

Ontario Municipal Board
Commission des affaires municipales
de l'Ontario



ISSUE DATE: September 6, 2017

CASE NO.:

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 St 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)

BEFORE:

J. DE P. SEABORN)
VICE-CHAIR)
)
) Wednesday, the 6th
)
) day of September, 2017

THE BOARD ORDERS that at the request of the parties and with their consent, the Procedural Order governing the proceedings scheduled to commence on February 5, 2018 (Phase 1) and February 26, 2018 (Phase 2) is set out as Schedule A. The same Board Member will preside over both Phases of the hearing and the disposition in respect of Phase 1 shall be reserved until Phase 2 is completed.

A handwritten signature in black ink, reading "Ma Hurwicks". The signature is written in a cursive, flowing style.

SECRETARY

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

SCHEDULE A

PL111184

ONTARIO MUNICIPAL BOARD

IN THE MATTER OF subsection 17(40) of the *Planning Act*, R.S.O. 1990, c. P.13, as amended

Appellant: 1042710 Ontario Limited
Appellant: 1191621 Ontario Inc.
Appellant: 1529749 Ontario Inc.
Appellant: 1541677 Ontario Inc. and others
Subject: Failure of the Regional Municipality of York to announce a decision respecting the proposed new Official Plan for the City of Vaughan [Centre Street Corridor Policies]

Municipality: City of Vaughan
OMB Case No.: PL111184
OMB File No.: PL111184

PROCEDURAL ORDER- CENTRE ST CORRIDOR POLICIES

1. The Board may vary or add to these rules at any time, either on request or as it sees fit. It may alter this Order by an oral ruling, or by another written Order.

Organization of the Hearing

2. Phase 1 of the hearing will begin on **Monday, February 5, 2018** at 10 a.m., at the City of Vaughan Municipal Building, OMB Hearing Room, 2nd Floor, 2141 Major Mackenzie Drive, Vaughan, Ontario.
3. The length of Phase 1 of the hearing will be fifteen (15) days.
4. Phase 2 of the hearing will begin on **Monday, February 26, 2018** at 10 a.m., at the City of Vaughan Municipal Building, OMB Hearing Room, 2nd Floor, 2141 Major Mackenzie Drive, Vaughan, Ontario.
5. The length of Phase 2 of the hearing will be five (5) days.
6. The parties and participants to this proceeding are listed in **Attachment 1**.
7. The Issues are as set out in the Issues List attached as **Attachment 2**. Any party who intends to raise additional issues shall provide to the Board and to the parties their additional issues by **Tuesday October 9, 2017**. There will be no further additions to this list unless the Board permits, and a party who asks for changes may have costs awarded against it.

8. Any person intending to participate in the hearing should provide a telephone number to the Board as soon as possible. Any such person who will be retaining a representative should advise the other parties and the Board of the representative's name, address and phone number as soon as possible.

Requirements Before the Hearing

9. A party who intends to call witnesses, whether by summons or not, shall provide to the Board, the other parties and to the Clerk a list of the witnesses, their professional qualifications, their areas of expertise, completed Acknowledgement of Expert's Duty, the precise area and discipline in which they will seek to be qualified to provide expert testimony, and the intended order in which the witnesses will be called during the hearing. This information must be delivered on or before **Monday, December 18, 2017**. Any challenge by a Party to the qualifications or expertise of a witness must be filed with the Board with supporting reasons within 30 days.
10. An expert witness shall prepare an expert witness statement which shall list any reports prepared by the expert, or any other reports or documents to be relied on at the hearing. Copies of this must be provided as in section 13. Instead of a witness statement, the expert may file his or her entire report if it contains the required information. If this is not done, the Board may refuse to hear the expert's testimony. For greater certainty, each expert witness statement must comply with the minimum content requirements specified in Rule 21 of the Board's *Rules of Practice and Procedure*. If the expert witness has prepared any report(s) that he/she intends to rely on at the hearing, and which did not form part of the submissions made to the City such report(s) shall be provided to the other parties at the same time as the delivery of expert witness statements, as in section 13.
11. A participant must provide to the Board and the parties a participant statement consisting of a short written outline of the person's or group's background, experience and interest in the matter; a list of the issues which the participant will address and a short outline of the evidence on those issues; and a list of reports, if any which the participant will refer to at the hearing, on or before **Monday, January 8, 2018**, or the participant may not give oral evidence at the hearing.
12. Expert witnesses who are under summons but not paid to produce a report do not have to file an expert witness statement; but the party calling them must file a brief outline of the expert's evidence, as in section 13.
13. On or before **Friday, January 12, 2018**, the parties shall provide copies of their witness and expert witness statements to the other parties and to the Clerk.
14. On or before **Monday, January 22, 2018**, the parties shall provide any reply witness statements responding to any written evidence received to the other parties.

15. On or before **Monday, January 29, 2018**, the parties shall provide copies of their visual evidence to the other parties. If a model will be used, all parties must have a reasonable opportunity to view it before the hearing.
16. A person wishing to change written evidence, including witness statements, must make a written motion to the Board. Such a motion shall be in accordance with the Board's Rules 34 to 38, which require that the moving party provide copies of the motion to all other parties 10 days before the Board hears the motion.
17. A party who provides a witness' evidence to the other parties must have the witness attend the hearing to give oral evidence, unless the party notifies the Board at least 7 days before the hearing that the written evidence is not part of the record.
18. Documents may be delivered by e-mail, personal delivery, facsimile, courier or registered or certified mail or otherwise as the Board may direct. The delivery of documents by fax shall be governed by the Board's Rules [26 – 31] on this subject. Material delivered by mail shall be deemed to have been received five business days after the date of registration or certification.
19. The Board's file number PL111184 is to be clearly marked on all documents served by the parties or filed with the Board.
20. No adjournments or delays will be granted before or during the hearing except for serious hardship or illness. The Board's Rules 61 to 65 apply to such requests.
21. The order of evidence shall be in accordance with **Attachment 3**.
22. The purpose of the Procedural Order and the meaning of the terms used in the Procedural Order are set out in **Attachment 4**.

This Member is not seized

So orders the Board.

ATTACHMENT 1

LIST OF PARTIES

Appellant / Party	Appeal/ Party No.	Representative	Contact Information
City of Vaughan	-	Bruce Engell	WeirFoulds LLP Toronto Dominion Centre 66 Wellington Street West, Suite 4100 Toronto ON M5K 1B7 (t) (416) 947-5081 / (f) (416) 365-1876 bengell@weirfoulds.com
Arthur Fisch & 1096818 Ontario Inc.	61	Mark Flowers	Davies Howe LLP The Tenth Floor 425 Adelaide Street West Toronto ON M5V 3C1 (416) 263-4513 markf@davieshowe.com
Centre Street Properties Inc. & Vogue Investments Ltd.	78 & 79	Barry Horosko	Horosko Planning Law 300 North Queen Street Suite 101 Toronto ON M9C 5K4 (416) 551-8534 x 339 bhorosko@horoskoplanninglaw.com
RioCan Holdings Inc. (Centre Street Corridor)	82	Joel Farber	Fogler Rubinoff LLP 77 King Street West, Suite 3000 North Tower Toronto ON M5J 2Z9 (t) (416) 365-3707 jfarber@foglers.com
TDC Medical Properties Inc.	105	Stephen D'Agostino	Thomson Rogers 390 Bay Street Suite 3100 Toronto, ON M5H 1W2 (416) 868-3126 sdagostino@thomsonrogers.com

Appellant / Party	Appeal/ Party No.	Representative	Contact Information
Regional Municipality of York	A	Pitman Patterson / Bola Ogunmefun	Borden Ladner Gervais Scotia Plaza 40 King Street West Toronto, ON M5H 3Y4 (t) (416) 367-6109 / (f) (416) 361-2459 ppatterson@blg.com The Regional Municipality of York Legal & Court Services Department 17250 Yonge Street, 4 th Floor Newmarket, ON L3Y 6Z1 (t) 1(877) 464-9675 / (f) (905) 895-3768 bola.ogunmefun@york.ca

ATTACHMENT 2

ISSUES LIST

1. Height and Density

- a. Are the heights and densities in the proposed designations appropriate?
- b. Are the boundaries of the designations appropriate?
- c. How should the density be calculated (gross or net land area)?
- d. Would density transfer policies be appropriate?

2. Urban Design

- a. Is the amount of parkland appropriate?
- b. Is the location, size and configuration of parks appropriate?
- c. Is the landscape buffer appropriate?
- d. Is the rear yard setback appropriate?
- e. Is the minimum frontage requirement appropriate?
- f. Is the minimum floor to ceiling height requirement too prescriptive?
- g. Are office uses appropriate for the ground floor?
- h. Should interim uses and development be permitted?
- i. Are the urban design policies too prescriptive?

3. Road Network

- a. Is the proposed road network appropriate?
- b. Are all segments of the proposed network required?
- c. Is the alignment and location of the roads in the network appropriate?
- d. Is the proposed rear laneway with easements appropriate?

ATTACHMENT 3
ORDER OF EVIDENCE

City of Vaughan – non-opinion overview evidence for Phase 1 and Phase 2

Phase 1:

1. City of Vaughan
2. Region of York and other parties in support
3. Appellants 78 & 79, 82 and 105
4. City of Vaughan reply, if any

Phase 2:

5. City of Vaughan
6. York Region and other parties in support
7. Appellant 61
8. City of Vaughan reply, if any

ATTACHMENT 4

Purpose of the Procedural Order and Meaning of Terms

The Board recommends that the parties **meet to discuss this sample Order before the prehearing conference** to try to identify the issues and the process that they want the Board to order following the conference. The Board will hear the parties' comments about the contents of the Order at the conference.

Prehearing conferences usually take place only where the hearing is expected to be long and complicated. If you are not represented by a lawyer, you should prepare by obtaining the Guide to the Ontario Municipal Board, and the Board's Rules, from the Board Information Office, 15th Floor, 655 Bay Street, Toronto, M5G 1E5, 416-326-6800, or from the Board website at www.omb.gov.on.ca.

Meaning of terms used in the Procedural Order

Party is an individual or corporation permitted by the Board to participate fully in the hearing by receiving copies of written evidence, presenting witnesses, cross-examining the witnesses of the other parties, and making submissions on all of the evidence. If an **unincorporated group** wishes to become a party, it must appoint one person to speak for it, and that person must accept the other responsibilities of a party as set out in the Order. Parties do not have to be represented by a lawyer, and may have an agent speak for them. The agent must have written authorisation from the party. **NOTE** that a person who wishes to become a party before or at the hearing, and who did not request this at the prehearing conference, must ask the Board to permit this.

Participant is an individual, group or corporation, whether represented by a lawyer or not, who may attend only part of the proceeding but who makes a statement to the Board on all or some of the issues in the hearing. Such persons may also be identified at the start of the hearing. The Board will set the time for hearing these statements. **NOTE** that such persons will likely not receive notice of a mediation or conference calls on procedural issues. They also cannot ask for costs, or review of a decision as parties can. If a participant does not attend the hearing and only files a written statement, the Board will not give it the same attention or weight as submissions made orally. The reason is that parties cannot ask further questions of a person if they merely file material and do not attend.

Written and Visual Evidence: **Written evidence** includes all written material, reports, studies, documents, letters and witness statements which a party or participant intends to present as evidence at the hearing. These must have pages numbered consecutively throughout the entire document, even if there are tabs or dividers in the material. **Visual evidence** includes photographs, maps, videos, models, and overlays which a party or participant intends to present as evidence at the hearing.

Witness Statements: A **witness statement** is a short written outline of the person's background, experience and interest in the matter; a list of the issues which he or she will discuss and the witness' opinions on those issues; and a list of reports that the witness will rely on at the hearing. An **expert witness statement** should include his or her (1) name and address, (2) qualifications, (3) a list of the issues he or she will address, (4) the witness' opinions on those issues and the complete reasons for the

opinions and (5) a list of reports that the witness will rely on at the hearing. A **participant statement** is a short written outline of the person's or group's background, experience and interest in the matter; a list of the issues which the participant will address and a short outline of the evidence on those issues; and a list of reports, if any, which the participant will refer to at the hearing.

Additional Information

Summons: A party must ask a Board Member or the senior staff of the Board to issue a summons. This request must be made before the time that the list of witnesses is provided to the Board and the parties. (See Rules 45 and 46 on the summons procedure.) If the Board requests it, an affidavit must be provided indicating how the witness' evidence is relevant to the hearing. If the Board is not satisfied from the affidavit, it will require that a motion be heard to decide whether the witness should be summoned.

The order of examination of witnesses: is usually direct examination, cross-examination and re-examination in the following way:

- direct examination by the party presenting the witness;
- direct examination by any party of similar interest, in the manner determined by the Board;
- cross-examination by parties of opposite interest;
- re-examination by the party presenting the witness; or
- another order of examination mutually agreed among the parties or directed by the Board.