

October 11, 2017

By E-Mail Only to *regional.clerk@york.ca*

Chairman Regional Councillor Joe Li and Members of the Committee of the Whole –
Meeting 2: Planning and Economic Development
Regional Municipality of York
Regional Clerk's Office
York Region Administrative Centre
17250 Yonge Street
Newmarket, Ontario
L3Y 6Z1

Attention: Mr. Christopher Raynor, Regional Clerk

Dear Chairman Li and Members of Committee:

Re: Committee of the Whole Meeting, October 12, 2017
Item F.2.5 – Referral Request to the Ontario Municipal Board
Application for Official Plan Amendment
Town of Whitchurch-Stouffville

As you know, we are counsel to 1057524 Ontario Limited, the proponent of the official plan amendment application (the “Application”) that is subject to the above-noted request for referral to the Ontario Municipal Board (the “Referral Request”).

We are writing to respond to the Staff Report released on October 6, 2017 recommending refusal of the Referral Request.

In short, it is our position that (1) there is no statutory basis for the Region to refuse the Referral Request and (2) the reasons provided in the Staff Report are not legal justification for refusal of the Referral Request.

We thus request the Region to refer the matter to the Ontario Municipal Board (the “Board”), as required by the legislation, and allow our client to have its Application considered as contemplated by the *Planning Act*. By doing so, the Region is in no way prejudiced and will continue to have its full opportunity to respond to the Application.

Legislative Intent

We suggest to you that the Region is obliged to refer the Application to the Board pursuant to section 22 of the *Planning Act, 1990*, the version substantially in effect on March 27, 1995 (the “Act”). Any reasonable review of the legislation suggests that it cannot have been intended that the Region would have the discretion to refuse to refer the Application to the Board without the Town having made a decision on the merits of the Application.

To do so would deny our clients the opportunity to fully and fairly present their case before the Board, without a Decision ever being made on the Application. This is a breach of procedural fairness, due process and natural justice.

Reasons for Refusal

The Staff Report purports to provide reasons which satisfy the “written explanation” requirement of s. 22(3) of the Act.

However, the reasons in the Staff Report do not provide legal justification for the refusal of the Referral Request. The crux of the Staff Report suggests that the Application does not meet current statutory and policy tests for approval. For example, Staff have taken the position that the Application is a settlement area boundary expansion and subject to those policies. While we strongly disagree, it is for the Board to make determinations on policy application when evaluating the Application on its merits.

Factual Inaccuracies

The Staff Report also contains several factual inaccuracies, many of which would be tested during a proper Hearing before the Board. While we have been given limited opportunity to review and respond to the Staff Report, there are two main points that we wish to bring to your attention.

Firstly, the Staff Report implies at the outset that the Application proposes a 24 lot residential subdivision, suggesting that our client is proposing a much more intensive development than is the case. While the original application submitted in 1988 proposed 24 lots, Staff are aware that the Application was subsequently revised in response to Region, Town and Conservation Authority comments, and has proposed a total of eight new lots and one retained lot, through formal revisions to the Application. This should be made clear from the outset of the Staff Report. To suggest to Council that the Application is for 24 lots is misleading.

Secondly, contrary to Staff’s assertion, our client does not recall any communication from the Region advising that the associated draft plan of subdivision file was closed, nor does he recall advising the Town of an intent to abandon the Application.

Conclusion

Based on the foregoing, we urge you to refer the Application to the Board for a proper hearing on the merits. Any other decision is a breach of procedural fairness, due process and natural justice.

Should you refuse to refer the Application to the Board, our client will be forced to consider all available legal options.

Yours sincerely,

DAVIES HOWE LLP



Susan Rosenthal
Professional Corporation

SR:mk

copy: Mr. Earl A. Cherniak, Q.C., Lerners LLP
Ms. Cynthia B. Kuehl, Lerners LLP
Ms. Joan MacIntyre, Malone Given Parsons Ltd.
Ms. Miriam Vasni, Malone Given Parsons Ltd.
Mr. Thomas Kilpatrick, Malone Given Parsons Ltd.
Ms. Barbara Montgomery, Legal & Court Services, Regional Municipality of York
Mr. Joshua Silver, Counsel to the Town of Whitchurch-Stouffville
Client