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May 5, 2015

**Sent via e-mail to clerks @vaughan.ca**

Committee of the Whole  
City of Vaughan  
2141 Major Mackenzie Drive  
Vaughan, ON N1G 5L3

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Item #	<u>4</u>
Report No.	<u>20 (cw)</u>
<u>Council - May 19/15</u>	

To the Committee of the Whole,

**Re: File BL.40/47.2003  
Block 40/47 Developers Inc.  
Status Update of Application for Block Plan Approval**

Donnelly Law represents Ms Gillian Evans and Mr. David Toyne, residents of Upper Cold Creek Farm ("UCCF") in Vaughan adjacent to Block Plan 40/47. My client is concerned the viability of UCCF is under threat from proposed residential development immediately adjacent to UCCF, and has appealed Official Plan Amendment 744 ("OPA 744") to the Ontario Municipal Board ("OMB"). In brief, our client is very concerned the City of Vaughan Planning Staff Report dated May 5, 2015 (the "Status Update") contains serious omissions that if allowed to stay, could prejudice Council's decision.

Whether it is the Evans family (UCCF's owners), or the Ontario Federation of Agriculture, there are serious outstanding issues that must be resolved before this development should proceed.

**Our client respectfully submits the Committee should send this Status Update back to Staff for revisions that respect the pre-existing and highly valued agricultural uses of the adjacent lands.**

**Lack of Consideration for UCCF**

Section 3 of the Status Update provides only a very brief treatment of my client's concerns with OPA 744, and by extension, the Block Plan. For example, it states the "appeal relates to concerns respecting the compatibility of the adjacent land uses with the operation." The Status Update should elaborate in detail on issues raised by my client in the OMB proceeding that are relevant to the Committee's consideration of the Block Plan.

For example:

- Relocation of a Stormwater Pond: My client's registered professional planner and professional agrologist suggested one means to address the land use conflict between agricultural/residential uses could involve the relocation of a stormwater pond north of UCCF. This was affirmed by Mr. Robert Clark, P. Eng., MCIP, RPP, P. Ag. on February 25, 2015, in response to a motion by Block 40/47 Developers Inc. (See attached.) Relocating a stormwater pond as a buffer between the incompatible uses would preserve an equal number of private lots for the developers. Why was the obvious solution ignored?
- Planning Review of OPA 744: Mr. Clark also affirmed that, prior to approving OPA 744, no study or report assessed the impacts to the existing agricultural operation from residential uses, or vice versa. Mr. Clark stated

"In my professional opinion, **it was a critical oversight that no [Agricultural Impact Assessment] was conducted** or opinion sought from a professional agrologist or planner experienced with agricultural issues, prior to approval of OPA 744..." [Emphasis added]

In his affidavit, Mr. Clark stated that in his professional opinion, he recommends a notification on land division agreements requiring notification of purchasers that they are purchasing in a rural area, and may be periodically subject to noise, odour and other effects from normal farm planning practices. Mr. Clark recommended the notification be required for land within 300-500 metres of UCCF.

Surprisingly, while Vaughan is aware of my client's concerns for the viability of UCCF's operations, the Block Plan has not been circulated to the Ontario Ministry of Agriculture, Food and Rural Affairs ("OMAFRA") (see section 6). Other matters of provincial interest such as ecological systems are directly addressed in the Status Update, e.g. Reside Dace habitat. We note Section 9a of the Status Update refers to meetings and discussion between Vaughan and the Ministry of Natural Resources and Forestry regarding the Pedestrian/Service Bridges: Why no similar discussion with OMAFRA?

### **Green Directions Vaughan**

The Status Update refers to *Green Directions Vaughan* Goal 2: To ensure sustainable development and redevelopment. We observe that proposed action 2.2.4 states:

Develop policies to create opportunities for near urban agriculture within Vaughan's rural areas, through policies described in the City's new Official Plan

The June 2014 *Green Directions Vaughan* Implementation Update reports no progress on action 2.2.4. The situation faced by UCCF is a prime example of why Vaughan must demonstrate leadership on protecting the viability of existing farm operations in

agricultural and rural areas, and supporting new operations, adjacent to the urban boundary.

Specifically, when will Vaughan hire a professional agrologist to draft policies to animate this section of *Green Directions Vaughan*?

**Recommendation 2**

Notwithstanding the near total avoidance of any issues or concerns regarding UCCF, Recommendation 2 states:

THAT the revised Block Plan prepared by KLM Planning Partners Inc. dated April 10, 2015 forming Attachment 3 BE APPROVED and form the basis for the consideration of the implementing draft plans of subdivision and zoning amendments and that the implementing development applications proceed to Council for approval, subject to the outcome of Ontario Municipal Board appeals of OPA 744.

Our client respectfully submits the Committee should send this Status Update back to Staff for revisions that respect the pre-existing and highly valued agricultural uses of the adjacent lands.

Please do not hesitate to contact me at 416-572-0464, or by email to [david@donnellylaw.ca](mailto:david@donnellylaw.ca), copying [anne@donnellylaw.ca](mailto:anne@donnellylaw.ca), should you have any questions or comments.

Yours truly,

A handwritten signature in black ink, appearing to read 'D. Donnelly', written over a horizontal line. The signature is stylized and includes a large flourish at the end.

David R. Donnelly

Attachment

**Ontario Municipal Board  
Commission des affaires municipales de l'Ontario**

IN THE MATTER OF subsection 17(36) of the *Planning Act*, R.S.O. 1990, c. P. 13, as amended

Appellants (jointly): Gillian Evans and David Toyne  
Appellants (jointly): Maria Pandolfo, Yolanda Pandolfo, Laura Pandolfo,  
Giuseppe Pandolfo & Cathy Campione  
Subject: Proposed Official Plan Amendment Number 744  
Municipality: The City of Vaughan  
OMB Case No.: PL141138  
OMB File No.: PL141138

**AFFIDAVIT OF ROBERT K. CLARK**

I, **ROBERT K. CLARK**, of the Municipality of Port Hope, in the Province of Ontario,  
MAKE OATH AND SAY as follows:

**Qualifications**

1. I am a professional land use planner and full member of both the Canadian Institute of Planners and the Ontario Professional Planners Institute. I am the principal planner for Clark Consulting Services (CSS), and have over 40 years of experience as a professional planner. I have provided professional planning advice to municipalities, individuals and corporations on land use planning matters.
2. I am also a professional agrologist, so designated by the Ontario Institute of Agrologists. I have over 40 years of experience as a professional agrologist. I have provided professional agrology advice through conducting Agricultural Impact Assessments ("AIA"), Agricultural Land Assessment/Analysis, etc., to municipalities, individuals and corporations.
3. As well, I am a professional engineer (P.Eng.) and a member of the Association of Ontario Land Economists.
4. I completed a Bachelor of Science (Eng.) in Water Resources Engineering, and a Master of Science in Resource Development and Resource Economics at the University of Guelph.

5. I have been qualified to give expert opinion evidence as a land use planner and agrologist before the Ontario Municipal Board (the "Board") on numerous occasions. My curriculum vita is attached as **Exhibit "A"**.

#### **Retainer**

6. On November 15, 2014, I was retained by Ms Gillian Evans and Mr. David Toyne (the "Appellants"). I first discussed the case with the Appellants' lawyer, Mr. David Donnelly, in September 2014.
7. The Appellants reside at 10240 Pine Valley Drive in Vaughan, Ontario on Upper Cold Creek Farm. Upper Cold Creek Farm lies south and west of the Block 40/47 Developers Group Inc. ("Block Plan Group") lands, on the west side of Pine Valley Drive. Upper Cold Creek Farm is adjacent to and south of the Pandolfo Family Lands. Upper Cold Creek Farm is also adjacent to and west of the Block Plan Group lands.
8. I conducted my first site visit to Upper Cold Creek Farm on November 2, 2014. As part of my retainer, I am completing an Agricultural Impact Assessment ("AIA") to describe the impacts of OPA 744 and the development on Upper Cold Creek Farm, as well as to provide my professional opinion on mitigation measures to address the incompatibilities between the existing and future agricultural uses and proposed residential development on both the Pandolfo and Block Plan Group lands.

#### **Description of Upper Cold Creek Farm**

9. **Exhibit "B"** shows the Upper Cold Creek Farm in relation to the Block Plan Group lands.
10. Upper Cold Creek Farm is located in the upper reaches of the Humber River and consists of 59.6 ha (147.3 acres) of owned lands and 46.4 (114.67) of lands leased from the Toronto and Region Conservation Authority ("TRCA"). As I understand, TRCA manages these lands on behalf of Ontario Heritage Trust ("OHT"). An aerial photo with a description of the operations of Upper Cold Creek Farm is attached as **Exhibit "C"**.
11. I note that Upper Cold Creek Farm's operations involve pasturing and cropping on adjacent lands immediately west of the Block Plan Group Lands, on the TRCA-managed land, and immediately adjacent to the Block Plan Group lands at the southwest corner of the land holdings east of Pine Valley Drive.
12. Upper Cold Creek farm houses a variety of livestock including beef cattle, horses, sheep and chickens. The cattle herd relies on pasture lands for feed, with a significant pasture area located immediately adjacent to the Pandolfo Family Lands and Block Plan Lands. Maintaining the pasture lands also involves

the spreading of fertilizer and manure. Lands are under active cultivation for a variety of crops including: hay, corn, oats and soybeans. The farm is substantially self-sufficient i.e. it can provide feed for the majority of livestock on the farm.

13. Upper Cold Creek Farm has been operated by three generations of the Evans family. The original farm included the adjacent lands now owned by the OHT and managed by TRCA. These lands were dedicated to OHT by Ms Evans' grandfather, Mr. Grant Glassco, for the purpose preservation of farming, prime agricultural land and the rural landscape. The farming operation has been modified to incorporate evolving farm and environmental practices, and recently includes restricted access to watercourses that cross the property. Upper Cold Creek Farm is also seeking to expand its operation and has applied for a new barn.
14. Upper Cold Creek Farm is located in the Protected Countryside of the Greenbelt Plan Area. A copy of the Greenbelt Plan Area map with Upper Cold Creek Farm indicated is attached as **Exhibit "D"**.

#### **Reasons for this Affidavit**

15. The Block Plan Group brought a motion asking the Board to dismiss the Appellant's appeal of OPA 744, save and except for the Pandolfo Family Lands. I have reviewed the affidavit of Mr. Mark Yarranton, filed by the Block Plan Group, which provides his land use planning option supporting the motion. Mr. Yarranton did not attempt to speak to me before preparing his affidavit.
16. The purpose of my affidavit is to provide my land use planning and agrology opinion on the Block Plan Group's motion. As I understand, the Block Plan Group motion is a request to scope the Appellants' appeal to the Pandolfo Family Lands, thereby releasing the remaining Block Plan Group lands from the hearing process.

#### **Description of the Agricultural Impact Assessment**

17. As part of my retainer with the Appellants, I am preparing an AIA. An AIA evaluates the potential impact of a development application on the viability of agriculture in an area. In this case, my AIA will focus on Upper Cold Creek Farm.
18. The purpose and objectives of an AIA are generally to identify possible adverse impacts to agriculture, additional restrictions that may impact agricultural operations as a result of development, methods of removing or reducing adverse impacts, and options for location of the proposed development in terms of minimizing impacts to agriculture.

19. I anticipate the AIA to be completed for March 1, 2015.

## Opinion

20. The entire development of OPA 744 will introduce a large resident population in proximity to an on-going, viable farm operation. This changes the nature of community surrounding Upper Cold Creek Farm.
21. In my planning and agrology opinion, the Appeal therefore raises genuine, authentic and legitimate planning issues that involve the Block Plan Group lands, and is not exclusively restricted to the Pandolfo Family Lands.
22. First, Block Plan Group lands may be impacted by, or impact upon, the agricultural operations of Upper Cold Creek Farm.
23. Second, the means of addressing the land use conflicts between agricultural/residential uses could involve a change in land use on the Pandolfo Family Lands, thereby affecting other Block Plan Group lands e.g. reconfiguration of road network, or relocation of stormwater ponds or park space. For example, relocating the large stormwater management pond from the western edge of the general Block Plan Group lands to the southern boundary of the Pandolfo Family Lands could present a reasonable compromise to buffer Upper Cold Creek Farm.
24. The urban residential development proposed near to Upper Cold Creek Farm is incompatible with the Farm, and introduces the following concerns for impacts on landowners' uses and enjoyment of their land:
  - i. Restrictions on the location of future livestock facilities, which cannot comply with Minimum Separation Distances. E.g. future expansion of Upper Cold Creek Farm's livestock operation will be severely limited due to residential development on the Block Plan Group lands.;
  - ii. Complaints about existing operations due to noise, odour, air emissions and dust, in the range of 300 to 500 metres from Upper Cold Creek Farm's operations;
  - iii. Security concerns related to trespass by people and pets;
  - iv. Interference with livestock and ultimately the limitation on pasture areas;
  - v. Security for livestock related to fencing;
  - vi. The cost of responding to complaints from neighbours; and
  - vii. Liability for any perceived losses due to the impact of the farming operation on neighbouring uses.
25. These impacts are not limited to the Pandolfo Family Lands e.g. concerns of trespass from other residents or sensitivities of residents to living near to a livestock operation where manure is spread.

26. More specifically, there is a proposed subdivision located to the east of Upper Cold Creek Farm, on the east side of Pine Valley Drive. There are also subdivisions located northwest of the TRCA-managed lands, which are used as pasture and croplands. Please refer to **Exhibits “B” and “C”** attached to my affidavit.
27. In my opinion, residents in the above two areas are within sufficient proximity (300 to 500 metres) to Upper Cold Creek Farm that they may be impacted by odour, dust, etc. from agricultural uses on the crop and pasture areas. My forthcoming AIA will recommend future residences in those areas are to be notified of the presence of the farm and the potential for periodic air emissions, with a caveat that these uses and impacts are protected and do not give rise to civil liability.
28. The residential lots in the subdivision east of Pine Valley Drive may also impact or limit future changes to the existing farm operation e.g. minimum distance separation requirements for a new barn application to allow the expansion of existing livestock operation. It would be reasonable to expect the existing livestock operation to increase to 200 or more cows, given the size of Upper Cold Creek Farm. The Block Plan Group lands therefore limit future expansion, which is related to concerns with farm viability.
29. To address the land use compatibility issues, my recommendation in the forthcoming AIA would be to introduce a new land use on the Pandolfo Family Lands adjacent to Upper Cold Creek Farm. This new land use would be compatible with both the residential and agricultural uses and could be infrastructure (road or stormwater pond), or park.
30. A new land use serving as a buffer and transition would likely impact the other Block Plan Group lands. For example, it could lead to a reconfiguration of the road network, the resizing of other parks proposed, changes to lands where existing stormwater ponds are proposed, etc. on other Block Plan Group lands.
31. While it is not my preferred recommendation, larger lots on the Pandolfo Family Lands may also be one option for discussion. This would reduce the number of residents adjacent to Upper Cold Creek Farm. Changes in the housing density on the Pandolfo Family Lands may lead to changes elsewhere on the Block Plan Group Lands e.g. increased density, to maintain the same number of proposed residential units i.e. 1,392.
32. It is also common practice in many municipalities to include a notification on land division agreements requiring notification of purchasers that they are purchasing in a rural area, and may be periodically subject to noise, odours and other effects from normal farm planning practices. It is recommended that such notifications be incorporated in land holdings within 300-500 metres of Upper Cold Creek Farm. Included with this notification should be a clear complaint protocol to allow



residents and the farm operator to advise the Municipality, should concerns arise with respect to the compatibility of the proximate residential/agricultural uses.

33. The above planning grounds are based on my professional planning and agrology opinion, and are reflected in the Appellants' proposed Issues List, which I assisted with drafting. See attached **Exhibit "E"**.

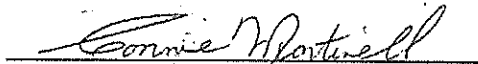
#### **Consideration of Upper Cold Creek Farm in the Municipal Approval Process**

34. The planning review that led to the approval of OPA 744 did not include any studies or reports assessing impacts to the agricultural operations in proximity to the Block Plan Group lands. Neither are impacts to the residential neighbourhood identified, analyzed or mitigated. This is confirmed by the list of reports provided by the City and relevant agencies in Mr. Yarranton's affidavit, paragraph 40.
35. I acknowledge that OPA 744 approved by the Region included the introduction of the "Compatibility Policy" in Section IV, paragraph 6, clause xv. [However, it is my opinion that the Compatibility Policy is insufficient to protect Upper Cold Creek Farm's viability, or future residents. I will be presenting the evidence in greater detail at the hearing on the merits.
36. I have reviewed the City's Planning Report(s) on OPA 744. Based on my review, there is no reference to any evaluation of potential agricultural impacts, land use conflicts between the agricultural and residential land uses, or planning policies dealing with agriculture. Please find attached a copy of the City's Planning Report(s) as **Exhibit "F" and "G"**.
37. I have reviewed York Region's Planning Report on OPA 744. Based on my review, there is no reference to any evaluation of potential agricultural impacts, land use conflicts between the agricultural and residential uses, or planning policies dealing with agriculture. Please find attached a copy of York Region Planning Report as **Exhibit "H"**.
38. In the above reports and affidavit of Mr. Yarranton, there was no reference to consultation with the Ontario Ministry of Agriculture, Food and Rural Affairs.
39. In my professional opinion, it was a critical oversight that no AIA was conducted or opinion sought from a professional agrologist or planner experienced with agricultural issues, prior to approval of OPA 744, including both the Pandolfo Family Lands and Block Plan Group lands.


**Issues List**

40. I endorse the Issues List attached to this my affidavit as **Exhibit "E"**. Given my opinion above, the land use compatibility issues are not limited to the Pandolfo Family Lands or the Compatibility Policy, but involve OPA 744 and the Block Plan Group lands as a whole. This list includes the consideration of impacts and mitigation, which touches upon all the land in OPA 744.
41. I affirm this affidavit in support of the Appellants' response to the Block Plan Group's Motion and for no improper purpose.

AFFIRMED before me at the Municipality  
of Port Hope in the Province of Ontario, )  
this 25<sup>th</sup> day of February, 2015. )

  
\_\_\_\_\_  
Commissioner for taking affidavits

Connie Joan Martinell, Deputy Clerk  
Municipality of Port Hope  
County of Northumberland  
Commissioner for Taking Affidavits  
R.S.O. 1990, Chapter C.17, Section 1(2)

  
\_\_\_\_\_  
Robert K. Clark

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**Subject:** FW: Corr re BL.40/47.2003 on May 5 Agenda  
**Attachments:** 2015 05 05 Corr re COW File BL.40-47-2003.pdf; 2015 05 05 Corr re Block Plan 40-47 - Att 1.PDF

**From:** Anne Sabourin [<mailto:anne@donnellylaw.ca>]  
**Sent:** Tuesday, May 05, 2015 12:01 PM  
**To:** [Clerks@vaughan.ca](mailto:Clerks@vaughan.ca)  
**Cc:** David Donnelly  
**Subject:** COW: Corr re BL.40/47.2003 on May 5 Agenda

Please find attached correspondence from Mr. David Donnelly, counsel to Vaughan residents, Ms Gillian Evans and Mr. David Toyne regarding the above-referenced matter for Committee members.

This matter is on today's agenda. Unfortunately, Ms Evans and Mr. Toyne are out of the country and cannot attend in person, but have sent instructions to file this letter with the City.

Sincerely,

**Anne Sabourin**, MES, J.D.  
Associate, Donnelly Law  
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