

Local Planning Appeal Tribunal
Tribunal d'appel de l'aménagement
local



ISSUE DATE: July 29, 2020

CASE NO(S):

PL180368

The Ontario Municipal Board (the “OMB”) is continued under the name Local Planning Appeal Tribunal (the “Tribunal”), and any reference to the Ontario Municipal Board or Board in any publication of the Tribunal is deemed to be a reference to the Tribunal.

PROCEEDING COMMENCED UNDER subsection 34(11) of the *Planning Act*, R.S.O. 1990, c. P.13, as amended

Applicant and Appellant:	1771107 Ontario Inc. (Times Group Corp.)
Subject:	Application to amend Zoning By-law No. (By-Law 2004-196) - Neglect of the Town of Markham to make a decision
Existing Zoning:	MC-D2*11 (Markham Centre Downtown), MC-PS1 (Markham Centre Public Space One)
Proposed Zoning:	Site Specific (To be determined)
Purpose:	To permit an increase in residential unit count and building height
Property Address/Description:	South Side of Highway 7, East of Warden
Municipality:	Town of Markham
Municipality File No.:	ZA 16 164154
LPAT Case No.:	PL180368
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LPAT Case Name:	1771107 Ontario Inc. v. Markham (Town)

Heard: July 22, 2020 by video hearing

APPEARANCES:

Parties

Counsel/Representative*

1771107 Ontario Inc. (Times Group Corp.) (“Applicant”)

Ira Kagan
Sarah Kagan (articling student)

City of Markham (“City”)

Pitman Patterson
Piper Morley

Aryeh Construction Ltd. (“Aryeh”)

Jennifer Meader

Dorsay (Residential) Developments Inc. Kyle Gossen

York Region District School Board James Easto

Unionville Ratepayers' Association Peter Miasek*

Participant

Smart Centres Real Estate Investment Trust Michael Cook

MEMORANDUM OF ORAL DECISION DELIVERED BY BRYAN W. TUCKEY ON JULY 22, 2020 AND INTERIM ORDER OF THE TRIBUNAL

INTRODUCTION

[1] This Memorandum of Oral Decision results from a hearing on the merits conducted via video hearing.

[2] The Applicant is appealing pursuant to s. 34(11) of the *Planning Act* the failure of the City of Markham to make a decision within 120 days on its application for a Zoning By-law Amendment (“ZBA”) to permit an increase in density and building height for a proposed development of its lands consisting of approximately 36 hectares located at the South Side of Highway No. 7 and east of Warden Avenue in the City.

[3] Mr. Kagan, counsel for 1771107 Ontario Inc. advised the Tribunal that the Applicant has reached a full settlement with City and all parties. Therefore, a settlement hearing proceeded with this understanding and with the consent of all parties.

[4] Mr. Kagan requested that an oral decision be issued by the Tribunal approving the ZBA submitted by the parties but that that the Tribunal withhold its Final Order pending the resolution of the following three matters:

- 1) That certain revisions be made to the ZBA respecting building setbacks.

- 2) Confirmation to the Tribunal that a revised school board option agreement has been signed by the parties.
- 3) Confirmation to the Tribunal that the final Minutes of Settlement between the Applicant and the City has been signed by both parties.

[5] No one took issue with Mr. Kagan's request.

LAND USE PLANNING

[6] Testimony was heard from two planning witnesses, Lincoln Lo on behalf of the Applicant and Stephen Lue on behalf of the City of Markham. Both were qualified to give expert land use planning evidence in this matter and have considerable planning experience within the subject area and the City of Markham.

[7] The subject lands are in what is commonly referred to as "Markham Centre". The majority of the parcels that are subject to the ZBA are located on the south east corner of Highway 7 and Warden Avenue.

[8] Mr. Lo described in detail the locational context and existing development found in the surrounding area. Development within Markham Centre has generally occurred in an east to west direction. Markham Centre has evolved in an orderly, well planned and phased fashion over many years. Existing developments within Markham Centre include: Times Village Parkway, Markham Town Square, Sheridan Nursery, Remington Downtown Markham, the Unionville GO Station, a Young Men's Christian Association, a Hilton Hotel and Markham Civic Centre. There are several active development applications and projects under construction within Markham Centre.

[9] There is a long established, clear and consistent hierarchy of land use designations for the Markham Centre and the subject lands beginning with Provincial and concluding with City policy. The subject lands have the following land use designations:

- 1) In the Provincial Growth Plan for the Greater Golden Horseshoe 2019 (“Growth Plan”) as an “Urban Growth Centre” including several existing and planned “Major Transit Station Areas”;
- 2) In the York Region Official Plan (“YROP”) as a Regional Centre and a portion of Highway 7 identified as a Regional Corridor; and
- 3) In the Markham Official Plan (“Markham OP”) the policies of the 1987 Official Plan remain in effect as a “Community Amenity Area – Major Urban Place”, as amended by Official Plan Amendment 21.

[10] Both planners evaluated and gave expert opinion with specific reference to Provincial, Regional and Municipal Policy. They agreed as to consistency to or conformity with all relevant policy documents.

[11] The proposed ZBA is consistent with the Provincial Policy Statement 2020 (“PPS”). It promotes development patterns that optimize the use of land, resources, investment of infrastructure and public service facilities. The Application represents significant intensification that includes a mix and range of market based and affordable housing, office and civic uses at a transit supportive scale and density.

[12] The proposed ZBA conforms to the Growth Plan. The Growth Plan identifies how and where growth and development will occur in the Greater Golden Horseshoe. The Application is in a Provincially designated Urban Growth Centre which is planned to accommodate a significant amount of municipal population and employment growth in a compact built-form to ensure the creation of a complete community.

[13] The proposed ZBA conforms to the YROP. The YROP identifies the subject lands being within the Urban Area and where the highest and most intense form of development is to be located namely: Regional Centres and along Regional Corridors (Highway 7). The YROP requires detailed sequencing plans to be included in each secondary plan to ensure an orderly and efficient progression of development.

Markham Centre and this Application implements regional policy by providing the greatest intensity of development and diverse mixture of uses within the Region.

[14] The proposed ZBA conforms to the Markham OP (1987 remains in effect) as amended by OPA 21. The municipal planning regime directs that the highest concentration of development and the greatest variety of activities are to be located in the Markham Centre planning district on lands designated “Community Amenity Area – Major Urban Place”. The subject lands are intended to be developed in a comprehensive manner ensuring the development of a high density, mixed use, transit supportive complete community.

[15] The Tribunal accepts the uncontested opinion of the expert planning witnesses and finds the proposed ZBA to be consistent with the PPS and in conformity with all necessary planning policies as outlined in Paragraphs 12 –14.

PROPOSED ZBA

[16] The ZBA uses text and a series of Schedules to define provisions for the various blocks found in the subject lands. The Tribunal found this approach to be a clear and effective way to describe the intended development and how it will be phased. It is a clear, comprehensive, implementation focused document.

[17] The ZBA creatively regulates the many important considerations for the development of the subject properties. The Tribunal will highlight in the following paragraphs key elements of the ZBA that the expert witnesses and the Tribunal found to be worthy of note.

[18] The ZBA:

- 1) Seeks to increase the maximum number of dwelling units permitted from 4,500 to 6,100;

- 2) The proposal includes a total of 300 units of purpose-built rental which will remain in perpetuity;
- 3) A total of 60 affordable housing units which include a substantial number of two and three-bedroom units suitable for families,
- 4) The necessary height, density and setback (to be included) provisions required for appropriate development;
- 5) A school site has been preserved within the subject lands;
- 6) A significant office space with a minimum Gross Floor Area of 20,000 square metres (“m²”) and non-residential commercial and/or Retail uses with a minimum of 2,500 m² is required in the ZBA to ensure a complete, mixed use community;
- 7) Suitable public open space and community facilities are secured to further the City’s policy objectives; and
- 8) A comprehensive suite of Holding Provisions is found within the ZBA to ensure the proper sequencing of development in keeping municipal priorities and infrastructure delivery. Holding provisions include many implementation mechanisms including: requirements regarding the Toronto/Buttonville Airport Zoning Regulations; the registration of a Subdivision Agreement; approval of Site Plan applications; Traffic Impact Studies; a Water Supply Analysis; a Municipal Design completion and Section 37 Agreements. The Holding Provisions are clear as to their intent and what conditions must be met for their future release.

[19] The Tribunal makes specific note of a certain portion of Mr. Lue’s testimony in which he clearly described the City’s continuous efforts to ensure that Markham Centre develop as a successful complete community. He outlined five critical elements

important to Markham and described how the ZBA ensures these elements were secured. The five elements are as follows:

- 1) **Parkland Dedication.** The City will secure a 1.42 hectare (“ha”) public park on the south side of Rougeside Promenade. The addition of this new public park will assist in implementing an extensive interconnected park and open space system along the Rouge River.
- 2) **Affordable Housing and Purpose Built Rental.** The YROP and Markham OP requires that Regional Centres require a range of housing that is affordable to low and moderate-income households. The ZBA secures 300 purpose built rental units of which 60 will be affordable with many of a size that is suitable for families.
- 3) **Community Space.** The ZBA secures a minimum of 930^{m2} Net Gross Floor Area for community facility space. Several other Community Benefits are identified in Mr. Lue’s witnesses’ statement.
- 4) **Warden Avenue Design Competition.** The “*Warden Strip and Area E likely represents the Appellant’s final development phase*”. Area E is found on Schedule X5 – Holding Zones. Holding provisions in the ZBL require a design competition to ensure development and built form worthy of this landmark location.
- 5) **Office and Non-Residential Uses.** A Special Provision in the ZBA requires a minimum Gross Floor Area of 20,000 ^{m2} of which a minimum of 2,500 ^{m2} will be commercial and/or retail space with office and non residential uses.

[20] The Tribunal finds that ZBA, as presented, represents good land use planning, is consistent or in conformity with and meets the objectives of all requisite public policy, and is in the public interest. The outcome of the planning efforts that culminated with

the proposed ZBA will be a high density, mixed use, transit oriented and pedestrian friendly, livable, complete community.

ARYEH SUBMISSION

[21] Aryeh has an application on lands in the Markham Centre that is presently before the Local Planning Appeal Tribunal (“LPAT”) for consideration.

[22] Ms. Meader on behalf of her client takes issue with the ZBA provision requiring the owner to prepare, submit and mitigate the recommendations of a Water System Analysis. Aryeh has objected to similar provisions found in the ZBA for their lands. Her client will not object to the provisions in the ZBA that is the subject of this Tribunal Hearing but made the argument that its approval should not prejudice Aryeh’s application in any way.

[23] Counsel for the municipality indicated that the Aryeh application will be considered on its own merits and approval of this ZBA will not predetermine any of Aryeh’s related issues.

[24] Accordingly, the Tribunal will allow the appeal in part and approve the ZBA found in Exhibit 1 pages 4 to 18 in the electronic version subject to the modifications referred to above.

[25] The Tribunal will withhold the Final Order for the ZBA until the following conditions have been satisfied:

- a. A revised final version of the ZBA is circulated to all parties for their review and consent. The ZBA will be provided to the Tribunal as an Attachment to said Final Order;
- b. The Tribunal receives confirmation that a revised school board option agreement has been signed by the participating parties; and

- c. The Tribunal receives confirmation that the final Minutes of Settlement between the Applicant and the City have been signed by both parties.

[26] The Member may be spoken to if any issues arise among the parties.

“Bryan W. Tuckey”

BRYAN W. TUCKEY
MEMBER

If there is an attachment referred to in this document,
please visit www.olt.gov.on.ca to view the attachment in PDF format.

Local Planning Appeal Tribunal

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