

DATE: MAY 19, 2015

TO: HONOURABLE MAYOR & MEMBERS OF COUNCIL

FROM: JOHN MACKENZIE, COMMISSIONER OF PLANNING

RE: COMMUNICATION - COUNCIL MEETING, MAY 19, 2015 (REFERRED ITEM)
ITEM #2 - COMMITTEE OF THE WHOLE - APRIL 14, 2015

SITE DEVELOPMENT FILE DA.14.042
LUCIA CORNO AND MICHAEL CORNO
WARD 1 - VICINITY OF WESTON ROAD AND KIRBY ROAD

C	<u>14</u>
Item #	<u>1</u>
Report No.	<u>Referred</u>
<u>Council - May 19/15</u>	

Recommendation

The Commissioner of Planning recommends:

1. THAT the previous Communication from the Commissioner of Planning, dated April 20 2015, BE RESCINDED.
2. THAT Recommendation #1 as contained in Item #2 of the Committee of the Whole Agenda dated April 14, 2015, and as the Referred Item in the Council Agenda dated May 19, 2015, be deleted and replaced with the following:
 - "1. THAT Site Development File DA.14.042 (Lucia Corno and Michael Corno) BE APPROVED, to permit the installation of a 41 m high flagpole telecommunication tower and associated radio equipment cabinet for Bell Mobility Inc. (Attachments #3 to #6) on the subject lands shown on Attachments #1 and #2, subject to the following:
 - a) The Owner and the Proponent (Bell) agree in the lease that the lease shall terminate in ten years of the commencement date of construction, or July 1, 2015, whichever is sooner, of the installation of the tower (being six weeks after receiving municipal concurrence from the Municipality) if the development of the property is inhibited by the existing location of the tower and cannot be relocated elsewhere on the existing property with the Owner and Proponent acting reasonably. The lease shall include that any such relocation and or termination would require at least 12 months for the Proponent to have sufficient time to locate an alternative location for its installation, being no earlier than 10 years following the commencement of construction of the tower, which shall require further municipal concurrence.
 - b) The Proponent agrees to remove the cell tower from the subject lands, unless prior to the termination date the following terms have been complied with:
 - i) The Owner and the Proponent acknowledge and agree that the municipal concurrence for the erection and operation of the Tower shall lapse on the Termination Date unless the existing or revised location on the existing property of the tower does not inhibit the proposed development on the property and it's continued use be deemed to be acceptable to the City's municipal standards with respect to Urban Design Guidelines in conformity with the OPA #637 Secondary Plan policies, and that Owner /Proponent must reapply to obtain municipal concurrence and further identify the further lease extension timeframe.

- ii) If the tower has to be removed and the tower relocated to another property not within the immediate proximity of the existing tower, the Proponent shall be free to reapply to the City of Vaughan and other appropriate authorities for a cell tower in the area, provided that in no case shall:

- the fact of the prior consent, and
- the use of the subject lands for the cell tower prior to the termination date of the lease shall not be raised in support of such fresh application, nor may the Proponent claim a prior non-conforming use arising from such prior use.

- c) Any party who objects to such fresh application shall not be prejudiced by the prior municipal concurrence for the cell tower's erection or use, so that for all purpose such fresh application shall proceed as if the prior use and any municipal concurrence had never been granted."

3. THAT the following additional Recommendation be approved:

- "2. THAT Attachment #4 contained in Item 2 of the Committee of the Whole Agenda dated April 14, 2105, and the Referred Item in the Council Agenda dated May 19, 2015, BE DELETED and BE REPLACED with revised Attachment #4, attached hereto to this Communication, to reflect a reduced flagpole height of 41 m (originally 45 m)."

A. Background (Lease Agreement – Negotiations Between Bell and M.A.M. Group)

On April 14, 2015, the Committee of the Whole adopted the following recommendation (in part) regarding Site Development File DA.14.042:

"That consideration of this matter be deferred to the Council meeting of April 21, 2015, and that staff provide a Communication to the Council meeting of April 21, 2015, with respect to the inclusion of a condition of site approval to permit the termination of the lease agreement or relocation of the tower to accommodate future development."

Since the Committee of the Whole Meeting of April 14, 2015, the Proponent (Bell Mobility) met with representatives from Trinistar Corporation, M.A.M. Group Inc., who submitted Communications C20 and C30 regarding this Site Development Application to discuss potential conditions to address the matters identified in the Communications. Both parties agreed to additional conditions, and a Communication Item was considered by Vaughan Council on April 21, 2015.

Vaughan Council passed a resolution at the April 21, 2015, Council meeting to further defer the item to the May 19, 2015 Vaughan Council meeting, to allow the Proponent to meet with staff and neighbouring residents to address outstanding issues. Subsequently, both parties have agreed to further revisions to the additional conditions regarding the proposal, including:

- a) The Owner and the Proponent agreeing that the lease shall terminate in ten years of the commencement date of construction, or July 1, 2015, whichever is sooner, of the installation if the development of the property is inhibited by the existing location of the tower and cannot be relocated elsewhere on the existing property with the Owner and Proponent acting reasonably. Any such relocation and or termination would require at least 12 months written notice from the Owner no earlier than 10 years following the commencement of the construction of the Tower so that the Proponent could have sufficient time to locate an alternative location for its installation.
- b) The Proponent agrees to remove the cell tower from the subject lands, unless prior to the termination date the following terms have been complied with:

- i) The Owner and the Proponent acknowledge and agree that the municipal concurrence for the erection and operation of the Tower shall lapse on the Termination Date unless the existing or revised location on the existing property of the tower does not inhibit the proposed development on the property and its continued use be deemed to be acceptable to the City's municipal standards with respect to Urban Design Guidelines in conformity in conformity with the OPA #637 Secondary Plan policies.
- ii) If the tower has to be removed and the tower relocated to another property not within the immediate proximity of the existing tower, the Proponent shall be free to reapply to the City of Vaughan and other appropriate authorities for the continued use of the cell tower, provided that in no case shall:
 - the fact of the prior consent, and
 - the use of the subject lands for the cell tower prior to the termination date of the lease be raised in support of such fresh application, nor may the Proponent claim a prior non-conforming use arising from such prior use.
- c) Any party who objects to such fresh application shall not be prejudiced by the prior use or prior zoning status permitting the cell tower's erection or use, so that for all purpose such fresh application shall proceed as if the prior use and any municipal concurrence had never been granted.

The Vaughan Planning Department is satisfied that the proposed conditions agreed to by both parties will address Vaughan Council's recommendation to include a condition of approval to permit the termination of the lease agreement or relocation of the tower to accommodate future development on the site or in the area. It is noted, that the City of Vaughan does not enter into an agreement with a landowner for the erection of a cell tower and that these conditions will be included in the lease agreement should the application be approved.

In addition, instead of requiring the Owner to submit a written request to terminate the lease, the Planning Department has amended the recommendation to have the lease include a clause that the lease terminates after 10 years, but gives Bell 12 months to find an alternative location or to file a new application for municipal concurrence.

The Planning Department also recommends revising Section B i), as it was unclear as to who would be determining if the continued tower use is acceptable. Planning Staff recommend inserting a requirement for a future municipal concurrence application for the continued use of the tower at that location and to further identify the lease extension timeframe.

B. Background (Neighbouring Resident to the South – Mr. Carafa)

On April 21 2015, Vaughan Council passed the following motion regarding Site Development File DA.14.042:

"That consideration of this matter be deferred to the Council meeting of May 19, 2015, to allow staff, the proponent and other affected residents to meet and discuss any outstanding issues."

On April 29, 2015, Vaughan Planning staff, together with representatives from Bell Mobility and the agent for the Proponent, met with the resident of the adjacent property to the south (Mr. Carafa) and his brother to discuss his concerns, which were related to health and aesthetics of being able to see the tower from his rear yard. The proponents offered documentation about Safety Code 6 (Health Canada's Radiofrequency Exposure Guidelines), and offered to discuss alternative locations for the tower on the property. The neighbour advised that he would not be satisfied with any documentation regarding health and safety, and that he would not be satisfied with the tower being located on any part of the adjacent property.

The Proponent advised the neighbour of Bell Mobility's engineering considerations regarding tower placement, and committed to re-canvassing the surrounding property owners in an attempt to secure an alternative location for the tower. The Proponent responded on May 7, 2015, that the attempts to secure a new location were unsuccessful.

In regards to health concerns, Bell Mobility is required to comply with Health Canada's Safety Code 6, which represents Health Canada's safety guidelines for exposure to radiofrequency fields. Bell advises that their radiofrequency engineers have completed their calculations and can attest that the proposed tower will be less than 1% of Health Canada's required limitations.

With respect to the aesthetic concerns, Bell Mobility has committed to planting 4.5 m - 6 m tall spruce trees along the common yard line between the two properties, and has reduced the tower height from 45 m to 41 m. The Vaughan Planning Department is satisfied that these measures and the flagpole design of the tower, mitigate the aesthetic impact of the tower.

Conclusion

The Vaughan Planning Department is satisfied with the conditions agreed to by the Proponent and Trinistar Corporation, M.A.M. Group Inc. regarding the proposed cell tower on the subject lands (11511 Weston Road), and is satisfied with the Proponent's response to the southerly neighbour's concerns.

Should the Committee concur, the revised recommendation can be approved to permit the proposed cell tower, subject to the conditions of approval identified in the recommendation of this Communication.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'John Mackenzie', with a large, stylized initial 'J' and a horizontal line extending to the right.

JOHN MACKENZIE
Commissioner of Planning

Attachments

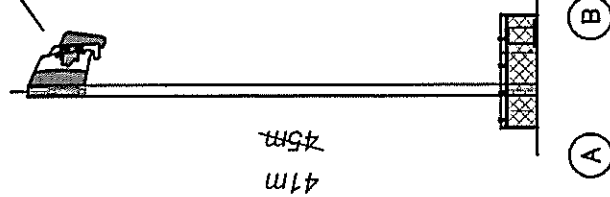
4. Compound Layout and Tower Details

GM/lg

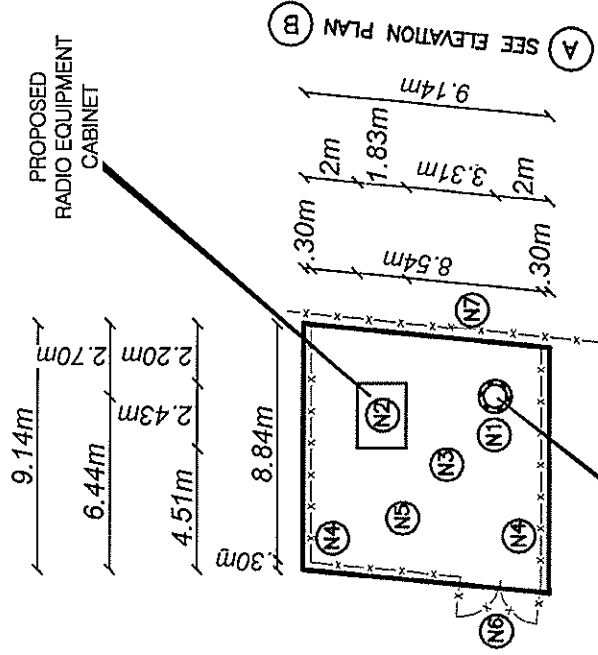
Copy to: Steve Kanellakos, City Manager
Jeffrey A. Abrams, City Clerk
Grant Uyeyama, Director of Development Planning



CELL TOWER
HEIGHT REDUCED
FROM 45m TO 41m



ELEVATION PLAN



PROPOSED COMPOUND LAYOUT PLAN

NOTES

- (N1) PROPOSED STEEL FLAGPOLE.
PAINT COLOUR SUBJECT TO NAV CANADA REQUIREMENTS.
ANTENNA NUMBER AND LOCATIONS TO BE DETERMINED.
FOUNDATION DESIGN PENDING SOIL REPORT.
- (N2) PROPOSED RADIO EQUIPMENT SHELTER ON
REINFORCED CONCRETE SLAB.
- (N3) HYDRO CONNECTION AND ROUTING TO BE DETERMINED BY
QUALIFIED PERSONNEL IN CONSULTATION WITH LOCAL AUTHORITY.
- (N4) PROPOSED 2.4 m HIGH CHAIN LINK SECURITY FENCE
TOPPED WITH BARBED WIRE SURROUNDING THE COMPOUND.
- (N5) REMOVE EXISTING TOPSOIL PROOF ROLL SUBGRADE, ADD
300 mm GRANULAR A ACROSS CABINET AREA. FINISHED GRAVEL
SURFACE TO BE MINIMUM 150 mm ABOVE EXISTING GRADE AND
SLOPED AWAY FROM PROPOSED STRUCTURE AT
MIN. 1% IN ALL SIDES TO PROVIDE ADEQUATE DRAINAGE.
- (N6) PROPOSED CHAIN LINK GATE.
- (N7) EXISTING CHAIN LINK FENCE TO REMAIN.

Not to Scale

Compound Layout & Tower Details

LOCATION:
Part of Lot 30, Concession 5

APPLICANT:
Lucia Corno and Michael Corno

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Attachment

FILE:
DA.14.042

DATE:
March 16, 2015

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