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File No. 701719

May 4, 2015

By E-Mail Only

Chair and Members of Committee
Committee of the Whole
City of Vaughan
2141 Major Mackenzie Drive
Vaughan, Ontario
L6A 1T1

Dear Chair and Members of Committee:

**Re: Oak Ridges Moraine Conservation Plan Review Update on
Provincial Plan Review
Committee Meeting May 5, 2015 – Item 5**

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Communication	
CW:	May 5/15
Item:	5

We are counsel to the purchaser under an agreement of purchase and sale of lands located on the north-east corner of Dufferin Street and Teston Road in Vaughan. These lands are approximately 44 hectares in size as shown on Attachment 1 (the "Property"). Of the 44 hectares, 29 hectares are currently designated Countryside in the ORMCP as identified in the staff report presented to the Committee in connection with this Item and as outlined in yellow on Attachment 1 (the "Subject Lands"). We are writing with respect to the above noted matter being considered by the Committee of the Whole on May 5th.

The purpose of this letter is to request that the City take a proactive role in its future and notify the Region of York (the "Region"), the Toronto Region Conservation Authority (the "TRCA") and the Province of its position with respect to amendments required to the Oak Ridges Moraine Conservation Plan (the "ORMCP") and the Oak Ridges Moraine Conservation Act ("ORMCA") affecting lands in the City.

In particular, we are requesting that the City request that the Province modify the ORMCA and ORMCP as follows, and to request that the Region and TRCA support this request:

1. Redesignate the Subject Lands, being the 29 hectares of the Property designated Countryside, from a Countryside designation to a Settlement Area designation on the ORMCP mapping;



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2. Ensure that lands currently transitioned under the ORMCA and regulations continue to maintain their transition status; and
3. Amend section 17 of the ORMCA, being a transitional section, to ensure that designated and/or zoned lands permitted to be developed under the Act can properly be implemented. We propose the following language, which reflects the original language of section 17 when the ORMCA was first enacted in 2001:
 - (a) If a decision made under the *Planning Act* or section 9 of the *Condominium Act, 1998* with respect to land to which the Oak Ridges Moraine Conservation Plan applies is conditional on a further approval under either of those Acts, the decision on the application for the further approval shall be made in accordance with the same requirements of this Act that applied to the original decision.

Redesignation of Land to Settlement Area

The Subject Lands are an ideal candidate to be designated Settlement Area rather than Countryside in the ORMCP for the following reasons:

1. They are entirely bounded to the south and west by the City's current Urban Boundary. To the east they are bounded by an estate subdivision and to the north by a cemetery.
2. As noted in the attached report from Schaeffers Consulting Engineers (the "Schaeffers Report"), the immediately adjacent lands within the City's Urban Boundary are fully developed and serviced, with services located at the adjacent property lines with sufficient capacity to accommodate additional development.
3. In order to accommodate development on the Subject Lands, the Schaeffers Report confirms that there are no major infrastructure upgrades needed downstream.
4. Both transit and transportation infrastructure currently exists in the Dufferin Street and Teston Road area to accommodate new development adjacent to the existing urban boundary, including a YRT Route on Teston Road. Further, as set out in the Schaeffers Report, Teston Road has recently been reconstructed and widened in the vicinity of the Subject Lands and additional road improvements in the vicinity are currently contemplated as



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part of the 2015 Roads 10 year capital budget being funded by Development Charges.

5. The Subject Lands have no environmental designations on them. They contain no ANSI's, Provincially Significant Wetlands, Provincially Significant Woodlands, or other environmentally significant areas. The lands are not part of the Regional Greenfield designation.
6. The Subject Lands are not designated for agricultural purposes and are not prime agricultural lands. They are currently designated for rural uses.
7. The Subject Lands are underutilized as a Rural Residential Single Family home and are the perfect candidate under the *Growth Plan* for densification and infill development, particularly given the surrounding development.
8. In order to best assess the appropriateness of the ORM designation, it is necessary to consider all provincial policy together. The *Growth Plan* is in place to ensure that growth occurs in appropriate locations in a sustainable manner effectively utilizing existing infrastructure and encouraging transit usage. This Plan's objectives are to ensure that underutilized lands be better utilized, including infill, intensification and densification. Plans like the ORMCP are in place to ensure that natural and hydrological features are effectively protected. The Provincial Policy Statement supports and balances all these objectives. Given the location of the Subject Lands, their ability to efficiently use existing infrastructure including transit and the lack of natural features to be protected, it is important to designate these lands in a manner which allows achievement of the *Growth Plan* objectives.
9. It is inappropriate to defer consideration of the redesignation of lands from Countryside to Settlement merely because the Region's land budgeting exercise is incomplete and the specifics of future growth have not yet been identified. The ORMCP Review is being completed well in advance of the completion of the Region's and then the City's Growth Management exercise. If the ORMCP Review is completed without the redesignation to Settlement Area of the Subject Lands and other appropriate lands, the choices available to the City for urban expansion may be unnecessarily limited when the growth management exercise is complete, given the restrictions against development in all but the Settlement Area designations. The current Regional exercise has not determined that an urban boundary



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expansion will be unnecessary. In fact, at least two analyses suggest that there will be a regional need for such an expansion.

10. Should it be determined that to accommodate future growth, Vaughan should be expanded, options for its location will be very limited, particularly given the encumbrances imposed by the GTA West corridor. The City should ensure that it is in a position to allow expansions in the best available locations in the City. As noted above, the Subject Lands are immediately adjacent to the existing urban boundary and are immediately serviceable. In addition, given the small size of the lands, they could be developed quickly through a subdivision approval process without the need for a slow, complicated block plan or secondary plan process. This could enable an expeditious opportunity for collection by the Region and the City of development charges, whose collections have been subject to a slow down as a result of delays in development approvals. Given the opportunities for expansion, the City should not constrain itself by an unnecessary Countryside designation which is not required by the objectives of the ORMCP.
11. It is not good planning to defer a recommendation for the redesignation of appropriate lands to Settlement pending completion of the growth management exercise. Such a deferral is not mandated by the ORMCA or the ORMCP. A document published by Ministry staff, called "Implementation" gives some suggested considerations for assessment of lands to be redesignated, including defined needs. This implementation section, and its suggested considerations, is not an operative section of the Plan and is not law, as confirmed by the document itself on page 1. Given the timing of the ORMCP review in relation to the growth management exercise, the City's responsible action is to appropriately protect options for expansion, particularly where there is no good reason not to do so.
12. It should be noted that even if designated Settlement Area, the underlying rural designation of the Official Plan will continue to apply. The designation merely provides flexibility to York Region and the City to allow for an urban boundary expansion in the future.
13. Settlement Areas are intended to provide the development or continuation of urban land uses consistent with growth management strategies in official plans while minimizing encroachment and impact of development on ecological and hydrological features under the ORMCP. The Subject Lands



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are an ideal candidate consistent with the objectives of the ORMCP and the *Growth Plan* for a request by the City and Region to the Province for redesignation from Countryside to Settlement Area.

Transition Regulations

The ORMCA and regulations contain a series of transition provisions which provided applications which had progressed sufficiently through the process with transition status, confirming that the ORMCP would not apply to them. Landowners have relied on these transition rights which should be maintained.

However, section 17 of the ORMCA as currently drafted creates an inconsistency under the *Planning Act* where lands could be designated and zoned for hundreds of units/lots but are prevented from being developed because the ORMCA prevents them from being subdivided or condominiumized.

When the ORMCA was first enacted in 2001, it provided a legislative code allowing transition to be applied to subdivision and condominium applications as long as there was a companion official plan or zoning application that was transitioned. It was judicially considered by the Board. In its support for the old section 17, the Board stated *"It is clear to the Board that the intent of this section was to ensure that if an application, or applications, properly before a council or the Board for a decision in accordance with Section 15(2) or (3) require(s) additional approvals in order to be properly implemented, they should not be thwarted by the application of the new legislation."*

However, subsequent to this decision, in 2003, a newly elected provincial government enacted the current version of section 17, whose effect was to prevent the implementation of approved designated and/or zoned land if a subdivision or condominium application had not been filed prior to the enactment of the ORMCP.

I would suggest that the Province in enacting this modification did not understand the implications created. This change in Legislation has caused anomalies where an application for an Official Plan and/or Rezoning are entirely transitional under the ORMCA (Section 15), but the lands are unable to be developed because a Draft Plan of Subdivision was not yet applied for.

It is not unusual for an applicant to apply for an official plan amendment and/or rezoning without a subdivision or condominium application. For example, it is very uncommon for a landowner to appeal a Municipal Comprehensive Official



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Plan to the OMB and file Draft Plan of Subdivision Application along with that appeal. Landowners always wait until the Official Plan is dealt with by the OMB, and then the “further applications” of a draft plan or zoning by-law would follow. In fact, Municipalities are required to pass comprehensive zoning by-laws to bring the zoning into conformity with the Official Plan. This comprehensive zoning by-law is considered a “further approval” which is not transitioned under section 17 as currently drafted. It is also often the case, outside of a municipal comprehensive review, for landowners to wait to file their subdivision plans and the expense related to that process, until after they have the certainty that the principle and details of development are established.

There are many applicants who filed official plan amendment applications and/or rezonings prior to the enactment of the ORMCA and ORMCP without subdivision applications on the basis of usual practice, whose lands have been determined to represent good planning but because of the anomaly created by the modified section 17, can never be developed.

Approvals under OPA 600 are also illustrative of this issue. OPA 600 is transitioned under the ORMCA. Some appeals of OPA 600 are still outstanding today. Those appeals will eventually be dealt with by the Board and could result in lands being fully designated for urban uses for hundreds of units/lots. However, because the future Draft Plans would then be filed in 2015, 2016, or 2017, those Draft Plans would not be considered transitioned (with some exceptions where rights are vested).

Both these situations create a scenario where lands are designated for hundreds of units, but will not be able to be subdivided or implemented. An additional problem arises from this issue in that these designated and zoned lands are counted in land budget exercises for forecasting, intensification requirements and settlement expansion processes even though they can never be developed. The population and employment forecasts of these designated and zoned lands are stranded and municipalities cannot grow as contemplated through the *Growth Plan*. Need could not be established for expansions of boundaries to allow for these uses because they are based on forecasting techniques which include these designated lands.

The resolution of these unintended issues is simple. Section 17 should be modified to reflect the original language of section 17 as follows:



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If a decision made under the *Planning Act* or section 9 of the *Condominium Act, 1998* with respect to land to which the Oak Ridges Moraine Conservation Plan applies is conditional on a further approval under either of those Acts, the decision on the application for the further approval shall be made in accordance with the same requirements of this Act that applied to the original decision.

Such an amendment would prevent the inconsistencies in land use planning under the *Planning Act* and *Growth Plan* and allow land uses approved in principle and good planning and in the public interest to be implemented appropriately. It would allow the City to plan their future comprehensively, orderly and efficiently. We therefore request that the City ask the Province to make this modification.

I will be attending Tuesday's meeting and would be pleased to answer any questions you may have with respect to the foregoing.

Yours sincerely,

DAVIES HOWE PARTNERS LLP

Susan Rosenthal
Professional Corporation

SR:am

copy: Client



Final confirmation of NHS boundaries will be required to determine final developable area

- Natural Linkage Area (approx. 15 ha.)
- Countryside Area (approx. 29 ha.)

March 23, 2015

SERVICING OPINION

**RE: Property @ N/E Corner of Teston Road &
Dufferin Street, City of Vaughan (125 Ac)**

General

The subject site has frontage on the north side of Teston Road, extending easterly from Dufferin Street approximately 1.2 km. Residential development is near completion on the opposite or south side of Teston Road. This development is known as Block 12, OPA 600, City of Vaughan. Full municipal services were a requisite for approval of this Block Plan.

As of this writing, approximately 72 Acres of the site are farmed with the balance shown as “core features” in the Vaughan OP Schedule 2, Natural Heritage Features. Drainage is generally in the easterly direction towards the Natural Heritage Feature. The lands are within the tributary area of the East Don River under the stewardship of the Toronto Region Conservation Authority.

Water Supply

The lands are well suited for the provision of potable water. Zone 8 water is available from a 300 Ø main on Teston Road and all of the site is in Pressure District 8 (see attached York Region plan). Two connections to this system would insure looping and security of supply. While we are not yet provided with a land use plan, it is expected that the site would attract low to medium density residential. The current infrastructure should support this style of development.



Wastewater (Sanitary)

At the Regional level these lands would be serviced by the YDSS (York Durham Sanitary System) and in particular the extension of the Bathurst Trunk (Phases 1, 2 & 3). This system extends throughout Block 12 and the trunk is located across the entire Dufferin Street frontage of the site. On the Teston Road frontage, the trunk extends from Dufferin Street easterly approx. 150 meters at such point it turns southerly into Block 12. Other potential connection points would be at the intersections of Teston & Lady Fenyrose; Teston & Via Romano Blvd, and the window street adjacent to Teston (Vanda Drive). The precise location of connections would be determined once the land use plan has been provided. Suffice it to say that we believe the existing system is sufficiently robust that a low to medium density residential development could be accommodated.

Storm Water Management

As noted earlier the lands are within the Don River drainage basin. It is anticipated that a storm water management scheme would be developed that would be comprised of the standard SWM pond treatment facility together with LID's (Low Impact Development techniques) in order to replicate the pre-development scenario. As noted in the previous discussion, the details of the SWM will emerge once the land uses are determined.

Roads

Teston Road between Dufferin Street and Bathurst Street is part of the York Region arterial road network. It was recently reconstructed and widened through this stretch. Teston Road westerly terminates at Dufferin Street but extends easterly beyond Bathurst street into Richmond Hill. Further widening of this section is not within the Region's 2014 – 10 year Capital Plan – signifying that the current cross section is not expected to require capacity improvements until beyond 2024.



The following Regional Road improvements in the vicinity are contained in the 2015 Region Roads

– 10 Year Capital Budget:

- Dufferin Street (Major Mackenzie to Teston Road – Timing 2025-2031);
- Bathurst Street (Major Mackenzie to Elgin Mills/Teston Road – Timing 2021-2023)
- Teston Road New (Keele Street to Dufferin Street – Timing 2024-2031)

Development on the north side of Teston Road (i.e. the subject site) can be accommodated in the short term with the long term requirements noted above funded through the Region's Development Charges Process.

It should also be noted that York Transit has a regular route along Teston Road between Lady Fenytrose and Via Romano Blvd. Such routing can service the subject property with opportunities to extend the service into the subject site if conditions warrant.

Summary

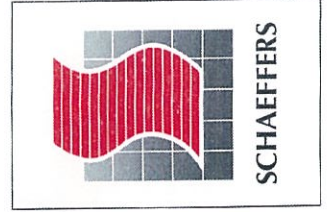
The subject site is well suited to be developed as a residential area, immediately north of Block 12. Both water and wastewater (sanitary) are available at its southerly and westerly boundaries.

Storm Water Management is largely an 'on site' facility and modern SWM concepts will replicate predevelopment conditions.

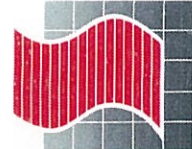
The site benefits from a robust existing Region road system with upgrades planned within current forecasts.

Encl: Supporting Material





SITE



SCHAEFFERS



SITE



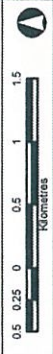
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LEGEND

 Ontario

- Greenbelt Area***
- Protected Countryside
 - Towns and Villages
 - Nature Escapement Plan Area
 - Old Ridges Moraine Area
- Settlement Areas Outside the Greenbelt**
- Natural Heritage System
 - River Valley Connections
 - Upper-tier Municipal Boundaries
 - Single-tier Municipal Boundaries
 - Single-tier Municipalities
 - Lot and Concessions
 - Major/Minor Roads
 - Geographic Township
 - Water

Physicians, *JAMA* June 21, 1993;
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2009 Master Plan Update – Water

