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c 15
Communication
cw: June 16/15
Item: 10

Please refer to: **Katarzyna Sliwa**
e-mail: katarzynas@davieshowe.com
direct line: 416.263.4511
File No. 702275

April 13, 2015

By E-Mail Only to jeffrey.abrams@vaughan.ca

Mr. Jeffrey Abrams
City Clerk
City of Vaughan
2141 Major Mackenzie Drive
Vaughan, Ontario
L6A 1T1

Attention: Mayor Bevilacqua and Council Members

Your Worship and Members of Council:

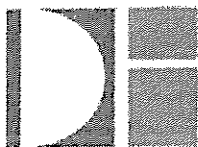
**Re: Item 1, Committee of the Whole Meeting, April 14, 2015
Natural Heritage Network Study ("NHN Study")
Natural Heritage Network Inventory and Improvements
Study Completion and Recommended Amendment to
Vaughan Official Plan 2010 (the "Proposed Amendments")
Teston Green Landowners Group ("Block 27")**

We write on behalf of Block 27. The purpose of this letter is to respectfully request that this matter be deferred to allow for discussions with our clients to continue.

There remain significant problems with the NHN Study and Proposed Amendments. They are detailed in the attached letter dated January 30, 2015.

Leaving aside substantive issues, we are very concerned about the speed with which the City is now proceeding. The NHN Study Staff Report and Proposed Amendments were only made available last week. This does not allow our clients or their consultants a fair and practical opportunity for review, never mind a dialogue with you or your Staff.

We acknowledge that our clients and their consultants have met with Staff and that there has been some progress, but the bottom line is not nearly enough. Many of the serious questions repeatedly raised by our clients' consultants continue to go unaddressed in the NHN Study as presently written. These concerns include a prohibitive impact of the viability of the proposed GO Station.



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Also significant is the proposal to defer a decision on the NHN habitat compensation protocol (the "Protocol"), treat it separately and shield it from the scrutiny of the *Planning Act* public consultation process. The Protocol, Proposed Amendments and NHN mapping must be adopted at the same time, and must be part of a comprehensive and complete Official Plan Amendment.

We request that I be added to the list of delegates for the Committee of the Whole meeting.

Thank you for the opportunity to provide you with these comments.

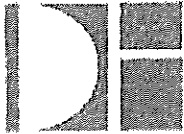
Yours sincerely,

DAVIES HOWE PARTNERS LLP

Katarzyna Sliwa

encl. As above

copy: Ms. Dawne Jubb, Solicitor, City of Vaughan
Mr. John Mackenzie, Commissioner of Planning, City of Vaughan
Mr. Tony Iacobelli, Environmental Planner, City of Vaughan
Mr. Gerry Lynch, Cole Engineering Group Ltd.
Mr. Don Fraser, Beacon Environmental
Mr. John Bousfield, Bousfields Inc.
Clients



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Please refer to: **Michael Melling**
e-mail: michaelm@davieshowe.com
direct line: 416.263.4515
File No. 702275

January 30, 2015

By E-Mail Only to *Dawne.Jubb@vaughan.ca*

Ms. Dawne Jubb
Solicitor
City of Vaughan
2141 Major Mackenzie Drive
Vaughan, Ontario
L6A 1T1

Dear Ms. Jubb:

**Re: Teston Green (Block 27) Landowners Group ("Block 27")
Natural Heritage Network Study ("NHN Study")
Proposed Policy Amendments
Chapter 3, Figures 2A, 2B and 2C (the "Proposed Amendments")
Natural Heritage Network Schedule
Vaughan Official Plan 2010 ("VOP 2010")**

We write on behalf of Block 27.

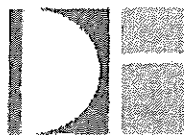
Our clients did not appeal the VOP 2010 despite significant concerns with Schedule 2 and some of the environmental policies in Chapter 3. Rather, they have been working co-operatively with City staff, by way of information exchange and meetings, since the VOP 2010 was adopted and the NHN Study was initiated.

On January 9, 2015 the City produced the Proposed Amendments. Our clients have very significant concerns with them.

These concerns, informed by our client's environmental consultant, Don Fraser of Beacon Environmental, and land use planner, John Bousfield of Bousfields Inc., are outlined in detail below.

Policy 3.3.2.2 Non-Evaluated/Other Wetlands

It is our understanding that the Proposed Amendments are intended to provide a clear distinction between:



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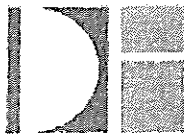
- (a) wetlands evaluated as Provincially Significant and those subject to the *Greenbelt Plan* and *Oak Ridges Moraine Conservation Plan* ("ORMCP"), on the one hand; and
- (b) all "other" wetlands (previously referred to as "non-evaluated" wetlands), on the other hand.

Policy 3.3.2.2 of the VOP 2010 says that "non-evaluated wetlands...shall be assessed for their significance, in accordance with criteria provided by the Province...". This appears to intend that, prior to any development or site alteration, a wetland be evaluated in accordance with the Ontario Wetland Evaluation System ("OWES").

Placing the onus on an individual landowner to evaluate a wetland under OWES is inappropriate, for the following reasons:

- the determination of a wetland's significance has historically been and should remain the responsibility of the Province, through the Ministry of Natural Resources and Forestry ("MNRF");
- OWES is not the method by which wetlands are assessed for function through the development process; rather, this is done through an Environmental Impact Study ("EIS");
- In almost all cases an OWES wetland evaluation involves examining other private properties to which access is not available; a single landowner cannot do a "wetland complexing" exercise that could encompass many discrete wetland units extending across numerous square kilometres (note: under OWES the evaluator cannot confine an evaluation to a given parcel of land with pre-imposed boundaries); and
- Evaluations under OWES are expensive and time consuming; in addition, the additional delays (and associated costs) incurred while waiting for an evaluation to be reviewed and accepted by the MNRF will add considerable time to an already lengthy and onerous process.

There is also a significant discrepancy with respect to evaluation standards. The "Discussion Notes" related to this policy say that the Proposed Amendments to the policy text are "in conformity with the Regional Municipality of York ["Region"] Official Plan 2010 ["ROP"] policy 2.2.39" and "consistent with ROP policy 2.2.42". However, the Proposed Amendments to policy 3.3.2.2 state that "other wetlands shall be assessed for their significance, in accordance with criteria provided by the Province..." [emphasis added]. This language goes well beyond that of the ROP policies.



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ROP policy 2.2.39 does not include the word "significance", and makes no reference to the application of provincial assessment criteria, or specifically OWES. Rather, it requires "an environmental impact study that determines their importance, functions and means of protection and/or maintenance of function, as appropriate, to the satisfaction of the approval authority"[emphasis added].

Our client's consultant team was involved with the ROP policy amendments and has confirmed that the phrase "shall be assessed for their significance" was removed from a previous version of ROP policy 2.2.39, in recognition that it was the specific intent of the Region to not require a formal wetland evaluation using OWES. The revised VOP 2010 policy 3.3.2.2 continues to include this requirement.

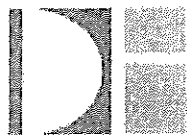
Furthermore, the new subparagraph (c) refers to "other" wetlands "evaluated in accordance with the Region Official Plan", which is misleading, since the Region does not require an "evaluation" *per se*. New subparagraph (c) also says that in cases where an "other" wetland is determined to be appropriate for protection, it "shall have a vegetation protection zone generally no less than 15 metres". This is different from the ROP requirement, which does not stipulate the width of a buffer for any "non-evaluated" or "other" wetlands. Rather, an EIS should determine if a wetland warrants protection and, if so, why and by what means. This may include provision of a vegetation protection zone; however, its width should not be prescribed, but rather dictated by site-specific conditions.

The revised VOP 2010 policy 3.3.2.2 is not in conformity with ROP policy 2.2.39. We request that the VOP 2010 reflect ROP policies 2.2.39 through 2.2.42.

Policies 3.3.3.3 and 3.3.3.4 Woodlands

Based on Beacon's review of the VOP 2010 policy 3.2.3.4 ("Core Features"), the results of the NHN Study, and many past discussions with City staff and North-South Environmental (the City's NHN Study consultant), it had consistently been understood that Core Feature woodlands were defined as those greater than 0.5 ha. This understanding was confirmed by the statement that "All woodland patches greater than 0.5 ha in size are included in the NHN"; found on page 29 of the Phase 2 – 4 *NHN Study Report* (prepared by North-South Environmental, May 2014). It is also confirmed by Schedule 2B (Natural Heritage Network – Woodlands), which maps all woodlands greater than 0.5 ha.

The Proposed Amendments to the VOP 2010 policy 3.3.3 appear to include all woodlands greater than 0.2 ha, as Core Features, rather than those that are greater than 0.5 ha. These 0.2 to 0.5 ha woodlands are not shown on Schedule 2b, nor do any woodlands falling into this size range appear as Core Features on Schedule



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2 – Natural Heritage Network (either in the current VOP 2010 or as proposed in the North-South Report).

Furthermore, the Proposed Amendments require additional study by a landowner to assess whether these smaller woodlands “meet tests of significance as set out in the ROP”. If these woodlands do not meet these tests they “can be modified subject to habitat compensation”. The proposed VOP 2010 policy 3.3.3.3 does not, however, provide any explanation or definition of “compensation”, other than to make reference to providing “a net ecological gain”. A clear indication of the compensation parameters is needed to provide certainty and clarity.

The inclusion of these smaller woodlands constitutes a major change from the original VOP 2010, specifically to policy 3.3.3. It not only broadens the definition of a Core Feature woodland, but places an unacceptable onus on a landowner.

One of the objectives identified by the City in revising policy 3.3.3.3 was to reflect the woodland policies in the ROP. However, the Proposed Amendments do not achieve this goal, but rather result in additional confusion.

Specifically, the “tests” described in the Proposed Amendments do not reflect ROP policies 2.2.48 and 2.2.49. The fundamental difference is that these ROP policies speak to the “tests” under which development or site alteration could occur within a “significant woodland” (i.e., a woodland greater than 0.5 ha.) situated within an Urban Area. The proposed policy language in 3.3.3.3 and 3.3.3.4 applies to non-significant (i.e., 0.2 to 0.5 ha.) woodlands and does not permit development or site alteration in any woodland deemed “significant” under the Region’s definition (i.e., greater than 0.5 ha.).

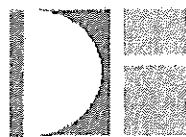
Finally, it does not appear that there are any circumstances under which development or site alteration could occur within all or a portion of a woodland greater than 0.5 ha. (notwithstanding the few exceptions listed under proposed VOP 2010 policy 3.2.3.7), even though ROP policy 2.2.49 does permit this in certain circumstances.

For the above reasons any consideration of woodlands 0.2 to 0.5 ha. in size as Core Features must be excluded. It was clearly not the intent of the ROP, the VOP 2010 or the conclusions of the NHN Study to include them.

Other Proposed Policy Revisions

Our clients also have concerns with a number of the other policies listed in the City’s Table. These include, but are not limited to the following:

- i) **Policy 3.2.3.4 and Definitions:** It is unclear how the Minimum Vegetation Protection Zones (“MVPZs”) associated with “valley and stream corridors”



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relate to MVPZs applied to other aquatic features addressed in the VOP 2010 (e.g., "sensitive surface water features", valleylands, "headwater drainage features", "waterbodies", watercourses, intermittent and permanent stream, seepage areas and springs, etc.). In general, there are far too many terms used to describe water-related features, many of which are not defined in the VOP 2010. This creates overlap and confusion.

Additionally, clarification is needed as it relates to the MVPZ within and outside the *Greenbelt Plan* and *ORMCP* areas. As the policy reads it can be interpreted that the MVPZ from a feature within either the *Greenbelt Plan* or *ORMCP* areas could extend beyond the *Greenbelt Plan* or *ORMCP* boundary, thus creating an additional buffer beyond the *Greenbelt Plan* or *ORMCP*. The boundaries of the *Greenbelt Plan* and *ORMCP* have been fixed for a significant time with the express intention of protecting certain natural features. If there is a feature within the boundary, as set by the Province, then the *Greenbelt Plan* or *ORMCP* boundary should be the buffer limit. The language contained in the policy must provide clarity on this from the outset.

- ii) **Policy 3.2.3.11:** Clarification is required as to the meaning of "modifications" to Core Feature boundaries and under what circumstances modifications can occur.
- iii) **Policies 3.2.3.13 to 3.2.3.15:** Clarification is also required as to the meaning of "critical function zone of wetlands" and "woodland enhancement" (neither of which are defined terms) in the context of "Enhancement Areas". There is no explanation given as to how these are to be defined and to which wetlands/woodlands they will apply. Proposed policy 3.2.3.15 indicates that these areas are not depicted on Schedule 2 (presumably because they have yet to be identified) and that under a new policy 3.2.3.16 these areas, once identified, "will be incorporated into the [NHN] as Core Features" without requiring an amendment to the Plan. This is a significant concern as it raises undesirable uncertainty as to the full extent of the lands that will ultimately appear as Core Features on Schedule 2.
- iv) **Policies 3.2.3.7, 3.2.3.11, 3.3.2.3, 3.3.3.3 and 3.3.3.4:** In all of these policies the wording has been changed to require "the satisfaction of the City and the Toronto and Region Conservation Authority" rather than "the satisfaction of the City in consultation with [emphasis added] the Toronto and Region and Conservation Authority". This goes beyond the corresponding ROP policies, which all use the words "in consultation with". The Region's language accurately reflects the TRCA's advisory role with respect to the interpretation and application of ROP policy and should be similarly utilized in the VOP 2010.



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v) **Proposed Supplemental Graphics to Figure 2, Natural Heritage System:** A detailed examination of the collective impacts of proposed Figures 2A, 2B and 2C has revealed unacceptable consequences for the realization of:

- a cohesive, intensified Mobility Hub surrounding a new Go Transit Station in the northeast;
- a compact, walkable neighbourhood in the southeast;
- east/west connectivity in the centre; and
- the wise use of a limited supply of buildable and serviceable tablelands.

As stated above, our clients had agreed not to appeal the VOP 2010 but rather to continue to work with City staff to address their concerns. They are frustrated that the serious issues repeatedly raised by their consultant team continue to go unaddressed.

We therefore request a meeting with City staff to further discuss these concerns, with the objective of achieving policy language that is clear and fair.

Thank you for the ongoing opportunity to provide you with our comments.

Yours sincerely,
DAVIESHOWEPARTNERSLLP

Michael Melling
MWM:KS

copy: Client
Mr. Don Fraser, Beacon Environmental
Mr. John Bousfield, Bousfields Inc.
Mr. Gerry Lynch, Cole Engineering Group Ltd.