

CITY OF VAUGHAN

EXTRACT FROM COUNCIL MEETING MINUTES OF JUNE 27, 2017

Item 39, Report No. 26, of the Committee of the Whole, which was adopted without amendment by the Council of the City of Vaughan on June 27, 2017.

39

**ZONING BY-LAW AMENDMENT FILE Z.14.026
SITE DEVELOPMENT FILE DA.15.056
FCF OLD MARKET LANE 2013 INC.
WARD 2 - VICINITY OF WOODBRIDGE AVENUE AND WALLACE STREET**

The Committee of the Whole recommends:

- 1) That the recommendation contained in the following report of the Deputy City Manager, Planning and Growth Management, and the Deputy City Manager, Legal and Human Resources, dated June 20, 2017, be approved; and**
- 2) That Confidential Communication C4 from the Deputy City Manager, Legal and Human Resources and the Deputy City Manager, Planning and Growth Management, dated June 16, 2017, be received.**

Recommendation

The Deputy City Manager, Planning and Growth Management, and the Deputy City Manager, Legal and Human Resources, recommend:

1. That Council receive this report in response to the Council resolution of September 20, 2016 which directed staff to retain an independent and objective third party experienced in planning law to review the planning process in respect of the FCF Old Market Lane 2013 Inc. file and identify any deficiencies in the process and make recommendations in that regard; and
2. That staff report to a future Council meeting on the implementation of standing instructions related to the issuance of heritage permits and extensions of time as required.

Contribution to Sustainability

Green Directions Vaughan embraces a Sustainability First principle and states that sustainability means we make decisions and take action that ensure a healthy environment, vibrant communities and economic vitality for current and future generations.

Economic Impact

There are no requirements for new funding associated with this report.

Communications Plan

On November 7, 2014, a Notice of Public Hearing for the December 2, 2014, meeting was circulated to all property owners located within the expanded notification area (exceeding the minimum required 150 m) and to the Village of Woodbridge Ratepayers Association and the West Woodbridge Homeowners Association. The Notice of Public Hearing was also posted on the City's website at www.vaughan.ca and a Notice Sign was installed on the property in accordance with the City's Notice Sign Procedures and Protocol.

The recommendation of the Committee of the Whole to receive the Public Hearing report of December 2, 2014, and to forward a comprehensive report to a future Committee of the Whole meeting was ratified by Council on December 9, 2014, and included a resolution that a community meeting be organized by the local Ward Councillor with Regional Councillors, the

CITY OF VAUGHAN

EXTRACT FROM COUNCIL MEETING MINUTES OF JUNE 27, 2017

Item 39, CW Report No. 26 – Page 2

applicant, a selection of ratepayers who spoke at the December 2, 2014, Public Hearing and appropriate City Staff to address the issues raised at the Public Hearing. Deputations, a written submission, and a petition were received.

On February 11, 18, 26, April 7, and December 9, 2015, community meetings were held at 7:00 p.m. at the Woodbridge Library, wherein local residents, the Woodbridge Ratepayers' Association, City staff and the Local Councillor were in attendance and issues and concerns were identified.

On October 20, 2015, Vaughan Council adopted a recommendation that the technical report be brought forward to a future Committee of the Whole meeting to be held in the evening, to afford local residents a better opportunity to comment on the proposal and recommendations. On February 18, 2016, the Vaughan Development Planning Department mailed a non-statutory courtesy notice of this March 1, 2016 Committee of the Whole meeting to those individuals requesting notice of further consideration of these applications.

On September 20, 2016 Council adopted the Committee of the Whole recommendation to, among other things, refuse the zoning by-law and site plan approval applications and retain an independent and objective third party to review the planning process which proceeded on this file.

This report has been provided to those individuals who requested notice in respect of the subject applications as well as those who participated in the OMB hearing.

Purpose

This purpose of this report is to advise Council of the findings of the independent third party review of the planning process for the above noted file.

Background - Analysis and Options

Council resolved as follows on September 20, 2016:

That an independent and objective third party experienced in planning law be asked to review the planning process as it has proceeded on this file, to identify any deficiencies in the process and to make recommendations in that regard.

The file relates to lands municipally known as 177, 185 and 197 Woodbridge Avenue, Vaughan (the "Subject Lands"). The Subject Lands are located within the Woodbridge Heritage Conservation District.

WeirFoulds LLP was retained to undertake this review and provided a report which included solicitor-client privileged information (the "Planning Review Opinion"). As a result, the Planning Review Opinion must remain confidential and will be provided to Council in its entirety on a confidential basis. The aspects that do not relate to litigation are detailed below.

Planning Process Chronology

The following is a chronology of the planning process identified in the Planning Review Opinion:

1. June 26, 2014 - FCF Old Market Lane 2013 Inc. ("FCF") files an application for an official plan amendment ("OPA") and zoning by-law amendment ("ZBA") to permit the development of a mixed-use building containing retail uses at grade and residential uses above, together with the relocation, restoration and conservation of the two heritage houses located on the Subject Lands, (the "Proposed Development").

CITY OF VAUGHAN

EXTRACT FROM COUNCIL MEETING MINUTES OF JUNE 27, 2017

Item 39, CW Report No. 26 – Page 3

2. July 2, 2014 - FCF appealed the City's Official Plan 2010 ("VOP 2010") and Secondary Plan on a site specific basis as they related to the Subject Lands.
3. July 22, 2014 - A Notice of Complete Application for the Proposed Development was issued by the City.
4. December 2, 2014 - statutory Public Hearing held on the Proposed Development as required by the *Planning Act*.
5. December 9, 2014 - Council directed a community meeting be organized, to address the issues raised at the Public Hearing regarding the Proposed Development.
6. February 11, 18, 26, April 7 and December 17, 2015 - Community meetings held on five separate occasions.
7. July 27, 2015 - FCF submitted an application to the City for site plan approval ("SPA").
8. October 21, 2015 - the City's heritage committee ("Heritage Vaughan") considered and received a report from staff recommending approval of the Development Proposal. Heritage Vaughan recommended that FCF work with the community to address issues relating to the historic character of the area.
9. January 19, 2016 - Council endorsed a settlement proposal for the site-specific VOP 2010 appeal during a closed session meeting.
10. January 26, 2016 - The Village of Woodbridge Ratepayers Association and the York Region Condominium Corporation No. 848 (collectively, the "Residents") were informed that Council endorsed the settlement of FCF's site specific VOP 2010 appeal.
11. March 1, 2016 - a Special Meeting of the Committee of the Whole was held to consider the Development Proposal. City staff recommended approval of the ZBA and SPA, that conformed with the VOP 2010 settlement approved by Council on January 16, 2016 for the VOP 2010 appeal, subject to a number of conditions.
12. March 1, 2016 - the Committee of the Whole recommended deferring consideration of the Development Proposal to Council. Council accepted the recommendation.
13. March 16, 2016 - FCF filed appeals of its OPA and ZBA
14. April 4, 2016 - FCF filed an appeal of its SPA
15. March 22, 2016 - Council directed staff to retain a heritage consultant to review the ZBA and SPA and to assist with the discussion of possible improvements to the building interface with the heritage buildings.
16. April 2016 – the City retained MTBA Associates Inc. who undertook a focused review of the Proposed Development from a cultural heritage perspective.
17. On April 14, 2016 - FCF submitted an application for a heritage permit under Part V of the *Ontario Heritage Act* to permit the relocation of the two heritage houses on the Subject Lands and to permit the demolition of elements of the dwellings as proposed in their Development Proposal. A decision was not made on the permit application within 90 days of the issuance of the notice of receipt, and therefore the permit was deemed to have been consented to.

CITY OF VAUGHAN

EXTRACT FROM COUNCIL MEETING MINUTES OF JUNE 27, 2017

Item 39, CW Report No. 26 – Page 4

18. May 18, 2016 - MTBA and Letourneau Heritage Consulting Inc. provided staff with a memo with their recommendations on the Development Proposal from a heritage perspective, (the "Technical Memorandum").
19. May 27, 2016, City staff, FCF, MTBA and Letourneau Heritage Consulting Inc. met to discuss the Technical Memorandum.
20. September 20, 2016- the Committee of the Whole recommended, among other things, that the ZBA and SPA be refused and that an independent and objective third party review the planning process which proceeded on this file. This recommendation was approved by Council.
21. January 24 and 25, 2017 – An OMB assisted mediation was held between the City, FCF and the Residents. A settlement was reached that was agreed to by all parties.
22. February 21, 2017 - Council endorsed the mediated settlement.

Since Council's consideration of the mediated settlement, the following has occurred:

1. April 28, 2017 – Ontario Municipal Board ("Board") Hearing wherein the Board approved the mediated settlement in principle.
2. May 24, 2017 – Memorandum of Oral Decision delivered by Gerald S. Swinkin issued by the Board confirming that the Board's final Order of approval is tied to the completion of a number of agreements as between FCF and the City and a payment of \$100,000 by FCF to the City, being a contribution required under the Section 37 Agreement.

Legislative Framework Identified in the Planning Review Opinion

The *Planning Act* governs the process by which applications for official plan amendments, zoning by-law amendments and site plan applications are made. Appeal rights are granted under the *Planning Act* if applications have not been considered within 180 days, 120 days and 30 days respectively. FCF exercised these appeal rights in addition to appealing the VOP 2010 to the Board.

The *Ontario Heritage Act* ("OHA") governs the process by which applications to alter or demolish designated heritage buildings are considered. Under Part V of the OHA, Council has 90 days in which to consider an application to alter or demolish, failing which, if the time to consider the application has not been extended as between the municipality and the applicant, Council is deemed to have consented to the permit. The specific section of the OHA reads:

Erection, demolition, etc.

42. (1) No owner of property situated in a heritage conservation district that has been designated by a municipality under this Part shall do any of the following, unless the owner obtains a permit from the municipality to do so:

1. Alter, or permit the alteration of, any part of the property, other than the interior of any structure or building on the property.
2. Erect, demolish or remove any building or structure on the property or permit the erection, demolition or removal of such a building or structure.

Decision of council

(4) Within 90 days after the notice of receipt is served on the applicant under subsection

CITY OF VAUGHAN

EXTRACT FROM COUNCIL MEETING MINUTES OF JUNE 27, 2017

Item 39, CW Report No. 26 – Page 5

(3) or within such longer period as is agreed upon by the applicant and the council, the council may give the applicant,

(a) the permit applied for;

(b) notice that the council is refusing the application for the permit; or

(c) the permit applied for, with terms and conditions attached.

Deemed permit

(5) If the council fails to do any of the things mentioned in subsection (4) within the time period mentioned in subsection (4), the council shall be deemed to have given the applicant the permit applied for.

Findings of the Planning Review Opinion

As set out above, FCF's submission of a site specific development application and the appeal of the VOP 2010 created a parallel planning process, with one element proceeding before the Board as it related to the appeal of the VOP 2010 and another proceeding before Council for a decision on the Proposed Development (OPA, ZBA, SPA). Following FCF's appeal of its site specific development applications, the Board consolidated all of FCF's respective appeals, and the Board has since disposed of those appeals together via the oral decision delivered by Gerald S. Swinkin on April 28, 2017. The Board's decision was issued on May 24, 2017.

The Planning Review Opinion includes the following comments and findings:

1. Council endorsed a settlement in relation to the applicant's site specific appeals of the VOP 2010 in advance of a decision on the site specific ZBA.

While there is no legal reason why Council could not have considered the settlement of the site specific VOP 2010 appeal in advance of a decision on the site specific ZBA, the specific nature of the settlement effectively predetermined the outcome of a decision on the ZBA.

2. Council dealt with the settlement of the site specific VOP 2010 appeal in closed session.

There is nothing legally problematic with Council having considered the settlement of the site specific VOP 2010 appeal in closed session, as it was entirely within Council's right to do so under the *Ontario Municipal Act*. However, because the settlement was part of a broader public planning process, the optics led the residents to believe that the decision regarding the site specific development application had been predetermined as a result of the decision regarding the VOP 2010 and that they had been left out of the process because the decision was made in closed session.

The Planning Review Opinion finds the residents' concerns about being left out of the process to be unfounded given the significant public consultation regarding the applications, including at least five community meetings and the statutory Public Hearing.

3. Council failed to make a decision on the heritage permit application for the Subject Lands within the statutory time frame and was therefore deemed to have consented to the application.

The Planning Review Opinion notes that the requirement for a heritage permit is an essential tool that the City has to protect heritage conservation districts and buildings, and identifies the failure of the City to make a decision on the application within the statutory time frame to be an error. The Planning Review Opinion finds however that the impact of the error was negligible given that an acceptable settlement was reached through mediation.

CITY OF VAUGHAN

EXTRACT FROM COUNCIL MEETING MINUTES OF JUNE 27, 2017

Item 39, CW Report No. 26 – Page 6

The Planning Review Opinion makes a number of recommendations:

1. All site specific appeals to the VOP 2010, for which there are also site specific development applications submitted to the City, should proceed together through the decision making process so as to ensure consistency in the decision making process that does not result in one process prematurely determining the outcome of another.

Staff Response: Staff support this recommendation and where possible make efforts to ensure appeals are consolidated. In limited circumstances, this may not be pragmatic due to timing and risk issues. In addition, it should be noted that once an appeal is filed, the Ontario Municipal Board retains ultimate jurisdiction in respect of when it proceeds.

2. Implement a system to ensure that all heritage permit applications are considered by Council within the statutory timeframe under the OHA, given the language in the OHA that deems Council to have approved a permit if it is not considered within the 90 day time period.

Staff Response: Staff support this recommendation and note that changes have been made to the heritage review process which were ratified by Council on June 5, 2017. Specifically, Council approved Item no. 11, Report 21, "Review of City Processes for Alteration and Demolition of Heritage Properties" which intends, in part, to address the timing of the Heritage Permit process to meet the 90 day timeframe.

3. Staff should have standing instructions to seek an extension of time to consider the heritage permit application for the necessary amount of time needed.

Staff Response: Staff support this recommendation and will report to a future Council meeting on the implementation of standing instructions.

Relationship to Term of Council Service Excellence Strategy Map (2014-2018)

This report supports the objectives of demonstrating leadership, support excellence in public service delivery and continuing to advance a culture of excellence in governance.

Regional Implications

Not applicable.

Conclusion

This report has been provided in response to the September 20, 2016 Council resolution set out in this report. Staff will endeavor to implement improvements to the City's planning and appeal process, taking the recommendations identified herein into account.

Attachments

None.

Report prepared by:

Caterina Facciolo
Legal Counsel (ext. 8662)

COMMITTEE OF THE WHOLE JUNE 20, 2017

ZONING BY-LAW AMENDMENT FILE Z.14.026

SITE DEVELOPMENT FILE DA.15.056

FCF OLD MARKET LANE 2013 INC.

WARD 2 - VICINITY OF WOODBRIDGE AVENUE AND WALLACE STREET

Recommendation

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Contribution to Sustainability

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Legislative Framework Identified in the Planning Review Opinion

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The *Ontario Heritage Act* ("OHA") governs the process by which applications to alter or demolish designated heritage buildings are considered. Under Part V of the OHA, Council has 90 days in which to consider an application to alter or demolish, failing which, if the time to consider the application has not been extended as between the municipality and the applicant, Council is deemed to have consented to the permit. The specific section of the OHA reads:

Erection, demolition, etc.

42. (1) No owner of property situated in a heritage conservation district that has been designated by a municipality under this Part shall do any of the following, unless the owner obtains a permit from the municipality to do so:

- 1. Alter, or permit the alteration of, any part of the property, other than the interior of any structure or building on the property.*
- 2. Erect, demolish or remove any building or structure on the property or permit the erection, demolition or removal of such a building or structure.*

Decision of council

(4) Within 90 days after the notice of receipt is served on the applicant under subsection (3) or within such longer period as is agreed upon by the applicant and the council, the council may give the applicant,

- (a) the permit applied for;*
- (b) notice that the council is refusing the application for the permit; or*
- (c) the permit applied for, with terms and conditions attached.*

Deemed permit

(5) If the council fails to do any of the things mentioned in subsection (4) within the time period mentioned in subsection (4), the council shall be deemed to have given the applicant the permit applied for.

Findings of the Planning Review Opinion

As set out above, FCF's submission of a site specific development application and the appeal of the VOP 2010 created a parallel planning process, with one element proceeding before the Board

as it related to the appeal of the VOP 2010 and another proceeding before Council for a decision on the Proposed Development (OPA, ZBA, SPA). Following FCF's appeal of its site specific development applications, the Board consolidated all of FCF's respective appeals, and the Board has since disposed of those appeals together via the oral decision delivered by Gerald S. Swinkin on April 28, 2017. The Board's decision was issued on May 24, 2017.

The Planning Review Opinion includes the following comments and findings:

1. Council endorsed a settlement in relation to the applicant's site specific appeals of the VOP 2010 in advance of a decision on the site specific ZBA.

While there is no legal reason why Council could not have considered the settlement of the site specific VOP 2010 appeal in advance of a decision on the site specific ZBA, the specific nature of the settlement effectively predetermined the outcome of a decision on the ZBA.

2. Council dealt with the settlement of the site specific VOP 2010 appeal in closed session.

There is nothing legally problematic with Council having considered the settlement of the site specific VOP 2010 appeal in closed session, as it was entirely within Council's right to do so under the *Ontario Municipal Act*. However, because the settlement was part of a broader public planning process, the optics led the residents to believe that the decision regarding the site specific development application had been predetermined as a result of the decision regarding the VOP 2010 and that they had been left out of the process because the decision was made in closed session.

The Planning Review Opinion finds the residents' concerns about being left out of the process to be unfounded given the significant public consultation regarding the applications, including at least five community meetings and the statutory Public Hearing.

3. Council failed to make a decision on the heritage permit application for the Subject Lands within the statutory time frame and was therefore deemed to have consented to the application.

The Planning Review Opinion notes that the requirement for a heritage permit is an essential tool that the City has to protect heritage conservation districts and buildings, and identifies the failure of the City to make a decision on the application within the statutory time frame to be an error. The Planning Review Opinion finds however that the impact of the error was negligible given that an acceptable settlement was reached through mediation.

The Planning Review Opinion makes a number of recommendations:

1. All site specific appeals to the VOP 2010, for which there are also site specific development applications submitted to the City, should proceed together through the decision making process so as to ensure consistency in the decision making process that does not result in one process prematurely determining the outcome of another.

Staff Response: Staff support this recommendation and where possible make efforts to ensure appeals are consolidated. In limited circumstances, this may not be pragmatic due to timing and risk issues. In addition, it should be noted that once an appeal is filed, the Ontario Municipal Board retains ultimate jurisdiction in respect of when it proceeds.

2. Implement a system to ensure that all heritage permit applications are considered by Council within the statutory timeframe under the OHA, given the language in the OHA that deems Council to have approved a permit if it is not considered within the 90 day time period.

Staff Response: Staff support this recommendation and note that changes have been made to the heritage review process which were ratified by Council on June 5, 2017. Specifically, Council approved Item no. 11, Report 21, "Review of City Processes for Alteration and Demolition of Heritage Properties" which intends, in part, to address the timing of the Heritage Permit process to meet the 90 day timeframe.

3. Staff should have standing instructions to seek an extension of time to consider the heritage permit application for the necessary amount of time needed.

Staff Response: Staff support this recommendation and will report to a future Council meeting on the implementation of standing instructions.

Relationship to Term of Council Service Excellence Strategy Map (2014-2018)

This report supports the objectives of demonstrating leadership, support excellence in public service delivery and continuing to advance a culture of excellence in governance.

Regional Implications

Not applicable.

Conclusion

This report has been provided in response to the September 20, 2016 Council resolution set out in this report. Staff will endeavor to implement improvements to the City's planning and appeal process, taking the recommendations identified herein into account.

Attachments

None.

Report prepared by:

Caterina Facciolo
Legal Counsel (ext. 8662)

Respectfully submitted,

John MacKenzie
Deputy City Manager,
Planning and Growth Management

Claudia A. Storto
Deputy City Manager,
Legal and Human Resources