

Ontario Land Tribunal
Tribunal ontarien de l'aménagement
du territoire



ISSUE DATE: June 07, 2024

CASE NO(S).:

OLT-23-000747

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

Applicant/Appellant: Fouro Towers Builders Ltd. & Sasson Construction Inc.s
Subject: Application to amend the Zoning By-law – neglect to make a decision
Description: Proposed two high rise mixed-used towers
Reference Number: ZA 18 140091
Property Address: 9331-9399 Markham Road
Municipality/UT: Markham/York
OLT Case No.: OLT-23-000747
OLT Lead Case No.: OLT-23-000747
OLT Case Name: Fouro Towers Builder Ltd. & Sasson Construction Inc. v. Markham (City)

PROCEEDING COMMENCED UNDER subsection 41(12) of the *Planning Act*, R.S.O. 1990, c. P.13, as amended

Subject: Site Plan
Description: Proposed two high rise mixed-used towers
Reference Number: 22.114181.000.00.SPC
Property Address: 9331-9399 Markham Road
Municipality/UT: Markham/York
OLT Case No.: OLT-23-000748
OLT Lead Case No.: OLT-23-000747

Heard: April 17, 2024 by video hearing

APPEARANCES:**Parties**

Fouro Towers Builders Ltd.
& Sasson Construction Inc.

City of Markham

Counsel

Paul DeMelo
Sarah Kagan (*in absentia*)

Pitman Patterson
Maggie Cheung-Madar
Julie Lesage

MEMORANDUM OF ORAL DECISION DELIVERED BY C.I. MOLINARI ON APRIL 17, 2024 AND ORDER AND INTERIM ORDER OF THE TRIBUNAL

[Link to Interim Order](#)

INTRODUCTION AND BACKGROUND

[1] The Tribunal conducted a Settlement Hearing related to appeals filed by Fouro Towers Builders Ltd. & Sasson Construction Inc. (“Appellant”) pursuant to ss. 34(11) and 41(12) of the *Planning Act* (“Act”), against the failure of the City of Markham (“City”) to make a decision on Zoning By-law Amendment (“ZBA”) and Site Plan Control (“SPC”) applications (together “Applications”) within the prescribed timeframe. The Applications, as revised, apply to an assembly of three parcels of lands known municipally as 9331, 9351 and 9399 Markham Road (“Property”).

[2] The Property is located on the east side of Markham Road, north of 16th Avenue and south of Bur Oak Avenue. It has an area of approximately 1.13 hectares with frontage of approximately 91.4 metres (“m”) on Markham Road, and is currently developed with six one-storey, auto-oriented, strip commercial buildings.

[3] Land uses surrounding the Property include the following:

- to the north – a car dealership, a one-storey commercial plaza, and the Mount Joy GO Station and associated surface parking lot;

- to the east – the GO Rail Corridor;
- to the south – several commercial service and retail uses; and
- to the west (across Markham Road) – multiple high-rise mixed-use buildings, commercial retail and service shops, block and freehold townhouses, single-detached dwellings, a school, and the Markham Museum.

[4] The Property is located approximately 300 m from the Mount Joy GO Station and is within a Major Transit Station Area (“MTSA”), as defined in the A Place to Grow: Growth Plan for the Greater Golden Horseshoe (“Growth Plan”). The surrounding area has a sidewalk network, as well as multi-use pathways along Markham Road, and on-street cycling lanes along Edward Jeffreys Avenue, with connections to the City’s trail and cycling network.

[5] The Property is designated ‘Urban Area’ on Map 1 Regional Structure in the Region of York Official Plan (“YROP”), ‘Mixed Use High Rise’ in the City Official Plan, 2014 (“COP”), ‘Commerical’ in the Town of Markham Official Plan, 1987 (“TOP”), and ‘Mixed Use Neighbourhood Area’ in the draft, but not approved, Markham Road Mount Joy Corridor Secondary Plan (“Draft SP”). Policy 9.3.7.3. of the COP directs that the provisions of the TOP apply until the Draft SP is approved.

[6] The Property is zoned ‘Highway Commercial (M.HC)’ under Zoning By-law 88-76, as amended (“ZBL 88-76”). The ZBA proposes to rezone the Property to ‘Community Amenity Four *752 (Hold) (CA4*752 (H)) Zone’ to implement the proposed development.

[7] The original ZBA application, which applied to 9351 and 9399 Markham Road, was to facilitate the development of two 23-storey residential towers, inclusive of a four-storey mixed-use podium, providing a total of 438 residential units, with a total gross floor area (“GFA”) of 40,977 square metres (“sq m”), including 585 sq m of commercial

uses. It was filed with the City in November 2018, and deemed complete as of December 13, 2018, with a public meeting held on May 19, 2019.

[8] The Appellant subsequently purchased 9331 Markham Road, resulting in the filing of a revised ZBA application as well as a Site Plan Control application (“Revised Applications”) in March 2022. The Revised Applications were to facilitate the development of a mixed-use development consisting of two residential towers of 37 and 42 storeys, connected by a three-storey elevated sky bridge, and two new municipal rights-of-way, being an extension of Edward Jeffreys Avenue along the south boundary of the Property and an extension of Anderson Avenue along the east boundary.

[9] The Revised Applications provided for a total of 933 residential units, and a total GFA of 74,840 sq m, including 1,049 sq m of commercial uses. Nine ground floor townhouse units were proposed within the building podium with direct access from the street. The Revised Applications also incorporated a train derailment barrier along the east side of the new Anderson Avenue extension.

[10] The Revised Applications were appealed to the Tribunal on July 13, 2023. The Tribunal received correspondence from the Appellant in advance of the Hearing advising that the Parties had reached a settlement (“Settlement”) and requesting that the Tribunal convert the proceedings to a Settlement Hearing. The Parties in attendance confirmed that they consented to the conversion of the proceedings.

[11] In accordance with Rule 12 of the Tribunal’s *Rules of Practice and Procedure*, the Tribunal convened the proceedings as a Settlement Hearing on the terms of the Settlement.

[12] The Settlement resulted in further revisions to the Revised Applications (“Settlement ZBA Application”, “Settlement SPC Application”, and collectively, “Settlement Proposal”), including the following:

- a) a mixed use building comprised of approximately 74,579 squares metres of gross floor area, including approximately 1,214 square metres of non-residential area.
- b) two towers with a maximum height to the top of roof, exclusive of mechanical, of 39-storeys (Towers A and B).
- c) an additional level of underground parking, providing for a total of 4-levels of underground parking.
- d) an increase in the total number of parking spaces to 768 parking, at a rate of 0.65 spaces per unit for residential units, while residential visitor and non-residential parking will be provided as a shared parking supply at a rate of 0.15 spaces per units which will be augmented by enhanced transportation demand management measures to support alternative modes of transportation.
- e) an increase in the right-of-way cross sections designed for the proposed extensions of Edward Jeffreys Avenue and Anderson Avenue to 23.0 metres to accommodate a paved roadway as well as streetscape elements such as sidewalks/multi-use paths, street lighting and trees to implement the streetscape policies of the draft MRMJSP.
- f) four ground floor townhouse units (larger family sized units consisting of a minimum of two bedroom and two bathrooms) located in Tower B provided for affordable housing.

[13] The Parties further advised the Tribunal that they were seeking final approval for the Settlement ZBA Application and the conditions of SPC approval (“Conditions”), and interim approval for the Settlement SPC Application, pending receipt by the Tribunal of the final Site Plan (“SP”) drawings.

LEGISLATIVE FRAMEWORK

[14] When considering appeals filed pursuant to ss. 34(11) and 41(12) of the Act, the Tribunal must have regard to the matters of provincial interest pursuant to s. 2 of the Act. Section 3(5) of the Act requires decisions of the Tribunal affecting planning matters

to be consistent with the Provincial Policy Statement, 2020 (“PPS”), and in this case, conform with the Growth Plan. The Tribunal must be satisfied that the Settlement ZBA Application conforms with the YROP, the COP and the TOP, as well as having regard for the Draft SP.

[15] In consideration of the statutory requirements set out above, the Tribunal must also be satisfied that the Applications represent good land use planning and are in the public interest.

EVIDENCE

[16] Prior to the commencement of the Hearing, the Tribunal received an Outline of Evidence of Andrew Ferancik in support of the Settlement Proposal. The Tribunal qualified Mr. Ferancik, on consent, to provide opinion evidence pertaining to this matter in the area of land use planning.

Planning Act

[17] It is Mr. Ferancik’s opinion that the Settlement Proposal has appropriate regard for the relevant matters of provincial interest in s. 2 of the Act as “the intense and mixed use built form” optimizes the use of public transit and active transportation networks, implements a range of housing types, encourages a sense of place within a populated and highly walkable area of the City, is an appropriate location for the development of new tall buildings, and will contribute to reduced greenhouse gas emissions through a reduced parking supply, making nearby transit and active transportation facilities the preferred mode of travel.

Provincial Policy Statement, 2020

[18] In his Outline of Evidence, Mr. Ferancik opined that the Settlement Proposal supports policies 1.1.1, 1.1.3.1, 1.1.3.2, 1.1.3.3, 1.4.3, 1.6.7 and 1.7.1 of the PPS pertaining to promoting efficient development and land use patterns, accommodating a

range of housing types, requiring residential intensification, densities, and a mix of land use that efficiently use resources, infrastructure and services, promoting active transportation, and supporting long-term economic prosperity.

[19] It was Mr. Ferancik's opinion that the Settlement Proposal is consistent with the PPS, as it represents a compact form of development that will introduce a variety of housing units to an underutilized site that is well-served by infrastructure, amenities, and facilities. In addition, it is "designed to a high standard of quality and provides generous setbacks and transitions to the public realm and surrounding uses", and is "conducive to provincial goals of reducing automobile use, making efficient use of infrastructure, improving public health, and reducing urban sprawl".

A Place to Grow: Growth Plan for the Greater Golden Horseshoe

[20] In his Outline of Evidence, Mr. Ferancik further opined that the Settlement Proposal conforms with the Growth Plan, including contributing to the objective of prioritizing growth close to transit investments. He stated that the Settlement Proposal implements policies of the Growth Plan related to directing growth to settlement areas and achieving complete communities by providing a range of dwelling units sizes, providing convenient access to local stores and services, and being accessible by active transportation. It was his opinion that the proposed compact form contributes to a vibrant public realm along Markham Road and supports existing and planned transit infrastructure.

[21] Mr. Ferancik opined that the Settlement Proposal represents an appropriate form of development within the MTSA, which will "assist with achieving densities that will efficiently utilize the existing infrastructure and create a dynamic, complete community", thereby supporting the viability of existing and planned rapid transit. He added that the Settlement Proposal will support the achievement of a complete community by providing for a compact, high-density development, and a range of non-residential uses within an MTSA.

Region of York Official Plan

[22] Mr. Ferancik opined that the Settlement Proposal conforms with the YROP policies as it “contributes to the Region’s intensification strategy by directing development to the Built-up Area/Urban Area, which is anticipated to accommodate future growth”.

[23] In particular, Mr. Ferancik noted that the housing policies of the YROP promote a diverse range and mix of housing options and densities that support the achievement of the minimum intensification, affordable housing, and density targets, and contribute to the creation of complete communities. He submitted that the Settlement Proposal will enable the development of an underutilized property with “an efficient and compact tall building in proximity to transit”, and provides “a range of housing options, including two-bedroom and three-bedroom units, to serve a variety of household sizes and provide affordable options as the economy changes”.

City of Markham Official Plan, 2014

[24] Mr. Ferancik advised that the Property is designated ‘Mixed Use High Rise’ in the COP, which permits a mix of residential, retail, restaurant, and service uses at a maximum building height of 15 storeys, unless otherwise specified in a secondary plan or site-specific policy. He added that, despite this designation, the Property is within an area identified in the COP to which the provisions of the TOP apply until the Draft SP is approved. As the Draft SP is not yet approved, the policies of the TOP continue to apply.

Town of Markham Official Plan, 1987

[25] Mr. Ferancik advised that lands designated ‘Commercial’ in the TOP are intended to be used primarily for a full range of business establishments, including shopping facilities, personal and service commercial facilities, offices, and mixed-use developments. As the Settlement Proposal is a mixed-use development, comprised of

commercial and residential uses, it was his opinion that the proposed use is contemplated by the 'Commercial' designation. He added that there are no policies in the TOP related to permitted heights or densities in the 'Commercial' designation.

[26] Mr. Ferancik stated that the Property is further designated 'Community Amenity Area' under the 'Commerical' land use category in the TOP. He noted that section 3.4.6.2 of the TOP explains that 'Community Amenity Areas' are to "function as significant and identifiable focal points for the areas served", to "provide for a multi-use, multi-purpose centre offering a diverse range of retail, service, community, institutional and recreational uses serving nearby residential and/or business areas", and to "accommodate office development and medium and high-density housing at appropriate locations".

[27] Mr. Ferancik submitted that high density residential uses "are contemplated and permitted by the [TOP] in the 'Community Amenity Area,' as long as it is located within an appropriate location as indicated in Section 2.13". It was his opinion that the Settlement Proposal implements the relevant policies of the TOP, is consistent with the design criteria and objectives, and "will preserve the planned function of the *Community Amenity Area* as a multi-use, multi-purpose centre for the surrounding neighbourhoods". He futher added that it "introduces appropriate infill development in an emerging high-density mixed use area in close proximity to amenities and transit and is designed in a way that complements the existing and planned character of the area".

Markham Road Mount Joy Corridor Secondary Plan

[28] Mr. Ferancik advised that lands designated 'Mixed use High Rise' in the Draft SP are intended to "deliver high density development to support a mix of uses and range of building types that optimizes opportunities for accessing existing and planned transit facilities and services at the Mount Joy GO Station". He opined that the Settlement Proposal conforms to, and is highly responsive to, the policies related to development within the Draft SP area.

[29] Mr. Ferancik submitted that the Settlement Proposal will support and promote transit use by providing for up to 990 new housing units within an MTSA and providing the opportunity for a minimum of 1,200 sq m of pedestrian-oriented retail space. He added that the proposed building heights “of approximately 39-storeys (with potential for some variability) will provide an appropriate building height transition to the 45-storey buildings permitted within the Mount Joy GO Station Mixed Use Node”.

[30] With respect to the relevant policies in the Draft SP, Mr. Ferancik opined that the Settlement Proposal implements the objectives, and conforms to the policies related to: providing a range of housing types and tenures, and affordable housing options; the provision of community infrastructure and services; urban form and character; the design and arrangement of streetscapes; built form; height; active transportation; and intensification.

Zoning By-law 88-76, as amended

[31] As the Property is zoned ‘Highway Commercial (M.HC)’ under ZBL 88-76, Mr. Ferancik noted that a site-specific ZBA is required to implement any form of meaningful intensification on the Property, and that the draft ZBA had been prepared and vetted by the City.

Conclusions and Recommendations

[32] Mr. Ferancik proffered his professional planning opinion that the Settlement Proposal and corresponding planning instruments have appropriate regard to matters of provincial interest, are consistent with the PPS, conform with the Growth Plan, the YROP, the COP, and the TOP, and align with the Draft SP. He furthered that the ZBA and SP represent an appropriate and desirable form of land use planning and should be approved.

ANALYSIS AND FINDINGS

[33] The Tribunal accepts the uncontroverted testimony and evidence of Mr. Ferancik.

[34] The Tribunal finds that the Settlement Proposal will fit harmoniously with the existing and planned built form context and will enhance the area by intensifying an underutilized site which is well-served with municipal infrastructure and higher-order transit.

[35] The Settlement Proposal will be an efficient use of the land and will support the achievement of the PPS and Growth Plan policy directions, promoting intensification within a built-up urban area resulting in a desirable mixed-use intensification project having convenient access to transit, and providing a range of housing types.

[36] In consideration of the evidence of Mr. Ferancik and the revisions resulting in the Settlement Proposal, the Tribunal is satisfied that the ZBA and SP have sufficient and proper regard for those matters of provincial interest as set out in s. 2 of the Act. The Tribunal finds that the ZBA and SP are consistent with the PPS, conform with the policies of the Growth Plan, the YROP, the TOP, the COP and the Draft SP, are appropriate and desirable from a land use planning perspective, and represent good land use planning.

[37] Therefore, the Tribunal approves the Settlement ZBA Application, and approves the Settlement SPC Application, in principle, pending receipt of the final SP drawings, and subject to the Conditions as set out in the Order.

ORDER

[38] **THE TRIBUNAL ORDERS THAT** the appeal is allowed and Zoning By-law 88-76, as amended, is hereby amended as set out in **Attachment 1** to this Order. The Tribunal authorizes the Municipal Clerk of the City of Markham to assign a number to this By-law for record keeping purposes.

INTERIM ORDER

[39] **THE TRIBUNAL ORDERS THAT** the Site Plan appeal is allowed in part, on an interim basis, contingent upon receipt of the updated final Site Plan drawings to be filed with the Tribunal, and the Site Plan is hereby approved in principle, subject to the Conditions set out in **Attachment 2**.

[40] The Tribunal will withhold the issuance of its Final Order of the Site Plan appeal contingent upon receipt of the final updated Site Plan drawings.

[41] The Panel Member will remain seized for the purposes of reviewing and approving the final Site Plan drawings and the issuance of the Final Order.

[42] If the Parties do not submit the final Site Plan drawings, and do not request the issuance of the Final Order, by **Monday, June 17, 2024**, the Appellant and the City shall provide a written status report to the Tribunal by that date, as to the timing of the expected confirmation and submission of the final form of the Site Plan drawings and issuance of the Final Order by the Tribunal.

[43] The Tribunal may, as necessary, arrange for the further attendance of the Parties by Telephone Conference Call to determine additional timelines and deadlines for the submission of the final form of the Site Plan drawings, and the issuance of the Final Order.

“C. I. Molinari”

C. I. MOLINARI
MEMBER

Ontario Land Tribunal

Website: 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 2024-_____

A By-law to amend By-law 88-76, as amended
(to delete lands from the designated areas of By-laws 88-76)
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 88-76, as amended, is hereby further amended by deleting the lands shown on Schedule 'A' attached hereto, from the designated areas of By-law 88-76, 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:
Highway Commercial (M-HC) Zone

to:
Community Amenity Four *752 (Hold) (CA4*752 (H)) Zone
3. By adding the following subsections to Section 7 – EXCEPTIONS:

Exception 7.752	9331-9399 Markham Road	Parent Zone CA4
File ZA 18 140091	East side of Markham Road, north of 16 th Avenue and south of Bur Oak Avenue	Amending By-law 2024-_____
Notwithstanding any other provisions of this By-law, the following provisions shall apply to the land denoted by the symbol *752 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.		
7.752.1 Only Permitted Uses		
The following are the only permitted uses:		
Residential Uses		
a)	<i>Apartment Dwellings</i>	
b)	<i>Home Child Care</i>	
c)	<i>Home Occupations</i>	
Non-Residential Uses		
d)	<i>Art Galleries</i>	
e)	<i>Business Offices</i>	
f)	<i>Child Care Centres</i>	
j)	<i>Commercial Fitness Centre</i>	
h)	<i>Commercial Schools</i>	
i)	<i>Financial Institutions</i>	
j)	<i>Libraries</i>	
k)	<i>Medical Offices</i>	
l)	<i>Museums</i>	
m)	<i>Personal Service Shops</i>	
n)	<i>Place of Amusement</i>	
o)	<i>Place of Entertainment</i>	

p)	<i>Private Clubs</i>
q)	<i>Private Schools</i>
r)	<i>Recreational Establishment</i>
s)	<i>Restaurants</i>
t)	<i>Retail Stores</i>
u)	<i>Supermarkets</i>
v)	<i>Take Out Restaurants</i>
7.752.2 Special Zone Standards	
The following special zone standards shall apply:	
a)	Notwithstanding any further division or partition of any of the lands subject to this Section, all lands zoned CA4*752 shall be deemed to be one lot for the purposes of this By-law.
b)	<p><i>Amenity Area</i> means indoor or outdoor space on a <i>lot</i> that is designed for and available for use by the occupants of a <i>building</i> on the <i>lot</i> for recreational or social activities.</p> <p><i>Bicycle Parking Space</i> means a space that is equipped with a rack or stand designed to lock the wheel and frame of a bicycle, or within a locked room for the exclusive use of parking bicycles.</p> <p><i>Podium</i> means the base or lower portion of a multi-storey <i>building</i>, which is located above the established grade, and is measured from the established grade to the maximum <i>podium height</i> as set out in the applicable zone. A <i>podium</i> may or may not have a <i>point tower</i> projecting above it.</p> <p><i>Point Tower</i> means portions of a <i>building</i> that projects above a <i>podium</i>.</p>
c)	For the purposes of this By-law, the lot line abutting Markham Road shall be deemed to be the front lot line.
d)	For the purposes of this By-law, established grade shall be 202.4 metres above sea level (Canadian Geodetic Datum Elevation)
e)	The provisions of Table A2 and Table B7, including Special Provisions, shall not apply.
f)	Non-residential uses are permitted only in the first and second storeys (including a mezzanine).
g)	Minimum <i>gross floor area</i> for non-residential uses including <i>public uses</i> – 1,200 square metres.
h)	Maximum <i>gross floor area</i> of all <i>buildings</i> – 79,534 square metres
i)	Maximum number of <i>dwelling units</i> – 990 units
j)	Maximum <i>gross floor area</i> of a <i>point tower</i> floorplate – 850 square metres.
k)	Minimum combined common indoor and outdoor <i>amenity areas</i> – 4.5 square metres per <i>dwelling unit</i> .
l)	<p>Minimum at grade setback:</p> <p>i) <i>Front yard</i> – 1.0 metres</p> <p>ii) <i>Interior side yard</i> –</p> <p style="padding-left: 20px;">a) Within 30 metres of the <i>front lot line</i> - 6.5 metres</p> <p style="padding-left: 20px;">b) 30 metres or greater from the front lot line – 1.0 metres</p> <p>iii) <i>Rear yard</i> – 6.5 metres</p> <p>iv) <i>Exterior side yard</i> – 1.0 metres</p> <p>v) Minimum setback from a sight triangle – 0.0 m</p>
m)	Architectural features such as sills, belt courses, cornices, eaves, gutters, pilasters, roof overhangs, columns, landings, stairs, <i>porches</i> , terraces, and <i>balconies</i> may encroach into the required <i>yards</i> a distance of no more than 3.0 metres.
n)	<p>Maximum <i>height</i> exclusive of mechanical penthouse or parapet:</p> <p><i>Podium</i>: 31 metres</p> <p><i>Point tower</i>: The maximum combined <i>height</i> of all <i>point towers</i> shall be 256 metres, and no individual <i>point tower</i> shall exceed 135 metres in <i>height</i>.</p>
o)	The parapet, mechanical penthouse, and mechanical features such as structures containing the equipment used for the functional operation of the building, including electrical, utility, mechanical and ventilation equipment, as well as enclosed stairwells, roof access, maintenance equipment storage, cooling towers, heating, cooling or ventilating equipment, chimneys, and vents, building maintenance units, <i>elevator overrun</i> , and window washing

	equipment are permitted to project a maximum of 7.0 metres above the highest point of the roof surface, regardless of the <i>height</i> of the <i>building</i> .
p)	Minimum separation between <i>point towers</i> – 27 metres.
q)	Notwithstanding p) above, <i>balconies</i> and <i>porches</i> are permitted to project 2.0 metres from the main wall of a <i>building</i> into the <i>minimum setbacks</i> and into the <i>minimum separation between point towers</i> .
r)	Minimum parking requirement: i) Dwelling units – 0.65 parking spaces per dwelling unit plus 0.15 parking spaces per dwelling unit for visitors. ii) Non-residential uses – No additional parking spaces are required. Non-residential uses share visitor parking spaces. iii) A minimum of 2 of the required parking spaces shall be used for car-share spaces. iv) 5% of the required parking shall be provided as accessible spaces.
s)	<i>Bicycle parking spaces</i> : a. Residential Uses: i) A minimum of 0.5 spaces per unit for long-term bicycle parking. ii) A minimum of 0.1 spaces per unit for short-term bicycle parking. b. Non-Residential Uses: i) No requirement for long-term bicycle parking. ii) A minimum of 0.25 spaces per 100 square metres of gross floor area or 5 spaces, whichever is greater, for short-term bicycle parking. c. A minimum of 2 bike repair stations shall be provided.
t)	The minimum dimensions of a horizontal bicycle parking space shall be: - Minimum length of 1.8 metres; - Minimum width of 0.6 metres; and, - Minimum vertical clearance of 1.2 metres.
u)	The minimum dimensions of a vertical bicycle parking space shall be: - Minimum vertical clearance of 1.8 metres; - Minimum width of 0.6 metres; and, - Minimum horizontal clearance from the wall of 1.2 metres.
v)	Stacked bicycle parking spaces may be provided in accordance with the minimum dimensions of 7.752.2 t) and u) for each bicycle parking space.
w)	Notwithstanding Section 6.1.1 of By-law 28-97, required parking may be provided in an underground parking garage that extends under the adjacent municipal right-of-way, provided the parking is located below grade.
x)	Minimum setbacks for any portion of a parking garage, storage lockers, or mechanical or electrical rooms, below established grade – 0.0 metres.
y)	Minimum setbacks to stairways, ventilation shaft of housing, and other similar facilities above establish grade associated with the below grade <i>parking garage</i> – 0.0 metres.

4. HOLDING PROVISION

- 4.1 For the purpose of this By-law, a Holding (H) provision is hereby established on lands zoned CA4*752 as identified on Schedule 'A' attached hereto by the letter (H) in parenthesis following the zoning symbols.
- 4.2 No person shall hereafter erect or alter any building or structure on lands subject to the Holding (H) provision for the purpose permitted under this By-law until amendment(s) to this By-law to remove the letter (H) have come into effect pursuant to the provisions of Section 36 of the Planning Act.
- 4.3 A Zoning By-law Amendment to remove the Holding (H) symbol from the lands shown on Schedule "A" shall not be passed until the following conditions have been met:
- i. The Owner shall prepare and submit a Sanitary Capacity Analysis, accounting for existing and approved developments, and current planning applications within the same sewershed along with the Upper Markham Village lands that are tributary to this same sewershed,, to the satisfaction of the City, to determine

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what is required to provide sanitary services for the development of the Lands without causing adverse impacts in the City's sanitary sewer system.

- ii. The Owner shall identify in the Sanitary Capacity Analysis, the sanitary capacity constraints, if any, for the Lands. If constraints are identified, the Owner shall evaluate and recommend the appropriate sanitary capacity solutions.
- iii. The Owner shall fulfill or implement the recommendations and the necessary works to mitigate any impacts identified in the Sanitary Capacity Analysis. If the Sanitary Capacity Analysis recommends additional sanitary infrastructure(s) necessary to provide municipal services to the development of the Lands, then the Owner shall execute an agreement with the City, at no cost to the City, to secure the provision of additional sanitary infrastructure(s) as identified by the Sanitary Capacity Analysis and other matters, including but not limited to: provision of any financial securities, detailed engineering drawings, fees required in accordance with the City's Fees By-Law, insurance, to the satisfaction of the Director of Engineering.

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EXPLANATORY NOTE

BY-LAW 2024-_____

A By-law to amend By-law 88-76, as amended

9331-9399 Markham Road

Lands located on the East side of Markham Road, north of 16th Avenue and south of Bur Oak Avenue.

Lands Affected

The proposed by-law amendment applies to approximately 0.76 hectares (1.89 acres) of land located on the East side of Markham Road, north of 16th Avenue and south of Bur Oak Avenue and municipally known in the year 2022 as 9331-9399 Markham Road in the City of Markham within the Regional Municipality of York.

Existing Zoning

The subject land is currently zoned **Highway Commercial (M-HC)** under By-law 88-76, as amended.

Purpose and Effect

The purpose and effect of this By-law is to amend By-law 88-76 as amended, as follows:

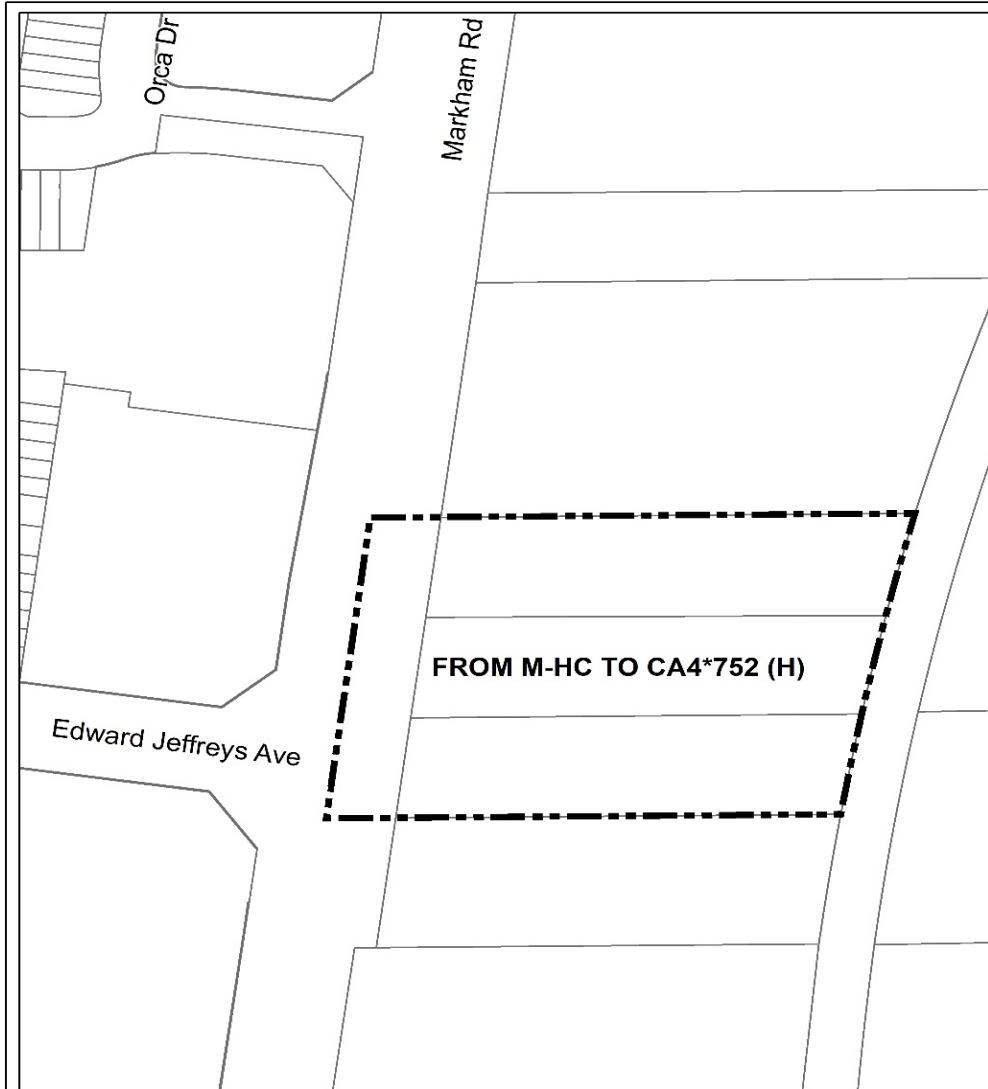
from:

Highway Commercial (M-HC)






to:

Community Amenity Four *752 (Hold) (CA4*752 (H)) Zone

in order to permit a mixed-use development on the lands.




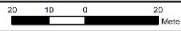
SCHEDULE 'A' TO BY-LAW AMENDING BY-LAWS 88-76 and 177-96

-  BOUNDARY OF AREA COVERED BY THIS AMENDMENT "To be deleted from By-law 88-76 and added to By-law 177-96"
-  CA4 COMMUNITY AMENITY FOUR
-  M-HC HIGHWAY COMMERCIAL
-  (H) HOLDING PROVISION
-  *(No.) EXCEPTION NUMBER



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.

Y:\Geomatics\New Operation\2024 Agenda\PLAN\PLAN22_258667\PLAN22_258667\Schedule A.mxd

 DEVELOPMENT SERVICES COMMISSION  Drawn By: BE Checked By: CT DATE: 04/12/2024

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

ATTACHMENT 2

FILE: SPC 22 114181

DATE: April 16, 2024**RE:** Site Plan Conditions
Four Towers Builders Ltd. And Sasson Construction Inc.
9331-9399 Markham Road

-
1. The Owner shall enter into a Site Plan Agreement with the City, including but not limited to, the following provisions and requirements:
 - Payment by the Owner of all applicable fees, recoveries, development charges;
 - Cash-in-lieu of parkland dedication;
 - The following requirements relating to the parking garage to be constructed partially under the boulevard portion of the future public rights-of-way (Anderson Avenue and Edward Jeffrey Avenue):
 1. The Owner shall convey to the City a fee simple interest in the stratified portion of the public right-of-way, that is directly above the garage, at a grade approved by the City's Director of Engineering (with the waterproof membrane forming part of the garage and not the right-of-way), free and clear of encumbrances to the satisfaction of the City Solicitor.
 2. The Owner shall convey to the City easements in favour of those portions of the rights-of-way directly above the garage ("Strata ROW"), as follows:
 - (a) an easement for maintenance over the garage for future maintenance;
 - (b) an easement for support over the garage and the lands below the Strata ROW.
 3. The Owner shall enter into a Maintenance, Easement and Indemnity Agreement with the City on the City's form to deal with future maintenance, easements required for the garage under the right-of-way and the right-of-way on top of the garage, which agreement will also contain a comprehensive indemnity to the City for all claims and expenses due to the right-of-way being above the garage, including future replacement of the waterproof membrane.
 4. The Owner shall arrange for the Maintenance, Easement and Indemnity Agreement to be assumed by the future condo corporation and shall provide a corporate opinion confirming that this agreement binds the future condo corporation.
 5. The Owner shall include in their declaration an obligation for the future condo corporation to hold sufficient amounts in the reserve fund to replace the stratified right-of-way if necessary, when they replace the waterproof membrane. Confirmation of this to the City an annual basis.



6. The Owner shall address the foregoing in the condo declaration to the satisfaction of the City.
 7. The Owner shall permit the City to register a section 118 restriction preventing transfer or charge of the subject lands without prior written consent of the City Solicitor until such time that all of these conditions have been met. This restriction shall not include sale of any individual condominium units.
 - Obligation of the Owner to include in the condominium declaration prepared in establishing the condominium for the Site a requirement that the condominium corporation will own and maintain the crash wall proposed along the length of the rail corridor; and
 - Shall contain all terms and conditions related to the construction of the two new collector roads; and
 - Obligation of the Owner to enter into an Encroachment Agreement with the City regarding the construction and maintenance of the derailment protection barrier (crash wall), including provisions for future maintenance of the crash wall (including removal of graffiti), indemnities and termination; and
 - Any other financial obligations and securities.
2. That the public collector roads on the subject site shall be conveyed to the City prior to occupancy, free of all costs and encumbrances, save and except for the encroachment for the derailment crash wall and the area identified in the strata plan as forming part of the underground parking garage (below the Strata ROW), to the satisfaction of the Director of Engineering and Director of Planning and Urban Design, or their delegates;
 3. The Owner shall enter into a Municipal Servicing Agreement and submit the necessary design documentation to design and construct the two proposed collector roads and the associated intersections, as well as signal improvement at the Markham Road and Edwards Jeffreys Avenue intersection, to the satisfaction of the Director of Engineering or delegate;
 4. The Owner shall obtain approval from Metrolinx on the detailed design of the proposed crash wall, to the satisfaction of the Metrolinx and in consultation with the director of Engineering or delegate. The Owner shall install a landscaping strip one to two metres in width along the entirety of the crash wall (public road side) within the rights-of-way, planted with shrubs and hedges, in accordance with landscaping plans which are approved to the satisfaction of the City, in consultation with Metrolinx in respect of acceptable species. The City will assume future maintenance of the landscaping strip upon assumption of the rights-of-way, and the Owner will transfer all warranties on plantings to the City;



5. The Owner covenants and agrees to retain a “Qualified Person” to prepare all necessary Environmental Site Assessments (ESA) and file Record of Site Condition with the Provincial Environmental Site Registry for all lands to be conveyed to the City. The “Qualified Person” is defined as the person who meets the qualifications prescribed by the *Environmental Protection Act* and O. Reg. 153/04, as amended. The lands to be conveyed to the City shall be defined as any land or easement to be conveyed to the City, in accordance with the City’s Environmental Policy and Procedures for Conveyance of Land to the City Pursuant to the Planning Act;
6. Prior to execution of the site plan agreement, the Owner shall submit an updated Environmental Site Assessment (ESA) report(s) prepared by a Qualified Person, in accordance with the Environmental Protection Act and its regulations and all applicable standards, for all lands to be conveyed to the City for peer review and concurrence, to the satisfaction of the Director of Engineering or delegate;
7. Prior to conveyance of public roads, the Owner shall submit an Environmental Clearance and Reliance Letter from a Qualified Person to the City for all lands or interests in lands to be conveyed to the City to the satisfaction of the Director of Engineering or delegate. The Environmental Clearance and Reliance Letter will be completed in accordance with the City’s standard and will be signed by the Qualified Person and a person authorized to bind the Owner’s company. The City will not accept any modifications to the standard Environmental Clearance and Reliance Letter, except as and where indicated in the template (template attached);
8. Prior to execution of the site plan agreement, the Owner shall confirm if temporary or permanent dewatering would be required for the subject site. If permanent and/or temporary dewatering is required, the owner has to submit a hydrogeological report to the City for review and approval. The hydrogeological report has to be duly signed and stamped by a qualified hydrogeologist or a professional engineer. If temporary dewatering is required, the owner also has to indicate the location(s) for discharging into City’s sewers and submit a dewatering application (template attached), including applicable fees, to the City for review and approval. Following the review, a permit for a temporary discharge into the City’s sewer will be issued by the City. The City generally does not support permanent dewatering and the owner is encouraged to explore other options. In the event that permanent dewatering is the only option, in addition to the hydrogeological report, the Owner has to submit a letter duly signed and stamped by a structural engineer and a hydrogeologist confirming this requirement;
9. Prior to execution of the site plan agreement, the Owner shall submit an Environmental Reliance Letter from a Qualified Person to the City for the hydrogeological report, to the satisfaction of the Director of Engineering or delegate. The Environmental Reliance Letter will be completed in accordance with the City’s standard and will be signed by the Qualified Person, and a person authorized to bind the Owner’s company. The City will not accept any modifications



to the standard Environmental Reliance Letter, except as and where indicated in the City's standard template;

10. The Owner shall provide the street lighting package for the proposed collector roads and the intersection in accordance with section N" of the City's Design Criteria, to the satisfaction of the Director of Engineering or delegate;
11. The Owner shall provide the revised functional servicing report, including a downstream capacity analysis, in accordance with the proposed holding provision for the zoning application, to the satisfaction of the Director of Engineering or delegate;
12. Prior to the execution of the site plan agreement, the Owner shall obtain a clearance letter from utility companies confirming they have no objection to the Works within or adjacent to the municipal rights-of-ways in the vicinity of the Encroachment Area;
13. The Owner shall submit a Pavement Marking and Signage Plan prepared by a qualified transportation consultant, and that the recommended pavement markings and signs must be clearly illustrated on the site plan drawings, to the satisfaction of the Director of Engineering or delegate;
14. The Owner shall address all outstanding comments provided on the Tree Inventory and Preservation Plan and Landscape Plan, and submit required plans and/or documents to the satisfaction of the Director of Planning and Urban Design or delegate;
15. The Owner shall submit for approval a revised Pedestrian Wind Study Report, noting all comfort categories to remain under "uncomfortable" and all safety levels to remain under "exceeded" in the post development condition, to the satisfaction of the Director of Planning and Urban Design or delegate;
16. The Owner shall submit revised elevation drawings which must all include the Markham's Bird Friendly Specifications Checklist, to the satisfaction of the Director of Planning and Urban Design or delegate;
17. The Owner shall submit a land appraisal report to the City for review and approval to capture full parkland cash-in-lieu payments in order to satisfy the parkland dedication requirements, calculated in total as of the date of Site Plan Approval;
18. The Owner shall enter into any agreements with the City required to secure affordable housing units within the proposed development in a form and tenure



acceptable to the City. The Owner will provide a total of four (4) affordable housing units subject to the following terms:

Ownership Unit conditions:

1. The four Units will be sold at the maximum sale price of \$483,000.00 per unit as per the City's Affordable and Rental Housing Strategy.
2. These Units shall be offered for purchase to the following order of potential purchasers, with each subsequent potential purchaser(s) only applicable if the preceding potential purchaser(s) declines the opportunity after a period of 60 days has elapsed from the first date of offer:
 - a. All four Units shall be offered to the City first;
 - b. If there are any remaining Units following 7.h.i.2.a) above, such Units shall be offered to the Regional Municipality of York including Housing York Inc. (collectively "RMY");
 - c. If there are any remaining Units following 7.h.i.2.b) above, such Unit shall be offered to a combination of RMY and another non-profit housing provider;
 - d. If there are any remaining Unit following 7.h.i.2.c) above, such Unit shall be offered to a non-profit housing provider;
 - e. If there are any remaining Unit following 7.h.i.2.d) above, such Unit shall be sold by the Appellant with the assistance of the City and/or a non-profit housing provider. The Appellant shall ensure that appropriate instruments shall be registered on title to the affordable housing Units to assure that the Units remain as affordable housing for a period of 25 years. Such instruments may include inhibiting orders and restrictive covenants registered pursuant to sections 118 and 119 of the Land Titles Act, respectively, and the City shall co-operate in the implementation of such assurances.
3. Unit Size: All four Units shall be two-storey at-grade townhouse units, larger family sized units consisting of a minimum of two bedrooms and two bathrooms.
4. Each of these Units will also be provided with an opportunity to purchase a parking spot and/or locker room.



5. Each Unit shall have direct access into the apartment building and to common amenity spaces similar to other units in the apartment building.

19. Prior to the execution of the Site Plan Agreement, the owner shall submit final drawings, to address the remaining outstanding comments from Fire Services and Wastes Management, to the satisfaction of the Director of Planning and Urban Design;

20. Prior to execution of Site Plan Agreement, the Owner shall comply with all requirements of the City and authorized public agencies, including the Regional Municipality of York, and Metrolinx, to the satisfaction of the Director of Planning and Development Services.