

Clause 4 in Report No. 11 of Committee of the Whole was adopted, without amendment, by the Council of The Regional Municipality of York at its meeting held on June 29, 2017.

4

Referral Request to the Ontario Municipal Board,
Town of East Gwillimbury

Committee of the Whole recommends:

1. Receipt of the communication from Michael Melling, Davies Howe Partners dated April 12, 2017 and June 22, 2017.
2. Adoption of the following recommendations contained in the report dated June 9, 2017 from Commissioner of Corporate Services and Chief Planner:
 1. The referral request by 669276 Ontario Limited and 651965 Ontario Limited for proposed Official Plan Amendment No. 76 to the Town of East Gwillimbury Official Plan be refused.
 2. The referral request by 669276 Ontario Limited and 651965 Ontario Limited for proposed draft plan of subdivision, file 19T-90068, in the Town of East Gwillimbury be refused.
 3. The Regional Solicitor be delegated the authority to respond to and defend any challenge to Regional Council's decision on the referral requests, in consultation with the Chief Planner.
 4. The Regional Clerk circulate a copy of this report to the Clerk of the Town of East Gwillimbury, and 669276 Ontario Limited and 651965 Ontario Limited.

Report dated June 9, 2017 from the Commissioner of Corporate Services and Chief Planner now follows:

1. Recommendations

It is recommended that:

1. The referral request by 669276 Ontario Limited and 651965 Ontario Limited for proposed Official Plan Amendment No. 76 to the Town of East Gwillimbury Official Plan be refused.
2. The referral request by 669276 Ontario Limited and 651965 Ontario Limited for proposed draft plan of subdivision, file 19T-90068, in the Town of East Gwillimbury be refused.
3. The Regional Solicitor be delegated the authority to respond to and defend any challenge to Regional Council's decision on the referral requests, in consultation with the Chief Planner.
4. The Regional Clerk circulate a copy of this report to the Clerk of the Town of East Gwillimbury, and 669276 Ontario Limited and 651965 Ontario Limited.

2. Purpose

This report addresses requests by 669276 Ontario Limited and 651965 Ontario Limited for referral to the Ontario Municipal Board (OMB) of an Official Plan Amendment (OPA), adopted by the Town of East Gwillimbury in 1990, and an application for approval of a draft plan of subdivision submitted to the Region in 1990. The applications proposed estate residential development on lands now designated Natural Core in the Oak Ridges Moraine Conservation Plan. The requests are being recommended for refusal for reasons set out in this report.

3. Background and Previous Council Direction

The subject property is located in rural East Gwillimbury on the Oak Ridges Moraine

The lands subject to the referral requests are 71.3 hectares in size and are located at the northwest corner of McCowan Road and Davis Drive (Attachment 1), both Regional roads. The lands are undeveloped and hilly with extensive tree cover comprised of coniferous plantations and a deciduous woodlot. Mount Albert Creek, a tributary to Lake Simcoe, runs along the northerly and westerly boundaries of the property. A wetland pocket is located in the northeastern corner of the property. A CN Rail line abuts the lands to the west and north. York

Regional Forest (Bendor and Graves Tract), an equestrian facility, and four single family dwellings are adjacent to the lands.

Applications for a proposed estate residential development were initiated in 1989 when the Minister was responsible for approving official plans

OPA and Zoning Bylaw Amendment (ZBA) applications were made to the Town of East Gwillimbury in 1989, proposing an estate residential development consisting of 73 estate residential lots on individual private services and a commercial block. The proposal was subsequently revised to remove the commercial use and one residential lot (Attachment 2). The related subdivision application was submitted to the Region in 1990.

The Town of East Gwillimbury Rural Area Plan (OPA 21) under the Town's Official Plan (1971) was the in-force official plan in 1989 designating the lands "Development Control Area" and "Aquifer and Recharge Area". The OPA application for the proposed 72 lot estate residential subdivision sought to re-designate portions of the lands to "Estate Residential Special", "Environmental Control Area: Development Control Area Special A", and "Environmental Protection Area: Development Control Area B".

The Town adopted OPA 76 in August 1990 and forwarded the proposed amendment to the Ministry of Municipal Affairs (MMA) for approval. Until March 27, 1995, the Minister of Municipal Affairs (Minister) was responsible for the approval of all official plans and amendments. The *Planning Act* in force until March 27, 1995 (1983 *Planning Act*) did not provide for appeals of decisions by the Minister on official plans or for appeals of non-decisions on proposed official plan amendments adopted by municipalities. The provisions of the 1983 *Planning Act* provided the Minister with criteria for considering requests to refer official plans or OPAs to the OMB.

A chronology of the applications and changes to the planning policy framework is outlined in Attachment 3.

York Region staff and other commenting agencies had concerns with the proposed 72 lot estate residential development

In 1992, York Region and other commenting agencies, including the Ministry of Natural Resources (MNR), did not support the OPA application because the development was proposed outside the Settlement Area, on the Oak Ridges Moraine, within a significant natural area (hardwood woodlot), and in an area containing hazard lands (floodplain). A technical report dated March 3, 1992 recommended that MMA be advised that York Region does not support OPA 76. At the request of the applicant, the Regional Planning Committee deferred

consideration of the report to allow the applicant the opportunity to address staff concerns.

In 1995, Regional Council advised the Province that the Official Plan Amendment for 33 lots generally conformed to the Regional Official Plan but the Province still had outstanding issues

East Gwillimbury Council adopted a resolution in August 1993 requesting that the Minister modify OPA 76 to reflect a revised subdivision concept consisting of 33 lots (Attachment 4). This resulted from agency comments and the Province's request for the Town to prepare municipal-wide needs analysis of estate lots proposed within the Oak Ridges Moraine area. The revised OPA 76 was circulated to review agencies for comment. MNR requested additional information from the applicant to justify the proposed development within an identified Significant Natural Area, outside the Settlement Area on the Oak Ridges Moraine. The (then) Ministry of Environment and Energy (MOEE) required a satisfactory Hydrogeological Study in order to support the proposed development.

Pursuant to a report dated February 28, 1995, Regional Council approved staff's recommendation that the Minister be advised that the Region had no objection to a modified OPA for the 33 lot proposal indicating the proposal generally conformed to the 1994 Regional Official Plan, including the estate residential development policies. This recommendation was subject to the extension of the "Environmental Protection Designation" and the preparation of a detailed Site Grading Plan for the subdivision application to ensure adequate environmental protection. The report also acknowledged the outstanding requirements of MNR and MOEE.

When the Province was considering approval of the Official Plan Amendment, the applicant did not respond to requests for outstanding information

The Province sent a letter to the Town in September 1995 asking that the concerns of MNR and MOEE be addressed in order for the OPA to be approved. The Town then sent correspondence to the applicant seeking an update on the outstanding information including a satisfactory hydrogeological study and technical studies under the Province's Oak Ridges Moraine Guidelines. There is no record of any response from the applicant to the request from the Town.

In 1995, significant amendments to the *Planning Act* delegated York Region approval authority for Official Plans

Pursuant to amendments following the *Planning Act* reform initiative in 1995, York Region was delegated approval authority for local official plans.

Subsequently in 1996, the Region was delegated (by regulation) approval authority for applications that were made prior to March 28, 1995, including OPA 76. Also as a result of the *Planning Act* amendments in 1995, upper-tier municipalities could delegate subdivision approval authority to local municipalities. York Region delegated approval authority for subdivision applications received after March 28, 1995 to its local municipalities.

York Region closed the subdivision file in 2002 with advanced notice to the applicant

As a result of the Oak Ridges Moraine Conservation Plan (ORMCP) taking effect in late 2001, Regional staff reviewed subdivision files affected by the Oak Ridges Moraine legislation. The purpose of this review was to assess existing subdivision applications to determine potential for approval under the ORMCP transition policies. Through this exercise, it was determined the Region would seek to close the applicant's subdivision application. The Region's Planning Department sent a letter to the applicant in June 2002 advising the subdivision application would be closed unless justification was provided for the file to remain open. No response was received. In September 2002, the applicant was notified by letter that the subdivision application was closed.

An information report on subdivision applications on the Oak Ridges Moraine was received by Regional Council in December 2002. That report provided a list of subdivision applications that were or would be closed due to their status under the ORMCP policies that apply to transitional applications. A review of OPA files was also undertaken as part of the Region's preparation of its ORMCP conformity amendment (ROPA 41). A report to Regional Council in March 2003 did not identify OPA 76 on the list of current OPA applications affected by the Oak Ridges Moraine legislation. Based on Town staff's response to an inquiry from the applicant's agent in 2011, it appears that the Town's OPA and ZBA files were closed due to non-activity and because the related subdivision application had been closed.

The applicant requested reactivation of the applications in 2013

In November of 2013, the applicant sent correspondence to the Town requesting the OPA, ZBA and draft plan of subdivision applications for the lands be reactivated. In 2014, York Region staff met with Town staff and the applicant's planning consultant. Following the meeting, Regional staff undertook further review and analysis regarding the status of the applications and the applicable planning policy context.

Reactivation of these applications was not supported by Regional staff in 2015

In 2015, the applicant was advised that Regional staff did not support the reactivation and further processing of the applications due to the OPA being abandoned since 1995 and the subdivision file being closed for over 10 years. In addition, significant changes in the planning policy context since the submission of the original applications result in the applications not being able to be approved, in particular due to the applicable provisions of the ORMCP and the coming into force of the Provincial Policy Statement, 2014 (PPS 2014).

In 2016 the applicant sought to appeal the applications to the Ontario Municipal Board in 2016

On March 16, 2016, York Region received Notices of Appeal for OPA 76 and the draft plan of subdivision application. The notices identified sections of the *Planning Act* that permit appeals for non-decision. The Region sent the record of appeal to the OMB on April 5, 2016 noting that those sections of the *Planning Act* were not in force on March 27, 1995. Due to the submission date of the applications the 1983 *Planning Act* applies, a Notice of Appeal for the related ZBA was filed with the Town and forwarded to the OMB. The 1983 *Planning Act* provides a right of appeal for non-decisions on ZBA applications.

At a Pre-Hearing Conference held on August 9, 2016, the Town requested a motion hearing to challenge the jurisdiction of the OMB to approve OPA 76 on the grounds that the official plan the applicant seeks to amend is no longer in force, and as such, there is no valid planning instrument before the OMB and no valid appeal.

Prior to the motion hearing, it was determined that OPA 76 and the draft plan of subdivision application could not be appealed to the OMB under the 1983 *Planning Act*. The framework in place under the 1983 *Planning Act* provided the Minister with discretion to decide whether to refer the OPA and draft plan of subdivision applications to the OMB, subject to certain criteria. The applicant therefore requested the proceedings be adjourned *sine die* (without a future date designated) in order to request that the applications be referred to the OMB. No date was requested to pursue the ZBA appeal because the outcome of the referral request decisions was not known.

4. Analysis and Implications

The applicant has now made a request to the Region for referral of the Official Plan Amendment and draft plan of subdivision to the OMB

By letter dated April 12, 2017, the applicant requested that York Region refer OPA 76 and the draft plan of subdivision application to the OMB. In support of the referral requests, the applicant provided the opinion that:

- The subject applications are appropriate and represent good land use planning and are in the public interest
- The subject applications contribute to the supply of a full range of housing types in order to meet residential development demand
- The subject applications appropriately protect and enhance natural heritage features and functions
- The subject applications are consistent and conform with the applicable provincial and municipal planning documents
- Their request is made in good faith and is not frivolous, vexatious, or made for the purpose of delay

Consideration of the referral request for the Official Plan Amendment and draft plan of subdivision needs to satisfy the 1983 *Planning Act* requirements

Under subsections 17 (11) and 51 (15) of the 1983 *Planning Act*, Regional Council may refuse the referral request if it is of the opinion that it was not made in good faith or was frivolous or vexatious or only made for the purpose of delay. Regional Council is required to grant the referral request if it is made in good faith, is not frivolous or vexatious or not made for the purpose of delay.

Given the legal issues preventing approval of the OPA, the applicable policy framework related to the environmental features on the site preventing the proposed development, including the ORMCP transition provisions that do not permit approval of the subdivision application, and the applicability of the PPS 2014, as well as the fact that the OPA application was abandoned in 1995 at the time approval agencies were following up for outstanding information, and the closure of the subdivision application file in 2002, it is recommended the referral request be refused.

Should Regional Council decide to refer the applications to the OMB, the hearings would proceed. Regional staff would not be able to appear at the OMB in support of approval of the applications.

Under the 1983 *Planning Act*, the Minister was required to provide a written explanation when a referral request is refused. This report will satisfy this requirement. Regional Council's decision regarding these referral requests is not subject to appeal; however, the applicant could seek a judicial review of the Region's decision.

In 1995, the applicant did not submit outstanding information and pursue approval of the Official Plan Amendment and draft plan of subdivision

In September 1995, a letter from MMAH to the Town requested the outstanding concerns of MNR and MOEE related to OPA 76 be addressed. The Town followed up with the applicant accordingly. This outstanding information included a satisfactory hydrogeological study and technical studies relating to the significant natural area identified on the lands. In addition, a detailed site grading plan was requested by York Region as part of the required revised draft plan of subdivision submission reflecting the 33-lot proposal. None of this requested information was ever submitted.

The applicant did not respond to notice from the Region in 2002 in advance of the subdivision file closure

The applicant was previously given an opportunity to provide the Region with justification to keep the subdivision file open. The Region's letters to the applicant in June 2002 and September 2002 regarding the closure of the subdivision file were sent to the applicant's planning consultant and the applicant. No response was received.

The applicant did not participate in Regional and Local Official Plan updates affecting the lands

Since 1995, the Town and the Region's Official Plan policies have been updated and replaced by a number of comprehensive reviews. In 2004, the Town's Oak Ridges Moraine Conservation Plan (ORMCP) conformity amendment (OPA 116) was approved by the Ministry of Municipal Affairs and Housing (MMAH), the approval authority for such conformity amendments. York Region's ORMCP conformity amendment was also approved by MMAH in 2004. These amendments designate the lands as "Oak Ridges Moraine Natural Core" in both the Town and the Region's Official Plans (Attachment 5). The Town and the Region's 2010 new Official Plans maintain the designation of "Oak Ridges

Moraine Natural Core” on the applicant’s lands. These updated policies prohibit development as proposed on the lands.

The applicant did not make submission or participate in the public consultation process related to these Regional and local official plan reviews and enactment of new Official Plans resulting in land use changes affecting their lands.

Official Plan Amendment 76 and the draft plan of subdivision do not conform to current provincial planning policy

Over 27 years has passed since the submission of these applications and the provincial and municipal planning policy context has significantly changed. Current policies now prohibit the applications, primarily due to the proposed use and the significant woodland located on the subject lands.

Pursuant to the provisions of the ORMCP, a significant woodland, a wetland and a permanent stream are located on and/ or adjacent to the property, all of which are considered Key Natural Heritage and/ or Hydrologically Sensitive Features. The applicable transition policies of ORMCP related to the subdivision application prohibit development (including the creation of lots) within these features and their associated vegetation protection zones (buffers).

The PPS 2014 does not permit development in significant environmental features, including significant woodlands, wetlands and streams (fish habitat). The PPS 2014 does not include transition provisions and therefore apply to OPA 76 and the draft plan of subdivision application.

The Growth Plan for the Greater Golden Horseshoe (2006) does not apply to the applications, due to transitions provisions. However, the Lake Simcoe Protection Plan (2006) applies (due to the transition provisions) but does not prohibit the development.

The Official Plan Amendment and draft plan of subdivision applications do not conform to the York Region Official Plan (2010)

Through the Region's ORMCP conformity amendment, the lands are designated “Oak Ridge Moraine Natural Core” in the YROP-2010. An estate residential subdivision is not a permitted use within this designation. The lands are entirely within the Regional Greenlands System and partially within an Environmentally Significant Area containing environmental features including a watercourse, wetland and woodland. An estate residential subdivision is not a permitted use within the Regional Greenlands System. York Region's significant woodlands study completed in 2005 identifies the woodlands as significant and contributing to the Region's tree cover. The site is within an area of high aquifer vulnerability, a significant groundwater recharge area and a recharge management area. The

policies of the YROP-2010 do not permit the proposed development on these lands.

The Town of East Gwillimbury supports applying the current legislative framework and planning policy context to the lands

In July 2016, East Gwillimbury Council authorized Town staff to appear at the OMB in support of the position that should the applicant wish to pursue development on the lands, it should be under the current legislative framework and planning policy context. The Town's new Official Plan (EGOP- 2010) designates the site "Natural Core" and its policies require conformity with the applicable provisions of the ORMCP.

On June 6, 2017, the Town of East Gwillimbury Council passed a bylaw that had the effect of repealing Bylaw No. 90-88, the bylaw that adopted OPA 76 in 1989. The bylaw was repealed to avoid any uncertainty related to OPA 76's current status and re-iterates the Town's position the current official plan policies should be applied to this site.

5. Financial Considerations

In the event that Regional Council's decision is challenged there would be costs associated with defending the Region's position including staff resources and other costs of participation in court or OMB proceedings.

6. Local Municipal Impact

The recommendations of this report to refuse these referral requests are consistent with the Town of East Gwillimbury's position in regard to these applications.

7. Conclusion

Applications for an OPA, ZBA and draft plan of subdivision were submitted in 1989 and 1990 for an estate residential development on the Oak Ridges Moraine. A revised OPA was adopted by the Town but never approved by the Minister as information remained outstanding from the applicant. The applications were considered closed or abandoned by the Region. The version of the *Planning Act* that applies to the applications did not provide for appeals of decision by the Minister on official plans or for non-decisions. The provisions of the 1983 *Planning Act* set out criteria to determine whether a matter should be referred to the OMB.

Given the legal issues preventing approval of the OPA, the applicable policy framework related to the environmental features on the site preventing the proposed development, including the ORMCP transition provisions that do not permit approval of the subdivision application, and the applicability of the PPS 2014, as well as the fact that the OPA application was abandoned in 1995 at the time approval agencies were following up for outstanding information, and the closure of the subdivision application file in 2002, it is recommended the referral request be refused.

For more information on this report, please contact Sara Brockman, Senior Planner at 1-877-464-9675 ext. 75750.

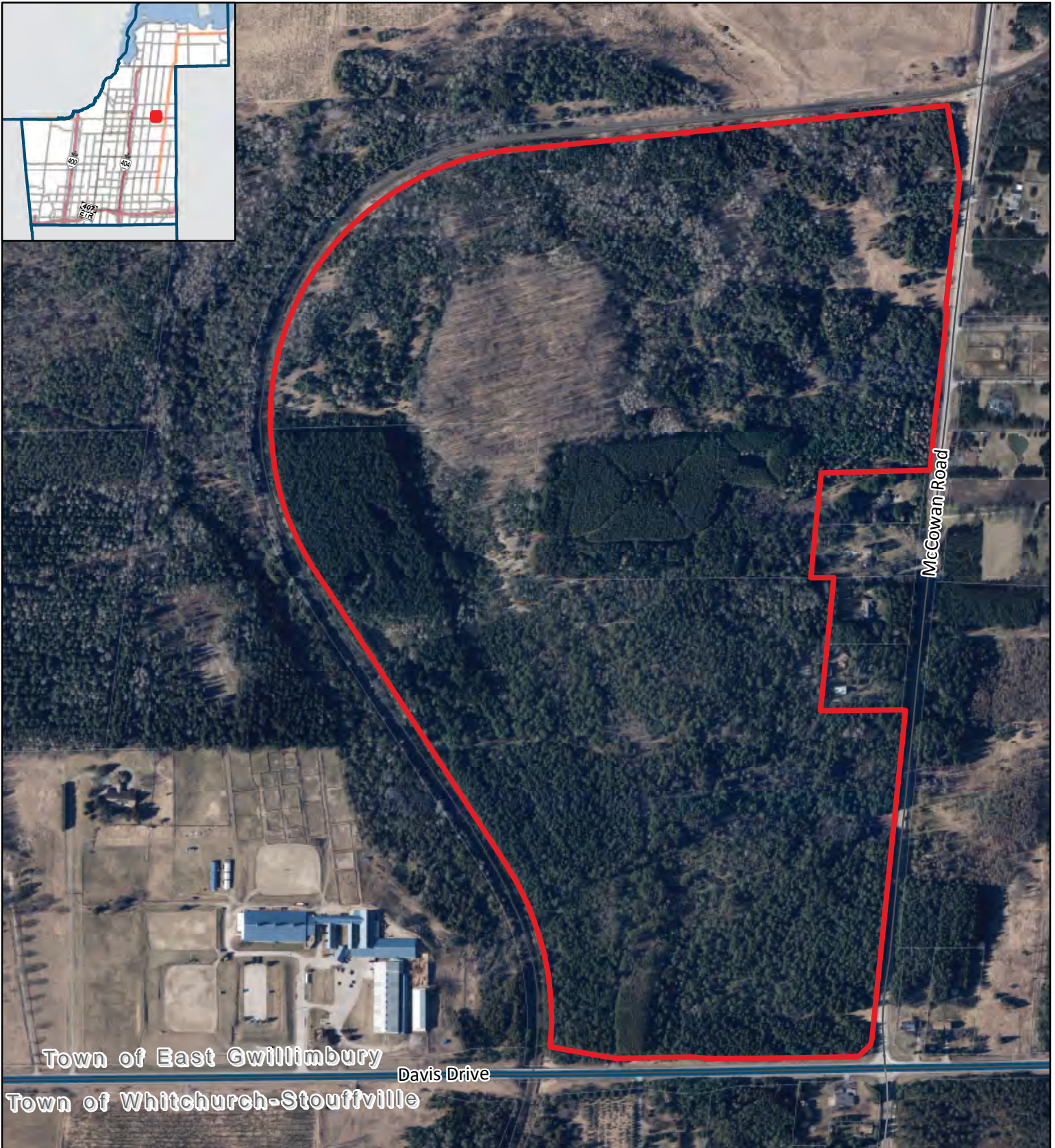
The Senior Management Group has reviewed this report.

June 9, 2017

Attachments (5)

7551566

Accessible formats or communication supports are available upon request



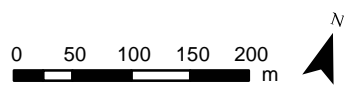
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 April 2017

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Northwest Corner of Davis Drive and McCowan Road
 Town of East Gwillimbury

- Rural Roads
- Regional Roads
- +++ Railway
- Subject Lands
- ▭ Parcels
- Municipal Borders



1990 Draft Plan of Subdivision
(72 Lots)

197-90048
REGION OF YORK
OFFICE COPY
DATE 1990.11.08



Idle Land

ROAD ALLOWANCE BETWEEN CONCESSIONS 6 & 7

Existing Dwelling

DAVIS DRIVE (York Region Road No. 31)

Existing Dwelling

*Modified from the Original Drawing for illustration Purposes, May 15, 2017

APPLICATION CHRONOLOGY AND PLANNING POLICY CONTEXT FOR OPA 76 AND 19T-90068

<u>Action Taken on Applications</u>	<u>Year</u>	<u>Legislation/Policy Context</u>
<ul style="list-style-type: none"> • OPA and ZBA applications submitted to <u>Town</u> 	1989	<ul style="list-style-type: none"> • <i>Planning Act</i>, 1983 • Four Provincial Policy Statements • Expression of Provincial Interest for Oak Ridges Moraine Area • York Region Interim Policy of Rural/Residential Development • Town of East Gwillimbury Official Plan, 1971 <ul style="list-style-type: none"> - Lands designated "Development Control Area" and "Aquifer and Recharge Area"
<ul style="list-style-type: none"> • OPA 76 adopted by <u>Town</u>, sent to MMA for approval • ZBA endorsed by <u>Town Council</u> • Subdivision application submitted to Region by <u>applicant</u> 	1990	
<ul style="list-style-type: none"> • <u>MNR</u> letter to MMA, objecting to OPA • <u>Region's</u> report recommends MMA be advised OPA is not supported; consideration deferred at <u>applicant's</u> request 	1992	
<ul style="list-style-type: none"> • Modification to OPA adopted by <u>Town</u> (Lots reduced from 72 to 33), forwarded to MMA for approval 	1993	
	1994	<ul style="list-style-type: none"> • Comprehensive Set of Policy Statements • First Regional Official Plan approved <ul style="list-style-type: none"> - Designated lands "Rural Policy Area", "Regional Greenlands System" and "Environmentally Significant Area"
<ul style="list-style-type: none"> • <u>MOEE</u> letter requests hydrogeological study • <u>Region Council</u> recommends MMA be advised that the Region has no objections to modified OPA with reduced number of lots • <u>MMAH</u> letter to Town requests concerns of MNR and MOEE be addressed • <u>Town</u> letter to applicant requests update regarding concerns of MNR and MOEE 	1995	<ul style="list-style-type: none"> • <i>Planning Act</i> changes <ul style="list-style-type: none"> - Approval authority for local Official Plans and amendments to Region
<ul style="list-style-type: none"> • <u>MMAH</u> transferred approval authority for OPA 76 to <u>Region</u> 	1996	<ul style="list-style-type: none"> • Provincial Policy Statement (PPS) • <i>Planning Act</i> Changes
	1997	<ul style="list-style-type: none"> • Provincial Policy Statement, 1997 • Town Official Plan update/consolidation adopted <ul style="list-style-type: none"> - Designated lands "Rural Area" and "Environmental Protection Area"

APPLICATION CHRONOLOGY AND PLANNING POLICY CONTEXT FOR OPA 76 AND 19T-90068

<u>Action Taken on Applications</u>	<u>Year</u>	<u>Legislation/Policy Context</u>
<ul style="list-style-type: none"> • <u>Town</u> staff express concern regarding inactivity on file and requests response from applicant 	1999	
<ul style="list-style-type: none"> • <u>Region</u> letter to applicant advises subdivision application will be closed. No response received. File closed. • Information report to Council regarding subdivisions on ORM 	2002	<ul style="list-style-type: none"> • ORMCP in effect <ul style="list-style-type: none"> - Designates property "Natural Core"
<ul style="list-style-type: none"> • Information Report received by <u>Regional Council</u> regarding ORMCP conformity does not identify OPA 76 among the list of current applications affected by ORM legislation 	2003	
	2004	<ul style="list-style-type: none"> • York Region ORMCP conformity amendment approved <ul style="list-style-type: none"> - Designates lands ORM "Natural Core" • York Region Significant Woodland Study identifies woodland onsite as significant • Town ORMCP conformity amendment approved
	2005	<ul style="list-style-type: none"> • Provincial Policy Statement, 2005
	2009	<ul style="list-style-type: none"> • Lake Simcoe Protection Plan in effect 2009 • York Region Official Plan adopted <ul style="list-style-type: none"> - Designated site ORM "Natural Core"
	2010	<ul style="list-style-type: none"> • Town of East Gwillumbury adopted new Official Plan <ul style="list-style-type: none"> - Designated lands "Natural Core"
<ul style="list-style-type: none"> • <u>Applicant</u> writes to Town requesting applications be re-activated 	2013	
<ul style="list-style-type: none"> • Information exchanged and meetings with <u>Region</u>, <u>Town</u> and <u>applicant's</u> planning consultant 	2014	<ul style="list-style-type: none"> • Provincial Policy Statement, 2014
	2015	
<ul style="list-style-type: none"> • <u>Applicant</u> appeals to OMB, determined not properly before the OMB 	2016	
<ul style="list-style-type: none"> • First Pre-Hearing Conference • Region received the request for referral to the OMB on April 13 	2017	

1993 Concept Plan

(33 Lots)

CONCESSION 6

RURAL / AGRICULTURAL

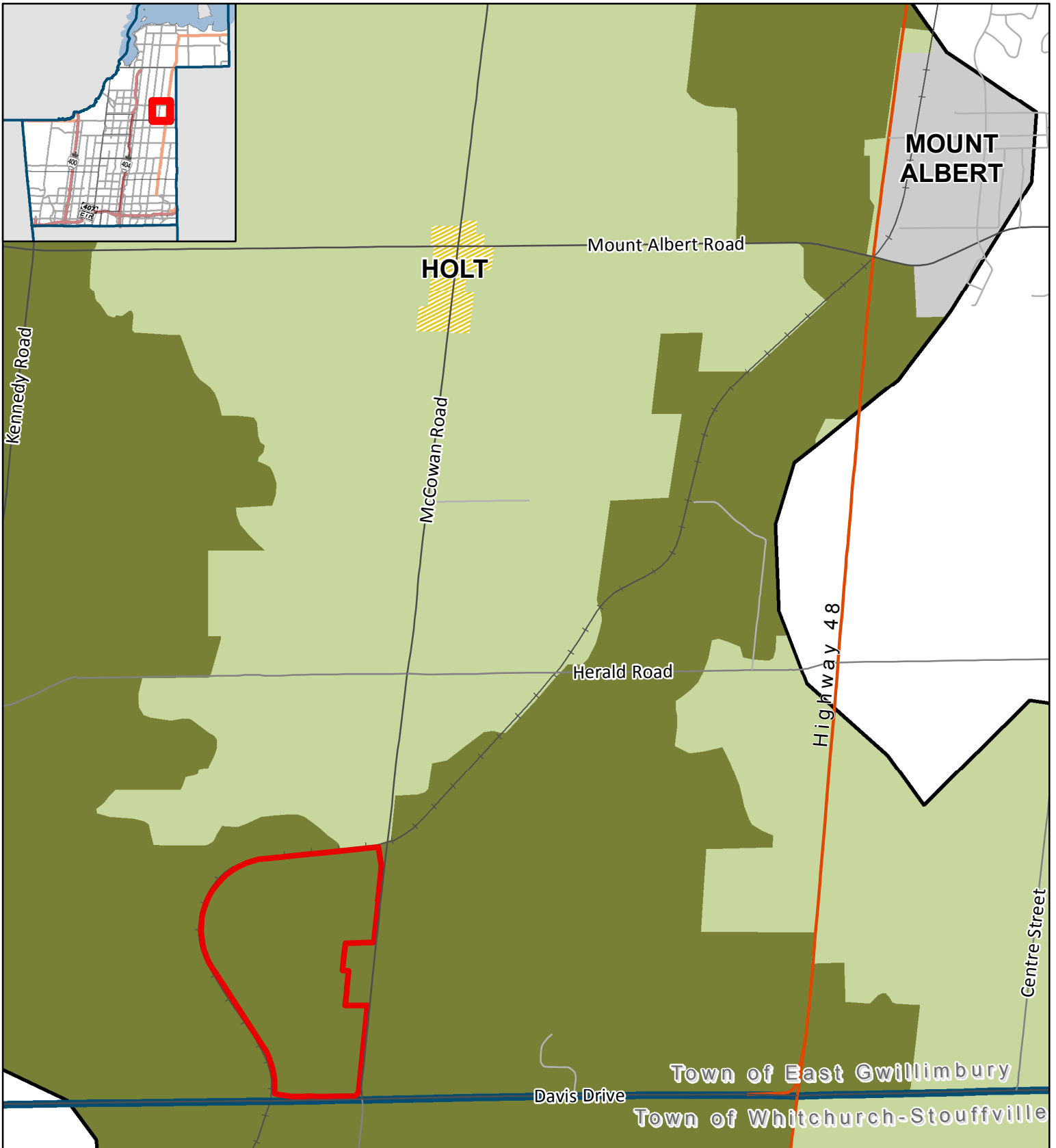


SCHEDULE OF PEOPLE AND USE

Estate Residential Lots 1 - 33 incl.	45.412 ha.	49.6 %
Block 34 - Environmental Protection	32.357 ha.	45.3 %
Block 35 - Road Widening	0.246 ha.	0.5 %
Road (Street A, B) @ 20.0m R.O.W.	3.316 ha.	4.6 %
TOTAL	71.331 ha.	100.0%

*Modified from the Original Drawing for illustration Purposes, May 15, 2017

DAVIS DRIVE (YORK REGION ROAD No. 31)



HOLT

MOUNT ALBERT

Mount-Albert Road

McCowan Road

Kennedy Road

Herald Road

Highway 48

Centre Street

Davis Drive

Town of East Gwillimbury

Town of Whitechurch-Stouffville

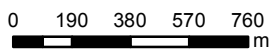


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May 2017

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ORM Land Use
Northwest Corner of Davis
Drive and McCowan Road
Town of East Gwillimbury



- | | |
|---------------------|------------------|
| — Rural Roads | ORM Designations |
| — Regional Roads | ■ Natural Core |
| ■ Subject Lands | ■ Countryside |
| ■ Municipal Borders | ■ Hamlet |
| ■ ORM Boundary | ■ Settlement |



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direct line: 416.263.4515
File No. 702420

April 12, 2017

By E-Mail Only to *regional.clerk@york.ca*

Mr. Christopher Raynor
Regional Clerk
Regional Municipality of York
17250 Yonge Street
Newmarket, Ontario
L3Y 6Z1

Dear Mr. Raynor:

**Re: Request for Referral pursuant to ss. 17(11) and 51(15) of the
Planning Act, R.S.O. 1990, c. P. 13, as in force on March 27,
1995 (the "1995 Planning Act")
Applications to Amend the Official Plan and for Draft Plan of
Subdivision Approval
Municipal File Nos. OPA.89.12 and 19T-90068
Town of East Gwillimbury (the "Town")**

We are counsel to 669276 Ontario Ltd. and 651965 Ontario Ltd., the owners of approximately 71 hectares of land in the Town (the "Subject Lands").

In May of 1989, our clients submitted concurrent applications to amend the Town's Official Plan and Zoning By-law to permit the development of a 72-lot residential subdivision on the Subject Lands (the "OPA Application" and the "ZBLA Application"). The Applicants submitted a corresponding application for Draft Plan of Subdivision to the Region in 1990 (the "Subdivision Application", and collectively with the "OPA Application" and the "ZBLA Application", the "Applications").

The purpose of this letter is to request that Regional Council refer the OPA Application and the Subdivision Application to the Ontario Municipal Board (the "Board") pursuant to Subsections 17(11) and 51(15) of the 1995 *Planning Act*.

Background

On August 13, 1990, Town Council approved the OPA Application and adopted OPA 76 to re-designate the Subject Lands for residential uses. The Town submitted OPA 76 to the Ministry of Municipal Affairs (the "MMA") for approval



Davies
Howe
Partners
LLP

on August 14, 1990. The Town decided not to enact the requested Zoning By-law amendment until after the OPA Application had been approved by the MMA.

In 1993, the Applicant revised its proposal following completion of Phase Two of the Town's Estate Residential Study. The revised proposal reduced the number of lots from 72 to 33, increasing the amount of land to remain designated for environmental protection. On August 23, 1993, the Town wrote to the MMA to advise of these revisions and request that OPA 76 be modified and approved accordingly. The Subdivision Application was similarly revised to reduce the number of proposed lots to 33.

OPA 76 was not approved by either the MMA or the Region. Accordingly, the ZBLA Application was never approved by the Town and the Subdivision Application never decided upon by the Region.

In March of 2016, our firm filed Notices of Appeal with the Board respecting the Applications. An initial Pre-Hearing Conference took place on August 9, 2016. The Town and the Region are Parties to this proceeding.

The Parties have since determined that, by operation of s. 74.1 of the *Planning Act*, R.S.O. 1990, c. P.13, as amended to date, the OPA Application and the Subdivision Application should have come before the Board by way of a referral by Regional Council rather than an appeal. The Parties are agreed that the ZBLA Application is properly before the Board by way of appeal by virtue of ss. 34(11) of the 1995 *Planning Act*.

Applicable Legislation

The OPA Application

The applicable Subsections 17(11) and (12) of the 1995 *Planning Act* read:

- (11) The Minister may refer the plan or any part of the plan to the Municipal Board and where the council or any person or other body requests the Minister to refer the plan or any part of the plan to the Municipal Board, the Minister shall refer the plan or such part to the Board, together with the statement mentioned in subsection (12), unless in the Minister's opinion, such requests is not made in good faith or is frivolous or vexatious or is made only for the purpose of delay.



Davies
Howe
Partners
LLP

- (12) Where a person submits a request to the Minister under subsection (11), the person shall include therewith a statement in writing setting out the reasons for the request.

The Subdivision Application

The applicable Subsections 51(15) and (16) of the 1995 *Planning Act* read:

- (15) At any time before the Minister has given or has refused to give approval to a draft plan of subdivision, the Minister may, and upon application therefor shall, refer the draft plan of subdivision to the Municipal Board unless, in the Minister's opinion, such request is not made in good faith, or is frivolous or vexatious or is made only for the purpose of delay and where the draft plan is referred to the Board the Board shall hear and determine the matter.
- (16) Where an application is made under subsection (15), the application shall be accompanied by written reasons in support thereof.

The Minister's authority to refer the OPA Application and Subdivision Application to the Board was delegated to the Region by Ontario Regulations 476/83 and 156/96. Copies of these Regulations are enclosed for ease of reference.

Reasons for the Request

The reasons for our clients' request are as follows:

1. The OPA Application and Subdivision Application would permit development on the Subject Lands which represents good land use planning, is appropriate for the Subject Lands and is in the public interest;
2. The OPA Application and Subdivision Application would contribute to the Town and Region's supply of a full range of housing types in order to meet residential development demand;
3. The OPA Application and Subdivision Application would appropriately protect and enhance natural heritage features and functions on the Subject Lands and in the immediate surrounding area;
4. The OPA Application and Subdivision Application are consistent with the applicable *Provincial Policy Statements* issued under Subsection 3(1) of the



Davies
Howe
Partners
LLP

1995 *Planning Act*, meet the requirements of all applicable Provincial policy, and conform to all applicable Regional policy; and

5. The request is made in good faith and is not frivolous, vexatious, or made for the purpose of delay.

Conclusion

For the foregoing reasons, we respectfully request that the Region proceed to refer the OPA Application and Subdivision Application to the Board at this time.

We would appreciate receiving confirmation of receipt of our request for referral. Please do not hesitate to contact us if you require clarification.

Yours sincerely,

DAVIES HOWE PARTNERS LLP

Michael Melling

MWM:kf

encls. As above

copy: Ms. Barbara Montgomery, Associate Counsel, York Region
Mr. Bruce Ketcheson, Counsel, Town of East Gwillimbury
Clients

Planning Act
Loi sur l'aménagement du territoire

ONTARIO REGULATION 156/96

**DELEGATION OF AUTHORITY OF MINISTER TO REGIONAL MUNICIPALITY OF YORK:
AMENDMENTS TO OFFICIAL PLANS**

Consolidation Period: From April 22, 1996 to the [e-Laws currency date](#).

No amendments.

This Regulation is made in English only.

1. All authority of the Minister in respect of those amendments to the official plans for the local municipalities of the Regional Municipality of York that are set out in the Schedule is hereby delegated to the Council of the Regional Municipality of York. O. Reg. 156/96, s. 1.

2. All authority of the Minister in respect of applications for amendments to the official plans for the local municipalities of the Regional Municipality of York that were made to the local municipalities before March 28, 1995 and that were not adopted by the councils of the local municipalities before the day this regulation comes into force is hereby delegated to the Council of the Regional Municipality of York. O. Reg. 156/96, s. 2.

3. OMITTED (PROVIDES FOR COMING INTO FORCE OF PROVISIONS OF THIS REGULATION). O. Reg. 156/96, s. 3.

SCHEDULE

City of Vaughan

19-OP-1500-291

19-OP-1500-399

19-OP-1500-457

19-OP-1500-464

19-OP-1500-465

Town of Markham

19-OP-0015-040

19-OP-0016-001

19-OP-0016-015

19-OP-0016-019

19-OP-0016-020

Town of Richmond Hill

19-OP-0182-009

19-OP-0182-104

19-OP-0182-105

19-OP-0182-144

19-OP-0182-151

19-OP-0182-154

Town of East Gwillimbury

19-OP-3200-062

19-OP-3200-070

19-OP-3200-072

19-OP-3200-073
19-OP-3200-076
19-OP-3200-080
19-OP-3200-081
19-OP-3200-087
19-OP-3200-088
19-OP-3200-092

Town of Whitchurch-Stouffville

19-OP-0032-008
19-OP-0032-034
19-OP-0032-047
19-OP-0032-054
19-OP-0032-055
19-OP-0032-070
19-OP-0032-078
19-OP-0032-082
19-OP-0032-083
19-OP-0032-089
19-OP-0032-090

Town of Aurora

19-OP-0025-034
19-OP-0026-012
19-OP-0026-014

Town of Georgina

19-OP-0033-068
19-OP-0033-070
19-OP-0033-071
19-OP-0033-072
19-OP-0033-074

O. Reg. 156/96, Sched.

[Back to top](#)

6. This Order comes into force on the 1st day of August, 1983. O. Reg. 475/83, s. 6.

CLAUDE BENNETT
Minister of Municipal Affairs
and Housing

Dated at Toronto, this 28th day of July, 1983.

(3140)

33

PLANNING ACT, 1983

O. Reg. 476/83.

Delegation of Authority of Minister
Under Section 4 of the Planning Act,
1983—Subdivision Plans.

Made—July 28th, 1983.

Filed—July 29th, 1983.

ORDER MADE UNDER THE PLANNING ACT, 1983

DELEGATION OF AUTHORITY OF MINISTER UNDER SECTION 4 OF THE PLANNING ACT, 1983—SUBDIVISION PLANS

1. Subject to sections 2 and 3, all authority of the Minister under subsection 49 (7) and under section 50 of the Act is hereby delegated to the council of each of the following municipalities in respect of land situate in the municipality:

1. The Municipality of Metropolitan Toronto.
2. The County of Oxford.
3. The District Municipality of Muskoka.
4. The Regional Municipality of Durham.
5. The Regional Municipality of Halton.
6. The Regional Municipality of Hamilton-Wentworth.
7. The Regional Municipality of Niagara.
8. The Regional Municipality of Ottawa-Carleton.
9. The Regional Municipality of Peel.
10. The Regional Municipality of Sudbury.
11. The Regional Municipality of Waterloo.
12. The Regional Municipality of York.

O. Reg. 476/83, s. 1.

2. The delegation made in section 1 does not apply

(a) any application for approval under subsection 49 (7) or subsection 50 (1) of the Act or a predecessor thereof received by the Minister before the day the Minister's authority with respect to the relevant municipality was delegated by a predecessor of this Order; or

(b) any matter referred to in subsections 50 (20), (21) and (22) of the Act, unless the matter relates to lands that are within a draft plan approved by the council under subsection 50 (13) of the Act. O. Reg. 476/83, s. 2.

3.—(1) Each council, in exercising the authority delegated by section 1 in respect of section 50 of the Act, shall comply with the following conditions:

1. The council shall adopt an application form that is approved by the Ministry of Municipal Affairs and Housing for the receipt of applications under subsection 50 (1) of the Act.
2. The council shall assign to each application received under subsection 50 (1) of the Act a file number consisting of the appropriate code used by the Ministry of Municipal Affairs and Housing, the letter "T", the last two figures of the year in which the application is received and a number corresponding to the order in which the application is received, commencing with "001", and a new series of numbers shall be commenced each year.
3. The council shall send to the Ministry of Municipal Affairs and Housing one copy of each application received by the council under subsection 50 (1) of the Act and one copy of the draft plan that is the subject of the application, and the copies shall be sent not later than ten days after the receipt of the application.
4. Where the council decides to confer as referred to in subsection 50 (3) of the Act in respect of an application, the council shall send to the Ministry of Municipal Affairs and Housing a list of the officials of municipalities and ministries of the public service, commissions, authorities or other persons conferred with or to be conferred with on the application, and shall send a copy of the application and of the draft plan to which it relates to the clerk of the area municipality in which the land that is the subject of the application is situate, and to such other officials of municipalities and ministries of the public service, commissions, authorities and other persons as the Minister may direct.
5. Where the council decides not to confer as referred to in subsection 50 (3) of the Act in respect of an application, the council shall send notice in writing to the applicant, the

clerk of the area municipality in which the land that is the subject of the application is situate and the Ministry of Municipal Affairs and Housing, giving the reason or reasons why the council has decided not to confer.

6. Where an application under subsection 50 (1) is withdrawn, the council shall send notice, in writing, to the clerk of the area municipality in which the land that is the subject of the application is situate and the Ministry of Municipal Affairs and Housing, giving the reason or reasons why the application was withdrawn, if known.
7. Where an application is revised or altered, a copy of the revised or altered application shall be sent to the applicant, the clerk of the area municipality in which the land that is the subject of the application is situate and the Ministry of Municipal Affairs and Housing.
8. In conferring, as referred to in paragraph 4, the council shall allow sixty days for the making of written comments in respect of the application for approval, commencing from the date that a copy of the application is sent to the party conferred with, but the time for making comments may be extended by the council where the council is satisfied that there is good reason to do so.
9. Where the council has not given or refused approval of an application made under subsection 50 (1) of the Act within ninety days of receipt of the application, the council shall forthwith provide the applicant, the clerk of the area municipality in which the land that is the subject of the application is situate and the Ministry of Municipal Affairs and Housing with a report on the status of the application.
10. Where the council gives approval or proposes to refuse to give approval to a draft plan under subsection 50 (13) or (14) of the Act, the council shall send notice to the applicant, the clerk of the area municipality in which the land that is the subject of the application is situate, the Ministry of Municipal Affairs and Housing and any other person or agency that has requested notification, and where approval is given to a draft plan the notice shall be accompanied by a copy of the draft plan and of the conditions imposed on the approval thereof.
11. Where land that is the subject of an application made under subsection 50 (1) of the Act is affected by a proposed amendment to an official plan incorporating policies and designations relating to the land, the council shall not make any decision concerning the application until the amendment to the official

plan has been approved or not approved by the Minister or the Municipal Board, as the case may be.

12. Where a matter is referred to the Municipal Board under subsection 50 (15) or (17) of the Act, the council shall notify the applicant, the clerk of the area municipality in which the land that is the subject of the application is situate and the Ministry of Municipal Affairs and Housing.
13. Where the council gives approval to a draft plan under subsection 50 (13) of the Act, the approval shall be shown on the draft plan in the following form:

Subject to the conditions, if any, set forth in our letter dated....., 19... , this draft plan is approved under section 50 of the *Planning Act, 1983* this..... day of....., 19...
14. Where, after approval of a draft plan and before approval of a final plan, the council varies substantially any condition of the draft plan or withdraws its approval of the draft plan, the council shall send notice thereof within fifteen days to all parties that were sent notice under paragraph 10.
15. Where conditions are imposed on the approval of a plan of subdivision, approval of a final plan for registration shall not be given until the area municipality in which the land is situate has advised the council, in writing, that all the requirements of the area municipality have been satisfied.
16. Where the council gives approval to a final plan under subsection 50 (20) of the Act, the approval shall be shown on the final plan in the following form:

Approved under section 50 of the *Planning Act, 1983* thisday of....., 19...
17. Where the final plan is to be registered under the *Land Titles Act*, the council shall not approve the final plan for registration until the examiner of surveys appointed under the *Land Titles Act* has advised that the plan is accepted for registration.
18. The original of the final plan as approved together with all copies required for registration under the *Registry Act* or the *Land Titles Act*, as the case may be, shall be forwarded by the council to the appropriate Land Registry Office.

19. The council shall forward one copy of each final plan approved for registration to the Ministry of Municipal Affairs and Housing.

(2) The Director of the Plans Administration Branch of the Ministry of Municipal Affairs and Housing having jurisdiction in a municipality named in section 1 may in respect of the municipality waive in writing any requirement imposed by paragraph 3, 4, 5, 6, 7, 9, 10, 14 or 16 in so far as it applies to the Ministry of Municipal Affairs and Housing.

(3) The delegation of authority set out in this Order is not terminated by reason only that a council has failed to comply with a condition set out in subsection (1). O. Reg. 476/83, s. 3.

4. Where any of the authority delegated by section 1 is in turn delegated by a council to a committee of council or an appointed officer under subsection 5 (1) of the *Planning Act, 1983* the council shall cause to be forwarded to the Minister a certified copy of the delegating by-law within fifteen days of its passing. O. Reg. 476/83, s. 4.

5.—(1) Ontario Regulations 890/80 and 78/82 are revoked.

(2) Notwithstanding any other provision of this Order, any application received before the day this Order comes into force by a council authorized to receive the application by section 1 of Ontario Regulation 890/80 or a predecessor thereof shall be governed and dealt with as if that Regulation or its predecessor had not been revoked. O. Reg. 476/83, s. 5.

6. This Order comes into force on the 1st day of August, 1983. O. Reg. 476/83, s. 6.

CLAUDE BENNETT
Minister of Municipal Affairs
and Housing

Dated at Toronto, this 28th day of July, 1983.

(3141)

33

PLANNING ACT, 1983

O. Reg. 477/83.

Delegation of Authority of Minister
Under Section 4 of the Planning Act,
1983—Official Plans.

Made—July 28th, 1983.

Filed—July 29th, 1983.

ORDER MADE UNDER THE PLANNING ACT, 1983

DELEGATION OF AUTHORITY OF MINISTER UNDER SECTION 4 OF THE PLANNING ACT, 1983—OFFICIAL PLANS

1. Subject to sections 2 and 3, all authority of the Minister under,

(a) section 17, except subsections 17 (19) and (21), subsection 20 (1), subsections 22 (1) and (3) and section 64 of the *Planning Act, 1983* is hereby delegated to the council of The Regional Municipality of Waterloo in respect of official plans for the local municipalities within that regional municipality; and

(b) section 17, except subsections 17 (19) and (21), subsection 20 (1) and section 64 of the *Planning Act, 1983* is hereby delegated to the council of The Regional Municipality of Ottawa-Carleton in respect of official plans for the local municipalities within that regional municipality. O. Reg. 477/83, s. 1.

2.—(1) A council, in exercising the authority delegated by section 1, shall comply with the following conditions:

1. The council shall send to the Ministry of Municipal Affairs and Housing one copy of each official plan or official plan amendment received by the council for approval, not later than ten days after the receipt of the application for approval.

2. The council shall request comments from those departments or ministries of the public service, commissions and authorities that, in the council's opinion, have an interest in an official plan or official plan amendment as well as from such other public authorities and agencies as the Minister may direct, and shall submit to the Ministry of Municipal Affairs and Housing a list thereof, and shall not make a decision in respect of the official plan or official plan amendment until thirty days after all requests for comments have been sent or until all comments have been received, whichever period of time is shorter.

3. Where the council has not approved or referred to the Ontario Municipal Board an official plan or an official plan amendment within ninety days of the receipt of the application for approval, the council shall forthwith provide the clerk of the local municipality and the Ministry of Municipal Affairs and Housing with a report on the status of the application.

4. The council shall send to the Ministry of Municipal Affairs and Housing one copy of each comment received under paragraph 2 as well as one copy of all modifications that are proposed for an official plan or official plan amendment and shall likewise send a copy of all modifications that are proposed to such other public authorities and agencies that the council considers are affected thereby.

June 22, 2017

By E-Mail Only to stephanie.dumont@york.ca

Chairman Wayne Emmerson and Members of the Committee of the Whole
Regional Municipality of York
Regional Clerk's Office
York Region Administrative Centre
17250 Yonge Street
Newmarket, Ontario
L3Y 6Z1

**Attention: Ms. Stephanie Dumont, Committee Coordinator,
Office of the Regional Clerk**

Dear Chairman Emmerson and Members of Committee:

**Re: Committee of the Whole Meeting, June 22, 2017
Item D.2.3 – Requests for Referral to the Ontario Municipal Board
Applications for Official Plan Amendment and
Draft Plan of Subdivision Approval
Town of East Gwillimbury**

We are counsel to 669276 Ontario Limited and 651965 Ontario Limited, the proponents of the applications that are subject to the above-noted requests for referral to the Ontario Municipal Board (the "Referral Requests").

Due to the very limited time we have been afforded to respond to the Staff Report in front of you, I'm going to cut to the chase.

Your Staff are Rushing You

Our clients have been given a grand total of three (3) business days to respond to the Staff Report and its recommendations. There is no reasonable explanation – or any explanation for that matter – for the brevity of the notice, given that we submitted the Referral Requests more than three months ago.

Three days' notice is clearly insufficient given the gravity of the decision you're being asked to make. And in case you're wondering, the additional week we'll have before Staff takes this matter, as they intend, to Council, isn't enough time either.

Denying our clients an adequate opportunity to respond is a breach of procedural fairness and natural justice. It would be a complete failure of your duty.

Staff Want You Not Only to Deny Justice, but to Deny Access to It

There has only been time for a preliminary review of the Staff Report, so what follows reflects that fact.

The decision before you is to refuse our clients any opportunity for an Ontario Municipal Board hearing of their applications. The entire "case" for that proposed decision is what's in your agenda package. You have not consulted the public. You have not afforded our clients a full and proper hearing. You have not reviewed the lengthy and torturous history of the applications or the conduct of the Region or the Town during it.

In short, you have one side of a long story, and therefore no basis to terminate our client's applications.

And, while the Staff Report isn't short, it boils down to a single claim: that Staff believe that our clients' applications do not meet current statutory and policy tests for approval. With respect, that's not your decision to make. It's the Board's.

The decision before you is not like the ones you regularly make in approving or refusing applications. In those cases, there are appeal rights and access to O.M.B. hearings. While one *might* justify refusing a planning application based on the kind of record you have before you today, knowing that there will be a proper hearing of an appeal at the Board, there's no such avenue available to our clients if you don't refer their applications.

Finally, if you agree with Staff, and are confident in their judgment, that our clients' applications are bad planning and shouldn't be approved, then send them to the O.M.B. We'll all find out there, after a proper hearing.

Any other decision is a violation of natural justice and a dereliction of duty.

Yours sincerely,
DAVIES HOWE LLP


Michael Melling

MWM:KF

copy: Ms. Barbara Montgomery, Legal & Court Services, Regional Municipality of York
Mr. Bruce Ketcheson, Counsel to the Town of East Gwillimbury
Clients