

Ontario Municipal Board
Commission des affaires municipales
de l'Ontario



ISSUE DATE: February 4, 2014

CASE NO(S): PL101128
PL101238

PROCEEDING COMMENCED UNDER 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
OMB Case No.: PL101128
OMB File No.: PL101128

PROCEEDING COMMENCED UNDER subsection 17(24) of the *Planning Act*, R.S.O. 1990 c. P. 13, as amended

Appellant: 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 Regional Official Plan Amendment No. 3 (ROPA 3)
Municipality: Regional Municipality of York (Town of Markham)
OMB Case No.: PL101238
OMB File No.: PL101238

Heard: June 6, 2014 in Toronto, Ontario and January 14, 2015 in Newmarket (York), Ontario

APPEARANCES:

Parties

Region of York
Romandale Farms

Counsel

S. Waque and C. Higgs
J. Lewis

CHFMS	S. D'Agostino
Minotar et al	C. Lyons
North Markham Landowners Group	N. J. Pepino, P. Foran and I. Kagan
Ministry of Municipal Affairs and Housing	K. Hare and M. Magotra (Student-at-law)
Grace Chinese Gospel Church of North York	R. Arblaster
Infrastructure Ontario	J. Dawson
Angus Glen Golf Course Angus Glen Development Ltd. Varlese Bros. Ltd. Norfinch Group Ltd.	R. Uukkivi
Barry Glen Hill Remington Steeles 9 Inc.	C. Facciolo
4716 Elgin Mills Markham Ltd. Kennedy MM Markham Ltd., Markham MMM North Development Corp. Markham MMM South Development Corp.	M. Piel
12112763 Ontario Limited Berczy Landowner Group R. Brock, L. Frisby, G Schickendanz et al	L. Townsend and J. Meader
Lyndvest Properties (Cornell) Ltd.	S. Zakem and P. Foran

DECISION DELIVERED BY K. J. HUSSEY AND J. E. SNIEZEK ON JUNE 6, 2014 AND BY K. J. HUSSEY ON JANUARY 14, 2015 AND ORDER OF THE BOARD

[1] The first pre-hearing conference (PHC) for Phase 3 of the hearing of appeals to the Region of York Official Plan 2010 ("ROP") was held on June 6, 2014. The following matters were addressed and the Board's findings, directions and decisions are set out below.

I. Settlement and Withdrawals

[2] Minutes of settlement were executed and filed by the following three entities, which also requested withdrawal from these proceedings.

- a. 445158 Ontario Inc. (Meldan) and Tracy and Kelly Ellis;
- b. 878211 Ontario Ltd.;
- c. Karma Tekchen Spellens Zabsal Ling Centre.

[3] Dorzil Developments (Bayview) Ltd. advised the Board that it too had resolved its issues with the ROP 2010 and sought to withdraw its appeal.

[4] The Board approved all four requests to withdraw.

II. Motions

[5] The Board was presented with motions to add Parties and to approve portions of the ROP 2010 that were no longer being challenged.

A. Request for Party Status

[6] On consent, The Board added the following entities as parties, subject to the Region's conditions set out in Exhibit 257:

- 4716 Elgin Mills Markham Limited
- Kennedy MM Markham Ltd.
- Markham MMM North Development Corp., and
- Markham South Development Corp.

B. Request to Approve Certain Policies

[7] The Board allowed the following requests by the Region:

- Approval and bringing into force policies 3.5.3, 5.1.6, 5.1.7, 5.1.13, 5.6.3, s. 5.6 sidebar (the two paragraphs commencing with “Places to Grow...”), set out in exhibit “E” to the affidavit of Sandra Malcic that was sworn on May 26, 2014, contained in Exhibit 260; the definition of *developable area* as modified by the Board, in its decision of April 1, 2014.
- Modification of appendices 2A and 2B of the March 5, 2013 Partial Approval Order, as set out in exhibit “F” to the affidavit of Sandra Malcic, sworn May 26, 2014.

[8] CHFMS was the only objector to the Region’s request. CHFMS did not dispute the content of the motion for approving sections of the plan; just the timing of it. CHFMS put forward the position that approval of policy 3.5.3, policy 5.6.3, and s. 5.6 sidebar may be imprudent based on the fact that an application for leave to appeal the Board’s decision issued on April 14, 2014, with respect to Phase 1 of these appeals, was filed with the Courts. CHFMS argued that such an order by the Board ought to be stayed until the Courts determine the leave application, as approval of those policies may be prejudicial to all land owners in the Region by creating a “race of the swift”.

[9] The Board rejected CHFMS's argument. The Board agreed with the Region that the onus was on CHFMS to demonstrate that harm would result from bringing into effect policies which are no longer at issue. In the Board's view CHFMS failed to meet that onus.

III. Draft Procedural Order and Issues List

[10] The Region advised that the Phase 3 issues list (Exhibit 258), extracted from the consolidated Issues list (Exhibit 114(b)), was circulated. The Board understands that the list would be adjusted to reflect the discussions and/or mediation in which the parties have been engaged.

[11] A revised Procedural Order (Exhibit 259) was circulated and consented to by the parties. Of note was the added requirement for parties to provide, prior to the exchange of witness statements, alternative boundary mapping and a declaration of the boundary which each party supports. In accordance with paragraph 25 of the Procedural Order the Board directed all parties to deliver by August 8, 2014, mapping indicating the proposed location for urban expansion, and to file statements by August 26, 2014, declaring support for either the ROP-2010 boundary or an alternative boundary. The Board also directed the parties to file the list of witnesses they intend to call.

[12] It was estimated that the hearing would require four weeks. The parties requested the Board to reserve four weeks starting on April 13, 2015. Although initially the Board agreed to fix the hearing within the time requested, scheduling difficulties ensued and the hearing was re-scheduled for four weeks starting on May 12, 2015.

PRE-HEARING CONFERENCE HELD ON JANUARY 14, 2015

[13] The second pre-hearing conference for the Phase 3 appeals to ROP was held on January 14, 2015.

[14] The Board received the following documents in response to its directions on June 6, 2014:

- The preferred option to the North Markham expansion, filed by CHFMS.
- The declaration of support for either alternative boundary mapping (ROP/ROPA 3 Boundary or the CHFMS alternative) filed by the parties.
- Witness lists for the Phase 3 hearing.

[15] Minotar Holdings Inc., Cor-lots Development, and Cherokee Holdings, appellants in these matters, and Halvan 5.5 Investments Limited, a party to these proceedings, collectively referred to as "Minotar et al", have withdrawn their appeals but intend to retain standing as a party to support the ROP/ROPA 3 Boundary.

Hearing Dates

[16] The parties agreed that it would be beneficial to schedule a later hearing date to continue settlement discussions. Except for May 12, 13, and 14, 2015 which will be reserved for motions, the dates for the hearing have been released. At the parties request the Board has set aside three weeks starting on September 8, 2015 for hearing these appeals. The Region has undertaken to amend the Procedural Order including certain key dates, to reflect this change.

Potential Motions

- [17] a) The Region seeks clarification from the Appellants on their position on five items that were raised at this PHC, including whether the ROP/ROPA Boundary provides good opportunity for employment lands; the aspects of the Municipality's comprehensive review that remains open; the production of data on traffic forecasting; and their position on Little Farms and Cornell. The Appellants (CHFMS and Grace Chinese Gospel Church of North York (Grace)) have been asked to respond to the Region's queries by February 9, 2015. Otherwise, the Region has indicated that it will seek the Board's intervention.
- b) The Region objects to Issue 8, as currently identified on Exhibit 258. This issue is raised by Grace. The Region's position is that the issue was resolved in the Phase 1 appeals. Grace was not involved in that phase of the hearings. The Region will attempt to clarify this matter with Grace, and otherwise, will seek to do so by way of a motion.
- a) A number of landowners expressed concern that they have no role in this phase of the hearing; they are not included in ROPA 3, and are not being challenged for inclusion in the urban boundary. These reluctant participants are requesting that they be released from these proceedings. Failing resolution, the Board will hear a motion on this matter in May.
- [18] A status telephone conference call is set for **March 23, 2015 at 9:30 a.m.** The parties who have indicated their desire to participate are instructed to dial **416-212-8012 or 1-866-633-0848** and when prompted to enter the following code **4779874 #**.
- [19] There will be no further notice.

Policy 7.2.50 Appeals:

[20] The Board was informed that these issues have been resolved and it is anticipated that Minutes of Settlement will be signed. The Board will be apprised of the situation in May.

Other Matters:

[21] The Board has taken notice that Berczy Landowner Group is now incorporated as Berczy Glen Landowners Group Inc.

[22] Mr. Dawson, Counsel for Infrastructure Ontario, advised that in the absence of a final procedural order, he will be seeking to call witnesses at this hearing. In light of the new hearing dates that have been set, and the understanding that witness statements would not be required until approximately June, unless otherwise informed, the Board sees no obstacle to this request.

[23] This is the Order of the Board.

"K. J. Hussey"

K. J. HUSSEY
VICE CHAIR

"J. E. Sniezek"

J. E. SNIEZEK
MEMBER

Ontario Municipal Board

A constituent tribunal of Environment and Land Tribunals Ontario

Website: www.elto.gov.on.ca Telephone: 416-212-6349 Toll Free: 1-866-448-2248

Attachment "1"

List of Appellants

York Region Official Plan – OMB Case No. PL101128

1. Angus Glen North West Inc. and Angus Glen Holdings Inc.
2. E. Manson Investments
3. North Leslie Residential Landowners Group Inc.
4. North Markham Landowners Group
 - 1212763 Ontario Limited
 - 1463069 Ontario Limited
 - 1512406 Ontario Limited
 - 1612286 Ontario Inc.
 - 4551 Elgin Mills Developments Limited
 - CAVCOE Holding Ltd.
 - First Elgin Mills Development Inc.
 - Glendower Properties Inc.
 - Mackenzie 48 Investments Limited
 - Kennedy Elgin Developments Limited
 - Major Kennedy Developments Limited
 - Major Kennedy South Developments Limited
 - Romandale Farms Ltd.; Frambordeaux Developments Inc.
 - Tsialtas, Peter and Cathy
 - Tung Kee Investment Limited Partnership
 - Warden Mills Development Limited
 - ZACORP Ventures Inc
5. Loblaw Properties Limited
6. Rice Commercial Group of Companies
7. Yonge Green Lane Developments Limited
8. Mr. Allen Eng
9. Mr. John Hayes
10. Mr. Paul Jadilebovski
11. Mr. Peter Antonopoulos
12. Mr. Philip Comartin
13. Mr. Shai Perlmutter
14. Mr. Steven DeFreitas
15. Peat Farmers of Ontario represented by Mr. Phil Comartin
16. Property Owners with Rights Association represented by Paul Jadilebovski
17. Kau & Associates L.P.
18. Block 27 Landowners Group
19. Dorzil Developments (Bayview) Ltd.
20. Westlin Farms
21. Lucia Milani and Rizmi Holdings Limited
22. Daraban Holdings Limited

23. Smart Centres and Calloway Real Estate Investment Trust
24. Yonge Bayview Holdings Inc.
25. 583753 Ontario Ltd.
26. 775377 Ontario Ltd.
27. Helmhorst Investments Ltd.
28. Aurora 2C Landowners Group Inc.
29. W. J. Smith Gardens Limited
30. Metrus Development Inc.
31. Upper City Corporation and Clear Point Developments
32. Minotar Holdings Inc, Cor-lots Development, Cherokee Holdings and Halvan 5.5 Investments Limited
33. Dalton and Alan Faris and Eden Mills Estates Inc.
34. Robert G. Sikura
35. Aurora-Leslie Developments Inc.
36. Fieldgate Developments and TACC Developments
37. Times Group Corporation
38. Memorial Gardens Canada Limited
40. 583753 Ontario Ltd.
41. Amir Hessam Limited and 668152 Ontario Ltd.
42. Arten Developments Inc.
43. Sanmike Construction Ltd.
44. Canada Mortgage and Housing Corporation
46. Mahamevna Bhavana Asapuwa Toronto
47. The Mandarin Golf and Country Club Inc. and AV Investments II Inc.
48. Cornerstone Christian Community Church
49. Tesmar Holdings Inc.
50. Sustainable Vaughan
51. Markham Gateway Inc.
52. CHFMS
 - Colebay Investments Inc.
 - Highcove Investments Inc.
 - Firwood Holdings Inc.
 - Major McCowan Developments Limited
 - Summerlane Realty Corp.

Amendment 1 – Urban Expansion in the Town of East Gwillimbury – OMB Case No. PL101233

- Dalton and Alan Faris
- Eden Mills Estates Inc.
- Martin Pick, Thomas Pick and 132463 Ontario Inc.
- Rice Commercial Group of Companies

Amendment 2 – Urban Expansion in the City of Vaughan – OMB Case No. PL101237

- **Sustainable Vaughan**

Amendment 3 - Urban Expansion in the Town of Markham – OMB Case No. PL101238

- **Minotar Holdings Inc., Corlots Developments, Cherokee Holdings and Halvan 5.5 Investments Ltd.**
- **Grace Chinese Gospel Church of North York**
- **North Markham Landowners Group**
 - **1212763 Ontario Limited**
 - **1463069 Ontario Limited**
 - **1512406 Ontario Limited**
 - **1612286 Ontario Inc.**
 - **4551 Elgin Mills Developments Limited**
 - **CAVCOE Holding Ltd.**
 - **First Elgin Mills Development Inc.**
 - **Glendower Properties Inc.**
 - **Mackenzie 48 Investments Limited**
 - **Major Kennedy Developments Limited**
 - **Major Kennedy South Developments Limited**
 - **Romandale Farms Ltd.; Frambordeaux Developments Inc. and Kennedy Elgin Developments Limited**
 - **Tsialtas, Peter and Cathy**
 - **Tung Kee Investment Limited Partnership**
 - **Warden Mills Development Limited**
 - **ZACORP Ventures Inc**
 - **CHFMS**
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 - **Summerlane Realty Corp.**