

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



ISSUE DATE: August 31, 2020

CASE NO.: 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 City 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: City of Markham
Municipality File No.: ZA 16 164154
LPAT Case No.: PL180368
LPAT File No.: PL180368
LPAT Case Name: 1771107 Ontario Inc. v. Markham (City)

BEFORE:

BRYAN W. TUCKEY) Monday, the 31st day of
MEMBER)
) August, 2020

THIS MATTER having come on for a public hearing and the Tribunal in its Decision issued on July 29, 2020, having withheld its Order for the Zoning By-law Amendment (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; 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;

THE TRIBUNAL ORDERS that the appeal is allowed in part, and By-law No. 2004-196, as amended, of the City of Markham, is hereby amended in the manner set out in Attachment “1” to this Order. The Tribunal authorizes the municipal clerk to assign a number to this by-law for record keeping purposes.

“Becky Fong”

REGISTRAR

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

A constituent tribunal of Ontario Land Tribunals

Website: www.olt.gov.on.ca Telephone: 416-212-6349 Toll Free: 1-866-448-2248

ATTACHMENT “1”**EXPLANATORY NOTE****BY-LAW NO. 2020-XX**

A By-law to amend By-law 2004-196, as amended.

1771107 Ontario Inc. (Times Group Inc.)
Blocks 1,2,3,4,7,8,9, and 13

LANDS AFFECTED

This by-law applies to properties totalling ~13.5 hectares (33.4 acres) located south of Highway 7 between Warden Avenue and east of Birchmount Road (the “Lands”).

EXISTING ZONING

The Lands are zoned “Markham Centre Downtown Two” (MC-D2*11 and MC-DC*14) with site-specific provisions, “Markham Centre Downtown Five” (MC-D5*12) with site-specific provisions, Markham Centre Public Space (MC-PS1) and Markham Centre Public Space (MC-PS1*13) with site-specific provisions and Markham Centre Public Space Two (MC-PS2) by the Markham Centre Zoning By-law 2004-196, as amended.

PURPOSE OF THE BY-LAW

The purpose of this By-law amendment is to:

- a) increase permitted building heights for portions of the Lands
- b) increase the maximum permitted number of residential units from 4,500 to 6,100

EFFECT OF THE BY-LAW

The effect of this by-law amendment is to permit the high-density mixed-use development as proposed.

By-law 2020-XX

A by-law to amend the Markham Centre
Zoning By-law 2004-196, as amended

THE COUNCIL OF THE CORPORATION OF THE CITY OF MARKHAM HEREBY
ENACTS AS FOLLOWS:

1. Zoning By-law 2004-196, as amended, be and the same is hereby further amended as follows:

- 1.1 By deleting Schedules F1, F2, F3, F4, and X5 and replacing them with the attached Schedules F1, F2, F3, F4, and X5 to this By-law.

- 1.2 For the purposes of this By-law, the definition of Gross Floor Area is as follows:

Gross Floor Area means the aggregate of the areas of each floor of a *building* or *structure* above or below grade, measured between the exterior faces of the exterior walls of the *building* or *structure*, or where there are common walls between uses or *buildings* or *structures*; measured to the centre-line of a common wall. The calculation of gross floor area excludes the areas of each floor used, or designed or intended for the parking of motor vehicles, unless the parking of *motor vehicles* is the principal use of a *building* or *structure*.

- 1.3 By adding the following new subsections to Section 2.6 – Holding Provisions to By-law 2004-196:

“2.6.X1 Holding Provision (“HX1”)

The following Holding Provisions shall apply:

- a) Holding Provision HX1, as shown in Schedule X5 to this By-law, shall only be lifted when the following provisions have been met:
 - i) For buildings that exceed the Toronto/Buttonville height restrictions, the Toronto/Buttonville Airport Zoning Regulations (SOR/88-148) have been repealed and the height restriction on the Lands or portions thereof, provided in section 4 therein are no longer in force and effect in respect of the Lands shown on Schedule “A” attached hereto, to the satisfaction of the City.
 - ii) A Subdivision Agreement has been executed and registered securing the conveyance and construction of the public street, the conveyance of any road widening along Highway 7 and Warden Avenue along the frontage of the Lands, the establishment of the

school block, the conveyance of parkland, and the extension of public services with respect to the development of the Lands, to the satisfaction of the City.

- iii) For the residential units that exceed 4500 on the Lands, the following shall apply, to the satisfaction of the City:
 - 1. The Traffic Impact Study prepared by NexTrans and dated April 2020, must be updated to:
 - A) consider the appropriate number of units that can be supported in advance of the Rougeside Promenade extension to Warden Avenue; and,
 - B) reflect that the access points to Highway 7 and Warden Avenue will not be considered by York Region until the Rougeside Promenade extension to Warden Avenue is constructed.
 - 2. The Holding Provision on the development blocks or residential units that can be supported in advance of the construction of the Rougeside Promenade extension to Warden Avenue will be removed once the City is satisfied with the updated Traffic Impact Study.
 - 3. The Holding Provision on the remaining development blocks or residential units, including the Warden Strip and "Area E", will only be lifted once the Rougeside Promenade extension to Warden Avenue is constructed and operational.
- iv) Final approval of a Site Plan Approval application(s) has been obtained for the Lands, or portion thereof, from which the Holding Provision is being removed, in accordance with Section 41 of the *Planning Act*.
- v) For the residential units that exceed 4500 on the Lands, the following shall apply, to the satisfaction of the City:
 - 1. The Owner shall prepare and submit a Water Supply Analysis in consideration of the conclusions and suggestions identified in the Water System Analysis, prepared by FP & P and HydraTek & Associates, dated May 27, 2020, to determine what is required to provide water services for the development of the Lands without

causing adverse impacts elsewhere in the water supply system.

2. The Owner shall identify the recommendations and address the necessary works to mitigate any impacts identified in the Water Supply Analysis and the deficiencies identified in the Water System Analysis, prepared by FP & P and HydraTek & Associates, dated May 27, 2020.
 3. The City shall retain a peer reviewer, at the Owner's expense, to peer review the Water Supply Analysis and mitigation recommendations as set out in paragraphs (v)(1) and (v)(2) above.
 4. The Owner shall execute an agreement with the City securing the provision of, or where more than the Lands benefit from the works, contribution to, water service infrastructure improvements identified by the above-noted Water Demand Analysis related to the development of the Lands.
- vi) Notwithstanding the above, driveways and underground parking garages are permitted to be constructed on the Lands prior to the lifting of the applicable Holding Provision(s), to the satisfaction of the City.
- vii) For the residential units that exceed 4500 on the Lands, the execution and registration of an Agreement, pursuant to Section 37 of the *Planning Act* and in accordance with the City's Official Plan policies, between the City and the Owner for the following:
1. the payment contribution by the Owner of \$ 3,885,000.00 with respect to increases in building height and density, in 2020 dollars, to be indexed to the Ontario rate of inflation as per the Toronto Consumer Price Index (CPI) up to the date the payment is required.
 2. the separate payment by the Owner of \$807,500.00 for the provision of public art.
 3. the provision of a minimum 930 m² net Gross Floor Area community facility space, if the City identifies the need for such space in the manner set out in the Agreement executed pursuant to Section 37 of the *Planning Act*,

which would reduce the contribution identified in paragraph (vii)(1) above.

- A. Should the fair market value of this community space exceed the total amount of the Section 37 amount and public art contributions for the Lands, then the City will immediately provide the difference to the Owner.
- B. Prior to the initial design of the building containing the potential community facility space, the City shall provide the Owner a design brief that describes the functional program requirements including, but not limited to, space dimensions, access, clear ceiling heights, heating and cooling, and lighting, to the satisfaction of the City.

Payment of the Section 37 amount, in accordance with paragraphs (1) and (2) above, shall be pro-rated based on the percentage of the approved number of units and payable prior to the execution of a Site Plan Agreement, to the satisfaction of the City.

- viii) A purpose-built rental housing building containing approximately 300 units shall be constructed in either "Area A" or "Area B", as shown on Schedule X5 to this By-law, prior to the approval of any development in Area "D" or the Warden Strip. In addition, 60 affordable rental housing units (as defined in the Markham Official Plan 2014) shall be provided within the purpose-built rental housing building and will contain the following, to the satisfaction of the City:
 - 1. 36, one-bedroom units;
 - 2. 16, two-bedroom units; and,
 - 3. 8 three-bedroom units.
- ix) For clarity, the Agreement, in accordance with paragraph (viii) above, will reflect the following:
 - 1. that the 300 units in the purpose-built rental housing building will not be required to pay any Section 37 amount or public art contribution, which waiver is already reflected in paragraphs (vii)(1) and (vii)(2) above;

2. 180 of the 300 units will not be required to make any parkland contribution (land or cash-in-lieu); and,
 3. none of the overall 6,100 units approved for the Lands will be required to pay any Community Benefit Charge.
- x) Notwithstanding any other provisions of this By-law, the following provisions shall apply to “Area A” on Schedule X5 to this By-law. All other provisions, unless specifically modified or amended by this section, continue to apply to the Lands subject to this section. Prior to this Holding Provision HX1 being removed, the following conditions shall be fulfilled, to the satisfaction of the City:
1. the Owner shall confirm that the maximum height shall be 17 storeys through the execution of a Site Plan Agreement; or,
 2. Notwithstanding paragraph (1) above, the Owner shall confirm the provision of not less than 60 units of affordable housing integrated in a purpose-built rental housing building, as contemplated in Section 2.6X1(a)(vii)4 of this Zoning By-law, with a maximum height of 30 storeys through the execution of a Site Plan Agreement; and,
 3. Should not less than 60 units of affordable housing be contemplated, the following parking provision shall apply to “Area A”:
 - A. a minimum of 0.8 parking space per dwelling unit and a maximum of 1.08 parking spaces per dwelling plus 0.12 parking spaces per dwelling unit for visitors.
- xi) Notwithstanding any other provisions of this By-law, the following provisions shall apply to “Area B” on Schedule X5 to this By-law. All other provisions, unless specifically modified or amended by this section, continue to apply to the Lands subject to this section. Prior to this Holding Provision HX1 being removed, the following conditions shall be fulfilled, to the satisfaction of the City:
1. the Owner shall confirm that the maximum height shall be 24 storeys through the execution of a Site Plan Agreement; or,

2. Notwithstanding paragraph (1) above, the Owner shall confirm the provision of not less than 60 units of affordable housing integrated in a purpose-built rental housing building, as contemplated in Section 2.6X1(a)(vii)4 of this Zoning By-law, with a maximum height of 30 storeys through the execution of a Site Plan Agreement.
- b) Prior to the removal of Holding Provision HX1 from the portion of the Lands shown as "Area D and the "Warden Strip" in Schedule X5 to this By-law, the conditions for removal of the Holding Provision HX1 from the portion of the Lands shown as "Area A" and "Area B" in Schedule X5 to this By-law shall be satisfied such that the affordable housing units in a purpose-built rental housing building have been provided in either "Area A" or "Area B.

2.6.X2 Holding Provision ("HX2")

The following Holding Provisions shall apply:

- a) Holding Provision HX2, as shown in Schedule X5 to this By-law, shall only be lifted when the following provisions have been met:
 - i) A design competition shall be organized by the Owner, assisted by the City, based on the terms of the competition brief to be agreed to by the Owner and City and provided in the executed Minutes of Settlement between the Owner and the City (LPAT File PL 180368) for further planning and design consideration, which addresses the requirements in sections "6.XX.2 Site Specific Provision" and "6.AA Special Provisions – Office Site south of Highway 7 and east of Warden Avenue" of this By-law.
 1. For clarity, a jury consisting of representatives for the Owner and the City shall select a winning design outcome, in accordance with the criteria described in the competition brief, to the satisfaction of the Commissioner of Planning and the Owner.
 - b) Notwithstanding the above, driveways and underground parking garages are permitted to be constructed prior to the lifting of the applicable Holding Provision(s).
- 1.4 By adding the following new subsection to Section 6 – Exceptions to By-law 2004-196:

"6.XX Special Provisions - Warden Strip south of Highway 7 and east of Warden Avenue

Notwithstanding any other provisions of this By-law, the following provisions shall apply to the Lands denoted by the symbol *XX (Exception XX), as shown in Schedule F1 to this By-law. All other provisions, unless specifically modified/amended by this section, continue to apply to the Lands.

6.XX.1 Special Uses Provisions

The following additional uses are permitted:

- a) *Home occupations within the first and second storeys of a building may be permitted along a local street.*

6.XX.2 Special Site Provisions

The following Special Site Provisions shall apply:

- a) *Dwelling units are prohibited on those portions of the first storey of a building facing Warden Avenue and Highway 7.*
- b) *Notwithstanding a), lobbies and other areas used to access residential uses are permitted within the first storey of a building.*
- c) *Special Provision (2) to Table A1 shall not apply.*
- d) *The minimum height of the first storey shall be 4.5 m, measured from the floor of the first storey to the floor of the storey above.*
- e) *The minimum podium height shall be 6 storeys*
- f) *The minimum commercial and/or retail space area shall be 2,500 m² in the combined *XX and *AA Zones.*
- g) *In the case of a corner lot with a daylighting triangle, the exterior side lot line shall be deemed to extend to its hypothetical point of intersection with the extension of the front lot line for the purposes of calculating minimum and maximum setbacks from streetlines.*
- h) *Notwithstanding g), in no case shall any building or structure extend into the public street right-of-way.*
- i) *Awnings are permitted to extend to any street line or lot line.*
- j) *Rooftop mechanical features, such as structures containing equipment necessary to control an elevator, shall not be included in the definition of Height.*

- k) No setbacks or yards shall be required for any portion of a *private garage* or Parking Garage if it is constructed completely below the Established Grade. This exemption shall also apply to ventilation shafts and housings, stairways, planters, retaining walls extending from the garage wall, underground structures including areas used for storage lockers and uses accessory to an apartment building, and other similar facilities above Established Grade associated with underground structures.

6.XX.3 Special Parking Provisions

The following Special Parking Provisions shall apply:

- a) The parking space requirement for apartment dwellings and multiple dwellings shall be as follows:
 - i) A minimum of 0.8 parking space per dwelling unit and a maximum of 1.08 parking spaces per dwelling unit plus 0.12 parking spaces per dwelling unit for visitors.
 - ii) The provision of additional parking spaces is not permitted.
 - iii) A maximum of 5% of the required parking spaces may be located in a surface parking area.

6.YY Special Provisions - School Site south of Highway 7 and east of Warden Avenue

Notwithstanding any other provisions of this By-law, the following provisions shall apply to the Lands denoted by symbol *YY (Exception YY), as shown in the Schedule F1 to this By-law. All other provisions, unless specifically modified/amended by this section, continue to apply to the Lands subject to this section.

6.YY.1 Special Uses Provisions

The following Special Use Provisions shall apply:

- a) Only the following uses are permitted:
 - i) *Schools, Public*
 - ii) *Parks*
 - iii) *Day Nurseries*
 - iv) *Community Facilities / Community Centres*

6.YY.2 Special Site Provisions

The following Special Site Provisions shall not apply:

- a) Section 4.14.8.
- b) Special Provision (2) to Table A1.

6.ZZ Special Provisions - Lands fronting Highway 7 and Verdale Crossing

Notwithstanding any other provisions of this By-law, the following provisions shall apply to the Lands denoted by symbol *ZZ (Exception ZZ), as shown in the Schedule F1 to this By-law. All other provisions, unless specifically modified/amended by this section, continue to apply to the Lands subject to this section.

6.ZZ.1 Special Parking Provisions

Notwithstanding any other parking provisions in this By-law (including Section 6.11.3), the following Special Parking Provisions shall apply:

- a) The parking space requirement for apartment dwellings and multiple dwellings shall be as follows:
 - i) A minimum of 0.8 parking space per dwelling unit and a maximum of 1.08 parking spaces per dwelling unit plus 0.12 parking spaces per dwelling unit for visitors.
 - ii) The provision of additional parking spaces is not permitted.
 - iii) A maximum of 5% of the parking spaces required may be located in a surface parking area.

6.AA Special Provisions – Office Site south of Highway 7 and east of Warden Avenue

Notwithstanding any other provisions of this By-law, the following provisions shall apply to the lands denoted by the symbol *AA (Exception AA), as shown in Schedule F1 to this By-law. All other provisions, unless specifically modified or amended by this section, continue to apply to the Lands.

6.AA.1 Special Uses Provisions

The following special use provisions shall apply:

- a) Only the following uses are permitted:
 - i) *Business Office*
 - ii) *Community Facilities / Community Centres*
 - iii) *Financial Institutions*

- iv) *Medical Offices*
- v) *Personal Service Shops*
- vi) *Place of Worship*
- vii) *Restaurants*
- viii) *Retail Stores*

6 AA.2 Special Site Provisions

The following additional provisions apply:

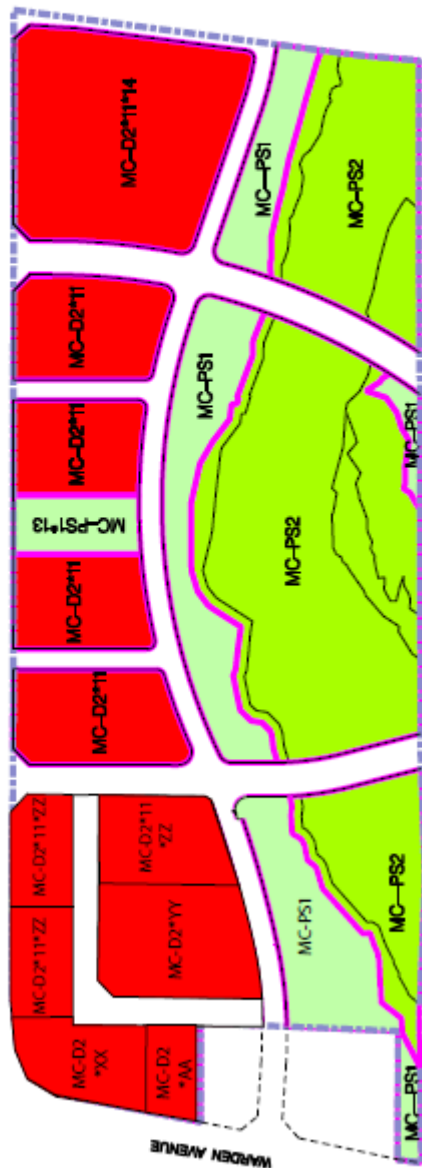
- a) The minimum office gross floor area shall be 20,000 m².
 - b) The maximum permitted podium height shall be 4 storeys for the area shown in hatching in Schedule F3 to this By-law.
 - c) The minimum commercial and/or retail space area shall be 2,500 m² in the combined *XX and *AA Zones."
2. All other provisions of By-law 2004-196, as amended, consistent with the provisions of this By-law shall continue to apply.

Read a first, second and third time and passed on _____, 2020.

City Clerk

Mayor

HIGHWAY No. 7



DEVELOPMENT SERVICES COMMISSION

A BY-LAW TO AMEND BY-LAW 2004-196

THIS IS SCHEDULE F TO BY-LAW

PASSED

MAYOR _____

CLEAR

 BOUNDARY OF AREA COVERED BY THIS BY-LAW

ZONE BOUNDARY

MC-D2 ZONE

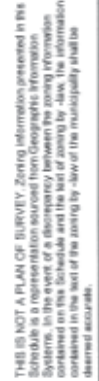
MC-D5 ZONE

MC-D5 ZONE

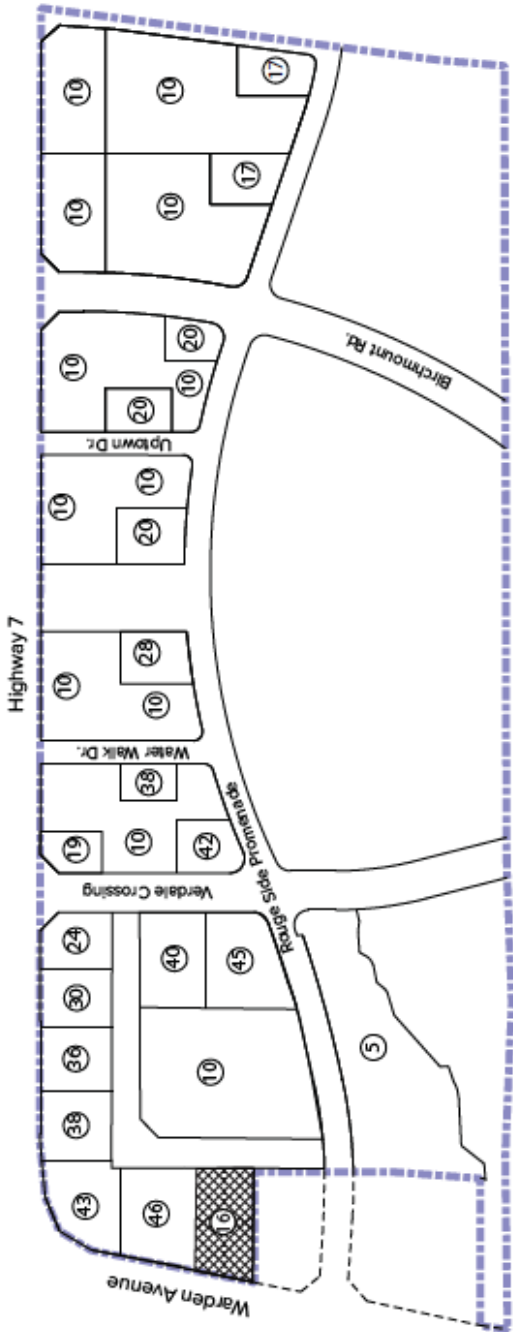
MC-PS2

NOTE- REFERENCE SHOULD BE MADE TO THE ORIGINAL BY-LAW LODGED IN THE OFFICE OF THE CLERK





Schedule F3
Maximum
Building Heights



A BY-LAW TO AMEND BY-LAW 2004-196

THIS IS SCHEDULE F3 TO BY-LAW

PASSED

MAYOR

CLERK

BOUNDARY OF AREA COVERED BY THIS BY-LAW

MAXIMUM NUMBER OF PERMITTED STOREYS

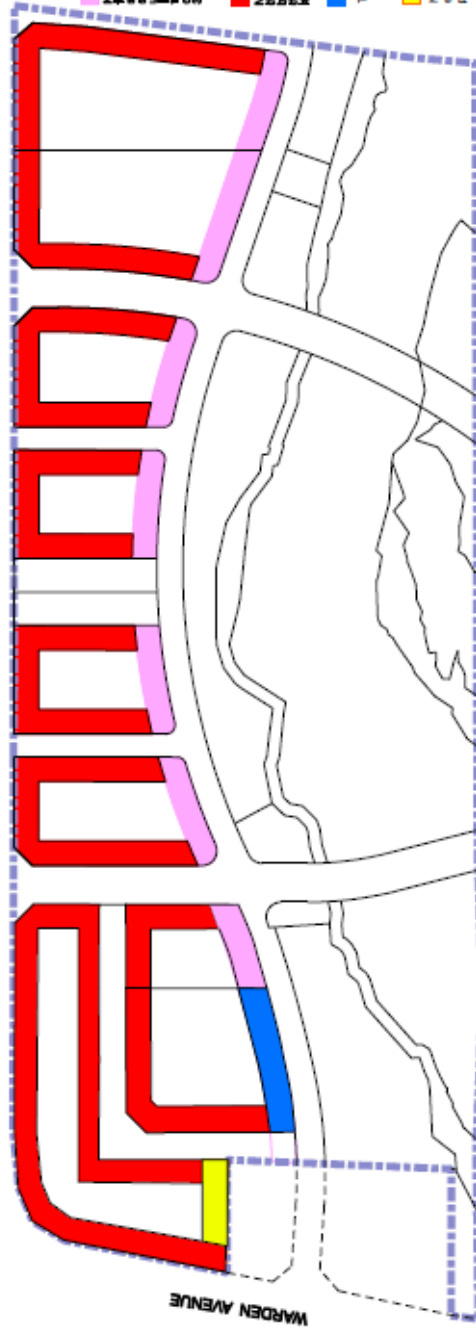
REFER TO SECTION 6AA.2(1) OF THE BY-LAW

NOTE: REFERENCE SHOULD BE MADE TO THE ORIGINAL BY-LAW LODGED IN THE OFFICE OF THE CLERK



Schedule F4 Setbacks

HIGHWAY No. 7



No building shall be located any closer than 4.0 metres from the street line. The minimum setback from the street line shall be 4.0 metres for any portion of the building that is located within the whole or part of a building. The setback shall be measured from the street line to the nearest corner of the building. The setback shall be measured from the street line to the nearest corner of the building. The setback shall be measured from the street line to the nearest corner of the building.

No building shall be located any closer than 6.0 metres from the street line. The minimum setback from the street line shall be 6.0 metres for any portion of the building that is located within the whole or part of a building. The setback shall be measured from the street line to the nearest corner of the building. The setback shall be measured from the street line to the nearest corner of the building. The setback shall be measured from the street line to the nearest corner of the building.

The minimum setback from the street line shall be 10.0 metres.

No building shall be located any closer than 10.0 metres from the street line or property line increasing to 10.0m for any portion of the building above 3m.



DEVELOPMENT SERVICES COMMISSION

A BY-LAW TO AMEND BY-LAW 2004-196

THIS IS SCHEDULE E TO BY-LAW

PASSED

MAYOR

CLERK

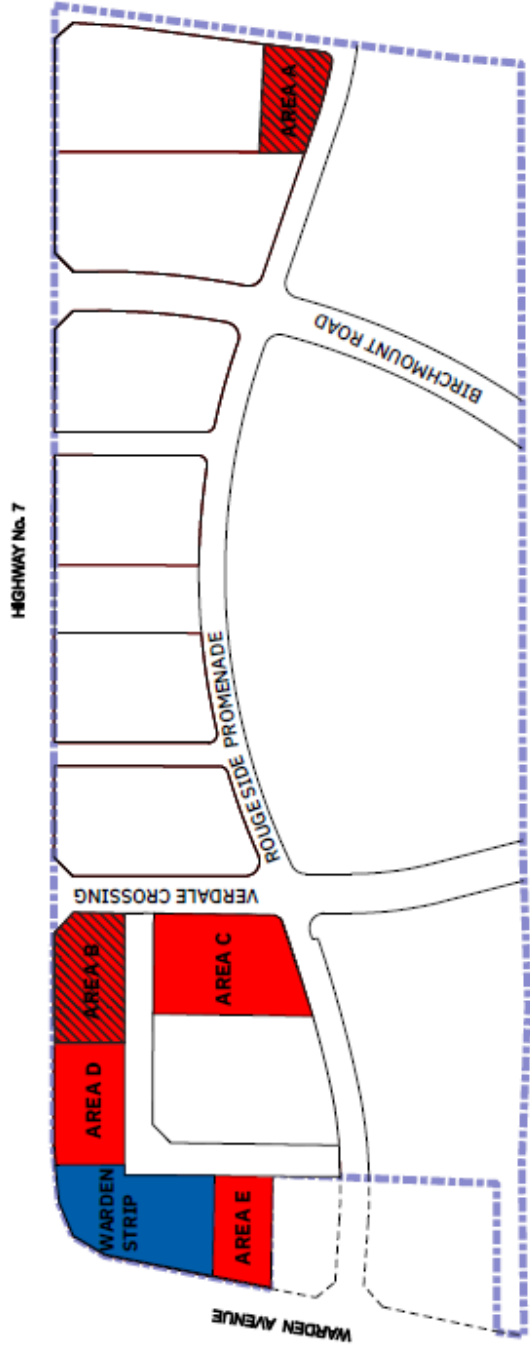
BOUNDARY OF AREA COVERED BY THIS BY-LAW




NOTE: REFERENCE SHOULD BE MADE TO
THE ORIGINAL BY-LAW LODGED IN
THE OFFICE OF THE CLERK



Schedule X5
Holding Zones



 MARKHAM CITY DEVELOPMENT SERVICES COMMISSION		A BY-LAW TO AMEND BY-LAW 2004-196	
THIS IS SCHEDULE X5 TO BY-LAW PASSED		BOUNDARY OF AREA COVERED BY THIS BY-LAW	
MAYOR		HX1  HX1 & HX2 	
CLERK		NOTE: REFERENCE SHOULD BE MADE TO THE ORIGINAL BY-LAW LODGED IN THE OFFICE OF THE CLERK	
			