

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



ISSUE DATE: December 18, 2018

CASE NO(S):

PL140839
PL140154

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 22(7) of the *Planning Act*, R.S.O. 1990, c. P. 13, as amended

Applicant and Appellant:	Rutherford Land Development Corp.
Subject:	Request to amend the Official Plan - Failure of the City of Vaughan to adopt the requested amendment
Existing Designation:	“Prestige Area” under Official Plan Amendment No. 450 (Employment Area Plan)

Proposed Designation: "High Density Residential/Commercial" under Official Plan Amendment No. 600

Purpose: To permit a mixed-use development consisting of approximately 303,000 square metres (3,261,464 square feet) in size containing 3,700 residential units in a built form containing 13 towers above a podium base with heights up to 38 storeys, as well as 10,300 square metres (110,868 square feet) of retail/institutional/community space and 4,500 square metres (48,437 square feet) of office space

Property Address/Description: 2901 Rutherford Road (south-east corner of Jane Street and Rutherford Road)

Municipality: City of Vaughan

Approval Authority File No.: OP.06.028

OMB Case No.: PL140154

OMB File No.: PL140154

OMB Case Name: Rutherford Land Development Corp. v. Vaughan (City)

PROCEEDING COMMENCED UNDER subsection 34(11) of the *Planning Act*, R.S.O. 1990, c. P. 13, as amended

Applicant and Appellant: Rutherford Land Development Corp.

Subject: Application to amend Zoning By-law 1-88, as amended – refusal or neglect of the City of Vaughan to make a decision

Existing Zoning: EM1 Prestige Employment Zone

Proposed Zoning: "RA3(H)" Apartment Residential (Holding) Zone and "OS2" Open Space Park Zone

Purpose: To permit a mixed-use development consisting of approximately 303,000 square metres (3,261,464 square feet) in size containing 3,700 residential units in a built form containing 13 towers above a podium base with heights up to 38 storeys, as well as 10,300 square metres (110,868 square feet) of retail/institutional/community space and 4,500 square metres (48,437 square feet) of office space

Property Address/Description: 2901 Rutherford Road (south-east corner of Jane Street and Rutherford Road)

Municipality: City of Vaughan

Municipal File No.: Z.06.075
 OMB Case No.: PL140154
 OMB File No.: PL140155

Heard: June 21, 2018 in Vaughan, Ontario

APPEARANCES:

Parties

Counsel

Rutherford Land Development Corp.	Q. Annibale B. Ruddick
City of Vaughan	B. Coburn E. Lidakis
Canadian National Railway	A. Heisey
Region of York	A. Ogunmefun
Magna International Inc. and Granite Real Estate Inc.	A. Skinner

DECISION DELIVERED BY C. CONTI AND ORDER OF THE TRIBUNAL

INTRODUCTION

[1] This is the decision for appeals filed by Rutherford Land Development Corporation (“Rutherford”) against the failure of the City of Vaughan (“City”) to approve proposed amendments to the Vaughan Mills Centre Secondary Plan (“Secondary Plan”) and Zoning By-law No. 1-88 (“Zoning By-law”) in order to permit the development of lands on the east side of Jane Street, south of Rutherford Road in Vaughan.

[2] Quinto Annibale filed a motion (Exhibit 37) seeking site-specific modifications to the Secondary Plan and Zoning By-law that would facilitate construction of three condominium towers of 30 storeys, 26 storeys and 26 storeys to comprise Phase 1 of the development of the subject property. Mr. Annibale requested that the remainder of

the appeal be adjourned *sine die* and that outstanding matters would be brought forward as the development progresses.

[3] Responses to the motion were filed by the City (Exhibit 41), by Magna International Inc. and Granite Real Estate Inc. (“Magna and Granite”) (Exhibit 43) and by Canadian National Railway (“CNR”) (Exhibit 42). The responses did not object to the motion, but requested that a number of conditions be fulfilled if the motion were to be allowed.

[4] The City’s response to the motion requested that the Tribunal withhold its final order until after the Tribunal issued its final order on modifications to the Secondary Plan approved through its oral decision of January 25, 2018.

[5] The response from Magna and Granite also indicated support for the motion dependent on the final order noted above being issued. Magna and Granite also requested a change in the wording of item iv(d) in the Environmental Noise Impact Study Section of the proposed amendment to the Secondary Plan (Exhibit 37, Tab 2L, p. 111) and indicated that further modifications to the Secondary Plan regarding the Rutherford lands may require further resolution of the Magna and Granite issues and appeals.

[6] The response of CNR did not oppose the motion on the condition that an agreement between CNR and Rutherford be registered on title of the lands and that the Tribunal’s approval would be without prejudice to the balance of policies appealed by CNR.

[7] The Tribunal heard that the change requested by Magna and Granite to the proposed Secondary Plan Amendment has been incorporated and included in the draft order provided by the parties (Exhibit 39, Schedule B). Furthermore, Mr. Annibale informed the Tribunal that an appropriate agreement between Rutherford and CNR will be registered on title. In addition, the Tribunal has issued its final order emanating from

its oral decision of January 25, 2018.

[8] Subject to the above, none of the parties objected to the approval of the modifications to the Secondary Plan and the proposed zoning by-law amendment that would permit Phase 1 of the development.

EVIDENCE

[9] The motion was accompanied by the affidavit of Michael Bissett, Partner at Bousfields Inc. who also provided oral evidence. Mr. Bissett is a Registered Professional Planner with approximately 18 years of experience. He was qualified by the Tribunal as an expert in land use planning.

[10] The Tribunal heard that the Phase 1 property is located on the east side of Jane Street south of Rutherford Road and it includes all of the area identified as b4 (a) in the Secondary Plan. The site has an area of 0.798 hectares (“ha”) with frontage on Jane Street of 90 metres (“m”). Along the eastern boundary of the site is the Calderi Road extension and to the south a new road is proposed between the Rutherford lands and lands owned by Tesmar Holdings Inc.

[11] The proposal is for a transit-supportive mixed use development with three residential towers of 30 storeys, 26 storeys and 26 storeys. The towers are proposed to have 750 square metre (“sq. m.”) floor plates with 25 m separation distances between them. Commercial space is proposed along the Jane Street frontage. Along the frontage on the extension of Calderi Road live-work units will be provided. The plans call for a Privately Owned Public Open Space with an area of approximately 2,500 sq. m. which will provide a mid-block connection between Jane Street and Calderi Road. Road widenings will also be provided through the proposal.

[12] Mr. Bissett indicated that through the proposed planning instruments the boundaries of development blocks b4 (a) and b4 (b) will be modified as shown in Exhibit

37, Tab 2 K. Phase 1 will provide for up to 985 residential units within development block b4 (a).

[13] Mr. Bissett indicated that the Phase 1 site has been designated as a Class 4 Area under the Ministry of the Environment and Climate Change Environmental Noise Guidelines, Stationary and Transportation Sources – Approval and Planning Publication NPC-300. In addition, City Council has amended its noise By-law to identify the Magna and Granite lands as Exempted Employment Area which provides flexibility regarding noise generated by the Magna operations as they might affect the Class 4 lands.

[14] Mr. Bissett referred to a draft order (Exhibit 39) submitted by Rutherford which includes the proposed amendment to the Secondary Plan in Schedule B and the amendment to the By-law in Schedule C. The proposed Secondary Plan amendment includes provision for 985 units in block b4 (a), provision for the use of the Holding Symbol, allowing building heights and densities to exceed the maximum as proposed, specifications regarding the towers, provisions for the dedication and construction of Calderi Road, and provisions related to noise mitigation.

[15] The proposed zoning by-law amendment includes provisions to regulate height, setbacks, tower separation and other design details of the site. It also includes provisions for lifting the Holding symbol and for section 37 contributions.

[16] Mr. Bissett's opinion was that the proposed amendments to the Secondary Plan and the Zoning By-law are appropriate and represent good planning.

[17] Mr. Bissett's planning opinion was that the modifications for Phase 1 of the development have regard for matters of provincial interest and the proposed amendments to the Secondary Plan and the Zoning By-law are consistent with the Provincial Policy Statement, 2014 ("PPS") and conform to the Growth Plan for the Greater Golden Horseshoe, 2017 ("Growth Plan"). He stated that the proposal makes efficient use of facilities in a built up area and that it provides for appropriate mitigation

of potential noise impacts.

[18] Mr. Bissett indicated that the subject property is identified as a Primary Centre in the York Region Official Plan which will permit the proposal. The City Official Plan designates the property as Primary Centre. Mr. Bissett's evidence referred to intensification policies in the York Region Official Plan. He indicated that the proposal is consistent with the City's intensification strategy.

[19] Mr. Bissett stated that the Secondary Plan implements the City's Official Plan and it contains the most relevant policies. He stated that the proposed height of the Towers of 26 and 30 storeys is in line with the direction in the Secondary Plan. Furthermore, the Secondary Plan identifies Jane Street as a potential rapid transit corridor and the intersection of Jane Street and Rutherford Road is identified as a potential Transit Stop. The proposal will function as a transit supportive development and the widening of Jane Street through the proposal will assist the proposed functions of area. In addition the widening will accommodate a bicycle lane.

[20] The Secondary Plan calls for a minimum of 60% of building frontages facing arterial or collector roads to consist of retail uses. Mr. Bissett indicated that the proposal fulfills this requirement by providing for the portions of Phase 1 of the development facing Jane Street to be in retail uses. Furthermore, a number of policies in the Secondary Plan require environmental matters to be addressed. Mr. Bissett indicated that these policies will be addressed through the proposed amendment to the Secondary Plan and will provide for land use compatibility.

[21] Mr. Bissett stated that the proposed development conforms to the Official Plan and the Secondary Plan. Furthermore, he stated that the proposed amendments to the Secondary Plan and the Zoning By-law are consistent with the PPS and conform to the Growth Plan, the York Region Official Plan and the City Official Plan.

ANALYSIS AND FINDINGS

[22] The Tribunal has carefully considered the evidence provided by the parties. The opinion evidence in support of the motion and recommending approval of the proposed amendments to the Secondary Plan and Zoning By-law is uncontested.

[23] In view of the above, the Tribunal accepts and agrees with the opinion evidence provided by Mr. Bissett. The proposed amendments to the Secondary Plan and the Zoning By-law will provide for transit supportive development in an appropriate location. The proposed development is encouraged by intensification policies in the City's Official Plan. The proposed built form fits within the approved planned context of the area in terms of height and density. The proposal will provide for public benefits in terms of the construction of new public streets and section 37 contributions.

[24] Based upon the above, the Tribunal finds that the proposed amendment to the Secondary Plan and Zoning By-law are consistent with the PPS, conform to the Growth Plan and conform to both the York Region and the City's Official Plan.

[25] Furthermore, the concerns identified by the parties in the responses to the motion have been resolved.

[26] The Tribunal adopts the Draft Order provided by the parties (Exhibit 39) which includes a clause that before the Tribunal's final order is issued that the agreement between the Appellant and CNR must be registered on the title of the property. Therefore, at this time the Tribunal will allow the motion, allow the appeal in part and approve the planning instruments in principle. The Tribunal's final order will be issued when Rutherford and CNR confirm that the agreement has been registered on title.

ORDER

[27] The Tribunal orders that the motion is allowed and the appeal is allowed in part. The Tribunal approves in principle the amendments to the Vaughan Mills Centre Secondary Plan and the City of Vaughan Zoning By-law No. 1-88 as set out in Exhibit 39. The Tribunal's final order will be withheld until it is informed by the Appellant and CNR that their agreement has been registered on title.

"C. Conti"

C. CONTI
VICE-CHAIR

If there is an attachment referred to in this document,
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Local Planning Appeal Tribunal

A constituent tribunal of Environment and Land Tribunals Ontario
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