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Communication
CW: <u>SEPT 7/16</u>
Item: <u>2</u>

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SENT BY E-MAIL

September 6, 2016

Committee of the Whole
City of Vaughan
2141 Major Mackenzie Drive
Vaughan, Ontario
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Dear Sirs/Mesdames:

Committee of the Whole - September 7, 2016
City of Vaughan - Telecommunication Facility Siting Protocol
Comments Concerning City of Vaughan
Policy Relating to Telecommunication Facilities
Our File No. 050739

We are the solicitors for Bell, TELUS and Rogers Communications (the "Wireless Carriers") in connection with the City of Vaughan's ("Vaughan") Telecommunication Facilities Siting Protocol ("Protocol"). Given the nature of the Protocol, our clients have chosen to collaborate on their response so that Vaughan has the benefit of their collective experience.

At the outset, and on behalf of the Wireless Carriers, we wish to thank Vaughan for consulting with interested stakeholders. The Wireless Carriers are strong supporters of the concept of a protocol designed to reflect local planning preferences provided it respects Industry Canada's requirements. Having devised the concept of a protocol in the mid 1990's, the Wireless Carriers have worked with municipalities such as Vaughan during the past two decades to ensure that policies are in place that balance their technical



requirements with the benefits of consultation so as to address the needs of all stakeholders. We trust our comments are of benefit to Council's deliberations.

The Wireless Carriers participated in the consultations associated with Vaughan's 2002 protocol and the 2002 and 2003 protocol updates. As well, the Wireless Carriers participated in Vaughan's Telecommunication Facility Siting Protocol Task Force. That Task Force produced a consensus report containing recommendations that we believe will reduce the prospect of controversy and land use conflict while furthering the development of high quality networks through the use of a path of least resistance philosophy. We note that the Protocol has adopted this approach and we support the staff recommendation to Council in that regard. However, the Protocol also contains amendments to the Task Force recommendations which inadvertently undermine the Task Force's objectives.

For the most part, the amendments of concern relate to the Protocol's implementation of changes to ISED's (formerly Industry Canada's) policy CPC-2-0-03 ("CPC") following adoption of the Task Force's Report.

Please accept the following comments related to our review of the Protocol.

Path of Least Resistance

The Task Force deliberations covered a wide variety of issues associated with the siting of wireless telecommunication facilities. The key recommendations can be found in Section C which tackles siting issues directly.

Recognizing that, the Provincial Policy Statement requires that the City accommodate the telecommunication needs of existing and future residents the Task Force recommendations seek to balance the objective of reducing the visual impact of wireless facilities while permitting the development of high quality networks.

The Task Force adopted the philosophy of "Path of Least Resistance". Recognizing that proponents will often compromise their engineering objectives in exchange for quick approval, the Task Force devised a process expanding on the exemptions found in the CPC to encourage taller facilities to locate away from residential zones through the creation of additional exemptions and incentives. "Where the Telecommunication Facility Proponent

is unable to meet the terms of the exemption, the proposal is subject to more scrutiny through a more intense process”.

The Schedule 1 Modified Review Procedure Chart included in the Task Force report was accordingly designed to encourage proponents to voluntarily select sites away from residential areas. Fundamental to the creation of that chart, was the Task Force’s recognition that the industry would use 15 metre towers in or near residential zones in order to provide service in those areas since they were exempt from the need to consult with Vaughan or the public. The Task Force contemplated that these 15 metre towers would be subject to notification only and not a consultation process. The Protocol encouraged 30 metre towers beyond 150 metres from residential zones.

ISEDLC subsequently removed the 15 metre exclusion from the CPC. The Protocol changes the balance in the path of least resistance fundamentally by removing the 15 metre exempt zone and replacing it with a full review process zone. In other words, there is no encouragement for towers of a lower height within 150 metres of a residential zone since a 15 metre and a 50 metre tower both go through the same process with the same notice obligations. In our view, an approach which better reflects the path of least resistance philosophy adopted by the Task Force would have been to create a new 15 metre category between 0 and 50 metres from residential whereby staff review and notice to adjacent landowners based on 3 times the tower height is required. Between 50 metres and 200 metres, the 15 metre category would use the existing Area D designations which require staff review only. Such an approach would provide a meaningful advantage to proponents for lowering their tower heights while at the same time ensuring that consultation is commensurate with the tower height and distance from the residential zone.

We have attached an extract from the Task Force’s report containing the predecessor to Figure 1 in the Protocol for Council’s information.

Notice to the Public

Similarly, the Protocol recommends that where notice is required, including all proposals within 150 metres of a residential zone, then notice is prescribed to be the greater of 3 times the tower height or 150 metres. While the Task Force recommended the 150 metre notification distance, it did so believing that towers less than 15 metres in height would not be subject to mandatory notice requirements. Given that 150 metre notice is equivalent to

10 times the tower height for a 15 metre tower and that Industry Canada's standard is only 3 times the tower height, we believe that the Protocol inadvertently skews the incentive in favour of the development of taller towers. In other words, there is no procedural advantage to a proponent constructing a 15 metre tower compared to a 50 metre tower given the notification distances. In our view, the prescribed distance for notification ought to be amended to provide for 3 times notice for towers 20 metres and less as an incentive. This approach is equally applicable to towers located in or near heritage conservation districts. We believe that our suggestion is consistent with Vaughan's approach to minor variances. These lesser Planning Act approvals only require notice at 60 metres.

Block Plan Coordination

The Task Force also considered the circumstance where telecommunication facilities are developed in rural areas before Block Planning has occurred. The Task Force recommended that staff be directed to consult with telecommunication facility proponents and report back to Council on opportunities to promote unobtrusive siting using the Block Plan process. Unfortunately, no such consultation occurred. Rather, the Protocol contains a requirement that antenna systems developed in advance of Block Plans must include a requirement that they be removed upon development of the area notwithstanding the term remaining in the lease. No other land use in Vaughan is the subject of such a harsh requirement. In our view, such a provision provides a strong disincentive to develop in the rural areas of the City because the capital investment can be defeated if development occurs in the area. Inadvertently, this requirement now creates an incentive for developing towers closer to existing residential uses.

Expiry of Concurrence

In Section 8.6 of the Protocol, the draft provides that the concurrence for antenna systems not installed within 3 years expires. As a result, a proponent wishing to proceed will be required to commence the municipal consultation process again. In our view, it would be prudent to permit the Director of Development to extend the approval for a further year where it is demonstrated to their satisfaction that there is no substantial change in land use planning circumstances within the vicinity of the proposal since the time concurrence was initially given. Such an approach has been adopted by other municipalities (most recently the City of Sudbury) in recognition of the saving in staff resources that will result.

Clarifications

There are several areas where the wireless carriers seek clarification with respect to the interpretation of the Protocol. These are as follows:

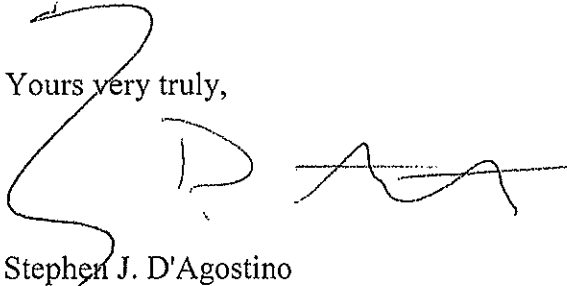
- In Section 4.1, the Protocol recites the ISEDC exemptions and the requirement to consult with Vaughan. In exemption number 2, the draft addresses the 25% exemption and then adds “any subsequent modifications or additions to the same structure will be subject to the consultation process, as applicable”. This language seems to suggest that a second modification would be the subject of consultation. Under the CPC, this is not the case since repeated modifications to the site are permitted provided the 25% height limit based on the existing structure is respected. As a practical matter, we can report that sites are constantly being modified to address the dynamic nature of wireless networks. Antennas are repeatedly repositioned or replaced with more suitable antennas for example. We suggest that this sentence be deleted or amended to clarify its intention.
- In Section 5.4 Development Guidelines, paragraphs 1 and 2 require that providers conduct preliminary radio frequency reports to ensure that the intended services do not interfere with the City’s pre-existing wireless services. As well, proponents are required to provide technical specifications of all radio equipment to be used on the site, including updates as installations are modified. It is unclear what purpose is served by these policies. Industry Canada already requires that new facilities not interfere with existing ones through its radio immunity requirements. In addition, the technical information concerning a site is well and above the information required for concurrence and is beyond the municipality’s expertise to analyse. Its disclosure further represents a risk to the wireless carriers if the information is inadvertently released by Freedom of Information, hacking or otherwise since a facility may become compromised if its technical details are known. We believe that these requirements should be clarified to focus on the specific purpose or be deleted.

Conclusion

We trust that these comments are useful in Council’s deliberations leading to a protocol that meets the need of all stakeholders. To that end, the undersigned will be present at the

Committee of the Whole meeting in order to clarify these comments and answer questions as required.

Yours very truly,

A handwritten signature in black ink, appearing to read 'Stephen J. D'Agostino', written over a horizontal line.

Stephen J. D'Agostino

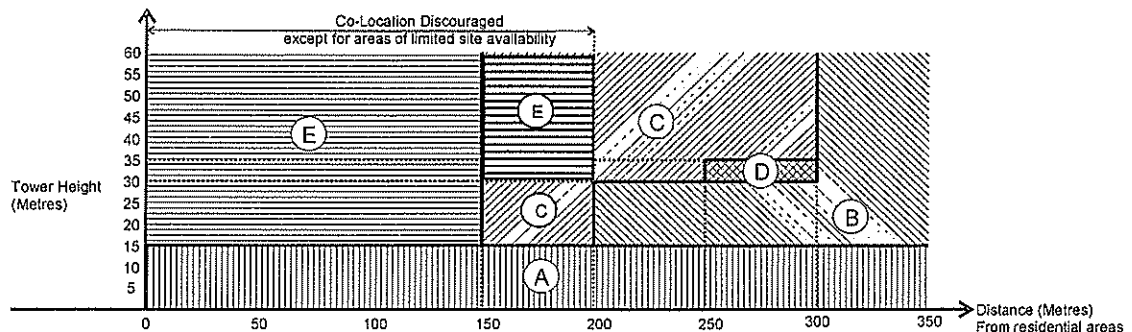
Stephen Joseph D'Agostino Law Professional Corporation

SJD/aph

cc: Ms. Carmela Marrelli, Senior Planner
Mr. Grant Uyeyama, Director of Development Planning

- ii. Amateur radio telecommunications towers, provided they are for personal use only, set back from the respective yards in accordance with the applicable zoning by-law and that the antenna is less than 15 metres in height.
- c) Vaughan Specific Exemptions from the Requirement to Consult with Council and/or the Public In Accordance With the Chart Below.

Schedule 1: Telecommunication application review process; modified review procedures to encourage Proponents to voluntarily select sites away from residential areas



Legend:

- Area "A": Exempted from Municipal Review Process (Notification Only)
- Area "B": Staff Review and Approval (No Council Approval)
- Area "C": Staff Review and Council Approval
- Area "D": If Co-Located, Council Approval Not Required; If Single Carrier, Council Approval Required
- Area "E": Full Consultation Process

Explanatory Notes for Schedule 1:

- a) With respect to proposals meeting the requirements of Area "A", as per Schedule 1 above, proposals with a height of less than 15 metres are exempted from the municipal application review process. However, the submission of a notification to inform the City of a new installation is requested;
- b) With respect to proposals meeting the requirements of Area "B", as per Schedule 1 above, proposals are recommended to be exempt from Council approval and public notification. Applications would be reviewed and granted concurrence/non-concurrence by City staff if:
 - i. a telecommunication tower is between 15 and 30 metres in height, and is located at a distance between 200 and 300 metres from residential areas; or
 - ii. a telecommunication tower height is equal to or higher than 15 metres and is installed farther than 300 metres from residential areas;