

Ontario Municipal Board
Commission des affaires municipales
de l'Ontario



ISSUE DATE: March 21, 2018

CASE NO(S): PL111184

PROCEEDING COMMENCED UNDER subsection 17(40) of the *Planning Act*, R.S.O. 1990, c. P.13, as amended

Appellant:	1042710 Ontario Limited (aka Royal Centre)
Appellant:	1096818 Ontario Inc.
Appellant:	11333 Dufferin Street et al
Appellant:	1191621 Ontario Inc.; and others
Subject:	Failure to announce a decision respecting Proposed New Official Plan
Municipality:	City of Vaughan
OMB Case No.:	PL111184
OMB File No.:	PL111184
OMB Case Name:	Duca v. Vaughan (City)

PROCEEDING COMMENCED UNDER 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:	City of Toronto
Request by:	City of Markham
Request for:	Request for Directions

Heard: March 9, 2018 in Vaughan, Ontario

APPEARANCES:

Parties

City of Toronto
City of Markham
City of Vaughan

Counsel

Ray Kallio
John Hart
Bruce Engell and Effie Lidakis

Regional Municipality of York	Bolajoko Ogunmefun
7040 Yonge Holdings Ltd. and 72 Steeles Holdings Ltd.	Ira Kagan and Kristie Jennings (articling student)
Auto Complex Limited	Ira Kagan and Kristie Jennings (articling student)
Salz & Son Ltd.	Ira Kagan and Kristie Jennings (articling student)
Glenwood Property Management Ltd.	David Bronskill
390 Steeles West Holdings Inc. and 398 Steeles Ave. West Inc.	Mary Flynn-Guglietti
8188 Master Holding Inc./Project 8188 Yonge Street Inc.	Christopher Tanzola
1306497 Ontario Inc. (Sisley Honda)	Joel Farber
Tan-Mark Holdings Ltd., Gino Matrundola and Telast Enterprises	Alexander Burton-Vulovic

MEMORANDUM OF ORAL DECISION DELIVERED BY GERALD S. SWINKIN ON MARCH 9, 2018 AND ORDER OF THE BOARD

[1] This hearing session was convened for the purpose of hearing motions by the City of Toronto (“Toronto”) and the City of Markham (“Markham”), both of which are seeking party status in the hearing of a branch of the Vaughan New Official Plan (the “OP”) appeals which is currently scheduled to commence on June 11, 2018. That branch is with respect to the part of the OP known as the Yonge-Steeles Corridor Secondary Plan (the “YSCSP”).

[2] The YSCSP is a secondary plan which forms part of the OP, all of which was adopted by City of Vaughan (“Vaughan”) Council back on September 7, 2010. The OP was subject to approval by an approval authority, which approval authority is the Region of York (“York”).

[3] The YSCSP affects a rather limited area of land within Vaughan but it is significant as it falls within what has been identified by Metrolinx's Big Move (Regional Transportation Plan) as a Gateway Hub, which area also has been identified by York in its 2010 official plan as a Regional Corridor. There is an expectation of the extension of the Yonge Subway from its current terminus at Finch Avenue in Toronto up Yonge Street ultimately to Highway 407 in Vaughan and beyond to Richmond Hill/Langstaff Gateway Centre.

[4] The lands within the YSCSP lie on the west side of Yonge Street, running from Steeles Avenue West up to just south of Highway 407 and west from Yonge Street along the north side of Steeles Avenue West to Palm Gate Boulevard. The north/south segment on the west side of Yonge Street is broken into two segments, the south, and larger, segment lying south of the Thornhill Heritage Conservation District/Yonge Street Thornhill Secondary Plan, and the north segment lying north of the Thornhill Heritage Conservation District/Yonge Street Thornhill Secondary Plan.

[5] Pertinent facts here are that Yonge Street and Steeles Avenue West are boundary roads. Markham lies on the east side of Yonge Street from Steeles Avenue East and running north to the south limit of the Town of Richmond Hill. Toronto lies on the south side of Steeles Avenue West. Toronto is the municipality in which Steeles Avenue is vested.

[6] The Vaughan OP comes to the Ontario Municipal Board (the "Board") as a s. 17(40) *Planning Act* appeal by reason of the failure of York, as approval authority, to render a decision within the statutory time frame.

[7] For appeal hearing purposes, the YSCSP is separated from the other Vaughan OP appeals. The entire YSCSP is under appeal.

[8] Arising out of a pre-hearing conference ("PHC") held on July 12, 2017, with the consent of all counsel involved save one, Vice Chair Seaborn and Member Tousaw determined that the YSCSP would proceed as a phased hearing. The first phase would

be confined to dealing with the phasing policy in the YSCSP relating to the triggers for release of lands for development contingent upon transportation/transit infrastructure being approved/funded/constructed.

[9] A subsequent phase of the hearing would deal with the various other matters which were the subject of the appeals, including height and density of buildings, parkland and privately owned public open space, the road network, office priority area, cost sharing and bonusing.

[10] The disposition from the July 12, 2017 PHC fixed June 11, 2018 as the commencement date for the Phase 1 hearing and set aside four weeks for that phase of the hearing.

[11] Since that PHC, a draft Procedural Order has been prepared with the agreement of all counsel although not yet formally issued by the Board.

[12] More importantly though, it was brought to the attention of this panel of the Board that proposed modifications to s. 8.6 of the YSCSP are being advanced by York as a response to the appeals relating to the development phasing, known in the documents as the “caps”. The modified s. 8.6 now proposes a specific permissible population cap prior to having secured funding for the subway extension and the determination of a definitive construction timeline for the subway extension. There is then an augmented cap after the funding and construction timeline have been confirmed. Provision is built in for review of the phasing plan should subway construction be delayed beyond 2021.

[13] Based upon the material filed in connection with the Toronto and Markham motions and the submissions of counsel, the Board understands that at the time of this motion hearing, Vaughan, Markham and Toronto support the proposed York modifications regarding development phasing in the YSCSP. The Board further understands that the Appellants are pursuing further discussions with York and Vaughan toward some further refinements to the modification proposal. It is significant that counsel for the Appellants suggest that there is a basis for belief that the Parties

may be able to find common ground and achieve a settlement of the development phasing issue prior to the June 11, 2018 hearing commencement date.

[14] This Motion hearing session began with the cross-examination of the deponent of the affidavit in support of the Toronto motion for party status. The cross-examination was conducted further to the delivery of a Notice of Cross-Examination on Your Affidavit served by Ira Kagan and returnable for the hearing date of this session, to be conducted before this panel. Guy Matthews, a Senior Planner in the Toronto Planning Department, the deponent of the affidavit, was vigorously cross-examined by Mr. Kagan. He was also cross-examined on a more limited basis by David Bronskill and Mary Flynn-Guglietti.

[15] At the conclusion of that cross-examination, the Board took its mid-morning break. The intention was that upon return, David Butler, who provided the supporting affidavit to Markham's Notice of Motion, would then be subject to cross-examination on his affidavit by Appellants' counsel.

[16] Upon resumption of the session, the Board was advised that the Parties were having settlement discussions concerning the Motions for party status and asked for time to further pursue those discussions. The Board accommodated.

[17] Upon further resumption of the hearing, the Board was advised that a settlement regarding the motions for party status for both Toronto and Markham had been achieved. The terms of that settlement, acceptable to, and assented to by, all counsel present, were then presented to the Board for its consideration and endorsement.

[18] At the procedural level, the two motions for party status, by Toronto and Markham respectively, are both adjourned and are subject to continuation. Those mechanics will be addressed further below.

[19] All parties to the proceeding consent to Participant status in the Phase 1 hearing for both Toronto and Markham.

[20] All parties to the proceeding consent to Party status for both Toronto and Markham for subsequent phases of the YSCSP hearing.

[21] The Appellants take no opposition to full consultation among Toronto, Markham, York and Vaughan.

[22] Toronto and Markham acknowledge that the cap numbers in the modification to s. 8.6 of the YSCSP may increase as a result of settlement discussions among the Appellants, York and Vaughan.

[23] If the cap numbers in the present form of the proposed s. 8.6 of the YSCSP to be presented in the Phase 1 hearing do not change or change in magnitude such that the impact on Markham and/or Toronto is determined by them to be not material, Markham and Toronto will accept Participant status in the Phase 1 hearing and advise the Board of that determination and authorize the Board to treat the motion hearing as concluded so that the decision of this panel of the Board can issue to confirm that status.

[24] However, if the cap numbers or any further or newly proposed modification of s. 8.6 of the YSCSP as a result of any proposed settlement among the Appellants, York and Vaughan changes the policy in a manner that Markham and/or Toronto anticipate will result in an impact that is unacceptable to them and is an issue properly before the Board for the Phase 1 hearing, Markham and/or Toronto may seek to continue the Motion hearing in order to pursue status as a Party in the Phase 1 hearing.

[25] For the purpose of any resumed Motion hearing, Toronto and Markham and any of the current Parties to the Phase 1 hearing shall be permitted to file documentary material which relates to any provisional settlement which is relevant to the Motion hearing but there is not to be the filing of any fresh material that would have otherwise been available prior to the commencement of the Motion hearing on March 9, 2018.

[26] To be clear, although the motions were set down to be heard on the same date and before the same panel of the Board, Toronto and Markham are independently

pursuing Motions for party status and are at liberty to act independently in determining whether to continue to pursue their respective motions.

[27] The Board is intent on ensuring that the Phase 1 hearing will proceed. To that end, and in the interests of clarity, the Board here sets out its understanding of the present arrangement. If there is no settlement prior to the Phase 1 hearing among the Appellants, York and Vaughan, Toronto and Markham will be accorded Participant status in that hearing. The Procedural Order shall be treated as amended to reflect that status and oblige those municipalities, if they do intend to participate in the hearing, to file Participant Statements prior to the commencement of the proceeding by a date either fixed in the Procedural Order or as soon as possible after their Participant status has been fixed.

[28] If there is a settlement among the Appellants, York and Vaughan, it shall be communicated forthwith to Toronto and Markham, and Toronto and Markham shall have five calendar days from receipt of that communication to determine whether they will seek to continue the motion hearing or accept Participant status. That determination should be communicated forthwith to the Board.

[29] If Toronto and/or Markham elect to continue the motion hearing, the Board will schedule the motion continuation date as soon as it reasonably is able to do so and, although some effort to consult with counsel on possible dates will be undertaken, the date selected by the Board shall be peremptory.

[30] In the event that the motions have not by then been concluded, the Board directs that a written status report from Messrs. Kagan, Kallio and Hart be received by the Board on or before Monday, May 8, 2018 (to the attention of the CaseCo-ordinator for this case) in order to allow the Board to assess the circumstances and to take such steps as are necessary to preserve the hearing block for the Phase 1 hearing and effect any necessary modifications to the Procedural Order as may be appropriate. In that regard, the Board fully reserves the right to precipitate the resumption of the motion

hearing on its own initiative on a peremptory basis on no less than five days' notice to counsel of record, with the continuation of the motions to occur either at the Vaughan Civic Centre or the Board's Toronto Chambers, in the Board's discretion.

[31] One final matter to be addressed in this disposition is a record of the undertaking which was given by counsel that there is to be no communication to David Butler of the testimony of Guy Matthews in his cross-examinations. The Board trusts that counsel will honour this undertaking.

[32] The Board commends the Parties for attempting to determine these motions in a balanced and reasonable fashion and bids the Parties good fortune in bringing about a resolution of the matter as well in advance of the Phase 1 hearing as possible.

"Gerald S. Swinkin"

GERALD S. SWINKIN
MEMBER

If there is an attachment referred to in this document
please visit www.elto.gov.on.ca to view the attachment in PDF format.

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