

May 25, 2010

Town of Markham  
Legal Department  
101 Town Centre Boulevard  
Markham, Ontario L3R 9W3

Attention: Ms. Catherine Conrad, Town Solicitor

Dear Madam:

**RE:    REQUEST FOR LEGAL OPINION REGARDING PROVISION OF FURTHER  
PROTECTION OF THE AGRICULTURAL LANDS WITHIN THE "WHITEBELT  
AREA" OF MARKHAM TO PROVIDE 40 YEARS OF PROTECTION/OUR FILE  
NO. K068**

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I am writing in response to your request for advice on a question posed in connection with formulation of a new Official Plan for the Town of Markham. The question raised involves the ability of the municipality to provide further protection from development, for a period of forty years, of agricultural lands located within the municipality but located outside the existing urban boundary of the Town. The request for advice was made by means of the adoption of a motion by Markham Council in partial response to the presentation of a staff report entitled "Recommended Markham Growth Alternative to 2031", dated April 20, 2010.

In responding to this enquiry, it is important to acknowledge the context in which the enquiry has been made. As noted above, the Town is currently engaged in a process of study and consultation that ultimately will lead to the formulation and adoption of a new Official Plan for the municipality under the Ontario Planning Act. As part of this exercise, Town Council with the support of staff and consultants have considered various growth alternatives for the municipality intended to respond to Provincial and Regional policies related to population and employment growth targets allocated to the Town of Markham, as well as intensification targets required to be addressed by the Town in accordance with the policies of the Provincial Growth Plan for the Greater Golden Horseshoe, 2006 ("the Places to Grow Plan"). In order to provide a basis for

responding to these policies, and to provide guidance to Town staff and consultants in carrying out further study leading to the formulation of the new Official Plan, the municipality has endorsed a Growth Strategy as detailed in the April 20 staff report referred to above.

As you are aware, at the present time under the City's current Official plan portions of the municipality located within the northern and eastern areas of the Town are located outside of the current urban boundary for development. This area comprises extensive tracts of land designated and used for agricultural purposes as well as additional lands designated for environmental/open space purposes, hamlets and transportation and utilities. As well, portions of this area outside of the urban boundary are located within the area subject to the policies of the Provincial Oak Ridges Moraine Conservation Plan ("the ORM Plan") and the Provincial Greenbelt Plan.

The lands within the non-urban area of the Town that does not fall within the areas of either the ORM Plan or the Greenbelt Plan are referred to as the "Whitebelt Area" of the Town of Markham. It is within a portion of this Whitebelt Area that the Town is considering an expansion of the current urban boundary by means of the new Official Plan, in order to accommodate mandated growth and intensification targets referred to above. The Growth Strategy discussed in the April staff report identifies that portion of the Whitebelt Area that the Town should be considering for future urban development.

It is my understanding that the question for which advice has been sought relates to the protection from development for a forty year period of that portion of the agricultural lands which have not been identified as a future area for urban expansion pursuant to the Growth Strategy. It is my opinion that approval of the Town's new Official Plan will afford protection to the maintenance of the remaining agricultural lands within the Whitebelt Area that are not included within the revised urban boundary. As you are aware, once the new Plan is approved further expansions to the urban boundary would not be permitted under the Planning Act in the absence of a comprehensive review undertaken by the municipality. However, the Town will not be able to extend that protection for a forty year period under the current land use planning powers afforded to it under the Provincial Planning Act. The basis for this opinion is outlined below.

In making decisions respecting the exercise of any authority under the Planning Act, including a decision to adopt an Official Plan, Subsection 3 (5) of the Act directs that such decisions:

- (a) shall be consistent with the policy statements issued under subsection (1) that are in effect on the date of the decision; and*

*(b) shall conform with the provincial plans that are in effect on that date, or shall not conflict with them, as the case may be."*

The planning process required for the preparation of the Town's new Official Plan is subject to the 2005 Provincial Policy Statement ("the 2005 PPS") issued by the Province in accordance with Subsection 3(1) of the Planning Act. Among other matters, the 2005 PPS requires municipalities to manage and direct land use to achieve efficient development and land use patterns. Policy 1.1.2 directs that the identification of the amount of land forecast to achieve these directions is to be based upon a time horizon of up to 20 years, unless an alternate time frame has been established as a result of a provincial planning exercise or a *provincial plan*. Policy 1.1.2 reads as follows:

*"Sufficient land shall be made available through intensification and redevelopment and, if necessary, designated growth areas, to accommodate an appropriate range and mix of employment opportunities, housing and other land uses to meet projected needs for a time horizon of up to 20 years. However, where an alternate time period has been established for specific areas of the Province as a result of a provincial planning exercise or a provincial plan, that time frame may be used for municipalities within the area."*

An Official Plan policy which sought to preserve agricultural lands for a period of 40 years would not, in my opinion, be found to be consistent with this direction to apply a 20 year planning horizon for the purpose of the formulation of the Town's Official Plan.

As noted above, Policy 1.1.2 refers to alternate time frames applied to areas of the province by provincial plans. In the case of Markham, the formulation of the Town's Official Plan is subject to the requirements of the Places to Grow Plan. The policies of this Plan, including the Population and Employment targets assigned to York Region (and as allocated by the Region to the Town), are based upon a planning horizon extending to the year 2031. As well, Policy 5.4.3.3 of the Places to Grow Plan requires municipalities to monitor and report on the implementation of the Plan's policies within their municipality, in accordance with guidelines developed by the Minister of Public Infrastructure Renewal. In accordance with the Planning Act municipalities are expected to periodically update their official plan policies by means of five year reviews.

Accordingly, it is my opinion that the application of a 40 year planning horizon within the Official Plan, intended to preserve the agricultural lands not included within the proposed area for urban expansion, would not be considered to conform to the policies established by the Province related to the evaluation of land supply required to accommodate future development by means of the formulation of Official Plan policies.

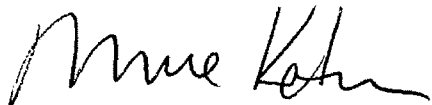
Finally, I would note that you have provided me with a copy of correspondence providing comments prepared by staff from the Ministry of Municipal Affairs and Housing to the Region of Durham, in response to the preparation of the Regional Plan. As you are aware, the Ministry in that correspondence took issue with the Region's forecasting and land budgeting exercise which projected land requirements beyond the 2031 time frame referred to in the Places to Grow Plan and instead utilized a planning horizon to 2056. As noted in the correspondence it was the position of the Ministry staff that the approach taken by the Region was not in accord with Provincial policies.

I am not aware of other regulatory or statutory authority that would be available to the Town to enable the application of a 40 year planning horizon supporting the preservation of agricultural land by means of the exercise of land use planning powers.

If you have any questions or comments regarding the foregoing please do not hesitate to contact me.

Yours very truly,

**RITCHIE KETCHESON  
HART & BIGGART LLP**



Bruce C. Ketcheson  
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