



June 9, 2023

City of Markham
Development Facilitation Office
101 Town Centre Boulevard
Markham, Ontario
L3R 9W3

Attn: Mr. Geoff Day, Senior Planner II

Dear Mr. Day,

**RE: Letter of Objection Regarding City of Markham's Proposed Response to Bill 109
2585231 Ontario Inc.
2752979 Ontario Inc.
OnePiece Ideal (MS) Developments Inc.**

Evans Planning acts on behalf of the following landowners:

- 2585231 Ontario Inc., the Owner of the lands municipally known as 9999 Markham Road, and legally described as 'Part of Lot 20, Concession 8, City of Markham';
- 2752979 Ontario Inc., the Owner of the lands municipally known as 4584, 4590, 4604, and 4618 Major Mackenzie Drive East, and legally described as 'Part of Lot 21, Concession 6, City of Markham';
- OnePiece Ideal (MS) Developments Inc., the Owner of the lands municipally known as 28 Main Street Unionville, and legally described as 'Part of Lot 5, Concession 5, Original Township of Markham, now in the City of Markham'.

Our Clients have development interests in the above referenced properties, which may require a variety of applications under the Planning Act in the future, including potential Official Plan and Zoning By-law Amendments, and Site Plan Control approval.

We thank Staff for the opportunity to review Staff Recommendation Report regarding the City Initiated Official Plan Amendment (OPA) (File No. PR 22 260697) related to proposed changes to the City's development review process in response to Bill 109, which is being considered by the Development Services Committee at its meeting of June 13, 2023. While we understand and are sympathetic to the complexity of the changes to the planning process implemented through this Bill, we wish to provide the following comments for your consideration on behalf of our Clients. We reserve the right to raise further and other concerns with the proposed OPA as we continue our review and assessment of its impacts.

Pre-Application Consultation Process

Based on the information provided in the Staff Report, and prior meetings with City Staff regarding the proposed 'pre-application consultation process' or 'LEAN' review, we feel that the proposed changes to the overall development review process are contrary to the intent of Bill 109 which seeks to accelerate same. While we understand the concerns of the City related to the potential loss of revenue if the City is not able to meet the timelines of Bill 109, the proposed changes create uncertainty in the potential timeline for a development submission, and would create a 'shadow' application process wherein a proponent has paid fees and submitted materials, and yet has no rights to seek to appeal to the Ontario Land Tribunal (OLT) for lack of decision.

This would also appear to complicate the determination of what policies are to be considered in the review of a proposal as the 'shadow' application process could stretch on for a considerable amount of time, during which Official Plan or Zoning policies could be revised or updated.

Proposed OPA

Our Clients object to the proposed OPA and the changes to the proposed pre-consultation and development review process, and requests clarification as to how the process is to function. We provide the following comments on the proposed OPA:

- **Policy 10.6.2.2(2)**: Requires that all materials much be prepared in compliance with applicable Terms of Reference (TOR). The TOR should be made publicly available and included in the OPA such that there is a reasonable ability to question or comment on them.
- **Policy 10.6.2.2(6)**: Requires that the Region confirm whether approval of an OPA is to be delegated to the City, or grant approval regarding same before a Zoning By-law application will be deemed complete. We request confirmation as to whether the Region has been consulted on this policy.

Requiring the Region to confirm whether it is going to approve or exempt an OPA prior to the formal 'submission' of an application presents inherent challenges with respect to transparency regarding anticipated timelines, as much of this determination may rely on detailed technical analysis.

Further, requiring approval of an OPA by the Region before a ZBLA may be submitted, and thereby not permitting concurrent review of related applications, will contribute to lengthening the time needed for approvals, which is contrary to the intent of Bill 109.

- **Policy 10.6.2.2(7)**: This provision appears to be structured so as to not permit a site plan control application to be considered concurrently with an application for Zoning By-law Amendment, or in advance of a Minor Variance application. Based on our experience, this may result in the need for additional applications should changes occur throughout the lifetime of an application which could trigger relief that was not previously contemplated/required. The end result of which may be that the approval process is significantly lengthened and unnecessary application fees and carrying costs may be incurred by a proponent.

- **Policy 10.6.2.2(8):** Similar to the above, given that changes inherently occur throughout the evolution of a proposal, we do not believe that requiring easements to be conveyed prior to the submission of a formal application, and approval of same is appropriate.

Pre-Consultation By-law

Our Clients object to the requirements outlined in Section 7 of the proposed Pre-Consultation By-law. It is unreasonable to expect a proponent to obtain 'clearances, approvals or permits from external agencies', or to enter into any required agreements, and obtain necessary permits for servicing connections, tree removal, or heritage, prior to being deemed complete. We do not understand how a proponent can obtain such items before even being able to submit an application, and request clarification of how the process is anticipated to function from Staff.

As an example, this process would essentially require a proponent to execute a Site Plan Agreement before being permitted to submit said Site Plan application for review as a complete application.

We further question why these requirements are not included within the proposed OPA, as the Planning Act requires the City Official Plan to outline all requirements for a complete application.

Conclusions

We feel the proposed changes to the development review process remove much needed transparency and certainty with respect the anticipated timelines for a development proposal. Aside from potential financial ramifications for proponents, this may inhibit the ability of the City to achieve planned/forecast growth and development, as well as the ability to achieve the recently adopted Municipal Housing Pledge, and the provision of much needed affordable and attainable housing. It is our Client's position that the proposed OPA and related By-laws should not be adopted/approved until the concerns listed above are addressed.

We request to be notified in advance of all reports, Council/Committee meetings, and decisions in respect of this matter. Please do not hesitate to contact me to discuss this matter at your earliest opportunity.

Yours truly,



Adam Layton, RPP, MCIP

cc. 2585231 Ontario Inc.
2752979 Ontario Inc.
OnePiece Ideal (MS) Developments Inc.
Mr. Stephen Lue, Senior Development Manager
City Clerk
Mr. Jason Park, KSDWP LLP



Barristers & Solicitors

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333 Bay Street, Suite 3400
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goodmans.ca

Direct Line: 416.849.6938
mlaskin@goodmans.ca

Our File No.: 213148

June 12, 2023

Development Services Committee and City Council
City of Markham
101 Town Centre Boulevard
Markham, ON L3R 9W3

Attention: City Clerk

Dear Sirs/Mesdames:

**Re: City of Markham's Response to Bill 109
File No. PR 22 260697**

We are counsel to TerraBona 7115 Yonge Ltd. We write to provide comments on the above-noted matter in advance of City Council considering the recommended amendments to the official plan as well as the Draft Municipal Infrastructure Servicing By-law and the Pre-Application Consultation By-law. As outlined further below, the proposed amendments and by-laws are problematic in a number of respects and, in our view, should be referred to staff for further consultation.

Our client's concerns with the proposed amendments include the following:

- The table in proposed policy 10.6.2.2 would require a record of site condition before an application can be deemed complete. A record of site condition is often only obtainable after excavation has occurred. Landowners cannot be expected to undertake such excavation works in advance of obtaining all necessary approvals, let alone in advance of even submitting an application. Further, even if a landowner was prepared to undertake such work, it would involve demolishing existing uses on the property – which could include retail and other uses serving the community – far earlier than necessary, and replacing them with a large hole that could remain for years while planning applications are processed. This approach is not in the best interests of local communities and does not represent good planning.
- Proposed policy 10.6.2.2.7 appears to provide that where an application for site plan control is requested, confirmation from the City must be provided that the proposal complies with the applicable zoning by-law before the site plan application can be considered complete. This would appear to have the effect of precluding concurrent zoning amendment and site plan control applications. Such an approach would dramatically increase overall



development application processing times, undermining the intent of Bill 109. Further, the City has no authority to preclude an applicant from making concurrent applications and no authority to withhold a notice of complete application on the basis that a separate planning application for the property has not yet been approved.

- The Draft Municipal Infrastructure By-law could create obstacles to constructing buildings concurrently with new infrastructure intended to service those buildings. If such construction is required to proceed sequentially, it would increase the duration of disruption to the public while also delaying the delivery of housing.
- The Draft Pre-Application Consultation By-law purports to require applicants to obtain a series of permits, including permits for municipal connections and tree matters, before a planning application can be deemed complete. This sequence is inappropriate, as the infrastructure design and tree matters often cannot be determined (and therefore permits cannot be obtained) until the design of the building is finalized and the planning application is approved. In this regard, the proposed approach is backwards.
- The Draft Pre-Application Consultation By-law also proposes to require the applicant to obtain a Zoning Preliminary Review confirming that the proposal as submitted complies with the applicable Zoning By-law (see section 2(7)). Obtaining such confirmation will be impossible for applications that involve zoning by-law amendments. It is not appropriate to establish a test for application completeness that is impossible for an entire category of planning applications to meet. Section 2(7) should be deleted.

In light of the concerns outlined above, our client asks City Council to refer this matter to staff for further consideration and consultation. Our client would be pleased to discuss these matters directly with staff.

Yours truly,

Goodmans LLP

A handwritten signature in blue ink, appearing to read "Max Laskin", written over a light blue rectangular background.

Max Laskin

ML/

cc: Client

7385010

June 12, 2023

Mayor Frank Scarpitti and Members of Council

City of Markham
101 Town Centre Blvd.
Markham, ON
L3R 8G5

RE: City of Markham

Item 8.3 | CITY OF MARKHAM'S RESPONSE TO BILL 109 - MORE HOMES FOR EVERYONE ACT, 2022, AND BILL 23 - MORE HOMES BUILT FASTER ACT, 2022, FILE: PR 22 260697 (10.0)

The Building Industry and Land Development Association (BILD) is in receipt of Item 8.3 *City of Markham's Response to Bill 109 - More Homes For Everyone Act, 2022, and Bill 23 - More Homes Built Faster Act, 2022, File: PR 22 260697*. On Behalf of our York chapter, BILD appreciates this opportunity to provide the following sentiments as it relates to this work.

To begin, we would like to thank City staff for meeting with BILD and considering the concerns we identified with the City's original proposal for pre-consultation and complete application requirements. As a result of these consultations, we are pleased to see that Markham has developed a comprehensive policy that addresses several of the concerns raised, as reflected in the staff report.

With all the positive changes we are seeing, there are a few outstanding matters that we want to flag to your attention from a legal perspective. For example, we understand the City intends to have certain types of reviews, permits and approvals occur concurrently with planning applications e.g. municipal servicing agreements and external agency clearances, which is a welcome change, but the proposed OPA and by-law continue to require such matters be finalized as part of a complete application, contrary to the report. There are other instances of proposed pre-application requirements which simply cannot be met as a matter of complete application for technical reasons. In addition, BILD also has a small number of concerns with certain aspects of the new approach.

BILD would welcome the opportunity to discuss these matters with staff further and is confident Markham's instruments can become an example of both good policy and collaboration with community builders.

As your community building partners, we appreciate the opportunity to provide these comments and trust you will take them into consideration as you finalize this work.

Kind regards,

A handwritten signature in black ink, appearing to read "Victoria Mortelliti".

Victoria Mortelliti, MCIP, RPP
Senior Manager of Policy and Advocacy

CC: BILD's Review Team
Danielle Binder, MCIP, RPP - BILD
Arvin Prasad, MCIP, RPP - City of Markham
Brad Roberts, City of Markham
Geoff Day, MCIP, RPP - City of Markham
Members of the BILD York Chapter

The Building Industry and Land Development Association is an advocacy and educational group representing the building, land development and professional renovation industry in the Greater Toronto Area. BILD is the largest home builders' association in Canada, and is affiliated with the Ontario Home Builders' Association and the Canadian Home Builders' Association. It's 1,500 member companies consists not only of direct industry participants but also of supporting companies such as financial and professional service organizations, trade contractors, as well as manufacturers and suppliers of home-related products.

BRL Realty Inc.
1128 Yonge Street
Toronto, ON M4W 2L8

June 12, 2023

Kimberley Kitteringham
City Clerk
City of Markham
101 Town Centre Boulevard
Markham, ON L3R 9W3
kkitteringham@markham.ca

Re: Bill 109

Dear Ms. Kitteringham:

We are the owners of the property at 7604-7620 Woodbine Avenue in Markham.

It is our understanding that a report is to be considered at the June 13 Development Services Committee meeting detailing the changes to the City submission process in response to Bill 109.

We wish to hereby register our objection with regard to the proposed changes. In support of our position, we submit herein the following comments:


- The proposed changes can create a 'shadow' application process which removes transparency and certainty from the current process, wherein the applicant has no rights to seek appeal to the Ontario Land Tribunal (OLT) for lack of decision. During this time, official plan and/or zoning policies could be changed, leaving the applicant in the position of requiring reconsideration of their proposal.
- The proposed Official Plan Amendment (OPA) should publish Terms of Reference.
- The proposed OPA does not state if the Region has been consulted the topic of delegating OPA approval to the City. There are additional concerns with respect to added timelines should the Region's approval be required prior to submission of a zoning by-law amendment.
- The proposed OPA appears to suggest that a Site Plan control application cannot be submitted at the same time as a zoning by-law amendment application. This could severely lengthen and add significant costs to the overall approval process for applicants.
- The indication on the proposed OPA that easements may be required prior to the submission of a formal application is neither equitable nor reasonable.

- With respect to Section 7 of the proposed Pre-Consultation By-law. We believe it is unreasonable to expect a proponent to obtain 'clearances, approvals or permits from external agencies', or to enter into any required agreements, and obtain necessary permits for servicing connections, tree removal, or heritage, prior to being deemed complete. We do not understand how a proponent can obtain such items before even being able to submit an application and request clarification of how the process is anticipated to function from Staff.

In conclusion, we believe that the proposed official plan amendment and related By-laws should not be adopted or approved until the concerns listed above are addressed.

We thank you for your consideration of the above. Please feel free to contact us with any questions.

Sincerely,



Paul McGuigan

Director of Real Estate and Development

c.c. Peter Amirault