

Ontario Municipal Board
Commission des affaires municipales
de l'Ontario



ISSUE DATE: May 4, 2016

CASE NO(S): PL111184

PROCEEDING COMMENCED UNDER subsection 17(40) of the *Planning Act*, R.S.O. 1990, c. P.13, as amended

Appellant: 1042710 Ontario Limited (aka Royal Centre)
Appellant: 1096818 Ontario Inc.
Appellant: 11333 Dufferin St et al
Appellant: 1191621 Ontario Inc.; and others
Subject: Failure to announce a decision respecting
Proposed New Official Plan
Municipality: City of Vaughan
OMB Case No.: PL111184
OMB File No.: PL111184
OMB Case Name: Duca v. Vaughan (City)

PROCEEDING COMMENCED UNDER section 37 of the *Ontario Municipal Board Act*, R.S.O. 1990, c. O. 28, as amended, and Rule 34 of the Board's Rules of Practice and Procedure

Request by: City of Vaughan
Request for: Request for Directions

Heard: April 28, 2016, in Vaughan, Ontario

APPEARANCES:

Parties

Argo Lumber Inc. and Alpa Roof
Trusses Inc.

City of Vaughan

Region of York

Counsel

W.T. Barlow and S.J. Turney

R.F. Coburn and I. Tang

P. Patterson and F. Santaguida

CRH Canada Inc., (formerly Holcim (Canada) Inc.); 2203012 Ontario Limited; and Blair Building Materials Inc. S.C. Ferri and B. Ruddick (student-at-law)

MEMORANDUM OF ORAL DECISION BY JAMES R. McKENZIE ON APRIL 28, 2016 AND ORDER OF THE BOARD

[1] This decision arises from a motion ordered by Member Chee-Hing on April 1, 2016, following a teleconference on March 30, 2016, convened for the purpose of finalising a procedural order and issues list for a hearing to address Appeal Nos. 129, 130, and 131 of the 2010 City of Vaughan Official Plan. At dispute in that teleconference was a question of whether land budget issues could and would be included on an issues list for a settlement hearing on those three appeals, which is scheduled to commence on July 11, 2016. Member Chee-Hing approved an issues list and procedural order for the July 11th hearing, and directed the dispute about whether to include additional issues to a motion for directions.

[2] Argo Lumber Inc. and Alpa Roof Trusses Inc. (“Moving Parties”) take issue with the settlement to be presented at the July 11th hearing, and wish to expand the issues list to include land budget considerations as a basis to contest the settlement. CRH Canada Group Inc., (formerly Holcim (Canada) Inc.) (Appeal No. 129), 2203012 Ontario Limited (Appeal No. 130), and Blair Building Materials Inc. (Appeal No. 131), (collectively, the “Appellants”), along with the City of Vaughan and the Region of York (collectively, “Responding Parties”) oppose the motion.

[3] As a threshold issue and question to the motion now before this panel, the Board is asked to determine whether this panel has the jurisdiction to consider and decide the motion which seeks relief that is at variance with an Order of the Board, (also issued by Member Chee-Hing), dated August 8, 2013. That Order, which, on consent, scoped Appeal Nos. 129, 130, and 131 and brought a number of policies of the 2010 City of Vaughan Official Plan into full force and effect, precludes any land budget argument being raised in connection the three appeals. The relief sought by the Moving Parties

seeks permission to make such an argument in that hearing. On the face of the respective text of each, this panel finds that the relief sought is at variance with the August 8, 2013 Order. This finding is fundamental to the answer on the question of this panel's authority to deal with the motion.

[4] During submissions, the Board was presented with *Chandler v. Alberta Association of Architects* [1989] 2. S.C.R. 848 ("Chandler"). Mr. Barlow, for the Moving Parties, submitted that this case stands for the proposition that *functus officio*, if applied to administrative tribunals, should be applied in a manner that is more flexible and less formalistic. Mr. Coburn, for the City of Vaughan, submitted that the case instead stands for the proposition that *functus officio* indeed does apply to administrative tribunals, and especially so when there is a statutory provision providing an avenue for review of a tribunal decision. Such an avenue—namely, s. 43 of the *Ontario Municipal Board Act*—exists in these circumstances, and he urged the panel herein to prefer his submission given that there was nothing in the circumstances of *Chandler* approximating s. 43. His remarks were adopted by the respective counsel of the remaining Responding Parties.

[5] The Board prefers Mr. Coburn's submissions on *Chandler* as it finds they more precisely orient the case's import to the present circumstances.

[6] To answer the question, then, this panel concludes that it does not have the authority to consider this motion; it is not empowered to grant the relief sought. As the motion herein seeks, in effect, to undo the August 8, 2013 Order, there is an avenue available to the Moving Parties in s. 43 of the *Ontario Municipal Board Act* to have that order reviewed with a view to achieving the relief it seeks. This forum—a motion for directions as ordered—is not that avenue. For this panel to determine the motion in a *de facto* manner as if it were that avenue would be to usurp powers residing with the Chair in Rules 110-119 in the Board's *Rules of Practice and Procedure*.

[7] As this proceeding was directed by the Board differently constituted, this panel concludes that costs are not warranted.

[8] At the request of the parties, the Board acknowledges the following arrangements and milestones agreed to and accepted by the parties:

1. a revised procedural order is appended hereto which adjusts for dates that have already passed; and,
2. in the event relief is sought under s. 43 of the *Ontario Municipal Board Act*, that request will be filed no later than May 13, 2016, and the parties may thereafter request further procedural direction.

“James R. McKenzie”

JAMES R. McKENZIE
VICE-CHAIR

If there is an attachment referred to in this document,
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Ontario Municipal Board

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