bakker, Joseph Zeffer and
Les Dolson have appealed to the Ontario Municipal Board
under subsection 34(19) of the Planning Act, R.S.O. 1990,
c. P.13, as amended, against Zoning By-law 7753-2001 of the
City of Woodstock O.M.B. File No. R010149 [* See Appendix A
for Complete Title of Case]**

[2002] O.M.B.D. No. 251
File Nos. PL010614, R010149, O010131, O010132

**Ontario Municipal Board
C.A. Beach**

Oral decision: February 20, 2002
Filed: April 22, 2002
(5 paras.)

COUNSEL:

P. Devine, for County of Oxford & City of Woodstock.
M. Bull, for Prostock Developments Limited.
R. MacDougall, for R. Virtue & Duracap International Inc.

MEMORANDUM OF ORAL DECISION DELIVERED BY C.A. BEACH AND ORDER OF THE BOARD:-

¶ 1 The Board makes reference to its Decision Order No: 0260 issued on February 12, 2002. In that decision, the Board dismissed the appeals of Robert Virtue and Siemen and Jan Bakker without holding a hearing, related to OPA #44 and #45 which dealt with a new commercial policy structure in the City of Woodstock. In that decision, the Board also noted that Les Dobson and Joseph Zeffer withdrew their appeals and that Loblaw Properties Limited supported OPA #44 but reserved future rights regarding the disposition of future appeals. Loblaw Properties Limited was not represented at this hearing.

¶ 2 Having dealt with the appeals of Robert Virtue, Siemen and Jan Bakker, Les Dobson, Joseph Zeffer and Loblaw Properties Limited, the only outstanding matter was the appeal of Duracap International Inc. Its appeal and issue relate to a realignment of Montclair Drive that is required by Prostock Developments Limited which property is adjacent to that of Duracap International Inc. The concern is the impact that the construction, timing of the construction and any liabilities regarding impact from the construction may have on the operation of Duracap.

¶ 3 The City proposed an agreement between it and Duracap which did not completely satisfy the concerns of Duracap. At the insistence of the Board, counsel for all the parties discussed and agreed on additional language which met the requirements of Duracap International Inc.

¶ 4 The matter was disposed of as follows:

- * Duracap and the City accept and will sign the original Agreement filed as Exhibit 9A prepared by the City and attached as Attachment 1; and
- * An additional clause filed as Exhibit 9B is to be included in the Development Agreement between the City and Prostock Developments Limited. Exhibit 9B is attached as Attachment 2.

¶ 5 The appeal by Duracap International is dismissed. Official Plan Amendment No. 44, filed as Exhibit 3A, is allowed in part and is attached as Attachment 3. The Board so orders.

C.A. BEACH, Member

* * * * *

ATTACHMENT 1

THIS AGREEMENT dated the 14th day of December, 2001.

BETWEEN:

THE CORPORATION OF THE CITY OF WOODSTOCK

(hereinafter called "the City")

and

DURACAP INTERNATIONAL INC.

(hereinafter called "Duracap")

WHEREAS it is anticipated that development is about to occur within the lands situated within the City of Woodstock, in the County of Oxford illustrated on the attached Exhibit "A" (hereinafter called "the Development").

AND WHEREAS Duracap, as an owner of lands abutting the development, wishes to continue to have access to the public street known as Montclair Drive as illustrated on the said Exhibit "A" until such street is re-aligned and opened as a public street in its new location.

AND WHEREAS it is intended that, as part of the development, those portions of Montclair Drive illustrated on Exhibit "A" as PARTS 2, 3, 5, 14 and 15 (hereinafter called "the present road") will be closed as a public roadway and replaced by the construction and vesting in the City of a public roadway within the portions of Exhibit "A" illustrated as PARTS 9 and 13 (hereinafter called "the new road").

NOW THEREFORE witness that the parties hereto, in consideration for the sum of \$2.00 now paid by each to the other, and the mutual covenants herein contained, the receipt and sufficiency of which is hereby mutually acknowledged, hereby agree as follows:

1. The City will include, as part of the Site Plan Control Agreement to be entered into between the City and the Developer pertaining to the development, a requirement that the new road be dedicated to the City prior to the issuance of a building permit for the development.
2. The City shall require that the new road be constructed to current City standards to a base asphalt.
3. The City shall not close the present road as a public street prior to the satisfactory construction and dedication as a public street of the new road.

4. The City shall obtain, as part of the development requirements, such security as may be necessary to ensure completion of the new road as stated above.
5. Upon the completion of execution of this Agreement by both parties,

Duracap shall withdraw its objection or appeal to the Ontario Municipal Board with respect to the development.

IN WITNESS WHEREOF the parties hereto have executed this Agreement as of the date first above written.

THE CORPORATION OF THE CITY OF WOODSTOCK

Per:

"John Geoghegan"

John Geoghegan - Mayor

Per:

"Louise Gartshore"

Louise Gartshore - Clerk

We have authority to bind the Corporation

DURACAP INTERNATIONAL INC. Per:

Authorized Officer

I have authority to bind the Corporation

[Quicklaw note: Exhibit A, could not be reproduced online. Please see paper copy.]

ATTACHMENT 2

February 20, 2002

2. The Developer hereby agrees to complete, at its own expense and in a good and workmanlike manner, for the City and Woodstock Hydro Incorporated, the realignment of Montclair Drive as hereinafter set forth to the satisfaction of the City Engineer and the Manager of Woodstock Hydro Incorporated. The Developer agrees that the realigned north/south Montclair Drive must be constructed to City Standards to the satisfaction of the City Engineer to base course asphalt and accessible to the public prior to the stopping up and closing of the current north/south Montclair Drive alignment. The Developer further agrees that no building permit shall be available until the new north/south alignment of Montclair Drive is dedicated to the City of Woodstock. The Developer agrees not to obstruct local traffic on Montclair at all times.

The Developer will be obliged to construct the new road in a timely fashion with a minimum of disruption to the operation of DuraCap International Inc. In the event that there is disruption, this Agreement shall not prevent DuraCap from claiming for damages for disturbance and business loss arising out of the construction of the works from the City and from the Developer.

ATTACHMENT 3

REVISED DECEMBER 12, 2001

AMENDMENT NUMBER 44

TO THE COUNTY OF OXFORD OFFICIAL PLAN

the following Plan attached hereto as explanatory text, constitutes Amendment Number 44 to the County of Oxford Official Plan.

THE CORPORATION OF THE COUNTY OF OXFORD

BY-LAW NUMBER 4113-2001

BEING a By-Law to adopt Amendment Number 44 to the County of Oxford Official Plan.

WHEREAS, Amendment Number 44 to the County of Oxford Official Plan has been recommended by resolution of the Council of the City of Woodstock and the County of Oxford Community and Strategic Planning Office has held a public hearing and has recommended the Amendment to the Corporation of the County of Oxford for adoption.

NOW THEREFORE, the Corporation of the County of Oxford pursuant to the provision of the Planning Act, R.S.O. 1990, as amended, enacts as follows:

1. That By-Law Number 4103-2001 is hereby repealed.
2. That Amendment Number 44 to the County of Oxford Official Plan, being the attached explanatory text, is hereby adopted.
2. This By-Law shall come into force and take effect on the day of the final passing thereof.

READ a first and second time this 13th day of June, 2001.

READ a third time and finally passed in Open Council this 13th day of June, 2001.

DAVID W. OLIPHANT, WARDEN
KEN WHITEFORD, CLERK

1.0 PURPOSE OF THE AMENDMENT

This Amendment which was filed by the City of Woodstock proposes three changes to the commercial policy structure of the Woodstock trade area. These changes are as follows:

- * modifications to the specialized Service Commercial Policies in the City of Woodstock by permitting department stores and ancillary retail uses as part of a specialty purpose or free-standing building development where the development is supported by retail impact studies;
- * modifications to the designation of Blandford Square in the Township of Blandford-Blenheim as a Regional Shopping Centre; and
- * modifications to the Regional Shopping Centre Policies in the County-wide policy section and the City of Woodstock Land Use Policies.

2.0 LOCATION OF LANDS AFFECTED

This Amendment applies to those lands designated as 'Regional Scale Shopping Centre' and 'Specialized Highway Service Commercial' within the City of Woodstock and the Township of Blandford-Blenheim.

3.0 BASIS FOR THE AMENDMENT

The application for the Official Plan amendment is a result of the City of Woodstock undertaking a review of the commercial policy structure within the Woodstock trade area in light of changing retailing trends in the Woodstock market structure.

In early 2000, the City of Woodstock retained Robin Dee and Associates to undertake a Commercial Policy Structure Review, Background Study. Mr. Dee's key findings were that the Woodstock trade area remains under-served with respect to available retail service facilities and that consumer outflow spending has increased since the early 1990's. As a result of the study, the County of Oxford Planning staff presented a policy options report for commercial policy structure to Woodstock Council in October, 2000. The policy options

report was circulated to interested groups, organizations and individuals to solicit comments regarding the range of policy options.

In the fall of 2000, an application for Official Plan amendment and zone change was received from Prostock Developments Limited for approximately 27,870 square metres (300,000 square feet) of free-standing retail box development. The development is proposed on the northeast corner of Norwich Avenue and Juliana Drive and is intended to accommodate a relocation of Wal-Mart from the Blandford Square Mall to a free-standing location, and, potentially a relocation of an existing home and automotive supply store such as Canadian Tire, to a larger format, along with additional retail and service commercial uses. The applications included retail impact studies of the proposed development as well as planning, servicing and traffic report, as well as the report on the impact of new retailing trends on the retail structure of Woodstock.

The analysis of commercial official plan policy for the Wood stock trade area concluded that the Official Plan is not structured in its commercial hierarchy to permit the type of development scenario that the Wal-Mart/Prostock development are proposing and that are typically being constructed in other market areas the size of Woodstock. In order to permit this type of new commercial node, modification would be required to the commercial hierarchy for the Woodstock trade area.

4.0 DETAILS OF THE AMENDMENT

- 4.1(a) That Schedule "W-1", City of Woodstock Land Use Plan, to the County of Oxford Official Plan is hereby amended by designating as 'Regional Commercial Node' the lands indicated as the Area of Amendment "Item 1" on Schedule "A" attached hereto.
- 4.1 That Section 5.4 is amended by deleting the terms "Regional Scale Shopping Centre(s)", "Regional Scale Shopping Facility, Regional Shopping Facility", "Regional Shopping Centre(s)" and replacing them with the term "Regional Commercial Node(s)".
- 4.2 That Section 5.4.1 is amended by deleting the "Policies Description" and replacing them with the following text:

"POLICIES

DESCRIPTION

Regional Commercial Nodes are intended to provide for a wide range of commercial uses, which meet specialized service and retail shopping needs. Regional Commercial Nodes, by reason of their size and range of uses, are regarded as major activity centres and may have trade areas which extend throughout large areas of the County. Within the context of the County of Oxford, Regional Commercial Nodes will serve a trade area population of approximately 50,000 people and have a minimum of 21,000 square metres (225,000 square feet) of gross leasable commercial floor area. Regional Commercial Nodes are not intended to accommodate the wide range of functions or the intensive scale of development permitted in traditional downtown Central Business Districts."

- 4.3 That Section 5.4.1 is amended by deleting the "Permitted Uses" and replacing them with the following text:

"PERMITTED USES

Uses permitted within Regional Commercial Nodes include a wide range of retail and service outlets, including department stores, either in free-standing buildings or incorporated into mall-type configurations. Other uses may include home and auto supply stores, convenience commercial uses, restaurants and commercial recreation uses, personal service shops, medical and dental offices and clinics, financial offices, and grocery stores.

The configuration of the site may include severances of individual buildings or portions of buildings, without regard to zoning provisions, provided the development is managed as a unit.

Site specific Official Plan Policies and zoning on individual sites where the development is greater than 1,858 square metres (20,000 square feet) may provide for less than the full range of permitted uses. Site specific Official Plan Amendments and zoning by-laws on individual sites may also restrict maximum size of non-department store DSTM retail uses, types of uses and minimum sizes of DSTM retail units where a market impact study, prepared to the satisfaction of the County of Oxford and local municipality, requires such restrictions in order to protect Central Areas, other shopping centres and other commercially designated areas and village cores within the respective trade area. Where an application for a site specific Official Plan Amendment is made by a proponent, the municipality shall require the preparation of a market impact peer review."

- 4.4 That Section 5.4.1, "Criteria for New or Expansions to Existing Regional Shopping Centres and Supporting Documentation" is amended by deleting the words "Regional Shopping Centres" and replacing with the words "Regional Commercial Nodes".
- 4.5 That Section 5.4.1 is amended by deleting those policies related to the Blandford Square Mall and replacing them with the following:

**"BLANDFORD
SQUARE MALL**

The following policies apply to those lands designated as a Specialized Regional Area in the Township of Blandford-Blenheim consisting of Lots 11 and 12, Concession 1 (Blandford).

The County of Oxford will recognize the full site and the existence of Blandford Square Mall as an existing Shopping Centre with a maximum gross leasable commercial floor area of 22,300 square metres (240,000 square feet). This will include the full range of permitted uses: including, all types of retail and warehouse outlets; grocery and food stores; clinics; personal service shops; financial services; convenience commercial uses; restaurants; hardware stores; pharmacies; and commercial recreation uses.

The County shall repeal Holding By-Law Number 3187(a)-92 passed pursuant to the Planning Act and replace it with a Holding By-Law that recognizes there are no municipal services available to the site currently and that the addition of new permitted uses will be subject to approval by the County of Oxford relative to the servicing constraints of any proposed uses.

The Specialized Regional Area will also allow reconfiguration of the existing gross leasable commercial floor area (22,296 square metres/240,000 square feet) and the addition of free-standing uses, which may include specialized uses, such as farmers' markets, flea markets, antique outlets, warehousing and storage, light industrial uses, farm implement dealers, recreational vehicle establishments including motorcycle, boat, and snowmobile dealerships, car

dealerships, home improvement/outdoor centres, medical offices, data condominiums, prefabricated home construction outlets, lumber yard/nursery/garden centre, and outdoor recreation facilities, such as go-carts/golf/amusement, subject to servicing constraints.

Other permitted uses that require full municipal services will include hotels/motels, restaurants, trade centres, educational facilities (college/trade school), call centres, vehicle wash establishments and some types of light industrial uses, and will be permitted on the site without further amendment to the Official Plan, subject to the provision of full municipal services by the County of Oxford. The extension of full municipal services should meet the County's phasing plan for extension of services and any such extensions, including financing, will be subject to the full approval of the County of Oxford."

- 4.6 That the legend of Schedule B-1, Land Use Plan, Township of Blandford-Blenheim is hereby amended by changing the word "Regional Shopping Centre" to "Specialized Regional Area".
- 4.7 That Section 5.4.1 is amended by adding the following subsection at the end thereof:

"NORWICH

**AVENUE AND
JULIANA DRIVE**

The following policies apply to those lands designated as a Regional Commercial Node in the City of Woodstock in the area of Norwich Avenue and Juliana Drive, as indicated on Schedule "W-1", City of Woodstock Land Use Plan.

A Regional Commercial Node may be developed in the vicinity of Norwich Avenue and Juliana Drive. The maximum gross leasable commercial floor area will be determined through market impact studies which determine the market impact of the proposal and whether it will adversely affect the planned function of the Woodstock Central Area. The market impact studies will be carried out to the satisfaction of the County of Oxford and the City of Woodstock.

Based on current market impact studies, uses which are important to the role and function of the Central Area will be restricted from the Regional Commercial Node, including: liquor, wine and beer stores; financial offices; professional offices; and grocery stores greater than 929 square metres (10,000 square feet). These uses may be considered for the Regional Commercial Node in the future, subject to the submission of a market impact study which is satisfactory to the County of Oxford and the City of Woodstock. The market impact study must establish that there is sufficient market capacity for these uses, and that the planned retail/service function of the Central Area of the City of Woodstock and other existing commercially designated areas in the Woodstock Trade Area will not be jeopardized.

A site specific amendment to the Official Plan will be required to implement the policies of the Regional Commercial Node for specific developments of greater than 1,858 square metres (20,000 square feet) in size on one property ownership. The site specific Official Plan Amendment will include policies to restrict the minimum size of DSTM retail units and the permitted uses, based on current market impact studies, in order to provide opportunities for the Central Area to remain the most functionally diverse commercial centre in the Woodstock Trade Area, as outlined in the Vision for the Central Commercial Area in Section 7.3.3.1.1. These policies may be reviewed in the future, subject to the submission of detailed market impact studies that are satisfactory to the County of Oxford and the City of Woodstock, provided that the market impact

study will establish that there is sufficient market capacity in the Woodstock Trade Area to justify the removal of restrictions and to establish that the planned retail and service function of the Woodstock Central Area and other existing commercially designated areas in the Trade Area will not be jeopardized. Where an application for a site specific Official Plan Amendment is made by a proponent, the County of Oxford and the City of Woodstock shall require the preparation of a market impact peer review.

All other policies of Section 5.4.1 shall apply to any site specific Official Plan Amendment."

4.8 That Section 7.3.3.2 is amended by deleting the terms "Regional Shopping Centre", "Regional Shopping Centres" and "Shopping Centre" with the terms "Regional Commercial Node(s)".

4.9 That Section 7.3.3.2 is amended by deleting the following under the subcategory "Regional and Community Shopping Centres":

"A Community Shopping Centre will require one major or junior department store, but will be restricted to no more than one such use.

A Regional Shopping Centre will have a minimum of one major and one junior department store."

4.10 That Section 7.3.3.2 is amended by adding the following at the end of the subcategory "Regional Commercial Node and Community Shopping Centres":

"The range of permitted uses will be determined through a market impact study undertaken at the time of designation of a Regional Commercial Node or Community Shopping Centre. The criteria for the market impact study will include the impact on the economic viability of the Central Area and other existing commercially designated areas in the Trade Area."

4.11 That Section 7.3.3.2 is amended by adding the following subsection at the end thereof:

"NORWICH

AVENUE AND

JULIANA DRIVE

The area of Norwich Avenue and Juliana Drive will be designated as a Regional Commercial Node, as defined on Schedule "W-1", City of Woodstock Land Use Plan. A site specific Official Plan Amendment will be required to implement regional commercial facilities greater than 1,858 square metres (20,000 square feet) in this location. The development will be subject to the policies and site planning criteria of Section 7.3.3.2. In addition, based on current market impact analysis, the following uses will not be permitted in this Regional Commercial Node:

- * grocery stores of greater than 929 square metres (10,000 square feet)
- * retail outlets for wine, beer and liquor
- * financial offices
- * professional offices
- * government offices

A site specific Official Plan Amendment for developments greater than 1,858

square metres (20,000 square feet), based on current retail market analysis, will define the maximum gross commercial leasable floor areas and will include a restriction on maximum size of department stores and non-department store DSTM uses and a minimum retail unit size in order to minimize impact on the Central Area of the City of Woodstock.

The above use and size restrictions may be removed by means of a site specific Official Plan Amendment, subject to the preparation of retail market impact study, carried out to the satisfaction of the County of Oxford and the City of Woodstock. The market impact study will establish that there is sufficient market capacity in order to allow the restrictions on use and size of department store and non-department store DSTM uses to be lifted and to establish that the planned retail and service functions of the Woodstock Central Area and other commercially designated areas in the Trade Area will not be jeopardized. Where an application for a site specific Official Plan Amendment is made by a proponent, the County of Oxford and the City of Woodstock shall require the preparation of a market impact peer review.

The permitted uses indicated in Section 7.3.3.3, Specialized Service Commercial, will also be permitted within the Regional Commercial Node designation at Norwich Avenue and Juliana Drive."

- 4.12 That Section 7.3.3.3, Service Commercial Areas, Description, is amended by adding the following paragraph at the end thereof:

"Areas which are designated as any of the functional categories of Service Commercial Areas and located in the immediate vicinity of a designated Regional Commercial Node as identified on Schedule "W-1", City of Woodstock Land Use Plan, under Section 7.3.3.2 are allowed the range of uses for the specific designated Regional Commercial Node for single developments within the Service Commercial Designation under 1858 square metres (20,000 square feet). These areas are also subject to a minimum size restriction of gross commercial leasable floor area for non-department store DSTM uses of 325 square metres (3,500 square feet). Developments of greater than 1858 square metres (20,000 square feet) will require an Official Plan Amendment to a Regional Commercial Node development."

5.0 IMPLEMENTATION

This Official Plan Amendment shall be implemented in accordance with the implementation policy of the Official Plan.

6.0 INTERPRETATION

This Official Plan Amendment shall be interpreted in accordance with the interpretation policy of the Official Plan.

[Quicklaw note: Schedule "A" Land Use Plan, could not be reproduced online. Please see paper copy.]

APPENDIX A Complete Title of Case

Robert Virtue, Siemen Bakker, Jan Bakker, Loblaw Properties Limited, Joseph Zeffer and Les Dolson Duracap have appealed to the Ontario Municipal Board under subsection 17(24) of the Planning Act, R.S.O., 1990, c. P.13, as amended, from a decision of the County of Oxford to approve Proposed Amendment No. 44 to the Official Plan for the County of Oxford to redesignate lands designated as 'Regional Scale Shopping Centre' and 'Specialized Highway

Service Commercial' within the City of Woodstock and the Township of Blandford-Blenheim to alter the commercial policy structure of the Woodstock trade area O.M.B. File No. O010131 and

Robert Virtue, Siemen Bakker, Jan Bakker, Joseph Zeffer and others have appealed to the Ontario Municipal Board under subsection 17(24) of the Planning Act, R.S.O., 1990, c. P.13, as amended, from a decision of the County of Oxford to approve Proposed Amendment No. 45 to the official Plan for the County of Oxford to redesignate lands from 'Specialized Highway Service Commercial' and 'Traditional Industrial' to 'Regional Commercial Node Development' within the City of Woodstock O.M.B. File No. O010132 and

The City of Woodstock and the County of Oxford have brought a motion before the Ontario Municipal Board under subsection 17(45) of the Planning Act, R.S.O. 1990, c. P.13, as amended, to dismiss the appeals of Robert Virtue, Siemen Bakker and Jan Bakker without holding a full hearing and

The City of Woodstock and the County of Oxford have brought a motion before the Ontario Municipal Board under subsection 34(25) of the Planning Act, R.S.O. 1990, c. P.13, as amended, to dismiss the appeals of Robert Virtue, Siemen Bakker and Jan Bakker without holding a full hearing

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