

ISSUE DATE:

**February 7, 2012**



Ontario

Ontario Municipal Board  
Commission des affaires municipales de l'Ontario

PL101128  
PL101233  
PL101238

IN THE MATTER OF Subsection 17(36) of the *Planning Act*, R.S.O. 1990, c. P. 13, as amended

Appellants: See Attachment "1"  
Subject: Proposed Official Plan for the Regional Municipality of York  
Municipality: Regional Municipality of York  
O.M.B. Case No.: PL101128  
O.M.B. File No.: PL101128

IN THE MATTER OF Subsection 17(24) of the *Planning Act*, R.S.O. 1990, c. P. 13, as amended

Appellant: 1596630 Ontario Limited  
Appellant: Dalton & Alan Faris  
Appellant: Eden Mills Estates Inc.  
Appellant: Martin Pick, Thomas Pick & 1324534 Ontario Inc.  
Appellant: Rice Commercial Group of Companies  
Subject: Proposed Official Plan Amendment No. 1 ("ROPA 1")  
Municipality: Regional Municipality of York (Town of East Gwillimbury)  
O.M.B. Case No.: PL101233  
O.M.B. File No.: PL101233

IN THE MATTER OF Subsection 17(24) of the *Planning Act*, R.S.O. 1990, c. P. 13, as amended

Appellants: Minotar Holdings Inc., Cor-lots Developments, Cherokee Holdings & Halvan 5.5 Investments Limited (collectively referred to as "Minotar")  
Appellant: Grace Chinese Gospel Church of North York  
Appellant: North Markham Landowners Group  
Subject: Proposed Official Plan Amendment No. 3 ("ROPA 3")  
Municipality: Regional Municipality of York (Town of Markham)  
O.M.B. Case No.: PL101238  
O.M.B. File No.: PL101238

IN THE MATTER OF section 37 of the *Ontario Municipal Board Act*, R.S.O. 1990, c. O. 28, as amended, and Rule 34 of the Board's Rules of Practice and Procedure

Request by: Canada Mortgage and Housing Corporation and Quaestus Corporation  
Request for: Request for Directions  
Subject: Proposed Official Plan for the Regional Municipality of York  
Municipality: Regional Municipality of York  
O.M.B. Case No.: PL101128  
O.M.B. File No.: PL101128

**APPEARANCES:**

**Parties**

**Counsel**

Canada Mortgage and Housing Corporation and Quaestus Corporation

Mark Piel

Region of York

Stephen Waque

Town of Richmond Hill

Jennifer Wyce

**DECISION OF THE BOARD DELIVERED BY J. K. HUSSEY**

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[1] By a motion returnable on October 23, 2012, Canada Mortgage and Housing Corporation and its agent Quaestus Corporation (together "CMHC") sought party status in the appeals to the York Region Official Plan 2010 (the "ROP"). CMHC also sought to defer approval or partial approval of the ROP until there is a settlement on the applicability of the ROP to CMHC's land, or until the Board has conducted a full hearing on the matter.

[2] Having considered counsel's submissions and the affidavit evidence filed by land use planners David McKay and David Butler, and law clerk Sarah Schmidt, the Board denies the motion.

## **BACKGROUND IN BRIEF**

[3] CMHC filed applications for official plan and zoning by-law amendments to permit retail development on its lands described as Block 2 Reference Plan 65M-2287 Town of Richmond Hill. The applications were made after the ROP was adopted by Region of York (Region) council and after its approval on September 7, 2010, by the Ministry of Municipal Affairs and Housing (MMAH). MMAH deleted Policy 4.3.8, with the effect of removing mixed use development along Regional Corridors. CMHC advised MMAH on September 28, 2010, of its intention to appeal the ROP, claiming that the removal of Policy 4.3.8 adversely affects its lands.

[4] In May 2011, the Region of York gave notice that it would challenge CMHC's appellant status as there is no evidence that CMHC made prior submissions to Regional council, required by Section 17(36) of the *Planning Act*. CMHC agreed to withdraw its appeal to the ROP subject to being granted party status to the appeals filed by Smart Centres and Times on the "old" Policy 4.3.8 (Exhibit 4). The Board's Order dated July 15, 2011, added CMHC as a party and CMHC withdrew its appeal to the ROP, confirmed by the Board's Order dated September 9, 2011.

[5] During 2011/2012, a number of parties to the ROP appeals engaged in discussions and mediation assisted by the Board, for the purpose of narrowing issues, and streamlining the hearing scheduled to start in January 2013. Mediation led to the settlement of several appeals and ultimately, modification of certain policies of the ROP. Transition policies under s.8.4, which deal with transition of development applications and the applicability of the ROP to those applications, were among the policies modified. According to Mr. Butler's affidavit of April 26, 2012, the transition policies previously approved by MMAH were modified to provide clarity, direction and certainty; to provide for appropriate direction with respect to the application of the ROP to certain sites or area-specific planning matters in accordance with minutes of settlements; and also to ensure that applications for planning approval would appropriately conform to, or be consistent with, applicable provincial plans and policies, including the *Growth Plan*. On May 4, 2012, the Region served on CMHC and other parties, notice of a motion (Exhibit 41) requesting the Board's partial approval of the ROP. The Region proposed

partial approval of the modified policies while providing for appeals to be maintained on a site-specific basis.

[6] Smart Centres and Times respectively, came to an agreement with the Region in September and October 2012 and each signed minutes of settlement agreeing to withdraw the appeals with respect to the "old" Policy 4.3.8, under which CMHC sheltered as a party. The Region's position, and indeed one that was reiterated by the Board throughout the pre-hearing proceedings, is that at all times CMHC and other parties sheltering under appeals to specific policies fully understood that party status granted to a non-appellant remains in force only as long as the appellant of record carries the appeal. With Times and Smart Centres withdrawing their appeals, CMHC would no longer be a party in the proceedings.

[7] By this motion,, CMHC now seeks party status in regard to the transition policies under Section 8.4 of the ROP.

## **THE ARGUMENTS**

[8] The Region objects to the request and argues that it is simply an attempt by CMHC to revive its party status lost as a result of the settlement reached with Times and Smart Centres. The Region argues that CMHC has forfeited its right as an appellant because it failed to comply with the requirement under s. 17(36) and therefore cannot be made an appellant to the s. 8.4 appeals. Further, CMHC is unable to seek shelter as a party under any existing appeal to s. 8.4, as all matters outstanding under this section are site-specific and are of no interest or relevance to CMHC.

[9] CMHC argues that the following are reasonable grounds on which the Board could exercise its discretion to grant CMHC party status in the s. 8.4 appeals:

- CMHC had no opportunity, nor was there need, to provide submission to Regional council on the transition policies because it was satisfied that the policies adopted by Regional council would not prejudice its applications.
- The proposed modifications represent entirely new policies dealing with the transition of development applications which prejudice its applications.

- Its interests are directly affected as the modified policies no longer transition local official plan amendment applications and therefore undermine its rights to have its application judged by policies in effect at the time of filing.
- No prejudice would result to any existing party as it seeks to raise issues which relate specifically to its lands. Also, because the Region has consented to the addition of other entities as parties to the transition policies for the purposes of the proposed modification, there would be no prejudice to the Region in adding CMHC as a party.

[10] The Region argued that there is no authority for this relief and emphasized that CMHC's problem arises not because of the later Board-amended transition policies, but because of its failure to comply with s. 17 (36). The Board agrees. The Board was categorical in its decision, issued November 17, 2011 from a pre-hearing conference in these proceedings, issued November 17, 2011, on motions to determine appeal status and standing of parties, that the requirement to make written or oral submission to council is absolute in order to appeal all, or part, of council's decision.

[11] The Board does not accept CHMH's argument that there would be no prejudice to any existing party or to the Region in adding CMHC as a party at this stage of the proceedings. On the contrary, the Board finds otherwise. At the time this motion was brought, there had been 16 months of an extensive pre-hearing process in which 11 prehearing conferences were held, aimed at managing the size and extent of the hearings. Throughout this process, the Board urged the parties to be vigorous in their efforts to scope the issues and to resolve procedural matters. The sheer magnitude of the proceedings demanded this effort. In this context, at the July 11, 2012 pre-hearing conference it was made clear that prior to the approval of the procedural order, party and participant matters had to be determined. Notice was given in April 2012 of the proposed order for partial approval of the transition policies, and although CMHC was fully aware of what was unfolding CMHC did not come forward as other parties did, but waited until two weeks before the exchange of expert witness statements and reports for the first phase of the hearing.

[12] The Board does not accept CMHC's claim that it refrained from seeking party status at an earlier date because it did not wish to breach the confidentiality of the mediation process. At the July prehearing conference, other entities, without impropriety, sought party status for the transition policies. But that aside, all the remaining appeals to the transition policies are site-specific and so there is no basis for CMHC to be granted party status to those appeals. CMHC has no interest in these sites. CMHC is unable, therefore, to shelter under any of those appeals, and sheltering is a prerequisite for party status in these circumstances (*Angus Glen North West Inc. v. York Municipality*, [2011] O.M.B.D. No. 861).

[13] The Region submitted that CMHC is not left without remedy if it does not participate in these appeals as it is still open to CMHC to defend its application before the Town of Richmond Hill by relying on the "Clergy Principle" (*Clergy Properties Ltd. v. Mississauga (City)* 34 O.M.B.R 2777). The Board agrees

[14] The Town of Richmond Hill was a party to this motion but Counsel made no submissions except to adopt the Region's position.

[15] The motion is denied.

"K. J. Hussey"

K. J. HUSSEY  
VICE-CHAIR

**Attachment 1 – List of Appellants**

<p><b>York region Official Plan – PL101128 (ROP)</b> <b>Appellants</b></p>	<p><b>Counsel</b></p>
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<del>Mr. Philip Comartin</del> (Appellant 12)	
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<del>Mr. Steven DeFreitas</del> (Appellant 14)	
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Markham Gateway Inc. (Appellant 51)	
CHFMS aka Trinison (Appellant 52): <ul style="list-style-type: none"> <li>• Colebay Investments Inc.</li> <li>• Firwood Holdings Inc.</li> <li>• Highcove Investment Inc.</li> <li>• Major McCowan Developments Limited</li> <li>• Summerlane Realty Corp</li> </ul> <i>(initially part of Appellant 4 but now separately)</i>	Stephen J. D'Agostino <a href="mailto:sdagostino@thomsonrogers.com">sdagostino@thomsonrogers.com</a>

<b>York region Official Plan – PL101128 (ROP)</b> <b>Appellants</b>	<b>Counsel</b>
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