

**Ontario Land Tribunal**  
Tribunal ontarien de l'aménagement  
du territoire



**ISSUE DATE:** February 21, 2023

**CASE NO(S):** OLT-22-002957  
(Formerly PL210231)

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

Appellant:	King David Inc.
Subject:	By-law No. 2021-15
Municipality:	City of Markham
OLT Case No.:	OLT-22-002957
Legacy Case No.:	PL210231
OLT Lead Case No.:	OLT-22-002957
Legacy Lead Case No.:	PL210231
OLT Case Name:	King David Inc. v. Markham (City)

**Heard:** November 15, 2022 by video hearing

**APPEARANCES:**

**Parties**

King David Inc.

City of Markham

Flato Developments Inc.

Leporis Construction Inc.

**Counsel**

M. McDermid

M. Cheung-Madar

K. Sliwa, M. Reedijk and D. Betlej

K. Sliwa, M. Reedijk and D. Betlej

**MEMORANDUM OF ORAL DECISION DELIVERED BY HUGH S. WILKINS ON  
NOVEMBER 15, 2022 AND ORDER OF THE TRIBUNAL**

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## INTRODUCTION

[1] This Decision arises from a settlement hearing that was held on November 15, 2022 regarding the appeal brought by King David Inc. (“Appellant”) of the passage by the City of Markham (“City”) of a zoning by-law amendment to facilitate development on the lands located 2695 Elgin Mills Road East (“subject lands”).

[2] The subject lands are located east of Highway 404 on lands designated as “Urban Area”, “Service Employment”, “Business Park Employment”, and “Greenway System Area” under the City’s Official Plan. They are currently zoned “Rural Residential Four (RR4)” under the City’s Zoning By-law No. 304-87. The proposed Zoning By-law Amendment would delete the subject lands from the designated areas of Zoning By-law No. 304-87 and re-zone the subject lands to “Business Corridor (BC)”, “Business Park (BP)”, and “Open Space One (OS1)” under the City’s Zoning By-law No. 177-96.

[3] At a Case Management Conference, held on December 7, 2021, the Tribunal granted Party status to Flato Developments Inc. (“Applicant”) and Leporis Construction Inc. (“Leporis”). Leporis owns lands adjacent to the subject lands.

[4] On October 11, 2022, the Applicant informed the Tribunal that a proposed settlement of the appeal had been reached.

[5] On November 15, 2022, the Tribunal convened a settlement hearing to consider the proposed settlement.

## ISSUES

[6] The issues that the Tribunal must address when adjudicating a zoning by-law amendment appeal are whether the proposed instrument:

- a) is consistent with policy statements issued by the Minister (in this case, the Provincial Policy Statement, 2020 (“PPS”));
- b) conforms with applicable provincial plans (in this case, the Growth Plan for the Greater Golden Horseshoe, 2019 as amended (“Growth Plan”));
- c) conforms with applicable official plans (in this case, the York Region Official Plan and the City’s Official Plan); and
- d) represents good planning.

[7] The Tribunal must have regard to the matters of provincial interest set out in s. 2 of the *Planning Act* and have regard to the decision made by City Council to pass the proposed Zoning By-law Amendment and the information and materials that City Council considered when making its decision (as required under s. 2.1(1) of the *Planning Act*).

## **EVIDENCE AND SUBMISSIONS**

[8] The Applicant filed an affidavit sworn by Emma West, dated November 8, 2022. Ms. West is a land use planner retained by the Applicant. She also provided oral testimony at the settlement hearing. The Tribunal qualified her to provide opinion evidence in the area of land use planning.

[9] The City and Leporis support the proposed settlement. Neither of them provided evidence at the settlement hearing.

[10] Ms. West stated that the proposed Zoning By-law Amendment would permit Employment Zone uses on the subject lands subject to site-specific development

standards while retaining a portion of the lands for environmental protection. She said the proposed site-specific Business Corridor Zone (BC\*680) would be located on the northern part of the subject lands and have building heights that are a function of the lot area and the allowable coverage. She said that retail stores and places of worship would be permitted subject to gross floor area restrictions. Ms. West said the proposed site-specific Business Park Zone (BP\*681) would be located on the southern part of the subject lands. She said it would aim to be a visually attractive area that balances function with aesthetics. She said the remaining lands, constituting roughly 50 percent of the subject lands, would be zoned Open Space to protect natural heritage features. She stated that as a result of the proposed settlement, the Parties agreed to requirements for landscaping adjacent to front lot lines in the Business Corridor Zone (BC\*680) and reduced maximum building heights in the Business Corridor Zone (BC\*680) and Business Park Zone (BP\*681).

[11] Ms. West opined that the proposed Zoning By-law Amendment is consistent with the PPS. She said it facilitates the efficient use of land by permitting employment uses in an employment designated area with available public service facilities, access to public roads, and transit. She stated that the proposed Zoning By-law Amendment would facilitate compact development at an appropriate density and support the long-term employment needs of the community. She opined that it promotes economic prosperity and opportunities for economic development and protects natural heritage features through buffering and the designation of much of the subject lands as Open Space.

[12] Ms. West opined that the proposed Zoning By-law Amendment conforms with the Growth Plan. She said the subject lands are designated under the Growth Plan as a Provincially Significant Employment Zone. She said the proposed Zoning By-law Amendment would facilitate the re-urbanization of a land parcel within the Urban Area and provide for a mix of employment uses with convenient access to a range of

transportation options. She reiterated that it would ensure employment uses on the subject lands over the long term.

[13] Ms. West opined that the proposed Zoning By-law Amendment conforms with the York Region Official Plan, 2010 and the York Region Official Plan, 2022. She stated that the subject lands are designated as “Urban Area” under the York Region Official Plan, 2010 and as “Urban Area” and “Employment Area” under the York Region Official Plan, 2022. She said the Urban Areas are intended as the focus for growth and development in the Region. She said the proposed Zoning By-law Amendment would contribute to the Region’s economic base and provide for a diverse range of employment uses over the long term. She said it would facilitate transit supportive employment opportunities in a compact built form that is close to an established community allowing residents to live close to their workplaces.

[14] Ms. West opined that the proposed Zoning By-law Amendment conforms with the City’s Official Plan. She stated that the subject lands are designated as “Urban Area”, “Service Employment”, “Business Park Employment”, and “Greenway System”. She said the subject lands are an appropriate location for office, hotel, and other general employment uses and that they would complement surrounding uses. She said the proposed permitted density under the proposed Zoning By-law Amendment optimizes the use of land and infrastructure and the proposed Zoning By-law Amendment would facilitate appropriate built form and urban design through its setbacks, site organization, and buffers from natural features. She said the proposed Zoning By-law Amendment is subject to the urban design guidelines set out in the City’s Cathedral Community Design Plan, which identifies the subject lands as “Business Corridor”, “Business Park”, and “Employment District”. She opined that the proposed Zoning By-law Amendment would facilitate development that is consistent with the Design Plan’s built form design guidelines by facilitating the development of buildings, parking and pedestrian areas that are located in a way that minimizes impacts on adjacent areas and provides for the configuration of the subject

lands with convenient and safe access and egress. Ms. West opined that, while the proposed Zoning By-law Amendment would reduce parking requirements, this is appropriate given the availability of transit in the area and the fact that reduced parking would allow for a more efficient use of land. She said that the proposed Zoning By-law Amendment's requirements for the protection of natural features would help maintain the character and identity of the area and the proposed development would not disrupt view corridors of the nearby Cathedral of the Transfiguration.

[15] Ms. West stated that she had regard to the matters of provincial interest set out in s. 2 of the *Planning Act*, including those on the protection of ecological systems, the orderly development of safe and healthy communities, the provision of employment opportunities, the appropriate location of growth and development, support for public transit, and promotion of appropriate built form.

## **FINDINGS**

[16] Based on Ms. West's opinion evidence, the Tribunal finds that the proposed Zoning By-law Amendment is consistent with the PPS and conforms with the Growth Plan, the York Region Official Plan, and the City's Official Plan. The Tribunal has had regard to the City's applicable policies and guidelines and the matters of provincial interest in s. 2 of the *Planning Act* as well as the decision of City Council and the information and materials that City Council considered when making its decision. The Tribunal finds that the proposed Zoning By-law Amendment constitutes good planning.

## **ORDER**

[17] The Tribunal orders the appeal is allowed in part.

[18] The Tribunal orders that the City of Markham Zoning By-law No. 304-87 and City of Markham Zoning By-law No. 177-96 are amended in accordance with the Zoning By-law Amendment attached as Attachment 1 to this Order and Decision.

[19] The Tribunal authorizes the municipal clerk to format, as may be necessary, and assign a number to the Zoning By-law Amendment for record keeping purposes.

*“Hugh S. Wilkins”*

HUGH S. WILKINS  
VICE-CHAIR

**Ontario Land Tribunal**

Website: [www.olt.gov.on.ca](http://www.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



## BY-LAW 2021-\_\_\_\_\_

**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\*680 (BC\*680) Zone**  
**Business Park\*681 (BP\*681) Zone**  
**Open Space One (OS1) Zone**
3. By adding the following subsections to Section 7 – EXCEPTIONS:

Exception 7.680	FLATO Developments Inc. 2695 Elgin Mills Road East	Parent Zone BC
File PLAN 19 119540		Amending By-law 2021-_____
Notwithstanding any other provisions of this By-law, the following provisions shall apply to the land denoted by the symbol *680 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.		
<b>7.680.1 Special Zone Standards</b>		
The following special zone standards shall apply:		
a)	Maximum <i>front yard</i> shall not apply	
b)	Maximum depth of <i>parking area</i> in the <i>front yard</i> shall not apply	
c)	Maximum depth of <i>parking area</i> in the <i>exterior side yard</i> shall not apply	
d)	Minimum required <i>exterior side yard</i> adjacent to Highway 404 – 14 metres	
e)	Minimum required width of <i>landscaping</i> adjacent to <i>front lot line</i> – 18 metres	
f)	Maximum building <i>height</i> – 27 metres	
g)	<i>Retail</i> stores are only permitted subject to the following: <ol style="list-style-type: none"> <li>i. Maximum of 1,000 square metres of <i>gross floor area</i> per <i>premises</i></li> <li>ii. Maximum of 50 % of the <i>gross floor area</i> of each <i>building</i></li> <li>iii. Maximum of 3,000 square metres of <i>gross floor area</i></li> </ol>	
h)	Places of worship are only permitted subject to the following: <ol style="list-style-type: none"> <li>i. Located in a multiple unit building</li> <li>ii. Maximum 500 square metres of <i>gross floor area</i></li> </ol>	
i)	Maximum <i>floor space index (FSI)</i> – 2.5	
j)	Maximum number of required parking spaces – 120	



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<b>Exception 7.681</b>	<b>FLATO Developments Inc. 2695 Elgin Mills Road East</b>	<b>Parent Zone BP</b>
File PLAN 19 119540		Amending By-law 2021- ____
Notwithstanding any other provisions of this By-law, the following provisions shall apply to the land denoted by the symbol *681 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.		
<b>7.681.1 Special Zone Standards</b>		
The following special zone standards shall apply:		
a)	Maximum depth of <i>parking area</i> in the <i>exterior side yard</i> shall not apply	
b)	Minimum required <i>exterior side yard</i> adjacent to Highway 404 – 14 metres	
c)	Maximum building <i>height</i> – 27 metres	
d)	Maximum <i>floor space index (FSI)</i> – 2.5	

Read and first, second and third time and passed on \_\_\_\_\_, 2021.

\_\_\_\_\_  
Kimberley Kitteringham  
City Clerk

\_\_\_\_\_  
Frank Scarpitti  
Mayor

Amanda File No. PLAN 19 119540

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#### **EXPLANATORY NOTE**

##### **BY-LAW 2021-\_\_\_\_**

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

**FLATO Developments Inc.**

**Part of the East Half of Lot 25 Concession 3 (Geographic Township of Markham)**

**2695 Elgin Mills Road East**

**PLAN 19 119540**

##### **Lands Affected**

The proposed by-law amendment applies to a parcel of land with an approximate area of 2.73 hectares (6.74 acres), which is located south of Elgin Mills Road East and east of Highway 404.

##### **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\*680 (BC\*680) Zone;  
Business Park\*681 (BP\*681) Zone; and  
Open Space One (OS1) Zone.

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

##### **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.

