

AIRD & BERLIS LLP

Barristers and Solicitors

N. Jane Pepino, C.M., Q.C., LL.D.
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April 9, 2013

Our File No. 114779

BY EMAIL

Mr. Jeffrey Abrams
Clerk's Department
City of Vaughan
2141 Major Mackenzie Drive
Vaughan, ON L6A 1T1

C	3
Item #	14
Report No.	14 (CW)
Council - APRIL 23/13	

Dear Mr. Abrams:

**Re: Committee of the Whole Meeting – April 9, 2013, Item 14
Thornhill Centre Street Area Land Use Plan Modifications
City of Vaughan Official Plan 2010 – Volume 2, Section 12.10
File No. 26.10**

As you are aware, we act on behalf of Imperial Oil Limited ("IOL"), with respect to IOL's interest in the new City of Vaughan Official Plan ("VOP 2010").

As the owner or lessee of numerous properties used for gas stations in the City of Vaughan, IOL has an interest in the VOP 2010 and has significant concerns with some of the proposed policies of the VOP 2010. These concerns were carefully outlined in IOL's Notice of Appeal, filed with the Region of York on November 12, 2012, and attached to this letter for your reference.

We have reviewed the Thornhill Centre Street Area Land Use Plan ("Centre Street Plan") and the report regarding modifications to the Centre Street Plan, to be considered by the Committee of the Whole on April 9, 2013. Our concerns with the Centre Street Plan are as follows:

- Map 12.10.A

In accordance with Section 12.10.10.1, Gas Stations are only permitted in the locations identified on Map 12.10.A. Currently, Map 12.10.A shows only one Gas Station within the Centre Street Plan area, that being the Gas Station located at the southwest corner of Dufferin Street and Centre Street. However, an Esso Gas Station is currently situated on the lands municipally known as 1030 Centre Street, which are located on the north side of Centre Street, west of New Westminster Drive. According to Map 12.10.A, 1030 Centre Street is proposed to be designated Mid-Rise Mixed-Use "A".

The Centre Street Plan formerly contained policies at Section 12.10.8.5 to permit the following uses on the property at 1030 Centre Street: *"the sale of auto fuel, oil*

and lubricant and other related products, the provision of repair and maintenance services for vehicles, and the existing car wash and convenience retail use as listed on the property." Former Section 12.10.8.5 also contained compatibility criteria for any future redevelopment of the site. This section has been removed by the modifications to the Centre Street Plan without explanation.

The exclusion of 1030 Centre Street as a Gas Station on Map 12.10.A and the removal of former Section 12.10.8.5 effectively renders the Esso Gas Station site "legal non-conforming" as Gas Stations are not listed as a permitted use in the Mid-Rise Mixed-Use "A" designation and are not specifically permitted by Section 12.10.8.5. This is unacceptable as Legal Non-conforming status would hinder the redevelopment of this Gas Station, which includes replacement of equipment as necessary to ensure the safe operation of the station and continuing upgrades, as market and customers demand.

- Section 12.10.11 – Special Policy Area

The policies regarding the Gas Station shown on Map 12.10.A are set out in Section 12.10.10. Section 12.10.10.2 permits any Gas Station designated on Map 12.10.A to be developed in accordance with the land use designation of the immediately adjoining land without amendment to this Area Specific Policy.

The lands immediately adjacent to the Gas Station shown on Map 12.10.A are designated Low-Rise Residential and Special Policy Area. We request clarification with respect to the policies of the Special Policy Area, specifically Section 12.10.11.2 which states that, *"The urban design, parking and other general policies of this Official Plan, including the 'Service Station/Gas Bar' policy, which in effect prohibits a service station use at the southwest corner of Dufferin and Centre Street, shall apply for any development within this designation."*

The intent of Section 12.10.10.2 is unclear. Currently there is no Gas Station at the southwest corner of Dufferin Street and Centre Street and a Gas Station would not be permitted by the Low-Rise Residential Designation of those lands. Further, it is unclear what the "Service Station/Gas Bar" policy of the Vaughan Official Plan referred to by Section 12.10.11.2 is as there are many policies respecting Gas Stations in Volume 1 of the Vaughan Official Plan and policies respecting Gas Stations in the Centre Street Plan.


Should you require any further information or clarification please do not hesitate to contact the undersigned, or Emily Elliott, Land Use Planner, of this office at 416-865-3069. Please provide any further notices associated with the Centre Street Plan, including notice of adoption of the revised Centre Street Plan to the undersigned. Thank you very much.

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Yours truly,

AIRD & BERLIS LLP



 N. Jane Pepino, C.M., Q.C., LL.D.

NJP/ee

cc. D. Dussault, Imperial Oil Limited
M. Goldberg, Goldberg Group
A. Sicilia, Vaughan Policy Planning Department

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AIRD & BERLIS LLP

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N. Jane Pepino, C.M., Q.C., LL.D.

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November 12, 2012

BY EMAIL AND BY COURIER

Mr. Denis Kelly
Regional Clerk
Regional Municipality of York
17250 Yonge Street
Newmarket, ON L3Y 6Z1

Dear Mr. Kelly:

**Re: Appeal of New City of Vaughan Official Plan
Subsection 17(40) of the Planning Act, R.S.O. 1990, c. P. 13, as amended
7018 Islington Avenue
4515 Highway 7
3764 Highway 7
6161 Highway 7
1 Thornhill Woods Drive
8525 Highway 27
8555 Keele Street
1500 Major Mackenzie Drive West
3555 Major Mackenzie Drive West
3100 Major Mackenzie Drive West
Highway 400 South
3650 Rutherford Road
1030 Centre Street
7491 Nashville Road
10520 Jane Street**

We act on behalf of Imperial Oil Limited ("IOL"), the owner or leasee of the above-noted properties, with respect to IOL's interest in the new City of Vaughan Official Plan.

The purpose of this letter is to appeal to the Ontario Municipal Board, Regional Council's failure to make a decision with respect to the new City of Vaughan Official Plan, pursuant to subsection 17(40) of the *Planning Act*. It has been in excess of 180 days since the new Vaughan Official Plan was received by the Region of York, and a decision has not been rendered. Please be advised that IOL is a member of the Canadian Fuels Association ("Cdn. Fuels"), formerly the Canadian Petroleum Products Institute. IOL will be represented both as part of the Cdn. Fuels appeal and individually with respect to individual gasoline stations and associated uses.

As the owner or leasee of numerous properties used for gas stations in the City of Vaughan (the "City"), IOL has an interest in the new City of Vaughan Official Plan. We respectfully submit that a number of the proposed policies in the Vaughan Official Plan

would undermine the safety and viability of many of IOL's gas stations. IOL's areas of concern are as follows:

- Section 9.2 - Land Use Designation and Permitted Building Types - Gas Stations in areas designated Mid-Rise Mixed Use, High-Rise Mixed Use, Employment Commercial Mixed Use, Community Commercial Mixed Use and Prestige Employment are subject to the following criteria:

(A) the use is located on an arterial street as indicated on Schedule 9;

*(B) the use is limited to one Gas Station per intersection;
and,*

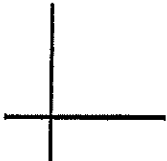
(C) no Gas Stations shall be permitted at the intersection of two arterial streets as indicated on Schedule 9.

Many existing Esso Gas Stations in the City are located at the intersection of two arterial streets in order to provide service to motorists passing in different directions without requiring a change in direction. Many of these high traffic intersections currently have more than one Gas Station, as road medians or traffic conditions prevent motorists from accessing Gas Stations located across a street. A single Gas Station could not provide adequate and safe service for the total motor vehicle traffic at many intersections in the City or in the alternative, would require added traffic movements increasing congestion and delay. Further, requiring that Gas Stations locate at the intersection of only one arterial street would result in twice the number of Gas Stations in the City to serve the same amount of vehicle traffic, as well as forcing Gas Stations to intersections of collector streets, which are more likely to be close to Residential neighbourhoods.

Additionally, the inclusion of the above sections would result in those existing Gas Stations at an intersection where more than one Gas Station exists, or on an intersection of two arterial streets, to simply become "Legal Non-conforming". (Subject to the provisions of Section 10.2.1.4, see below). This is unacceptable as Legal Non-conforming status would hinder the redevelopment of these Gas Stations, which includes replacement of equipment as necessary to ensure the safe operation of the stations, and continuing upgrades and changes to the offerings at Gas Stations, as market and customers demand.

- Section 9.2.3.9 - Building Types and Development Criteria, Gas Stations imposes specific policies and development criteria on Gas Stations. Section 9.2.3.9.c. requires that:

Where a Gas Station contains a retail building greater than 100 square metres, the retail building shall front onto at least one public street, with no driveways or parking spaces located between the building and the public street.



The above section is too prescriptive for an Official Plan and rather, an Official Plan should call for Urban Design Guidelines, which set out detailed policies.

Section 9.2.3.9 is not compatible with the design of modern Gas Stations. Moreover, modern Gas Stations allow for the "one stop shopping" concept where the public can perform a multitude of daily tasks on one site thus avoiding otherwise separate small trips. Additionally, modern Gas Stations are equipped with public washrooms adapted for customers with disabilities. In order for modern Gas Stations to accommodate these services, a building in excess of 100 square metres is required.

The requirement that a retail building greater than 100 square metres be located facing the street, with no driveways or parking spaces located between the building and the street, makes it impossible for a modern Gas Station to function. The gas pumps and canopy must be fronting the retail building to allow access for motorist customers and to allow the Gas Station attendant to monitor the pump islands. Based on the above, this requirement of the Official Plan is unworkable. It should also be noted that Section 9.1.2.6.e. contains a contradictory exception permitting parking between a building and public sidewalks in the case of Gas Stations in *Intensification Areas*.

- Also in Section 9.2.3.9 - Building Types and Development Criteria, Gas Stations, Section 9.2.3.9.d. requires that:

Where a Gas Station contains a car wash, the car wash shall generally be located to the rear of the site and setback a minimum of 30 metres from any Low-Rise Residential designation.

IOL is opposed to this arbitrary minimum setback of 30 metres of a car wash from any Low-Rise Residential Designation. This type of detailed requirement is not warranted within the Official Plan but rather, if necessary, would be better suited in a zoning by-law or urban design guidelines.

- Section 10.2.1.4 – Interpretation states that it is the policy of Council:

To recognize legally existing land uses as they exist at the time this Plan is approved. These land uses shall be deemed to conform to this Plan. Minor extensions, reductions or expansions of such uses shall be permitted without amendment to this Plan, provided that the intent of this Plan is not compromised...

It is IOL's position that the section above needs to be revised to allow for the redevelopment of legally existing uses for a similar use while remaining in compliance with the Official Plan without the uncertainty presented by the conditions attached to the above deeming provision. Gas Stations are somewhat different from typical uses as their facilities are comprised of dispensing pumps, underground storage equipment, kiosks, canopies and other equipment that need to be replaced or rebuilt periodically to adhere to safety and environmental legislation and regulations. They are also mainly outdoor areas

which are subject to wear and tear as a result of weather, road salts and traffic. For these reasons, and in order to meet evolving customer demands, existing Gas Stations need to be redeveloped from time to time. The deletion of the words "*provided that the intent of this Plan is not compromised*" (which are themselves incapable of being clearly interpreted), would ensure that the routine and necessary redevelopment of Gas Stations currently existing throughout the City of Vaughan does not trigger an amendment to the Official Plan. However, as a first principle it is IOL's position, consistent with that of the Cdn. Fuels, that no gas station site, vacant or occupied, should be rendered non-conforming.

- Section 5.2.3.8 – Supporting and Transforming the Retail Sector, Drive-through Facilities prohibits drive-through facilities as follows:

Drive-throughs facilities are a complement to general retail activity and shall only be located such that the use does not adversely affect the goals of intensification, pedestrianization, attractive streetscapes, transit supportiveness, or have an adverse impact on residential neighbourhoods. In addition to and in recognition of Intensification Areas and Heritage Conservation Districts, which are already subject to a prohibition of drive-through facilities, it is intended that the prohibition shall also pertain to all Intensification Areas except Primary Intensification Corridors that are not Regional Corridors as identified on Schedule 1.

The redevelopment of Esso gas stations currently operating with drive-through facilities will be hindered by the above prohibition as it will result in those existing Gas Stations to simply become "Legal Non-conforming", which for the reasons stated above, is unacceptable. Further, the drive-through prohibition will dramatically impact Esso's interests and the needs of the travelling public.

The inclusion of the drive-through prohibition is inappropriate as it has been approved by without relevant studies supporting such a prohibition. Additionally, the Vaughan Official Plan does not define the term "*drive-through facility*" which makes a clear interpretation of Section 5.2.3.8 difficult.

Cdn. Fuels has actively participated in the process of the new City of Vaughan Official Plan and, as a member company, IOL was listed in all past correspondence and representations made to the City by Cdn. Fuels. Specifically, Cdn. Fuels and representatives from some member companies met with City Planning Staff on June 24, 2010 to discuss the issues outlined above and others. At that time, staff indicated these issues would be considered and that revisions to the Official Plan would be made as appropriate. Despite a Council direction on September 27, 2011 to do so, staff has not contacted Cdn. Fuels since the June 2010 meeting and the above-described issues remain outstanding. Cdn. Fuels has continued to express concerns through deputations to the Committee of the Whole on June 14, 2010 and April 2, 2012 and to the York Region Planning and Economic Development Committee on June 13, 2012. Additionally letters to

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the City of Vaughan were filed on June 7, 2012, July 5, 2012, July 27, 2010, September 12, 2011 and April 2, 2012

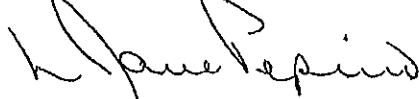
Please accept this letter, the attached Appellant Form, the enclosed cheque in the amount of \$125, payable to the Ministry of Finance, and the enclosed cheque in the amount of \$480 made payable to the Regional Municipality of York, as the IOL appeal of the of new City of Vaughan Official Plan in its entirety.

We would be pleased to meet with appropriate Regional and City Officials to discuss IOL's concerns in greater detail.

Should you require any further information or clarification respecting any aspects of this appeal, please do not hesitate to contact the undersigned, or Emily Elliott, Land Use Planner, of this office at 416-865-3069. Acknowledgement of receipt of this appeal would be greatly appreciated. Please provide any further notices associated with this appeal to the undersigned. Thank you very much.

Yours truly,

AIRD & BERLIS LLP



N. Jane Pepino, C.M., Q.C., LL.D.

NJP/ee

cc. Don Dussault, Imperial Oil Limited
Michael Goldberg, Goldberg Group
Claudia Storto, Solicitor, City of Vaughan
Ryan Co, Planner, Ontario Municipal Board

Encl.

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Environment and Land Tribunals Ontario
Ontario Municipal Board
655 Bay Street, Suite 1500 Toronto, Ontario M5G 1E5
TEL: (416) 212-6349 or Toll Free: 1-866-448-2248
FAX: (416) 326-5370
www.eltio.gov.on.ca

**APPELLANT FORM (A1)
PLANNING ACT**

**SUBMIT COMPLETED FORM
TO MUNICIPALITY/APPROVAL AUTHORITY**

Date Stamp - Appeal Received by Municipality

Receipt Number (OMB Office Use Only)

Part 1: Appeal Type (Please check only one box)

SUBJECT OF APPEAL	TYPE OF APPEAL	PLANNING ACT REFERENCE (SECTION)
Minor Variance	<input type="checkbox"/> Appeal a decision	45(12)
Consent/Severance	<input type="checkbox"/> Appeal a decision	53(19)
	<input type="checkbox"/> Appeal conditions imposed	
	<input type="checkbox"/> Appeal changed conditions	53(27)
	<input type="checkbox"/> Failed to make a decision on the application within 90 days	53(14)
Zoning By-law or Zoning By-law Amendment	<input type="checkbox"/> Appeal the passing of a Zoning By-law	34(19)
	<input type="checkbox"/> Application for an amendment to the Zoning By-law – failed to make a decision on the application within 120 days	34(11)
	<input type="checkbox"/> Application for an amendment to the Zoning By-law – refused by the municipality	
Interim Control By-law	<input type="checkbox"/> Appeal the passing of an Interim Control By-law	38(4)
Official Plan or Official Plan Amendment	<input type="checkbox"/> Appeal a decision	17(24) or 17(36)
	<input checked="" type="checkbox"/> Failed to make a decision on the plan within 180 days	17(40)
	<input type="checkbox"/> Application for an amendment to the Official Plan – failed to make a decision on the application within 180 days	22(7)
	<input type="checkbox"/> Application for an amendment to the Official Plan – refused by the municipality	
Plan of Subdivision	<input type="checkbox"/> Appeal a decision	51(39)
	<input type="checkbox"/> Appeal conditions imposed	51(43) or 51(48)
	<input type="checkbox"/> Failed to make a decision on the application within 180 days	51(34)

Part 2: Location Information

All lands within municipality
Address and/or Legal Description of property subject to the appeal:

Municipality/Upper tier: City of Vaughan / Region of York

Part 3: Appellant InformationFirst Name: Don Last Name: DussaultImperial Oil Limited

Company Name or Association Name (Association must be incorporated – Include copy of letter of incorporation)

Professional Title (if applicable): _____

E-mail Address: don.i.dussault@esso.ca

By providing an e-mail address you agree to receive communications from the OMB by e-mail.

Daytime Telephone #: 905.736.0194 Alternate Telephone #: 905.892.8044Fax #: 905.982.4995Mailing Address: P.O. Box 1490, Fonthill
Street Address Apt/Suite/Unit# City/TownOntario L0S 1E2
Province Country (if not Canada) Postal CodeSignature of Appellant: _____ Date: _____
(Signature not required if the appeal is submitted by a law office.)

Please note: You must notify the Ontario Municipal Board of any change of address or telephone number in writing. Please quote your OMB Reference Number(s) after they have been assigned.

Personal information requested on this form is collected under the provisions of the *Planning Act*, R.S.O. 1990, c. P. 13, as amended, and the *Ontario Municipal Board Act*, R.S.O. 1990, c. O. 28 as amended. After an appeal is filed, all information relating to this appeal may become available to the public.

Part 4: Representative Information (if applicable)

I hereby authorize the named company and/or individual(s) to represent me:

First Name: N. Jane Last Name: PepinoCompany Name: Aird & Berlis LLPProfessional Title: SolicitorE-mail Address: jpepino@airdberlis.com

By providing an e-mail address you agree to receive communications from the OMB by e-mail.

Daytime Telephone #: 416.865.1500 Alternate Telephone #: _____Fax #: 416.863.1515Mailing Address: 181 Bay Street Suite 1800 Toronto
Street Address Apt/Suite/Unit# City/TownOntario M5J 2T9
Province Country (if not Canada) Postal CodeSignature of Appellant: [Signature] Date: Nov 12/12

Please note: If you are representing the appellant and are NOT a solicitor, please confirm that you have written authorization, as required by the Board's Rules of Practice and Procedure, to act on behalf of the appellant. Please confirm this by checking the box below.

☐ I certify that I have written authorization from the appellant to act as a representative with respect to this appeal on his or her behalf and I understand that I may be asked to produce this authorization at any time.

Part 5: Language and Accessibility

Please choose preferred language: ☒ English ☐ French

We are committed to providing services as set out in the *Accessibility for Ontarians with Disabilities Act, 2005*. If you have any accessibility needs, please contact our Accessibility Coordinator as soon as possible.

Part 6: Appeal Specific Information

1. Provide specific information about what you are appealing. For example: Municipal File Number(s), By-law Number(s), Official Plan Number(s) or Subdivision Number(s):

Appeal of City of Vaughan's new Official Plan, City File No. OP.25.1.

2. Outline the nature of your appeal and the reasons for your appeal. Be specific and provide land-use planning reasons (for example: the specific provisions, sections and/or policies of the Official Plan or By-law which are the subject of your appeal - if applicable). **If more space is required, please continue in Part 9 or attach a separate page.

Please see covering letter.

THE FOLLOWING SECTIONS (a&b) APPLY ONLY TO APPEALS OF ZONING BY-LAW AMENDMENTS UNDER SECTION 34(11) OF THE *PLANNING ACT*.

- a) DATE APPLICATION SUBMITTED TO MUNICIPALITY: _____
(If application submitted before January 1, 2007 please use the O1 'pre-Bill 51' form.)

- b) Provide a brief explanatory note regarding the proposal, which includes the existing zoning category, desired zoning category, the purpose of the desired zoning by-law change, and a description of the lands under appeal:
**If more space is required, please continue in Part 9 or attach a separate page.

Part 7: Related Matters (if known)

Are there other appeals not yet filed with the Municipality?

YES ☐

NO ☒

Are there other planning matters related to this appeal?

YES ☒

NO ☐

(For example: A consent application connected to a variance application)

If yes, please provide OMB Reference Number(s) and/or Municipal File Number(s) in the box below:

The new City of Vaughan Official Plan has been appealed for Regional Council's failure to make a decision by various other parties. (File No. PL 111184)

Part 8: Scheduling Information

How many days do you estimate are needed for hearing this appeal? ☐ half day ☐ 1 day ☐ 2 days ☐ 3 days
☐ 4 days ☐ 1 week ☒ More than 1 week – please specify number of days: 8 days

How many expert witnesses and other witnesses do you expect to have at the hearing providing evidence/testimony?
Various

Describe expert witness(es)' area of expertise (For example: land use planner, architect, engineer, etc.): Land Use Planner, urban designer, traffic expert, industry representative

Do you believe this matter would benefit from mediation? YES ☒ NO ☐
(Mediation is generally scheduled only when all parties agree to participate)

Do you believe this matter would benefit from a prehearing conference? YES ☒ NO ☐
(Prehearing conferences are generally not scheduled for variances or consents)

If yes, why? To determine the scope of the hearing, the various parties and the issues list.

Part 9: Other Applicable Information **Attach a separate page if more space is required.

[illegible]

Part 10: Required Fee

Total Fee Submitted: \$ 125

Payment Method: ☐ Certified cheque ☐ Money Order ☒ Solicitor's general or trust account cheque

- The payment must be in Canadian funds, payable to the Minister of Finance.
- Do not send cash.
- PLEASE ATTACH THE CERTIFIED CHEQUE/MONEY ORDER TO THE FRONT OF THIS FORM.