

ISSUE DATE:

January 28, 2014



PL111184

Ontario Municipal Board
Commission des affaires municipales de l'Ontario

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

APPEARANCES:

Parties

Counsel/Agent*

City of Vaughan

Claudia Storto

Regional Municipality of York

Pitman Patterson

Home Depot Holdings Inc. (and others)

Patrick Harrington

A & W Food Services of Canada Inc. (and others)

Denise Baker

Canadian Petroleum Products Institute/Imperial Oil Ltd.

Emily Elliott* (for Jane Pepino)

Suncor Energy Products Partnership (and others)

Annik Forristal

Di Poce Management Limited (and others)

Thomas Barlow

Novagal Developments Inc./588701 Ontario Limited

Caterina Facciolo

Highway 7 Langstaff GP Ltd (and others) Susan Rosenthal

Block 40/47 Developers Group Inc. (and others) Jason Lewis

Weston Down Ratepayers Krish Chakraborty (student-at-law)

**MEMORANDUM OF ORAL DECISION DELIVERED BY J. de P. SEABORN ON
JANUARY 20, 2014 AND ORDER OF THE BOARD**

[1] The purpose of the prehearing conference was to address several motions. At the commencement of the hearing, Ms. Storto, counsel for the City of Vaughan (“City”), advised that all matters are resolved on consent, the details of which are set out below.

[2] Home Depot Holdings Inc. (“Home Depot”) served and filed a notice of motion (Exhibit 36) seeking an order of the Board pursuant to s. 17(50) of the *Planning Act* (“Act”) to modify the 2010 City of Vaughan Official Plan (“2010 VOP”). In support of the order sought, Mr. Harrington relies on the evidence of David McKay, a planner qualified to provide evidence in the area of land use planning. The rationale for the modifications are contained in the affidavit and I adopt and rely upon the opinion of Mr. McKay that each represent good planning, are consistent with the Provincial Policy Statement (“PPS”) and conform with applicable provincial and municipal plans. There was no opposition to the order sought and the modifications, which are referred to in both the Minutes of Settlement (Exhibit 37) and the draft order (Exhibit 38), are approved. The Board’s order is set out as Attachment 1.

[3] A & W Food Services of Canada Inc. (and other owners of drive-through facilities) served and filed a notice of motion (Exhibit 39) seeking modifications to the 2010 VOP as it relates to drive-through operations. In support of the order sought, Ms. Baker relies on the evidence of Victor Labreche, a planner qualified to provide evidence in the area of land use planning. The rationale for the modifications are contained in the affidavit and I adopt and rely upon the opinion of Mr. Labreche that each represent good planning, are consistent with the PPS and conform to all applicable provincial and municipal plans. There was no opposition to the order sought and the modifications,

which are referred to in both the Minutes of Settlement (Exhibit 41) and the draft order (Exhibit 40), are approved. The Board's order is set out as Attachment 2.

[4] At the request of the parties and with their consent, the motion seeking a partial approval order is adjourned and returnable **February 12 and 13, 2014**. Mr. Barlow filed an affidavit of service (Exhibit 42) and a notice of motion (Exhibit 43) which seeks partial approval of a portion of the City's Official Plan and the Secondary Plan for the west Vaughan employment area. Mediation has taken place and discussions continue such that the parties affected by the order sought are optimistic that a settlement can be achieved. Ms. Rosenthal's clients have appealed the entire secondary plan and while confident that the appeal can be resolved by February 12, 2014 it may be necessary to oppose any partial approval of the policies contained in the secondary plan. Counsel advised that the dates of February 12 and 13, 2014 were previously scheduled on the calendar and therefore no further notice of the motion need be given.

"J. de P. Seaborn"

J. de P. SEABORN
VICE CHAIR

ATTACHMENT 1

PL111184

ONTARIO MUNICIPAL BOARD

IN THE MATTER OF subsection 17(4) of the *Planning Act*, R.S.O. 1990, c. P.12, as amended

Appellant:	1042710 Ontario Limited
Appellant:	1191621 Ontario Inc.
Appellant:	1529749 Ontario Inc.
Appellant:	1541677 Ontario Inc. and others
Subject:	Failure to announce a decision respecting the proposed new Official Plan for the City of Vaughan
Municipality:	City of Vaughan
OMB Case No.:	PL111184
OMB File No.:	PL111184

ORDER

BEFORE:

) Monday, the 20TH day of
)
) January, 2014

THIS MOTION, for modification and partial approval of the 2010 City of Vaughan Official Plan, having come before the Ontario Municipal Board (the “Board”) for a hearing on the above-noted date;

AND THE BOARD having reviewed the uncontradicted land use planning opinion evidence contained within the Affidavit of Mr. David A. McKay, BES, MSC, MCIP, RPP;

AND THE BOARD having reviewed the Minutes of Settlement agreed to between the City of Vaughan and Home Depot Holdings Inc., dated January 20, 2014 (the “Minutes”);

AND THE BOARD having heard the submissions of counsel for both the City of Vaughan and Home Depot Holdings Inc. with respect to the approval of the proposed modifications;

AND WHEREAS the City of Vaughan and Home Depot Holdings Inc. consent to this Order:

THE BOARD ORDERS THAT:

1. The Motion is granted.
2. Pursuant to subsection 17(50) of the *Planning Act*, R.S.O. 1990, c. P.13, as amended, the appeal filed by Home Depot Holdings Inc. is allowed in part and the modifications to the 2010 City of Vaughan Official Plan outlined in Schedule A, attached hereto, are hereby made and approved.
3. The balance of the appeal filed by Home Depot Holdings Inc. is otherwise scoped in accordance with section 4 to the Minutes.
4. No costs shall be awarded in respect of this Motion.

AND THE BOARD FURTHER ORDERS that it may be spoken to in the event some matter or matters should arise in connection with the implementation of this Order or the Minutes.

SCHEDULE “A”

MODIFICATIONS

Home Depot Holdings Inc. and the Corporation of the City of Vaughan have agreed to jointly support the approval of the following modifications to the 2010 City of Vaughan Official Plan:

1. The Major Mac Site shall be redesignated from “Prestige Employment” to “Employment Commercial Mixed Use” on Schedule 13: Land Use.

2. A new site-specific policy shall be added to Volume 2 providing as follows:
 - a. Notwithstanding Policy 9.2.2.7 or anything else in this Plan, in addition to existing permitted uses, Major Retail uses are permitted.

 - b. Notwithstanding Policy 9.2.2.7 or anything else in this Plan, Retail units may exceed 3,500 square metres.

 - c. Provision 9.2.2.7(d) shall only apply to the lands within 100 m of Major Mackenzie Drive West.

 - d. Provision 9.2.2.7(e)(i) Low-Rise Buildings are permitted on the entirety of the site.

 - e. Provisions 9.2.3.4 c) and d) shall not apply.

 - f. Outdoor storage and display shall be permitted subject to being screened by black metal architectural fencing [and/or other materials and architectural details, to the satisfaction of the City](#). The amount and location of outdoor storage and display shall be determined through the Site Plan Approval process.

ATTACHMENT 2

PL111184

THE 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 to announce a decision respecting the proposed new Official Plan of the Regional Municipality for York for the City of Vaughan

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

ORDER

That the appeals filed by TDL Group Corp., A&W Food Services of Canada Inc., McDonald's Restaurants of Canada Limited, Wendy's Restaurants of Canada Inc., and the Ontario Restaurant Hotel and Motel Association are allowed in part by:

1. approving modifications to the 2010 Vaughan Official Plan in the form attached hereto as Schedule "A";
2. removing all references to drive-throughs in the Vaughan Metropolitan Centre (VMC) Secondary Plan, the West Vaughan Employment Area Secondary Plan, the North Kleinberg-Nashville Secondary Plan, the Yonge Steeles Corridor Secondary Plan and the Woodbridge Centre Secondary Plan.
3. ordering that this approval of the modifications as set out in Schedule "A" be without prejudice to, and shall not have the effect of limiting, the rights of a party to seek, or the jurisdiction of the Board to consider and approve, modifications,

deletions or additions to the unapproved maps, policies, figures, definitions, and schedules in the 2010 Vaughan Official Plan on a general, area-specific or site-specific basis, as the case may be.

4. **AND THE BOARD FURTHER ORDERS** that the approval of the policies pursuant to this order, as shown on Schedule “A”, shall not apply to any lands subject to appeals filed by Canadian Petroleum Products Institute, Imperial Oil Limited, Suncor Energy Products Partnership and CST Canada Co. (hereinafter referred to as the parties) and is without prejudice to the positions taken by the parties to those site-specific or area-specific appeals of those same policies so that if those appeals proceed to a hearing, either on their own or as may be consolidated with other site specific appeals, the City will not take the position that the Board ought not to approve site-specific or area-specific modifications to the affected policies, schedules, maps, figures, definitions, tables and associated text on the basis that they deviate from or are inconsistent with such policies, schedules, maps, figures, definitions, tables and associated text on a City-wide basis (or as approved in respect of other lands which are subject to the same policies, schedules, maps, figures, definitions, tables and associated text).

SCHEDULE 'A'

Vaughan Official Plan Modifications to Drive-Through Policies

5.2.3- Delete last paragraph

5.2.3.8- Amend

Drive-through facilities are a complement to some types of retail activity, typically in an auto-oriented environment. Such facilities shall only be located where they will not adversely affect the goals of this Plan respecting intensification, pedestrianization, attractive streetscapes and transit supportiveness. In consideration of potential locations for drive-through facilities, it will need to be demonstrated that the unique sense of place, characteristic of or envisioned for the area, will be maintained and enhanced. Drive-through facilities will not be located where there will be an adverse impact on adjacent residential uses. All new drive-through facilities shall adhere to specific design guidelines, as developed by the City.

Intensification Areas have been designed to fulfill a specific role in the City's structural hierarchy. Consisting of centres and corridors, shown on Schedule 1, they are intended to be the primary locations for accommodating the City's 45% residential intensification target. Intensification areas, as described in Policy 2.2.5 of this Plan, provide for mixed-use development at a range of higher densities, primarily in recognition of their location adjacent to planned and existing rapid transit facilities. Achieving the desired densities and mix of uses requires the use of transit supportive development forms and the avoidance of land consumptive development forms. A main goal is to take advantage of major public investments in rapid transit services and promote more sustainable development by shifting the transportation modal split toward transit. General design criteria for Intensification Areas are set out in Policies 9.1.2.5 and 9.1.2.6. More detailed guidance may be provided by individual secondary plans or site or area specific amendments in Volume 2 of this Plan, which respond to the conditions of the individual intensification area.

The Vaughan Metropolitan Centre, the Primary Centres, the Local Centres and Regional Intensification Corridors comprise a relatively small proportion of the City's total area, but will account for much of the City's intensification. Care will need to be taken to ensure that any proposed use in these areas is compatible with the intent of this Plan. The following policies shall apply when considering a proposal for drive-through facilities within the following Intensification Areas:

- a) Drive-through facilities proposed for the Vaughan Metropolitan Centre and within 200 metres of the intersection of Yonge Street and Steeles Avenue (the future Steeles Avenue Subway Station) will only be permitted on the basis of a site specific amendment to this Plan.
- b) Drive-through facilities in the Primary Centres, Local Centres and Regional Intensification Corridors will only be permitted on the basis of a site specific zoning by-law amendment.

c) In considering applications for site specific Official Plan amendments and/or Zoning By-law amendments under a) and b) above to permit drive through facilities, such applications will need to demonstrate that the proposed drive through facility:

- i. Can maintain consistency with the objectives of the Official Plan;
- ii. Does not preclude the planned function and intensification of the site;
- iii. Conforms to the Urban Design Policies of this plan.
- iv. Does not conflict with the planned character of the area by accommodating the operational and functional requirements of the drive-through use;
- v. Does not conflict with the planned urban design and architectural characteristics of the predominant uses on the development parcel if located in a mixed-use development;
- vi. Ensures that if co-located in a mixed-use development, which includes residential units and/or office uses located in a Low-Rise Building, Mid-Rise Building or High-Rise Building, the proposed use does not: Compromise the use and enjoyment of outdoor amenity areas; impact other uses on the site as a result of noise and odour effects; and does not affect the functional support systems for the other uses on the development parcel, including loading, refuse pick-up, on-site visitor and resident/tenant vehicular and pedestrian circulation, access and egress.
- vii. Maintains the planned scale of the urban environment; and
- viii. Gives priority to the comfort, safety and efficient movement of pedestrians and cyclists.

d) Detailed Urban Design Guidelines for drive-through facilities in Intensification Areas may be prepared by the City in accordance with the objectives of policies 9.1.2.5 and 9.1.2.6 for application during the development review process.

5.2.3.9

Drive-through facilities in the areas identified in Policy 5.2.3.8 a), b) and c) that legally existed as of the date of approval of this Plan are deemed to conform to this Plan in accordance with Policy 10.2.1.4.