

Ontario Municipal Board
Commission des affaires municipales
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CITY OF MARKHAM
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ISSUE DATE: September 4, 2014

CASE NO(S):

PL130551

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

Appellant:	Harry Farber Construction Limited
Subject:	By-law No. 2013-45
Municipality:	Town of Markham
OMB Case No.:	PL130551
OMB File No.:	PL130551

PROCEEDING COMMENCED UNDER subsection 17(36) of the Planning Act, R.S.O. 1990, c. P. 13, as amended

Appellant	Harry Faber Construction Limited
Subject:	Proposed Official Plan Amendment No. 207
Municipality:	Town of Markham
OMB Case No.:	PL130551
OMB File No.:	PL131335

Heard: August 18, 2014 in Markham, Ontario

APPEARANCES:

Parties

Counsel

2145312 Ontario Limited

Harry Farber Construction Limited

City of Markham

Region of York

M. Flowers

M. Flynn-Guglietti

A. Wilson-Peebles

B. Montgomery

**MEMORANDUM OF ORAL DECISION DELIVERED BY JAMES R. MCKENZIE
ON AUGUST 18, 2014 AND ORDER OF THE BOARD**

[1] The Council of the City of Markham ("City") enacted Zoning By-law No. 2013-45 ("By-law") on April 16, 2013, to rezone 1 Steelcase Road West ("subject property") and facilitate intensified employment uses. 2145312 Ontario Limited ("applicant") owns the subject property, which is situated at the southwest corner of Woodbine Avenue and Steelcase Road West and is occupied by a vacant, one-storey, 66,799 square metre (719,014 square foot) industrial building. Harry Farber Construction Limited, who owns a property improved with a commercial plaza at the southeast corner of Woodbine Avenue and Dennison Avenue, a short distance from the subject property, appealed the By-law. The Board was advised at the outset of the hearing that the parties had resolved their differences and the hearing was convened to consider a settlement.

[2] Peter Smith is a registered professional planner. He was qualified by the Board to provide opinion planning evidence.

[3] The subject property is situated in a large employment area in south Markham bounded by Steeles Avenue East (south), Highway No. 404 (west), Highway No. 7 (north), and Warden Avenue (east). It is a block north of the Steeles-Woodbine intersection. The section of Woodbine Avenue in which it is located is characterised by a mix of employment uses that include hotel and office buildings, service and retail commercial establishments, as well as automotive and home-related businesses.

[4] The applicant submitted applications to amend the City's Official Plan and Zoning By-law No. 108-81, as amended, to permit a mixed-use commercial/office development that would be implemented in phases. The first phase proposes the demolition of approximately 10 per cent of the existing building and the construction of a 16-storey office building, a 2-storey retail building, and a three level parking garage. Future phases include the introduction of two additional office buildings (15 and 17 storeys), a hotel (17 storeys), and two stand-alone retail restaurants.

[5] At the time the applications were filed, the subject property maintained two

Official Plan designations, each applying to a different portion. The westerly portion, approximately 75 per cent, was designated *General Industrial Area* and the easterly portion *Business Corridor Area*. The subject property was zoned *Select Industrial (M)*.

[6] Council adopted Official Plan Amendment No. 207 ("OPA 207") on the same date as it enacted the By-law. OPA 207 introduced a uniform designation across the subject property by changing that portion designated *General Industrial Area* to *Business Corridor Area* and incorporated hold policies to secure phasing of the proposed redevelopment. The By-law rezoned the subject property to *Business Corridor* and also included hold provisions as well as conditions for their removal.

[7] The Region of York ("Region") modified OPA 207 by incorporating provisions relating to City Of Toronto interests into the hold policies of the amendment and then approved the instrument in its modified form. The appellant then appealed OPA 207, but subsequently withdrew that appeal of OPA 207. OPA 207 is therefore in full force and effect.

[8] Mr. Smith reviewed the policy and regulatory context. He opined that the By-law is consistent with the 2014 Provincial Policy Statement, conforms to the Growth Plan for the Greater Golden Horseshoe, conforms to the Region's Official Plan, and conforms to the City's Official Plan and implements OPA 207. The proposed redevelopment of the subject property represents an intensification of employment uses, is consistent with municipal goals and corresponding policy to intensify Woodbine Avenue, supports the identification of Woodbine Avenue as a Regional Transit Priority Area, and supports the investment in Steeles Avenue as a Regional Rapid Transit Corridor.

[9] Mr. Smith also reviewed revisions to the By-law necessitated by the Region-initiated modifications to OPA 207 and terms negotiated by the applicant and appellant to settle the By-law appeal. The former ensure that conditions for releasing holds are consistent with the modifications to OPA 207 approved by the Region. The latter implement an agreed-to restriction with respect to the scope of retail stores having a gross leasable area less than 46.45 square metres (500 square feet). Mr. Smith confirmed that City planning staff had reviewed and were satisfied with the proposed

revisions to the By-law.

[10] The Board accepts and relies on Mr. Smith's uncontradicted evidence and professional opinions to find that the By-law, with the proposed amendments, is consistent with and conforms to all senior level planning instruments and represents good planning.

ORDER

[11] The appeal is allowed in part and only to the extent necessary to amend the By-law as set out in Exhibit 3B which, for ease of reference, is appended to this decision as Attachment 1. By-law No. 2013-45 is amended and shall take effect as such.

"James R. McKenzie"

JAMES R. McKENZIE
VICE-CHAIR

Ontario Municipal Board

A constituent tribunal of Environment and Land Tribunals Ontario

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

ATTACHMENT 1



BY-LAW 2013-45

A By-law to amend By-law 108-81, as amended
(1 Steelcase Road West)

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

1.0 That By-law 108-81, as amended, be and the same is hereby further amended as follows:

1.1 By repealing By-law 58-82, amending By-law 108-81.

1.2 By rezoning the lands identified on Schedule "A" attached hereto from Select Industrial (M) to Business Corridor Hold One [(H1) B.C.], Business Corridor Hold Two [(H2) B.C.] and Business Corridor Hold Three [(H3) B.C.] as shown on Schedule 'A' attached hereto.

1.3 By adding to Section 8 – Exceptions, the following new subsection:

"2145312 Ontario Inc. – 1 Steelcase Road West

8.13 Notwithstanding any other provisions of By-law 108-81, as amended, the provisions in this Section shall apply to those lands municipally known as 1 Steelcase Road West, as shown on Schedule 'A' attached to this By-law. All other provisions of this By-law, unless specifically modified/amended by this section, continue to apply to the lands subject to this Section.

8.13.1 Use Definitions

The following definitions apply to the lands outlined on Schedule 'A' attached hereto. For the purpose of this By-law, where other terms have not been specifically defined within By-law 108-81, as amended, the definitions of By-law 28-97, as amended, shall apply.

- a. "*Automotive Showroom*" means premises used for the display and sale of motor vehicles, but excludes a vehicle repair shop; a vehicle service shop; and *outdoor storage* and *outdoor display and sales* of motor vehicles whether or not accessory or incidental to an *Automotive Showroom*.
- b. "*Drive-Through Service Facility*" means a building or *structure* or part thereof where goods and/or services are offered to the public within a parked or stationary vehicle by way of a service window or kiosk, where goods, money or materials are exchanged. Kiosks within a parking garage or associated with a surface parking area are not considered to be drive-through service uses.
- c. "*Outdoor Storage*" means an area of land used in conjunction with a business located within a building or *structure* on the same *lot*, for the storage of goods and materials.
- d. "*Outdoor Display and Sales Area*" means outdoor open space area where produce or merchandise is displayed *and/or* sold *and/or* where services are provided in conjunction with a business located within a *building* or *structure* on the same *lot*.
- e. "*Hotel*" means a *premises* that contains rooms with no private cooking facilities that are rented on a temporary basis to the public, and which may also contain a public dining area, meeting rooms and *accessory* banquet facilities.

8.13.2 Uses Permitted

- *Automotive Showroom;*
- *Banks and Financial institutions;*
- *Business offices;*
- *Commercial fitness centres;*
- *Data processing and related facilities*
- *Dry Cleaning establishments;*
- *Hotels*
- *Medical offices;*
- *Personal service shops;*
- *Places of entertainment;*
- *Recreational establishments;*
- *Repair shops;*

- *Research and training centres*
- *Restaurants;*
- *Restaurants, fast food;*
- *Restaurants, take-out;*
- *Retail stores;*
- *Schools, commercial;*
- *Supermarkets;*
- *Warehouse and related distribution centre.*

8.13.3 Zone Standards

The following specific zone standards apply:

- a) Maximum HEIGHT of building or structure - 100 metres
- b) Minimum YARD adjoining a Street or highway – 3 metres
- c) Minimum LANDSCAPED OPEN SPACE abutting STREET LINES - 3 metres
- d) Maximum permitted projections:
Encroachments into the permitted yard setbacks shall be as follows:

Structure	Maximum Permitted Projection
Eaves, cornices, ornamental or architectural elements, light fixtures, balustrades, mullions, window sills, and bay windows	Maximum projection of 0.3 metres into the required yard setback
Canopies and awnings	Maximum projection of 2.4 metres into the required yard setback

8.13.4 Special Site Provisions

The following additional provisions apply:

- a) Maximum FLOOR AREA RATIO in Phases 1A, 1B and 2 - 105%
- b) Maximum GROSS FLOOR AREA of all permitted uses, excluding offices, in Phase 1A - 20,000m²
- c) Minimum GROSS FLOOR AREA of OFFICE SPACE in Phase 1A - 7,500m²
- d) Maximum GROSS FLOOR AREA of all permitted uses, excluding offices, in Phases 1A and 1B - 60,820m²

- e) Minimum GROSS FLOOR AREA of OFFICE SPACE in Phases 1A and 1B - 22,497m²
- f) Minimum GROSS FLOOR AREA of HOTEL in Phase 2 - 11,055m²
- g) Minimum GROSS FLOOR AREA of OFFICE SPACE in Phases 1A, 1B and 2 - 52,302m²
- h) Maximum GROSS FLOOR AREA of RETAIL STORES shall not exceed 50% of all GROSS FLOOR AREA on the lot with the exception of Phases 1A and 1B
- i) GROSS FLOOR AREA of RETAIL STORES in Phase 2 - 0m²
- j) Maximum GROSS FLOOR AREA for an individual RETAIL STORE - 6,000m²
- k) At all times, in each BUILDING the maximum total GROSS LEASABLE FLOOR AREA of all RETAIL STORES having an individual GROSS LEASABLE FLOOR AREA less than 46.45 m² shall not be greater than 20% of the total GROSS LEASABLE FLOOR AREA of all RETAIL STORES.
- l) For the purposes of this By-law, the lands shown on Schedule "A" shall be considered one lot.
- m) Notwithstanding 8.13.3c), the minimum required width of a LANDSCAPED OPEN SPACE strip between Steelcase Road West and onsite parking existing on the property on the date of passing of this By-law is 0.0 metres.
- n) Notwithstanding 8.13.3c), the minimum required width of a LANDSCAPED OPEN SPACE strip between Idema Road and onsite ramps or driveways existing on the property on the date of passing of this By-law is 0.0 metres.
- o) Notwithstanding the Hold (H) provisions established in this By-law, those uses existing on the property on the date of passing of this By-law shall continue to be permitted.
- p) *Outdoor storage and Outdoor display and sales* are not permitted.
- q) The establishment of a *drive-through service facility* associated with any use is not permitted.
- r) Nothing in this By-law shall be interpreted to prevent the construction of an underground *parking garage* for the purposes of *motor vehicle* parking on any portion of the lands identified on Schedule A to this By-law."

2.0 Holding Provisions

- 2.1 For the purpose of this By-law, Hold One (H1), Hold Two (H2) and Hold Three (H3) zones are hereby established and are identified on Schedule "A" after the zoning symbol.
- 2.2 No person shall hereafter use, erect or alter any building or structure within each phase of development for the purposes permitted under this by-law, until an amendment to this by-law to remove the Hold (H) that applies to that phase has come into effect pursuant to the provisions of Section 36 of the Planning Act.
- 2.3 Underground parking garages are permitted to be constructed prior to the removal of the Hold (H) provisions.
- 2.4 Zoning By-law Amendments to remove the Hold One (H1), Hold Two (H2) and Hold Three (H3) symbols from the Zoning on 1 Steelcase Road West shall not be passed until the following conditions have been met to the satisfaction of the City of Markham, Region of York and City of Toronto, within their jurisdiction, as applicable:
 - a) **Conditions for Removing the Hold One (H1) Provision (Phase 1A):**
 - preparation of a Transportation Demand Management Plan by the developer, to the satisfaction of the City of Markham, Region of York and City of Toronto, within their jurisdiction;
 - preparation of a Water Analysis by the developer, to the satisfaction of the City of Markham;
 - provision of documentation by the developer, that sanitary flows generated from the Phase 1A development do not exceed the pre-development flow rates, to the satisfaction of the City of Markham;
 - approval of the Traffic Impact Study, to the satisfaction of the Director of Engineering, Region of York and City of Toronto, within their jurisdiction;
 - site plan approval, including a comprehensive block plan;

- execution of a site plan agreement between the City and the developer requiring, among other things, the following:

Provision of a minimum of 7,500m² of gross floor area for business offices and/or medical offices in Phase 1A, with such Site Plan Agreement requiring the issuance of a building permit for a minimum of 7,500m² of gross floor area for business offices and/or medical offices prior to, or concurrent with, the issuance of any building permit or other suitable evidence of occupancy, for retail gross floor area in Phase 1A.

Upon the lifting of the Hold One (H1) provision:

a maximum of 20,000m² of gross floor area devoted to all permitted uses, excluding offices, shall be permitted and a minimum of 7,500m² of gross floor area devoted to office uses shall be required.

b) Conditions for Removing the Hold Two (H2) Provision (Phase 1B):

- removal of the Hold One (H1) provision on the property;
- preparation of an updated Transportation Demand Management Plan by the developer, if required, to the satisfaction of the City of Markham, Region of York and City of Toronto, within their jurisdiction;
- preparation of a Water Analysis by the developer, to the satisfaction of the City of Markham;
- provision of documentation by the developer, that sanitary flows generated from the Phase 1B development do not exceed the pre-development flow rates, to the satisfaction of the City of Markham;
- approval of the Traffic Impact Study, to the satisfaction of the Director of Engineering, Region of York and City of Toronto, within their jurisdiction;
- site plan approval, including revisions to the comprehensive block plan, if required;
- execution of a site plan agreement between the City and the developer requiring, among other things, the following:

Provision of a minimum of 14,997m² of gross floor area for business offices and/or medical offices in Phase 1B, with such Site Plan Agreement requiring the issuance of a building permit for a minimum of 14,997m² of gross floor area for business offices and/or medical offices prior to, or concurrent with, the issuance of any building permit for retail gross floor area in Phase 1B.

Upon the lifting of the Hold Two (H2) provision:

a maximum of 60,820m² of gross floor area devoted to all permitted uses, excluding offices, shall be permitted and a minimum of 22,497m² of gross floor area devoted to office uses shall be required.

c) Conditions for Removing the Hold Three (H3) Provision (Phase 2):

- removal of the Hold Two (H2) provision on the property;
- preparation of an updated Traffic Impact Study by the developer documenting traffic impacts and associated infrastructure improvement requirements, to the satisfaction of the City of Markham, Region of York and City of Toronto, within their jurisdiction;
- preparation of a traffic study by the developer examining the potential of a partial interchange from Highway 404 to the satisfaction of the City of Markham in consultation with the Region of York and City of Toronto;
- completion of required downstream sanitary sewer improvements, to the satisfaction of the City of Markham;
- the developer's payment of its proportionate share of all downstream infrastructure improvements;
- site plan approval and execution of a site plan agreement amendment

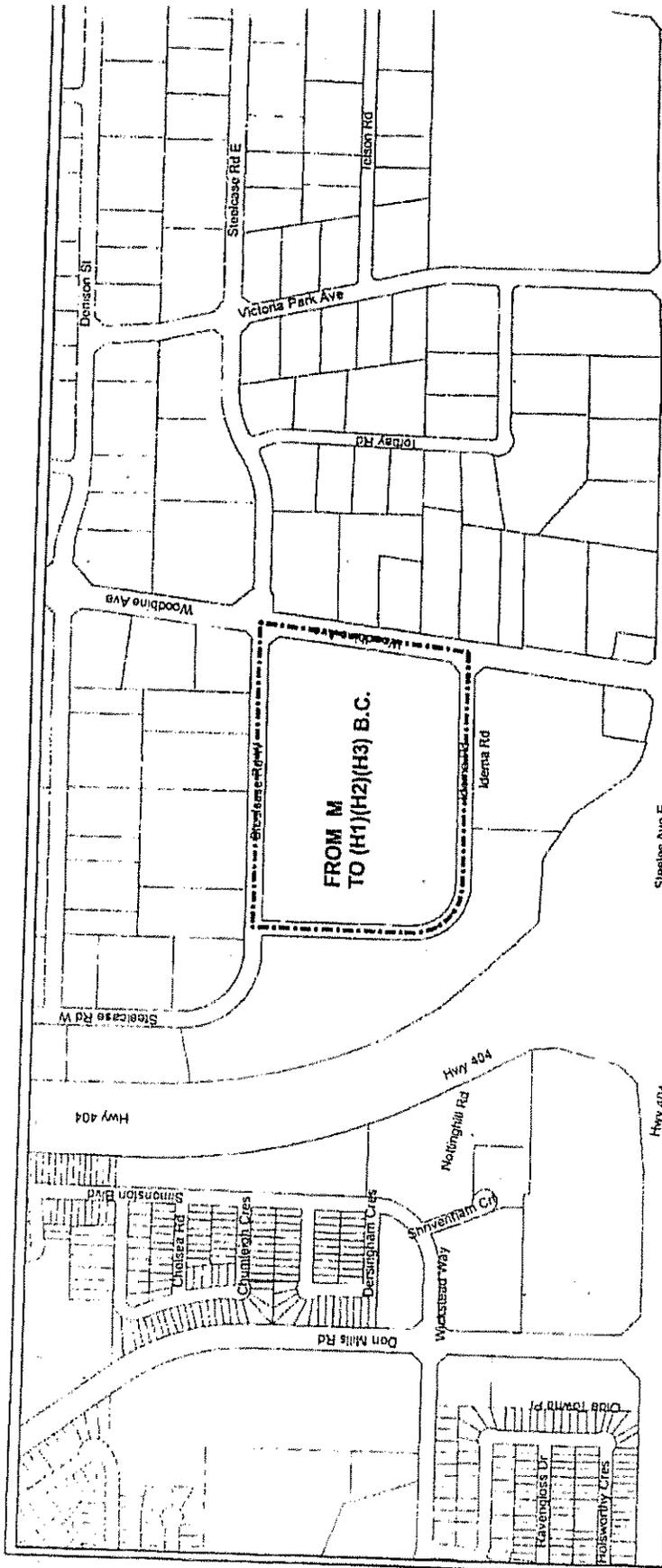
Upon the lifting of the Hold Three (H3) provision, full build out of the property shall be permitted.

- 3.0 All other provisions of By-law 108-81, as amended, not inconsistent with the provisions of this by-law shall continue to apply.

READ A FIRST, SECOND, AND THIRD TIME AND PASSED THIS X DAY OF
XX,
2013

KIMBERLEY KITTERGHAM
CITY CLERK

FRANK SCARPITTI
MAYOR



BY-LAW SCHEDULE 'A' TO AMEND BY-LAW 108-81

BOUNDARY OF AREA COVERED BY THIS BY-LAW SCHEDULE

- SELECT INDUSTRIAL
- BUSINESS CORRIDOR

- (H1) HOLDING PROVISION ONE
- (H2) HOLDING PROVISION TWO

- (H3) HOLDING PROVISION THREE

BY-LAW AMENDMENT No. PASSED

.....

..... (MAYOR)

..... (CLERK)

MARKHAM DEVELOPMENT SERVICES COMMISSION

Drawn By: CPW

Checked By: CS

DATE: 03/01/2013



Meters
0 70 140

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



EXPLANATORY NOTE

BY-LAW 2013 – 45

A By-law to amend By-law 108-81, as amended.

**2145312 Ont. Inc.
1 Steelcase Road West
Part of Lots 1 and 2, Concession 3**

Lands Affected

The By-law amendment applies to 12 ha. (30 acres) of land located at the southwest corner of Woodbine Avenue and Steelcase Road West.

Existing Zoning

The lands are presently zoned Select Industrial (M) by By-law 108-81, as amended.

Purpose and Effect

The purpose of the by-law amendment is to rezone the lands to Business Corridor Hold One [(H1) B.C.], Business Corridor Hold Two [(H2) B.C.] and Business Corridor Hold Three [(H3) B.C.] and establish site specific development standards.

As outlined in the by-law amendment, certain conditions will have to be satisfied prior to the removal of the Hold (H) provisions. Following removal of the Hold (H) provisions, in sequence from (H1) to (H3), development of the lands will be allowed in phases.