

Ontario Land Tribunal
Tribunal ontarien de l'aménagement
du territoire



ISSUE DATE: July 29, 2022

CASE NO(S).:

OLT-21-001033

PROCEEDING COMMENCED UNDER subsection 34(19) of the *Planning Act*, R.S.O. 1990, c. P.13, as amended

Appellant:	King David Inc.
Applicant:	Leporis Construction Inc.
Subject:	By-Law 2021-28
Description:	To permit office, retail, restaurants, convention centre, and industrial complex
Reference Number:	By-Law 2021-28
Property Address:	2705 & 2755 Elgin Mills Road
Municipality/UT:	Markham/York
OLT Case No.:	OLT-21-001033
OLT Lead Case No.:	OLT-21-001033
OLT Case Name:	King David Inc. v. Markham (City)

Heard: July 18, 2022 by video hearing

APPEARANCES:

Parties

King David Inc.

Leporis Construction Inc.

City of Markham

Flato Developments Inc.

Counsel

Andy Margaritis

Kataryzna Sliwa

Maggie Cheung-Madar

Kataryzna Sliwa

MEMORANUM OF ORAL DECISION DELIVERED BY ERIC S. CROWE ON JULY 18, 2022 AND ORDER OF THE TRIBUNAL

INTRODUCTION

[1] The Appeal is by King David Inc. (the “Appellant”) against approval of Zoning By-law Amendment No. 2021-28 (the “ZBLA”) by the City of Markham (the “City”). The ZBA was sought by Leporis Construction Inc. (the “Applicant”).

[2] The Applicant plans to develop its properties with a six (6) storey building complex at lands located and municipally known as 2705 and 2755 Elgin Mills Road East in the City (the “Subject Lands”). The ZBLA redesignates the lands to mixed use, whereas they are currently zoned employment. The Appellant states that the approved six (6) storey development is not appropriate and that only a maximum of three (3) storey as per the Cathedral Community Design Plan (“CDP”) should be allowed.

[3] A Case Management Conference (“CMC”) was previously held on November 30, 2021, which approved a Final Procedural Order and granted Party Status to Flato Developments Inc. (Counsel is the same for the Applicant) which has similar proposed developments in the vicinity of the Subject Lands. During this first CMC the Tribunal also set a five-day (5) hearing beginning in September.

HEARING

[4] On the request of all Parties, the Tribunal converted the scheduled second CMC to a Settlement Hearing to amend ZBL No. 2021-28, as amended (to delete lands from the designated areas of ZBL No. 304-87) and to amend ZBL No. 177-96, as amended (to incorporate lands into the designated area of ZBL No. 177-96).

[5] The parties informed the Tribunal that since the first CMC, the Parties were able to finalize a settlement with a Revised ZBLA (see Attachment 1). All Parties were canvassed as to their concurrence of the settlement to be presented. The City advised they had no objections to the Settlement. With all Parties agreeing with the proposed ZBLA amendments, the Tribunal accepted on consent the Affidavit evidence of Donald Given an Expert in Land Use Planning. He is an experienced planner and is qualified as

an expert in Land Use Planning. His Affidavit was marked as Exhibit 1 to this proceeding.

[6] Counsel for the Appellant, Mr. Margaritis' noted to the Tribunal he wanted to highlight that although he was consenting to the adoption to the Affidavit of Mr. Given as evidence, there was wording in 4 paragraphs in the Affidavit that he was not fully in agreement with which appeared to be irrelevant or that Mr. Given should not have given his opinion regarding a ZBLA application.

[7] To be brief, the Tribunal notes Mr. Margaritis' concern with some wording within paragraphs 48, 52, 71, and 80. In Paragraph 48, it was Mr. Given's opinion, in Paragraph 52, Mr. Given noted an individual from his previous knowledge and dealings, in paragraph 71, Mr. Given detailed Council's reasons for the enactment of the ZBLA and finally paragraph 80, with Mr. Given's opinion with no impacts to sight lines to the Cathedral.

[8] The Tribunal agrees with Counsel for the Applicant, Kataryzna Sliwa and finds the comments highlighted by the Appellant's counsel in paragraphs 48, 52, 71 and 80 are inconsequential and have no bearing on determining this Revised ZBLA application. Therefore, the Tribunal accepts Mr. Given's Affidavit in its entirety. The Tribunal also wants to ensure to counsel the noted wording in the highlighted paragraphs had no bearing on determining this Order.

MINUTES OF SETTLEMENT ("MOS")

[9] Ms. Sliwa provided the Tribunal an overview of the MOS dated July 4, 2022, that served to further define and clarify the basis of settlements for the Parties. The MOS are between the Applicant and the Appellant. The City and Flato Developments Inc. had no objections to the MOS.

[10] Ms. Sliwa provided a brief history of the application. On January 25, 2021, a final recommendation report recommending the approval of the ZBLA Application was

presented to Development Services Committee and subsequently approved by Council on February 9, 2021 (the “Recommendation Report”). Planning Staff recommended approval of the ZBLA Application, being satisfied that the proposed development addresses any concerns raised and is consistent with the CDP. The Recommendation Report is attached within Mr. Given’s Affidavit as Exhibit “R” and the minutes of the Council meeting on February 9, 2021 approving the ZBLA Application is attached as Exhibit “S”. On April 20, 2021, after completion of the statutory process mandated by the *Planning Act* (the “Act”), Council approved the ZBLA Application and enacted ZBL 2021-28. A copy of the ZBLA is attached as Exhibit “T” to the Affidavit.

[11] In Mr. Given’s Affidavit, pursuant to the MOS, the City, Applicant and the Appellant agreed to a version of the ZBLA with revisions that address the Appellant’s concerns and Appeal (the “Revised ZBLA”). A copy of the Revised ZBLA is attached as Exhibit “V” in the Affidavit and Attachment 1 to this Order.

The Proposed Revised ZBLA

[12] Ms. Sliwa highlighted the Revised ZBLA which includes the following changes from the Council-enacted ZBLA:

- (a) The addition of language within subsection 7.670.2.b) of Exception BC*670 to clarify the front and rear lot lines;
- (b) A modification to subsection 7.670.2.c) of Exception BC*670 to permit a maximum building height of 21 m for an office building, whereas the Council-enacted ZBLA permitted a maximum building height of 22 m for an office building;
- (c) A new provision within Exception BC*670 to permit a maximum 18 m depth of parking area in the rear yard, whereas the Council-enacted ZBLA did not include a maximum depth of parking area in the rear yard;

(d) A new provision within Exception BC*670 to require a minimum 6.0 m width of landscaping adjacent to the rear lot line, except where the lot line is abutting the bulb of a cul de sac, in which case the minimum width shall be 0 metres;

(e) A new provision within Exception BC*670 to require at least 40% of the surface area of each wall facing Elgin Mills Road East which are within 30 m of Elgin Mills Road East to be comprised of openings. This provision only applies to that portion of the wall that is within 3.0 m of established grade. For the purpose of this provision, 'openings' are spaces/perforations in walls that contain windows, doors, or entrance features, or any combination thereof, and may contain spandrel glass;

(f) A modification to subsection 7.671.2.b) within Exception BP*671 to permit a maximum 18 m depth of parking area in the front yard, whereas the Council-enacted ZBLA provided that the maximum depth of parking area in the front yard did not apply; and

(g) A modification to subsection 7.671.2(d) (ii) in order to clarify that the minimum width of landscaping adjacent to a lot abutting the bulb of a cul de sac shall be 0.0 m. Ms. Sliwa advised for the purposes of illustrating these changes, she enclosed a redline of the Revised ZBLA as against the Council-enacted ZBLA as Exhibit "W" in the Affidavit.

[13] In Mr. Given's opinion, the revised ZBLA meets all of the applicable provincial policy tests. The revised ZBLA, has regard to the matters of provincial interest in s. 2 of the Act, conform and do not conflict with the Growth Plan, and are consistent with the Provincial Policy Statement 2020 ("PPS 2020"). The Revised ZBLA contains minor amendments to it that were made to allow for a settlement of the appeal.

AFFIDAVIT EVIDENCE

[14] In Mr. Given's Affidavit he provided the Staff Planning Recommendation Report

dated January 25, 2020 prepared by Marty Rokos, the City Planner as well as his own land use planning evidence as contained in his Affidavit.

SITE CONTEXT AND SURROUNDING AREA

[15] The Subject Lands are comprised of two rectangular parcels of land approximately 7.835 hectares ("ha") (19.361 acres) in total size. The Subject Lands are located on the south side of Elgin Mills Road between Highway 404 and the Woodbine Avenue By-Pass and have approximately 210 metres ("m") of frontage along Elgin Mills Road. The westerly parcel (2705 Elgin Mills Road) is currently vacant and is legally described as PT E1/2 LT 25, CON 3 (MKM), PT 1 ON 65R39209, City of Markham. The easterly parcel (2755 Elgin Mills Road) is vacant and is legally described as PT 2 3 E1/2 LT 25 CON 3 (MKM) PT 2 ON 65R39209, City of Markham.

[16] The Subject Lands are surrounded largely by vacant lands designated, for employment and environmental protection uses, between Highway 404 and the Woodbine Avenue By-Pass. An existing gas station and vacant lands are located immediately to the east, south of the gas station. These lands are the subject of an approved ZBLA and Site Plan application submitted by Clera Holdings ("Clera") to permit four buildings between one (1) and two (2) storeys, totaling 3,697 square metres ("m²") (39,794 square feet ("sq²"), for office and commercial development. The Clera lands are adjacent to Woodbine Avenue, which was re-aligned (known as the Woodbine Avenue By-Pass) to protect the existing Victoria Square Hamlet located to the east. Further to the east on the east side of the realigned Woodbine Avenue are a range of low to medium density residential uses including single family detached units, townhouse units, public parks, institutional uses, and open space.

[17] For the lands to the immediate west, Flato Developments Inc. ("Flato") has submitted a ZBLA application for the vacant lands at 2695 Elgin Mills Road to permit the development of three buildings with uses including office, hotel, and a convention centre. On February 9, 2021, Council enacted ZBL No. 2021-15 to approve the proposed Flato development. Further to the west of the Flato development site are

Highway 404 and its associated on and off ramps. The Appellant in this proceeding has also appealed the ZBL for the proposed Flato Development and this matter is currently before the Tribunal.

[18] To the south are vacant lands designated for employment and environmental protection uses. There are low and medium density residential uses on the east side of the re-aligned Woodbine Avenue further southeast of the Subject Lands which comprise the Cathedral District.

[19] To the north, on the north side of Elgin Mills Road, is a stormwater management pond and future residential lands, which are under construction. The lands on the north abutting Elgin Mills Road are designated for Service Employment uses. Further to the north are vacant lands.

PROVINCIAL POLICY STATEMENT (“PPS”)

[20] Mr. Given’s Affidavit advised the PPS provides policy direction on land use planning, development, and other related matters of provincial interest. The goals identified in the PPS provide a framework for long-term policy directives and are to be complemented by regional and municipal plans to achieve comprehensive, integrated planning. All decisions by approval authorities that affect a planning matter “shall be consistent with” the policies of the PPS.

[21] In Mr. Given’s opinion, the Revised ZBLA is consistent with the PPS. The ZBLA proposes uses and regulations that encourage a sense of place appropriate with the land use designations and design guidelines outlined in the CDP. The provision of surface parking contemplated by the Revised ZBLA ensures that parking will be provided to service future employment uses and the convenient and safe movement of pedestrians and vehicles to, from, and within the Subject Lands while maintaining good urban design principles. The proposed building heights and other zoning regulations provide flexibility for attracting a range of future businesses and tenants, which is consistent with Policy 1.3.1 of the PPS regarding the promotion of economic

development and employment uses.

[22] The Revised ZBLA supports long-term economic prosperity in accordance with Policy 1.7.1 by providing opportunities for employment uses on the Subject Lands and permitting a range of uses that optimize the long-term availability of land and infrastructure in an area designated for urban growth.

[23] The Revised ZBLA is consistent with other policies of the PPS, including Policies 1.1.1, 1.1.3.2, 1.3.1, and 1.3.2 to promote development and land use patterns that efficiently use land, resources, and infrastructure and provide a broad range of employment opportunities for a diversified economic base within a strategic area adjacent to a 400 series Highway and major arterial roads. In particular, the PPS requires the protection and preservation of employment areas adjacent to major goods movement facilities and corridors (Policy 1.3.2.6) and emphasizes the importance of encouraging employment and economic growth within municipalities.

**GROWTH PLAN FOR THE GREATER GOLDEN HORSESHOE, 2019
(the “Growth Plan”)**

[24] Mr. Given advised in his Affidavit, the Growth Plan provides a framework for implementing Ontario's vision for building stronger, prosperous communities by better managing growth in the region. It establishes the long-term framework for where and how the region will grow, while recognizing the realities facing our cities and smaller communities. All decisions by approval authorities that affect a planning matter “shall conform with” the policies of the Growth Plan.

[25] In Mr. Given's opinion, the Revised ZBLA conforms to the Growth Plan by providing employment growth within a delineated built-up area where the vast majority of growth is directed (Policy 2.2.1.2.a), providing a mix of land uses, a compact built form, and a vibrant public realm including public open spaces such as the Natural Wildlife Corridor (Policy 2.2.1.4), and making efficient use of existing employment areas and vacant, underutilized lands to meet density and job targets for the City and Region

(Policy 2.2.5.1).

[26] The introduction of a Provincially Significant Employment Zone (“PSEZ”) in the 2019 Growth Plan, which includes the Subject Lands, emphasizes the Province’s direction on the importance of protecting employment areas and uses and promoting economic growth and jobs. The Revised ZBLA conforms to this direction and contributes to the economic and employment growth targets for the City and the Region, while providing an overall benefit to the community through the creation of new, high-quality, and accessible jobs.

YORK REGION OFFICIAL PLAN 2010 (“YROP”)

[27] Mr. Given advised in his Affidavit the YROP provides a framework for guiding economic, environmental and community building decisions to manage growth within York Region. Development within the Region must conform with the policies of the YROP. The Subject Lands are designated Urban Area on Map 1, Regional Structure. A portion of the Subject Lands, namely the existing hedgerows, are designated as Woodlands.

[28] The YROP sets out policies relating to Urban Areas and employment lands. The Region supports employment lands that are flexible and adaptable, and “include street patterns and building design and siting that allow for redevelopment and intensification” (Policy 4.3.18). Urban Areas are the focus of intensification in order to conserve resources and promote sustainable development (Section 5.4).

[29] The Revised ZBLA conforms to the YROP, particularly as it relates to the intensification of underutilized employment lands within the Urban Area that allow for flexible, walkable, and economically viable employment lands for the long term (Section 4.3).

[30] In Mr. Given’s opinion, the Revised ZBLA and the development it regulates provides an overall benefit to the Region’s economy, job growth, and reputation for

attracting new businesses and employers to the City and the Region.

[31] The Revised ZBLA also conforms to Section 5.2 of the YROP, in relation to creating high quality, sustainable communities and cities. The policies of this section encourage development to be compact, walkable, transit-supportive, energy efficient, accessible, and employ the highest standard of urban design. Existing sidewalks, cycling facilities, and transit routes along Elgin Mills Road and Woodbine Avenue provide alternative modes of travel to and from the Subject Lands, which promote sustainability and lessen dependency on the automobile.

MARKHAM CITY OFFICIAL PLAN (“OP”)

[32] The Subject Lands are designated “Employment Area – Service Employment”, “Employment Area – Business Park Employment” and “Greenway – Natural Heritage Network” under the 2014 OP. Under the 1987 OP, the Subject Lands are designated “Industrial – Business Corridor Area”, “Industrial – Business Park Area”, and “Valleylands”. Because of the date that the application was submitted, it is subject to the policies of the 1987 OP, however the policies of the 2014 OP must also be taken into account. The OP policies provide for the proposed uses.

Conformity to the 1987 City OP and the CPD

[33] The Subject Lands are designated Industrial – Business Corridor Area, Industrial – Business Park Area, and Valleylands under the 1987 City OP.

[34] Business Park Areas are characterized by developments with high design standards, including “corporate head offices and research facilities. The visual attractiveness and consistent image of such areas is of prime importance” (Policy 3.5.6.2.a). As per Policy 3.5.6.2.b, these uses should be located in close proximity to Provincial highways or major arterial roads and served by public transit.

[35] Business Corridor Areas are generally located along major roads either within or

on the periphery of industrial areas (Policy 3.5.6.3.b). These areas are “intended for industrial and office uses that require the exposure offered by such locations in order to accommodate the business and service needs of nearby companies and employees they serve” (Policy 3.5.6.3.a). Policy 3.5.6.3.d.ii states that development near or on major arterial roads “shall generally consist of multi-storey buildings located in close proximity to the property line adjoining the public street”.

[36] The Revised ZBLA conforms to the policies of the 1987 City OP, as amended by OPA 42 and 123, as applicable, by proposing uses contemplated by the Business Park and Business Corridor Area designations while encouraging appropriate visual attractiveness through the use of zone standards such as parking depth maximums and minimum landscaping widths. Specifically, OPA 42 Policies 5.3.2 and 5.3.3 are the land use designation policies for Business Park Area and Business Corridor Area. These policies generally direct development to be subject to Section 3.5.6 of the 1987 City OP while setting a maximum floor space index of 2.0 and 1.0 times the lot area within the Business Park Area and the Business Corridor Area, respectively. Both policies indicate the CDP shall establish the intended character and high-quality design standards of the area. Section 5.11 provides the guiding policies for the establishment of the CDP.

[37] The proposed development contemplated by the Revised ZBLA conforms to Section 3.5.6.2 and 3.5.6.3 of the 1987 City OP relating to each of the employment land use designations. The proposed uses identified in the ZBLA conform to the permitted uses in the 1987 City OP, with the intent of serving both employees and members of the public in the area. The development requirements in accordance with Policy 3.5.6.2.d. will be established at the detailed design stage and implemented through site plan approval and building permits. These requirements do not impact the Revised ZBLA.

[38] The Revised ZBLA, and the parent ZBL 177-96 for the Subject Lands, as amended, establishes a maximum floor space index consistent with the Policies 5.3.2 and 5.3.3 of OPA 42. The Revised ZBLA is also consistent with the CDP.

[39] Policies 6.5 and 6.11 of OPA 42 speak to the implementation of the CPD

through a ZBL established at the time of applications for development, and with the agreement of public agencies in order to achieve the goals and objectives of the secondary plan.

[40] The ZBLA Application has been circulated to all relevant public agencies including the Toronto and Region Conservation Authority (“TRCA”), the Region, utilities and telecommunications agencies, and Canada Post. City Council, in its capacity as the approval authority for the ZBLA Application, enacted the ZBLA on the basis that it conforms and complies with all relevant planning documents, including the CPD, and that the public and agencies have been consulted, and any comments have been addressed. The Revised ZBLA conforms to Policies 6.5 and 6.11 of OPA 42.

Conformity to the 2014 City OP and CDP

[41] In Mr. Given’s Affidavit he advised, with respect to the urban design policies of Sections 6.1.2, 6.1.3, and 6.1.4 of the 2014 City OP that were in force at the time of application submission, the Revised ZBLA conforms to these policies by providing a public realm and urban form that is safe, accessible, and comfortable through the provision of sidewalks, landscaping, and cycling facilities. The proposed and existing street network will adequately service the proposed uses while minimizing impacts and crossings over natural heritage features and encouraging active transportation in an area well-served by local transit and cycling routes. Certain design aspects will be finalized through draft plan of approval conditions and/or later detailed design stages and are not governed by the Revised ZBLA, as confirmed in the Recommendation Report. This includes aspects such as landscaping, sidewalks and trails, building materials, architectural details, screening or location of servicing/loading areas, signage, and lighting.

[42] Section 9.5, containing the Cathedral area and site-specific policies, was brought into force in October 2015, except for certain policies which remain under site-specific appeal, and is therefore applicable to the Subject Lands. The objective of the Cathedral District is to create a balanced community of neighbourhoods with a mix of uses (Policy

9.5.2). Section 9.5.4 requires consistency with the CDP. The CDP is a non-statutory guideline document that was prepared in September 2005 and amended in October 2009 to supplement the Cathedral SP and assist in guiding development.

[43] Section 2.5 of the CDP identifies Business Park and Business Corridor Areas consistent with the CPD, which are expected to offer a variety of employment, industrial, commercial, and community uses. Sections 3.6 and 3.7 provide more detailed guidelines with respect to built form, parking, streetscape, and service/loading areas, which mainly consist of items to be determined at the detailed design stage. A future site plan application will determine compliance with the detailed guidelines regarding parking and built form.

[44] The Revised ZBLA is consistent with the CDP and includes zoning provisions for predominantly low-rise buildings, between 1-5 storeys in height in accordance with the built form guidelines of Section 3.6. The five (5) storey height in the northern portion of the Subject Lands is appropriate given its location along a major arterial adjacent to Highway 404 and the City and Regional official plan policies regarding the intensification of employment lands.

[45] The Appellant advised that the final height permissions in the ZBLA were determined through consultation with the City to provide maximum flexibility for building design (e.g. higher floor heights for office or commercial buildings), while maintaining a five (5) storey built form.

[46] In Mr. Given's opinion, the Revised ZBLA provisions permitting a maximum office building height of 21 m (equivalent to a five 5 storey building) and 12 to 24 m for all other buildings in the Business Corridor zone are appropriate and conforms to the intent of the CDP. Further, the maximum permitted height within the parent Business Park and Business Corridor zone is 46 m under ZBL No. 177-96. The Revised ZBLA has had appropriate regard for its surrounding context by providing a reduced maximum height of 15 m in the Business Park zone on the south portion and 21 and 14 m in the Business Corridor zone on the north portion of the Subject Lands.

[47] In the context of these guidelines, ZBL's and the overall planning policy framework in provincial and regional policies, a proposed height of 21 and 14 m in the Revised ZBLA is appropriate and provides a balance of intensified and more compact built forms while respecting the low- to mid-rise character of the surrounding area.

[48] There is no additional density or lot coverage being sought through the ZBLA Application. The Revised ZBLA satisfies the overall intent of the Business Park Area and Business Corridor Area designations.

[49] The CDP also sets out view corridors through the Business Park Area south of the Subject Lands in Section 3.7.10 and Figure 3.7.2.a. The Subject Lands are entirely outside the identified view corridors and there are no impacts to sight lines to the Cathedral from the proposed development.

[50] Section 3.5 of the CDP guides lands within the Business Corridor Area to integrate and minimize the impact of parking and service/loading areas on the street and to locate buildings to address the street edge, particularly at corner or gateway locations. Further, Section 4.2.4 encourages landscape buffers between parking and loading areas adjacent to the street.

[51] The Revised ZBLA provides for increased setbacks from Elgin Mills Road to provide maximum flexibility for attracting future businesses, employers, and tenants and accommodating their building designs. In Mr. Given's opinion, the increased setbacks may assist during the detailed design stage to transition from the significantly higher grade along Elgin Mills Road down to the lower elevation in the interior of the Subject Lands. The revisions made to the ZBLA as a result of the settlement with the Appellant ensures that while there may be surface parking along the public street frontages, the maximum depth of parking area will be 18 m, which reduces the visual impact and the Appellant's perceived possibility for a "sea of parking" from the public realm.

[52] The Revised ZBLA also regulates a minimum width of landscaping along certain lot lines, in particular along Elgin Mills Road, which provide appropriate buffers and

screening for any surface parking. Balancing the objectives of the CDP and the land use designations, the Revised ZBLA provisions relating to the location of buildings and/or parking are appropriate, commonly built throughout the City, and generally consistent with the CDP.

[53] The Revised ZBLA also includes a new provision which requires a minimum of 40% openings (windows, doors, entrance features, spandrel glass, etc.) for buildings facing Elgin Mills Road and which are within 30 m of Elgin Mills Road. This provision addresses the Appellants desire to ensure that the façades along Elgin Mills Road are or appear as frontages. The provision addresses streetscape along Elgin Mills Road for the future buildings and is in line with previously approved ZBLA applications within the City. Detailed parking and urban design matters will be further determined at the site plan application stage.

[54] The Revised ZBLA does not impact the ability of future development of the remainder of the Business Park lands to the south to develop in accordance with Section 3.7 of the CDP, including the protection of view corridors.

[55] Detailed design matters identified in the CDP such as architectural elements, landscaping, and streetscape improvements will be determined at a later stage in the development of the Subject Lands.

CONCLUSION

[56] Mr. Given in his Affidavit opined, the City is generally supportive of economic growth, as mandated by regional and local planning policy, and in particular, has had a long history of creating innovative and progressive approaches to growth such as new design standards. The Revised ZBLA supports Council's intentions to continue and contribute to economic growth within the City and the Region.

[57] In Mr. Given's opinion, the Revised ZBLA is appropriate, represents good planning, and is in the public interest. The proposed regulations within the Revised

ZBLA allow for the development of employment, commercial, and open space uses on the Subject Lands in accordance with the land use designations of the YROP, the 2014 City OP, and the 1987 City OP. The Revised ZBLA has had appropriate regard to the CDP in developing the proposed regulations. Site-specific urban design matters will be addressed through the draft plan of subdivision conditions and at a future site plan application stage, which do not impact the approval of the Revised ZBLA. The Revised ZBLA is consistent with the PPS, conforms to the Growth Plan, YROP, 2014 City OP, and 1987 City OP.

TRIBUNAL ANALYSIS OF THE REVISED ZBLA

[58] The Tribunal has received and reviewed the Affidavit of Donald Given, a Land Use Planner, sworn on July 12, 2022, in support of the settlement of the above Appeal.

[59] The Tribunal has received submissions in support of the settlement of the above appeal from counsel to Leporis Construction Inc., King David Inc., Flato Developments Inc., and the City of Markham.

[60] The Tribunal accepts the uncontested evidence of Mr. Given in its entirety and finds the ZBLA found in the proposed settlement, meet all the relevant policy tests of the Act, PPS 2020, Growth Plan 2019, the Regional and City OP. Mr. Given's Affidavit presented to the Tribunal built upon the basic tenets of having regard to, being consistent with or in conformity with statutory provincial documents. The revised ZBLA represent good planning and are in the public interest.

[61] The Tribunal finds that the Revised ZBLA from the Council Enacted ZBLA are somewhat minor in nature. All of the revised wording serves to provide clarity to the ZBA. Therefore, the Revised ZBLA (Attachment 1) is accepted in its entirety.

[62] The Tribunal commends the efforts of the City and all Parties to find common ground.

ORDER

[63] **THE TRIBUNAL ORDERS** the appeal is allowed in part and the City of Markham Zoning By-law No. 304-87 and City of Markham Zoning By-law No. 177-96 are hereby amended as set out in Attachment 1 to this Order.

“Eric S. Crowe”

ERIC S. CROWE
MEMBER

Ontario Land Tribunal

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

The Conservation Review Board, the Environmental Review Tribunal, the Local Planning Appeal Tribunal and the Mining and Lands Tribunal are amalgamated and continued as the Ontario Land Tribunal (“Tribunal”). Any reference to the preceding tribunals or the former Ontario Municipal Board is deemed to be a reference to the Tribunal.

ATTACHMENT 1



A By-law to amend By-law 304-87, as amended
(to delete lands from the designated areas of By-law 304-87)
and to amend By-law 177-96, as amended
(to incorporate lands into the designated area of By-law 177-96)

The Council of The Corporation of the City of Markham hereby enacts as follows:

1. That By-law 304-87, as amended, is hereby further amended by deleting the lands shown on Schedule 'A' attached hereto, from the designated areas of By-law 304-87, as amended.
2. That By-law 177-96, as amended, is hereby further amended as follows:
 - 2.1 By expanding the designated area of By-law 177-96, as amended, to include additional lands as shown on Schedule "A" attached hereto.
 - 2.2 By zoning the lands outlined on Schedule "A" attached hereto:

from:
Rural Residential (RR4) Zone

to:
Business Corridor*670 (BC*670) Zone
Business Park*671 (BP*671) Zone
Open Space One (OS1) Zone
3. By adding the following subsections to Section 7 – EXCEPTIONS:

Exception 7.670	Leporis Construction Inc. 2705 and 2755 Elgin Mills Road East	Parent Zone BC
File ZA 16 137567		Amending By-law 2021-____

Notwithstanding any other provisions of this By-law, the following provisions shall apply to the land denoted by the symbol *670 on the schedules to this By-law. All other provisions, unless specifically modified/amended by this section, continue

to apply to the lands subject to this section.

7.670.1 Additional Permitted Uses

- | | |
|----|-------------------------------|
| a) | <i>Child Care Centre</i> |
| b) | <i>Place of Amusement</i> |
| c) | <i>Place of Entertainment</i> |
| d) | <i>Kennel, Day</i> |
| e) | Pet Grooming |

7.670.2 Special Zone Standards

The following special zone standards shall apply:

- | | |
|----|--|
| a) | Notwithstanding any further division or partition of the land subject to this Section, all lands zoned with Exception *670 shall be deemed to be one <i>lot</i> for the purposes of this By-law and all zone standards are applicable to the lands zoned with Exception *670 as a whole and not to any subdivided part thereof. |
| b) | For the purposes of this By-law, the <i>lot line</i> abutting Elgin Mills Road East shall be deemed to be the <i>front lot line</i> . |
| c) | For the purposes of this By-law, the southern <i>lot line</i> shall be deemed to be the <i>rear lot line</i> . |
| d) | Maximum building <i>height</i> :
i. Office building – 21 metres
ii. All other buildings – 14 metres |
| e) | Maximum <i>front yard</i> shall not apply. |
| f) | Maximum depth of <i>parking area</i> in the <i>front yard</i> shall not apply. |
| g) | Maximum depth of <i>parking area</i> in the <i>rear yard</i> shall be 18 metres. |
| h) | The minimum required width of <i>landscaping</i> shall be:
i. Adjacent to the front lot line – 5.5 metres
ii. Adjacent to the <i>rear lot line</i> – 6.0 metres, except where the <i>lot line</i> is abutting the bulb of a cul de sac, in which case the minimum width shall be 0 metres
iii. Adjacent to any other <i>lot line</i> – 1.2 metres |
| i) | Within 40 metres of the Elgin Mills Road East <i>streetline</i> , the following additional provisions shall apply:
i. Minimum building <i>height</i> – 8.0 metres
ii. Maximum setback from front lot line – 6.0 metres
iii. <i>Drive-through service facilities</i> and <i>queuing lanes</i> are not permitted within 5.5 metres of the front lot line. |
| j) | Special Provisions #3, #5, and #6 of Table A4 shall not apply. |

k)	<p>Retail stores are only permitted subject to the following:</p> <ul style="list-style-type: none"> i. A <i>retail store</i> shall have a minimum <i>gross floor area</i> of 150 square metres per <i>premises</i>; ii. In all building types, a <i>retail store</i> shall have a maximum <i>gross floor area</i> of 1,000 square metres per <i>premises</i> unless the <i>retail store</i> is an office supply or computer supply store which may have a maximum <i>gross floor area</i> of up to 3,000 square metres per <i>premises</i>; iii. The total combined <i>gross floor area</i> for all individual <i>retail store premises</i> shall not exceed 30% of the combined <i>gross floor area</i> of all buildings.
l)	Notwithstanding Section 6.9, where one loading space is required in accordance with section 6.9.1, the minimum size of the loading space shall be not less than 5.8 metres long, 3.5 metres wide, and have a vertical clearance of not less than 4.2 metres
m)	At least 40% of the surface area of each wall facing Elgin Mills Road East which are within 30 metres of Elgin Mills Road East shall be comprised of openings. This provision only applies to that portion of the wall that is within 3.0 metres of established grade. For the purpose of this provision, "openings" are spaces/perforations in walls that contain windows, doors, or entrance features, or any combination thereof, and may contain spandrel glass.

Exception 7.671	Leporis Construction Inc. 2705 and 2755 Elgin Mills Road East	Parent Zone BP
File ZA 16 137567		Amending By-law 2021-____
Notwithstanding any other provisions of this By-law, the following provisions shall apply to the land denoted by the symbol *671 on the schedules to this By-law. All other provisions, unless specifically modified/amended by this section, continue to apply to the lands subject to this section.		
7.671.1 Additional Permitted Uses		
a)	<i>Child Care Centre</i>	
b)	<i>Place of Entertainment</i>	
c)	<i>Schools, Commercial</i>	
d)	<i>Commercial Fitness Centre</i>	
7.671.2 Special Zone Standards		

The following special zone standards shall apply:	
a)	Notwithstanding any further division or partition of the land subject to this Section, all lands zoned with Exception *671 shall be deemed to be one <i>lot</i> for the purposes of this By-law and all zone standards are applicable to the lands zoned with Exception *671 as a whole and not to any subdivided part thereof.
b)	Maximum Depth of <i>parking area</i> in the <i>front yard</i> shall be 18 metres.
c)	A <i>Place of Entertainment</i> shall only be located within an office <i>building</i> or a <i>building</i> containing a <i>hotel</i>
d)	The minimum required width of <i>landscaping</i> shall be: <ul style="list-style-type: none"> i. Adjacent to any <i>lot line</i> not abutting a street – 0.0 metres ii. Adjacent to a <i>lot line</i> abutting the bulb of a cul de sac – 0.0 metres
e)	The maximum <i>floor space index</i> shall be 2.0.
f)	For lands zoned with Exception *671, Special Provision #2 of Table A4 shall be replaced with the following: <p>“An accessory retail store in which goods produced and/or stored in a building containing an industrial use is permitted provided the retail store has a net floor area that does not exceed the lessor of 500 square metres or 15 percent of the net floor area of the building containing the industrial use.”</p>
g)	Special Provision #3 of Table A4 shall not apply.
h)	Maximum building <i>height</i> – 15 metres

Read and first, second and third time and passed on _____, 2021.

Kimberley Kitteringham
City Clerk

Frank Scarpitti
Mayor



EXPLANATORY NOTE

BY-LAW 2021-____

A By-law to amend By-laws 304-87 and 177-96, as amended

Leporis Construction Inc.

Part 1, Plan of Part of the East Half of Lot 25, Concession 3 (Geographic Township of Markham)

2705 and 2755 Elgin Mills Road East

ZA 16 137567

Lands Affected

The proposed by-law amendment applies to a parcel of land with an approximate area of 7.835 hectares (19.361 acres), which is located south of Elgin Mills Road East and west of Woodbine Avenue.

Existing Zoning

The subject lands are zoned Rural Residential Four (RR4) Zone under By-law 304-87, as amended.

Purpose and Effect

The purpose and effect of this By-law is to rezone the subject lands under By-law 177-96, as amended as follows:

from:

Rural Residential Four (RR4) Zone

to:

Business Corridor*670 (BC*670) Zone;

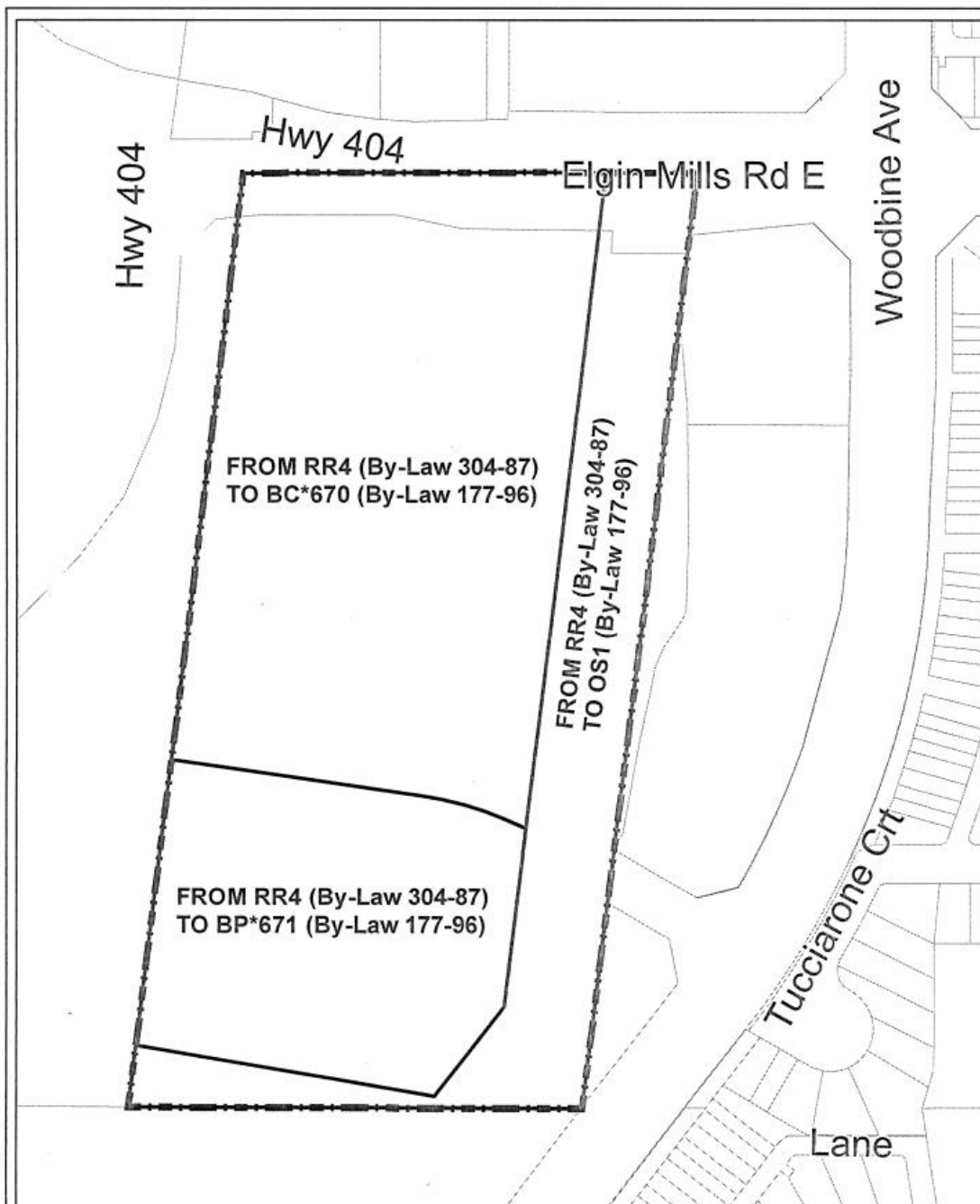
Business Park*671 (BP*671) Zone; and

Open Space One (OS1) Zone.

in order to permit the development of a convention centre, office building, restaurants, and retail.

Note Regarding Further Planning Applications on this Property

The *Planning Act* provides that no person shall apply for a minor variance from the provisions of this by-law before the second anniversary of the day on which the by-law was amended, unless the Council has declared by resolution that such an application is permitted.



SCHEDULE "A" TO BY-LAW 2021-28

AMENDING BY-LAWS 304-87 AND 177-96 DATED APRIL 20 2021

	BOUNDARY OF AREA COVERED BY THIS SCHEDULE TO BE DELETED FROM BY-LAW 304-87 AND ADDED TO BY-LAW 177-96		
	BOUNDARY OF ZONE DESIGNATION(S)		
	BUSINESS CORRIDOR		EXCEPTION NUMBER
	BUSINESS PARK		
	OPEN SPACE ONE		
	RURAL RESIDENTIAL FOUR		

THIS IS NOT A PLAN OF SURVEY. Zoning information presented in this Schedule is a representation sourced from Geographic Information Systems. In the event of a discrepancy between the zoning information contained on this Schedule and the text of zoning by-law, the information contained in the text of the zoning by-law of the municipality shall be deemed accurate.

Q:\Geomatics\New Operation\By-Laws\2A\2A16137567\Schedule A.mxd



DEVELOPMENT SERVICES COMMISSION



Drawn By: RT

Checked By: MR

DATE: 12/04/2021

NOTE: This Schedule should be read in conjunction with the signed original By-Law filed with the City of Markham Clerk's Office