

Local Planning Appeal Tribunal
Tribunal d'appel de l'aménagement
local



ISSUE DATE: October 03, 2018

CASE NO(S):

PL140839
PL111184

The Ontario Municipal Board (the “OMB”) is continued under the name Local Planning Appeal Tribunal (the “Tribunal”), and any reference to the Ontario Municipal Board or Board in any publication of the Tribunal is deemed to be a reference to the Tribunal.

PROCEEDING COMMENCED UNDER subsection 17(36) of the *Planning Act*, R.S.O. 1990, c. P.13, as amended

Appellants (jointly):	Casertano Developments Corporation and Sandra Mammone
Appellants (jointly):	Limestone Gallery Investments Inc. and Damara Investment Corp.
Appellants (jointly):	Granite Real Estate Investment Trust and Magna International Inc.
Appellants (jointly):	H & L Title Inc. and Ledbury Investments Ltd.
Appellant:	Canadian National Railway
Appellant:	Rutherford Land Development Corporation
Appellant:	281187 Ontario Ltd.
Appellant:	Anland Developments Inc.
Subject:	Proposed Official Plan Amendment No. 2 to the Official Plan for the City of Vaughan (2010)
Municipality:	City of Vaughan
OMB Case No.:	PL140839
OMB File No.:	PL140839
OMB Case Name:	Mammone v. Vaughan (City)

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 Official Plan Amendment No. New Official Plan

Municipality: City of Vaughan
 OMB Case No.: PL111184
 OMB File No.: PL111184
 OMB Case Name: Duca v. Vaughan (City)

Heard: January 25 and 26, 2018 in Vaughan, Ontario
 and on February 12, 2018 by Telephone
 Conference Call

APPEARANCES:

Parties

Counsel*/Representative

City of Vaughan

R. Coburn*, C. Storto*

Dulcina Investments Inc. (formerly
 Casetano Development Corporation),
 and Sandra Mammone

M. Flynn-Guglietti*, A. Forristal*

Tesmar Holdings Inc.

M. McDermid*

Rutherford Land Development
 Corporation

Q. Annabale*, B. Ruddick*

Granite Real Estate Inc. and Magna
 International Inc.

A. Skinner*

Anland Developments Inc.

C. Barnett*

281187 Ontario Limited

G. Borean*

Regional Municipality of York

B. Ogunmefun*

Canadian National Railway

A. Heisey*

H & L Title and Ledbury Investments
 Ltd.

M. Flowers*

Ivanhoe Cambridge II Inc.

J. Alati*, M. Keating*

York Region District School Board

J. Easto*

York Catholic District School Board

T. McRae*

Toronto and Region Conservation
Authority

T. Duncan*, C. Bonner

DECISION DELIVERED BY C. CONTI AND ORDER OF THE TRIBUNAL

INTRODUCTION

[1] This is the decision resulting from a Pre-hearing Conference (“PHC”) and a Telephone Conference Call (“TCC”) before the Ontario Municipal Board (“Board”), now the Local Planning Appeal Tribunal (“Tribunal”), with regard to appeals related to the City of Vaughan (“City”) Official Plan and the Vaughan Mills Secondary Plan (“Secondary Plan”) by H & L Title and Ledbury Investments Ltd., Anland Developments Inc. and 281187 Ontario Limited (“Appellants”) for lands owned by the Appellants on the west side of Hwy. 400.

[2] The Secondary Plan sets out proposed land use designations and policies for an area generally bounded by Rutherford Road to the north and Bass Pro Mills Drive to the south, generally extending to Jane Street to the east and Weston Road to the west. An area to the east of Jane Street and south of Rutherford Road is also included in the Secondary Plan area.

[3] This Decision deals with the appeals for the Appellants’ lands. The Board heard that the Appellants are seeking a Mixed Use designation for their lands which would permit some residential development. The City’s Official Plan and the Secondary Plan designate the lands for employment uses.

[4] It should be noted that of the above appearances, the TCC was attended only by Ms. Ogunmefun, Mr. Coburn, Mr. Easto, Mr. Duncan, Ms. Bonner, Mr. McRae, Ms. Keating, Mr. Barnett and Mr. Flowers. Also, Ms. Keating, Mr. Duncan and Mr. McRae only attended the TCC and did not attend the PHC.

[5] Mr. Flowers indicated that the parties have agreed that it is appropriate to

proceed with phase 1 of the hearing of the appeals which would deal with the principal of development of the lands. He filed a draft Procedural Order (“PO”) and Issues List (“IL”) at the PHC. A revised PO including an IL which had the consent of the parties was submitted prior to the TCC. The parties requested that a 20 day hearing be scheduled for the phase 1 hearing of these appeals.

[6] Mr. McRae indicated that he was only monitoring the proceeding on behalf of the York Catholic District School Board and that it would not be participating in the phase 1 hearing of these appeals. Ms. Keating also indicated that Ivanhoe Cambridge II Inc. was not expected to participate in the phase 1 hearing.

[7] After hearing from the parties the Board scheduled a four week hearing commencing on **April 1, 2019 at 10:00 a.m.** to be held at:

**Vaughan City Hall
2141 Major Mackenzie Drive
Vaughan, Ontario**

[8] Subsequent to the TCC the Tribunal received a final PO. The Tribunal has amended the PO to reflect the transition from the OMB to LPAT. The Tribunal adopts the PO and IL included with this decision as Attachment 1.

[9] The Member is not seized.

[10] No further notice is required.

[11] The above is the direction and order of the Tribunal.

"C. Conti"

C. CONTI
VICE-CHAIR

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

Local Planning Appeal Tribunal

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

LOCAL PLANNING APPEAL TRIBUNAL

PROCEEDING COMMENCED UNDER subsection 17(36) of the *Planning Act*, R.S.O. 1990, c. P. 13, as amended

Appellants (jointly): Casertano Developments Corporation and Sandra Mammone
Appellants (jointly): Limestone Gallery Investments Inc. and Damara Investment Corp.
Appellants (jointly): Granite Real Estate Investment Trust and Magna International Inc.
Appellants (jointly): H & L Title Inc. and Ledbury Investments Ltd.
Appellant: Canadian National Railway
Appellant: Rutherford Land Development Corporation
Appellant: 281187 Ontario Ltd.
Appellant: Anland Developments Inc.
Subject: Proposed Official Plan Amendment No. 2 to the Official Plan for the City of Vaughan (2010)
Municipality: City of Vaughan
OMB Case No.: PL140839
OMB File No.: PL140839

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

Appellant: 1042710 Ontario Limited (aka Royal Centre)
Appellant: 1191621 Ontario Inc.
Appellant: 1529749 Ontario Inc.
Appellant: 1541677 Ontario Inc; and others
Subject: Failure to announce a decision respecting proposed New Official Plan of the Regional Municipality of York for the City of Vaughan
Municipality: City of Vaughan
OMB Case No.: PL111184
OMB File No.: PL111184

PROCEDURAL ORDER

**PHASE 1 HEARING OF APPEALS FOR LANDS WITHIN THE
VAUGHAN MILLS CENTRE SECONDARY PLAN WEST OF HIGHWAY 400**

The Tribunal 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

1. The hearing of the consolidated appeals by (i) 281187 Ontario Ltd., (ii) Anland Developments Inc., and (iii) H & L Title Inc. and Ledbury Investments Ltd., of the Vaughan Official Plan (2010) (“VOP 2010”) and the Vaughan Mills Centre Secondary Plan (“VMCSP”) will be phased. This Procedural Order governs the first phase of the hearing of the appeals (“Phase 1”). A Procedural Order for one or more subsequent phase(s) will be determined after the completion of Phase 1.
2. The Phase 1 hearing will begin on **Monday, April 1, 2019 at 10:00 a.m.** at Vaughan City Hall, 2141 Major Mackenzie Drive, Vaughan, Ontario. No further notice shall be required.
3. The length of the Phase 1 hearing will be approximately **four (4) weeks**.
4. The parties and participants (see Attachment 1 for the meaning of these terms) for the Phase 1 hearing identified at the prehearing conference are listed in Attachment 2 to this Order. The order of evidence for the Phase 1 hearing is listed in Attachment 3 to this Order.
5. The issues for the Phase 1 hearing are set out in the Issues List attached as Attachment 4 to this Order. There will be no changes to this List unless the Tribunal permits, and a party who asks for changes may have costs awarded against it.
6. Any person intending to participate in the Phase 1 hearing should provide a telephone number, address and email address to the Tribunal as soon as possible. Any such person who will be retaining a representative should advise the other parties and the Tribunal of the representative’s name, telephone number, address and email address as soon as possible.

Requirements Before the Hearing

7. Unless the parties agree otherwise, expert witnesses in the same discipline shall have at least one meeting prior to the commencement of the hearing to try to resolve or reduce the issues for the hearing. The experts shall prepare a list of any agreed facts and provide this list to all of the parties and the Tribunal.
8. A party who intends to call witnesses, whether by summons or not, shall provide to the Tribunal and the other parties a list of the witnesses and the order in which they are intended to be called. This list must be delivered on or before **Monday, January 14, 2019**. For expert witnesses, the party shall identify the discipline(s) in which they will be seeking to qualify the witness in the witness list.

9. 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 12. 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 Tribunal 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*. In addition, each expert witness shall execute an Acknowledgement of Expert's Duty and shall append the executed Acknowledgement to his/her witness statement.
10. A participant shall provide to the Tribunal and the parties a participant statement on or before **Monday, February 4, 2019**. For greater certainty, participant statements are to include the information identified in Attachment 1 to this Order.
11. Witnesses who are under summons but not paid to produce a report do not have to file a witness statement; but the party calling them must file an outline of the witness' anticipated evidence, as in section 12.
12. On or before **Monday, February 4, 2019**, the parties shall provide copies of their witness and expert witness statements to the other parties. The parties shall also deliver hard copies of their witness and expert witness statements to the Tribunal, if requested.
13. On or before **Monday, March 4, 2019**, the parties may provide to all other parties a reply to any written evidence. The parties shall also deliver hard copies of any reply witness statements to the Tribunal, if requested.
14. On or before **Monday, March 18, 2019**, the parties and participants shall provide copies of their visual evidence to all parties or, alternatively, shall arrange for a viewing of visual evidence that cannot reasonably be transmitted.
15. A person wishing to change written evidence, including witness statements, must make a written motion to the Tribunal (see Rule 10 of the Tribunal's Rules, which require that the moving party provide copies of the motion to all other parties at least ten (15) days before the Tribunal hears the motion).
16. A party who provides a witness' written evidence to the other parties must have the witness attend the hearing to give oral evidence, unless the party notifies the other parties and the Tribunal at least seven (7) days before the hearing that the written evidence is not part of their record.
17. Documents may be delivered by personal delivery, e-mail, facsimile, courier, registered or certified mail, or otherwise as the Tribunal may direct. For documents delivered by e-mail, a hard copy shall also be delivered in the event that the recipient party requests a hard copy. Material delivered by mail shall be deemed to have been received five business days after the date of registration or certification.

18. No adjournments or delays will be granted before or during the hearing except for serious hardship or illness and Rules 61 to 65 apply to such requests.

**This Member is not seized.
So orders the Tribunal .**

Attachment 1

PURPOSE OF THE PROCEDURAL ORDER AND MEANING OF TERMS

Meaning of terms used in the Procedural Order:

Party is an individual or corporation permitted by the Tribunal 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 authorization 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 Tribunal 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 Tribunal on all or some of the issues in the hearing. Such persons may also be identified at the start of the hearing. The Tribunal 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 Tribunal 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 Tribunal Member or the senior staff of the Tribunal to issue a summons. This request must be made before the time that the list of witnesses is provided to the Tribunal and the parties (see Rule 13 on the summons procedure.) If the Tribunal requests it, an affidavit must be provided indicating how the witness' evidence is relevant to the hearing. If the Tribunal 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 Tribunal ;
- 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 Tribunal.

Attachment 2

LIST OF PARTIES/PARTICIPANTS

PARTIES

1. 281187 Ontario Ltd.

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2. Anland Developments Inc.

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3. H & L Title Inc. and Ledbury Investments Ltd.

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4. **City of Vaughan**

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5. **Regional Municipality of York**

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6. York Region District School Board

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7. Toronto and Region Conservation Authority

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PARTICIPANTS

Attachment 3

ORDER OF EVIDENCE

1. 281187 Ontario Ltd., Anland Developments Inc., and H & L Title Inc. and Ledbury Investments Ltd.
2. City of Vaughan
3. Regional Municipality of York
4. York Region District School Board
5. Toronto and Region Conservation Authority
6. Reply, if any, by 281187 Ontario Ltd., Anland Developments Inc., and H & L Title Inc. and Ledbury Investments Ltd.

Note: The hearing panel will determine the timing for the evidence of participants

Attachment 4

ISSUES LIST

Issues of 281187 Ontario Ltd., Anland Developments Inc., and H & L Title Inc. and Ledbury Investments Ltd.

1. Should the lands within the Vaughan Mills Centre Secondary Plan (“VMCSP”) that are west of Highway 400 (the “Western Lands”) be designated solely for employment uses (i.e. as General Employment and Prestige Employment in the Vaughan Official Plan 2010 (“VOP 2010”)) and be referred to as the Vaughan Mills Centre Business District in the VMCSP? Alternatively, should the Western Lands be designated for a mix of uses, including both employment and non-employment (including residential) uses?
2. Are the proposed land use designations and the related policies for permitted uses on the Western Lands appropriate?
3. Should the Western Lands be identified as being within a Primary Centre within the City’s urban structure and be identified as an appropriate location for intensification?
4. Are the proposed job projections for the Western Lands (and, likewise, the totals for the VMCSP) reasonable, attainable, and appropriate?
5. Does the proposed job forecast in the VMCSP for the Vaughan Mills Centre Business District conflict with the policies in sections 5.1 and 5.2 of the VOP 2010?

Issue of City of Vaughan and Region of York

6. Whether the permission for non-employment uses on a portion of the Western Lands as proposed by the Appellants is consistent with the PPS, and conforms to the applicable provincial plans, regional and local official plan instruments?

Note: The identification of an issue on this list does not mean that all parties agree that such an issue, or the manner in which it is expressed, is appropriate or relevant for the proper determination of the appeals. The extent of the appropriateness and/or relevance of the issue may be a matter of evidence and/or argument at the hearing.