

**Ontario Land Tribunal**  
Tribunal ontarien de l'aménagement  
du territoire



**ISSUE DATE:** December 17, 2021

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

**Heard:** December 14, 2021 by written hearing

**APPEARANCES:**

**Parties**

**Counsel**

City of Vaughan

G. Perhar

West Rutherford Properties Ltd.

Q. Annibale  
B. Ruddick

**DECISION DELIVERED BY S. TOUSAW AND ORDER OF THE TRIBUNAL**

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**INTRODUCTION**

[1] This Decision approves a settlement as endorsed by the Parties.

[2] West Rutherford Properties Ltd. ("Appellant") appealed the land use designation and policies ("Appeal 16") of the 2010 Vaughan Official Plan ("VOP") affecting 3660

Rutherford Road (“site”) in the City of Vaughan (“City”). Following settlement discussions, the City filed a Motion seeking a modification and approval of the VOP affecting this site. The Appellant responded in favour of the Motion. No other Responses were received.

[3] The sworn Affidavit of David Marcucci is marked as Exhibit 1. Mr. Marcucci is a Registered Professional Planner with the City, who has been previously qualified and affirmed under oath in these proceedings. The Tribunal accepts the unchallenged evidence of Mr. Marcucci and finds as follows.

[4] The VOP, as originally adopted by the City, designated this site as Mid-Rise Mixed-Use, permitting up to six storeys in height and a density of two FSI (Floor Space Index). Then, while making recommendations to the Regional Municipality of York (“Region”) on proposed modifications to the VOP, the City requested that this site be modified to a designation of Community Commercial Mixed-Use, reducing the permitted height to three storeys and 1.5 FSI. Next, before the Region made its decision on the VOP, many appeals were filed for its non-decision, including Appeal 16. Although already subject to appeal, the Region did modify and endorse the VOP, including the City’s requested modification for this site.

[5] As now settled by the Parties, this Decision will uphold the designation of this site as originally adopted by the City and which became subject to appeal for the Region’s non-decision. The Parties request that the Decision refer to a modification, which the Tribunal finds may not be required technically, but may assist in clarifying that the Region’s post-appeal endorsement of a different designation has no standing.

[6] The Appellant also appealed the City’s absence of decisions on its applications for Official Plan Amendment (“OPA”), Zoning By-law Amendment (“ZBA”) and Site Plan Approval (“SPA”) which continue to seek a higher height and density than being addressed by this settlement. The Parties agree that the resolution of the VOP appeal here will not prejudice the Appellant’s appeals of its site-specific applications being

heard separately from this VOP appeal.

[7] On the VOP, Mr. Marcucci advises that City Staff did not support the City's request, and the Region's endorsement, of a modification to this site's designation. Staff did recommend this site's designation as contained in the City-adopted VOP, and thus continues that position in support of this settlement. In terms of the City's sequence of decisions, this settlement constitutes a return to the site's designation as originally adopted.

[8] The site is located west of and close to the interchange of Provincial Highway 400 and Rutherford Road. This site of 1.13 hectares fronts onto Rutherford Road which, in this area, is designated as a Primary Intensification Corridor intended for mixed uses with higher building forms and supported by transit. The requested designation for this site will match the designation of abutting properties on both sides. The site's north limit abuts Hawkview Boulevard serving the low-rise residential neighbourhood to the north. The ample depth of this site will enable suitable transitions in building height in proximity to the low-rise area. Across Rutherford Road from the site are lands designated as Employment Commercial Mixed-Use permitting up to eight storeys in height, as generally settled but subject to a final Order of the Tribunal on an appeal in that area.

[9] The Tribunal accepts Mr. Marcucci's opinion that the requested modification represents good planning given that it satisfies all statutory tests. Designating this site as Mid-Rise Mixed-Use enables intensification suitable for the area, the efficient use of land, and support for public transit. Such designation will be approved on the finding that it has suitable regard to the provincial interests of s. 2 of the *Planning Act* ("Act"), is consistent with the Provincial Policy Statement, 2020, conforms with A Place to Grow, Growth Plan for the Greater Golden Horseshoe, 2020, and conforms with the Region Official Plan.

**ORDER**

[10] The Tribunal Orders, pursuant to s. 17(50) of the *Planning Act*, in respect of the City of Vaughan Official Plan (2010), as adopted by the City on September 7, 2010, subject to Council modifications on September 27, 2011, March 20, 2012 and April 17, 2012, and as modified and endorsed by the Regional Municipality of York on June 28, 2012, that:

- Appeal 16 is allowed in part;
- The Vaughan Official Plan is modified, and approved as modified, for the lands subject to Appeal 16 in accordance with Schedule A attached to and forming part of this Order; and
- In all other respects, Appeal 16 is dismissed.

*“S. Tousaw”*

S. TOUSAW  
MEMBER

**Ontario Land Tribunal**

Website: [olt.gov.on.ca](http://olt.gov.on.ca) Telephone: 416-212-6349 Toll Free: 1-866-448-2248

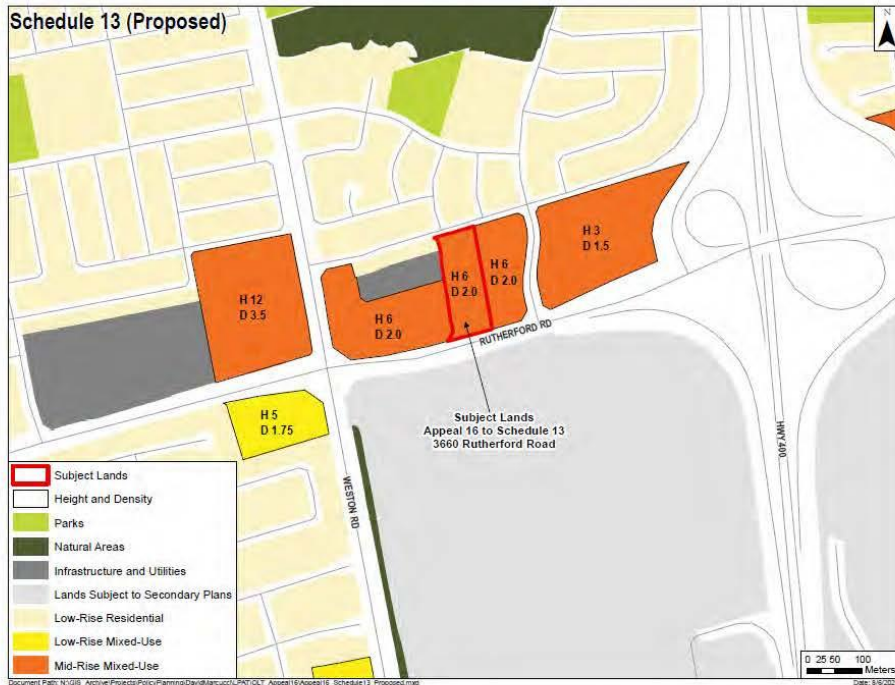
The Conservation Review Board, the Environmental Review Tribunal, the Local Planning Appeal Tribunal and the Mining and Lands Tribunal are amalgamated and continued as the Ontario Land Tribunal (“Tribunal”). Any reference to the preceding tribunals or the former Ontario Municipal Board is deemed to be a reference to the Tribunal.

Schedule "A"

**Modifications requested to VOP 2010 as they pertain to the  
Subject Lands 3660 Rutherford Road**

**1. Modification to Volume 1, Schedule 13**

Modify Volume 1, Schedule 13 to designate the Subject Lands , outlined in red in the below schedule, to Mid-Rise Mixed-Use with a maximum height of 6 storeys and a maximum floor space index of 2



LANDS SUBJECT TO PROPOSED MODIFICATIONS

LOCATION: PART OF LOT 16, CONCESSION  
 3660 RUTHERFORD ROAD  
 WEST RUTHERFORD PROPERTIES LTD  
 CITY OF VAUGHAN

**2. Other VOP 2010 policies and schedules**

OLT approval for VOP 2010 Volume 1 policies and schedules as they apply to the Subject Lands without modification