

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



ISSUE DATE: December 28, 2018

CASE NO(S): 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(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)

Heard: November 30, 2018 in Vaughan, Ontario

APPEARANCES:

Parties

Counsel

City of Vaughan

Bruce Engell and Effie Lidakis

Region of York

Pitman Patterson

Solmar Inc.

Meaghan McDermid

Canadian National Railway
Company

A. Milliken Heisey

2443390 Ontario Ltd. and 1034933 Ontario Ltd.	Gerard Borean
Luigi Brothers Paving Company Ltd.	Gerard Borean
Rutherford Land Development Corp.	Quinto Annibale and Ryan Wilson (student-at-law)
785343 Ontario Ltd. and I & M Pandolfo Holdings	Quinto Annibale and Ryan Wilson (student-at-law)
Antonio Di Benedetto	Self-represented

**MEMORANDUM OF ORAL DECISION DELIVERED BY GERALD S. SWINKIN ON
NOVEMBER 30, 2018**

INTRODUCTION

[1] This Pre-hearing Conference (“PHC”) was conducted in the ongoing management of the many appeals with respect to the Vaughan Official Plan 2010 (“VOP 2010”).

[2] There were essentially three matters dealt with at this hearing session: 1) a formal withdrawal of Appeal 128, 2) a Motion for Partial Approval with respect to Appeals 91 and 120, and 3) a Motion for Partial Approval with respect to Appeal 3 (Solmar Inc.).

Withdrawal of Appeal 128

[3] With respect to the first item, Gerard Borean, counsel to Luigi Brothers Paving Ltd. advised that his client’s appeal, being Appeal 128, was being withdrawn and that he wished that to be recorded in the disposition of the session today before the Local Planning Appeal Tribunal (the “Tribunal”).

[4] Consequent upon that withdrawal by Mr. Borean, Bruce Engell, counsel for the City of Vaughan (the “City”), requested that, with the appeals against the same now having been resolved, the Tribunal order that Policies 4.3.1, 4.3.7 and 4.3.8 in the Street Network section of the Vaughan Metropolitan Centre Secondary Plan be approved and declared in effect (saving aside one site-specific appeal with respect to Policy 4.3.1). The Tribunal so Orders.

The 2443390 Ontario Ltd. and 1034933 Ontario Ltd. Settlement Motion

[5] The second matter before the Tribunal was a motion for partial approval filed by 2443390 Ontario Limited and 1034933 Ontario Limited (the “Moving Parties”). This relates to Appeals 91 and 120. The Moving Parties’ lands are two parcels municipally known as 126A Peelar Road and 126-146 Peelar Road. The lands comprise approximately one hectare, lying on the north side of Peelar Road between Jane Street and Creditstone Road. The lands abut the Black Creek.

[6] The lands of the Moving Parties will be affected by the outcome of the Black Creek Renewal Environmental Assessment (“Black Creek Renewal EA”).

[7] The Moving Parties entered into discussions with the City, which has led to a settlement of the appeal. This will result in the introduction of Policy 9.3.7 into the Vaughan Metropolitan Centre Secondary Plan (“VMCSP”), which has the effect of identifying an Area E on Schedule K concerning the automatic redesignation of certain lands presently designated as parkland if they are not required for parkland. The new policy also deals with the matter of determining the location of the north-south street shown on the Schedules to the VMCSP once the Black Creek Renewal EA has been completed.

[8] The Motion was supported by the affidavit of Kurt Franklin, a Registered Professional Planner, who asserted that the proposed modifications would be consistent with the Provincial Policy Statement 2014, conform with the Growth Plan for the Greater

Golden Horseshoe 2017 and conform with the Region of York Official Plan, and that they represented good planning.

[9] The Motion was supported by a Notice of Response filed by the City, supported by the affidavit of David Marcucci, a senior staff planner at the City.

[10] There were no notices of response opposed and no counsel present expressed opposition to the requested modifications.

[11] On the strength of the filings and submissions of counsel, the Tribunal allowed the Motion regarding the requested modifications.

[12] Counsel advised that a draft Order to implement that decision would be submitted to the Case Coordinator at the Tribunal, following which the formal Order to implement this decision of the Tribunal can issue.

The Solmar Motion

[13] The final matter before the Tribunal was the Solmar Motion. Counsel for Solmar had filed the original Notice of Motion, which was originally returnable at the PHC on October 17, 2018, but was deferred to this session. This Notice relates to the lands of Solmar municipally known as 9291 Jane Street, which are north of Rutherford Road on the east side of Jane Street (the "Solmar Lands").

[14] The Solmar Motion seeks modification to the Land Use Schedule of the VOP 2010 and the identification of a new Site Specific Policy Area to Section 13 of the VOP 2010 with a host of policies introduced to govern development of the Solmar Lands for High Rise Residential purposes.

[15] The Solmar Lands are part of an original parcel owned by Solmar, the southern portion of which is now developed with four high-rise residential buildings. The Solmar

Lands are also adjoined by land with commercial and office uses. But most significantly, to the north of the Solmar Lands is what is referred to as “the Pullback Track” of the Canadian National Railway Company (“CN”) MacMillan Rail Yard.

[16] In response to the Solmar Motion, a Notice of Response was filed by the City consenting to the motion.

[17] Counsel for the Region served a memorandum indicating that the Region consents to and supports the modifications being sought by Solmar (which had undergone further modification just prior to the PHC), subject to the Tribunal being requested to withhold any final Order on the modifications until advised by the Region that certain updates to a traffic report had been completed to the satisfaction of the Region.

[18] A Notice of Response was filed by Rutherford Land Development Corporation opposed to the Solmar Motion. At the PHC, Quinto Annibale, counsel to this respondent, indicated that following certain discussions, his client was satisfied that there was intended to be in place, by way of the Solmar modifications, sufficient controls regarding traffic capacity so as to not prejudice the development potential of the Rutherford lands and, on this basis, the opposition to the Solmar Motion was withdrawn.

[19] A Notice of Response was filed on behalf of CN. CN was opposed to the Solmar Motion. The CN Notice of Response raised a variety of issues of concern to CN and which put in question the consistency and conformity of the proposed modifications with Provincial policy and guidelines as well as policy at the Regional and local level. It was the position of CN that this Motion was essentially an abuse of the appeal process in this instance as Solmar was effectively seeking a site specific amendment that was not at all related to the planning for the site which was earlier determined through OPA 626 as previously approved by the Ontario Municipal Board and was therefore without the usual scrutiny of a site specific private amendment application.

[20] By reason of the position of CN as set out in their Notice of Response, Solmar served and filed a Reply Motion Record (which was only made available to this Member at the PHC session), which spawned a somewhat unorthodox Supplementary Responding Motion Record by CN, dated November 29, 2018 (also only available to this Member at the PHC session).

[21] What the Tribunal gleaned from the filed material is that on a site-specific application for official plan amendment, and after consideration by the Ontario Municipal Board and issuance of its Order in 2004, OPA 626 was approved for the then broader Solmar parcel and designated the lands High Density Residential/Commercial. The policies of OPA 626 however, restricted use of the lands within 150 metres of the CN Pullback Track to non-residential.

[22] In the course of the VOP 2010 process, the Solmar Lands were originally designated High Density Residential but, at the request of Solmar, that designation was changed by the City to Commercial Mixed Use. The Region endorsed a modified version of that as Community Commercial Mixed Use.

[23] In the meantime, Solmar again communicated with the municipalities and indicated that it had a change of view and wished to withdraw the request for the commercial designation and to go back to the High Density Residential designation alone.

[24] Ms. McDermid attempted to suggest that the only formal designation of the Solmar Lands was that adopted at the time of the adoption of VOP 2010 in 2010 and that the subsequent steps by the municipalities were not by by-law and therefore were not to be treated as altering the designation of High Density Residential.

[25] However, the modifications proposed by Solmar to be authorized by the Tribunal in the Notice of Motion lead off with a change to the Land Use Plan of the VOP 2010 to designate the Solmar Lands as High Density Residential. The proposed modifications

would also introduce a very significant entitlement to bonus density and there are an extensive array of provisions to deal with noise impact from the CN Pullback Track, virtually all of which are to the satisfaction of the City without reference to the satisfaction of CN.

[26] The Notice of Response by CN was very clear that CN had substantial issues with the prospect of sensitive uses being introduced onto the Solmar Lands and that they had not been consulted on the proposal in any meaningful way.

[27] At a PHC, the Tribunal may indeed entertain motions to address settlements and make orders consequent thereon. This authority is laid out in Rule 12.01 of the Tribunal's *Rules of Practice and Procedure* (the "Rule"). The Rule comes into play when the parties in the proceeding agree to a settlement. CN does have party status in this proceeding and they have a material interest in the matter. They clearly were not in agreement with the settlement amongst Solmar, the City and the Region.

[28] However, Rule 12.01 goes further and indicates that the Tribunal must ascertain that all statutory requirements have been satisfied and that the Tribunal also determines that the public interest has been satisfied before it may approve the settlement and issue any order to implement it.

[29] In this instance, in light of the matters raised in the filed materials and being mindful of the position of the parties, the Tribunal finds itself unable at this juncture, strictly on the basis of the filed materials, to conclude that the public interest would be satisfied by the proposed settlement and requested modifications.

[30] On this basis, the Tribunal dismissed the Solmar motion. Prior to taking that step, the Tribunal did canvas with the Parties whether there may be a prospect of further discussion and potential settlement of the issues leading to a consensus resolution. The upshot of that discussion was not optimistic of such a resolution and

accordingly, rather than defer disposition of the motion to a later date, the Tribunal dismissed the motion.

March 6, 2019 PHC

[31] In accordance with prior scheduling, there will be a further PHC regarding VOP 2010 and VMCSP matters on **Wednesday, March 6, 2019 at 10 a.m.** at the

**Vaughan Municipal Building
Multi-purpose Room
2141 Major Mackenzie Drive
Vaughan, Ontario**

[32] Mr. Engell undertook to circulate an agenda to all Parties in advance of that hearing session itemizing matters to be addressed and to forward a copy of the agenda to the Case Coordinator at the Tribunal.

[33] The Tribunal expects an update on the status of the Black Creek Renewal EA.

[34] Mr. Engell did indicate that he intends to address the management of appeals within the VMCSP that relate to parkland now that the Supreme Court of Canada has dismissed the leave application with respect to the Ontario Court of Appeal decision in *Richmond Hill (Town) v. Elginbay Corporation, 2018 CarswellOnt 1643, 2018 ONCA 72*.

[35] It was also indicated upon dismissal of the Solmar Motion that since this appears to require a full hearing on the merits of that appeal, the Parties may wish to speak to the scheduling of such a hearing at the March 6th PHC. In accordance with Tribunal practice, that scheduling will not take place in the absence of a settled Procedural Order with complete Issues List. And although the discussion of scheduling such a hearing was raised at this PHC, consideration should be given to the overall management of the appeals in the VOP 2010 and VMCSP proceeding and whether that scheduling may nonetheless be premature in light of a fair and appropriate sequencing of hearings in this case.

[36] There will be no further notice of the March 6th PHC.

[37] This Member will remain seized of case management matters in this case.

“Gerald S. Swinkin”

GERALD S. SWINKIN
MEMBER

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Local Planning Appeal Tribunal

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