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Ontario Municipal Board

Commission des affaires municipales de l'Ontario

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TOWN OF MARKHAM
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PL091117

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IN THE MATTER OF subsection 17(24) of the *Planning Act*, R.S.O. 1990, c. P. 13, as amended

Appellant: Cesaroni Holdings Limited
Appellant: Massimo Saragosa
Appellant: Gel-Don Investments Inc.
Appellant: Clarence & Mary Vallee and others
Subject: Proposed Official Plan Amendment No. 182
Municipality: Town of Markham
OMB Case No.: PL091117
OMB File No.: PL091117

APPEARANCES:

Parties

Town of Markham

Gel-Don Investments Inc.
Cesaroni Holdings Limited
Michael and Dawn Davis
Antonio Fedele (withdrawn)
Massimo Saragosa
589236 Ontario Limited
Goulam Deng (formerly Gulnar and Farid
Walji) (withdrawn)
Clarence and Mary Vallee (withdrawn)

Region of York

Safarali Abediny

Counsel

B. Ketcheson

M. Melling

B. Montgomery

**MEMORANDUM OF ORAL DECISION DELIVERED BY N. C. JACKSON ON
OCTOBER 25, 2010**

Introduction

Official Plan Amendment No. 182 of the Town of Markham amends policies for the Hamlet of Victoria Square, located on Woodbine Avenue and Elgin Mills Road East. The existing Official Plan policy is generic and applies to 5 Hamlets. Some enquiries were made concerning commercial uses in the interior of the Hamlet resulting in concerns from residents. The Town decided to undertake a secondary planning study of Victoria Square culminating in the adoption of Official Plan Amendment 182. The effect is to maintain the low rise residential character of Victoria Square. Planning staff had initially recommended commercial at the four corners of the main Woodbine Avenue frontage with Elgin Mills Road East. In the public process Council decided to permit only residential. That action in adoption of OP 182 brought about 8 Appeals, three of which are not proceeded with.

Victoria Square is about 75 acres in size with about 100 properties in number. Two residential subdivisions were created in the northeast and southeast in the 1970's. This Hamlet has a church, community centre and public park. Approximately 25% of the housing is listed as having heritage value. The Hamlet is not yet serviced with municipal water and sewage.

The Hearing

The Board heard evidence from land use planners for the Town and the Appellants, Mr. Safarali Abediny, a resident and argument over 3 days.

Consolidation

In addition to OPA 182, the Board previously consolidated zoning (private appeal) and site plan appeals by Cesaroni Holdings—also a remaining Appellant to OP 182. On Consent, the Region of York is added as a Party to the site plan appeal only. On consent the site plan appeal is adjourned *sine die* to be brought back on, on 30 days notice by any Party.

The Abediny Issues

Also appearing is Safarali Abediny of 10760 Woodbine Road, L6B1J5. On consent Mr. Abediny is added as a Party to the Appeals of OP Amendment No. 182.

Mr. Abediny is seeking commercial status for his property where he now lives. He seeks that based in part on the earlier position of Markham planning staff. The revised position of the Town put forward in settlement with the remaining Appellants is to restrict commercial to the northeast, northwest and southeast corners of Woodbine Avenue and Elgin Mills Road East. This position is advanced by professional planner David Butler. The intent is to permit frontage on Woodbine and Elgin Mills only with access to those major streets and to avoid traffic and other impacts in the heart of the community. The settlement was raised at a community consultation meeting attended by approximately 45 members of the public where it was endorsed by those attending. Mr. Abediny did attend and states he did raise his concern. He states commercial on his property would not cause undue impact. The Town disagrees. There are 3 residential properties between the Abediny property and proposed commercial. Mr. Abediny did not appeal OP 182 and currently has residential zoning on his property. There is a legitimate planning concern expressed by planner Butler with the expansion of commercial further from the settlement to the interior of the Hamlet. Although there have been a few commercial uses in the past in the Hamlet, the substantial overwhelming use has been residential. There are now no commercial zoned properties in the Hamlet although a butcher shop continues as a legal non conforming use. The butcher shop property is planned for conversion to residential. The Heritage character of the Hamlet requires change be carefully studied. The heritage is set out in OPA 182 policies and the Council has asked for a report on the process of creating a Heritage Conservation District under the Ontario Heritage Act. The late entry of Mr. Abediny in this proceeding without an Appeal on his part, after 2 earlier prehearing conferences and extensive public consultation reflects on the planning merits of the Abediny request. The Board prefers the balanced position of planner Butler in the absence of a planning rationale to expand commercial to the north and interior of the Hamlet and will not modify OP 182 in the manner requested by Mr. Abediny. Mr. Abediny can in the next 5 year review of the parent Official Plan raise his issue at a more opportune earlier point in time of the planning process.

The case of the remaining Five Appellants to OPA 182

The proposed settlement with the remaining 5 Appellants is to recognize limited commercial on the periphery of the Hamlet. The Appellants and Town now agree on the territorial limits of the commercial. The Board agrees with the planning rationale for the territorial limits. What remains is a dispute between the Town and the Appellants on the height in urban design principles

The Appellants' draft of paragraph a reads:

"a. generally not exceeding two storeys in height and of a scale and orientation compatible with adjacent buildings For lands shown on Figure No.141 as being subject to the policies of 4.3.14. 2a), additional height up to a maximum of 3 storeys may be permitted within house –form buildings which have a heritage architectural style, including a pitched roof and other compatible elements. The implementing zoning by-law will strictly control the maximum height and form of any new non-residential buildings;" The Appellants version of Figure No.14.1 in exhibit 12 shows the 3 corners of Elgin Mills Road and Woodbine Avenue northeast, northwest and southeast for residential and non-residential."

The Town's draft of paragraph a reads:

"a. generally not to exceed two storeys in height, scale and orientation as adjacent buildings. For non-residential uses permitted on lands shown as Figure No 14.1 additional height up to a maximum of 3 storeys only within a pitched roof may be permitted subject to demonstrating a heritage architectural style, which is compatible with adjacent lands. The implementing zoning by-law will strictly control the maximum height and form of any new non-residential buildings." The Town's version of Figure No.14.1 shows the same 3 corners for single detached dwellings and non-residential opportunities but creates an additional legend showing only the northwest and southeast corners for single detached dwellings and non-residential opportunities with 3 storey provisions. The difference in the two Figures is that the Towns version limits non-residential with 3 storey provisions to 2 corners while permitting non-residential on 3 corners."

The Appellants and the Town agree generally on a two storey height limit (in both drafts Exhibit 9 of the Town and Exhibit 3, Tab 3) of the Appellants) but not on the provisions respecting non-residential in paragraph a) of each draft and specifically on the meaning of when 3 storey may apply in each version of paragraph a). The Appellants would also apply the 3 storey provisions in the limited areas to residential. Both sides agree non-residential may be up to 3 storeys but not on the language regarding roof and architectural style.

In order to appreciate the positions of both sides, the nature of the Hamlet of Victoria Square and where in the planning process this matter has proceeded must be understood. Approximately 25% of the buildings in Victoria Square have heritage value. The heritage buildings generally have architectural and or historical value which the Town seeks to protect, while at the same time acknowledging that development can and will occur.

The existing in force Town Official Plan references the need to protect the form and setting of the historic features and character of the Hamlet. Small scale commercial uses were permitted while the predominant use was to be housing.

Although the original position of the Town at time of the adoption of OPA 182 as reflected in the document was no commercial, the Town now wisely accepts the premise of commercial at 3 sites of the Appellants at Woodbine and Elgin Mills. Through settlement discussions between the planners for the Appellants and the Town, there has been serious redrafting of the adopted OPA 182. That is set out in Exhibit 3, Tab 3 and Exhibit 9. The Appellants have agreed with the Town on most changes including:

1. The deletion of the former direction of the Town Council to restrict all new development to single detached residential uses.
2. The Residential Area in part is now with Non-Residential Opportunities as shown on Figure 14.1—the planned function is to provide for small scale institutional and commercial uses, designed to serve the hamlet and surrounding area, compatible in terms of size, height and intensity with the generally residential character of the Hamlet.
3. Permitted Uses are now set out in detail with specific cap sizes for commercial uses
4. Prohibited uses are listed
5. Non-residential uses prior to conversion or redevelopment are to required to present a concept plan

6. Fronts of Buildings associated with non-residential uses shall be oriented to Woodbine Avenue or Elgin Mills Road only, parking not to be in the front yard and a modest one illuminated sign is permitted for each non-residential building.

The Appellants further accept the language of the adopted OPA 182 that:

1. All new development planned within the hamlet shall be appropriate to the historic features and character of the hamlet in terms of its form and scale.
2. The design of new buildings or additions to existing buildings on properties fronting on Woodbine Avenue, Elgin Mills Road, Royal Albert Street and Victoria Avenue shall reflect historic architectural styles which will complement the surrounding area by:
 - b. having setbacks compatible with adjacent buildings; and
 - c. being of materials and colours consistent with existing building stock in the area.

(The provisions of paragraph a in this section are the dispute)

Heritage buildings will be preserved and integrated into new development or uses. The design of new buildings fronting on Boyd Court, Mortson Street and Thomas Read Road are to complement the surrounding area by reflecting predominant architectural styles and with materials and colours consistent with the heritage building stock in the area.

The design principle in dispute applies in the Woodbine Avenue, Elgin Mills Road, Royal Albert Street, and Victoria Avenue area which contains more of the historic architectural styles. There is no dispute with the leading indicia for this area that new development generally not exceed 2 storeys in height and be of a scale and orientation with adjacent buildings. This language is revised in grammar as suggested by Mr. Melling. The intent is clear however that height will generally be 2 stories – but as admitted by planner Butler, the word generally permits limited consideration of more. The more is set out in the following sentence and Figure 14.1, a map schedule to the proposed OP. Both sides draft wording of 3 storeys and

areas affected on Figure 14.1 They agree on the areas for commercial on their respective mapping – being 3 blocks at the northwest, northeast and southeast corners of the intersection of Elgin Mills Road East and Woodbine Avenue. They differ in several respects: The Town, although designating the 3 areas to include non-residential, only designates the northwest and southeast corners for the three storey provisions. The Town's language reflects the 3 storeys only within a pitched roof subject to demonstrating a heritage architectural style compatible with adjacent lands. The Appellants' language references 3 storeys within house form-buildings which have a heritage architectural style, including a pitched roof and other compatible elements, but apply the 3 storey to the three corners and to residential and non-residential.

The original dispute as to any non-residential has been narrowed to what was estimated by counsel Ketcheson to be a 95% settlement. There is no doubt in the Board's mind that the general height principle is to be 2 stories. Three storeys will be permitted when architectural considerations of the surroundings are met. There is good reason to limit to 2 storeys generally, given what exists now in this Hamlet. There is also a strong planning rationale to consider the Heritage characteristics since the Provincial Policy Statement now recognizes the value of properties listed for Heritage value as significant built heritage resources. There are a significant number of buildings listed for heritage in this Hamlet- that is twenty-five. Roofing can be a significant consideration of the appearance of a new structure and whether it fits within the area. Within the 3 corners there are 3 listed heritage buildings on 2 of the areas and there are 3 more nearby. This is good reason to support the cautious approach adopted by the Town. The Board finds that the language of the Town referring to the third storey within a pitched or mansard roof is preferred as set out in Exhibit 9, further modified in Exhibit 21. The Board further modifies Exhibit 21 to change the word storey in the first line thereof to storeys.

The Board prefers the language of the Appellants in referring to the lands for the consideration of 3 storeys as being the lands shown on Figure 14.1 (being residential with non-residential opportunities) rather than the Town's direct reference in language to non-residential uses. The Appellants language is more consistent with the balance of the agreed upon document and settlement. The agreed upon permission itself is Residential Area with Non-Residential Opportunities. The

permitted uses include commercial but also single detached dwellings and mixed uses comprised of residential and non-residential uses. This is in sharp contrast to Residential area which does not permit commercial uses. It is preferable to maintain the terms and intent that there can be mixed use. This finding also follows the Town draft of Figure 14.1 referencing in the legend single detached dwellings and non-residential opportunities together.

The Board prefers the Appellants' version of Figure 14.1 in Exhibit 12. There is no valid planning reason proven to the satisfaction of the Board to distinguish 2 blocks from the third as proposed by the Town. Rather, the northeast corner has similar characteristics as the other 2 corners. The northeast corner owners, notwithstanding their position on appeal of OPA 182 as part of the appellant group, have settled with the Town at 2 storeys in zoning and site plan. Their preservation work in the existing structure to be maintained and the fit with the new structure is lauded highly by the Town and accepted by the Board in the zoning appeal to follow in this decision. Official Plan policy should be at a higher level than zoning, while zoning is more precise. It is true that storeys may be of different heights, calculations that are best tied down more specifically in Zoning By-law performance standards under section 34 of the *Planning Act*. This zoning settlement to follow in this Decision respecting Cesaroni is instructive of the value of the 2 storey general limit and that the 3 storey is permissive, design driven on architectural considerations necessary to protect valid heritage values.

The Board modifies the text of OPA 182 and its Figure 18.2 in the manner set out in this decision and with the settlement otherwise made between the Town and the Appellants. The Board finds these modifications to be good planning, in the public interest, consistent with the Provincial Policy Statement, in conformity with the Growth Plan and in conformity with the York Official Plan.

For these reasons the Appeals to OP 182 are allowed in part, so as to give effect to this Decision, but are otherwise dismissed. The Board order on OPA 182 is withheld pending receipt by the Board planner of the final text and mapping approved by the Board within 60 days of the date of this decision.

Cesaroni Appeal respecting the failure of the Town to pass a By-law to amend By-law 83-73

This Appeal has resulted in a more complete settlement portion of the Hearing. The Town based upon discussions now agrees with the form and substance of the amending zoning by-law in the form of Exhibit 11. This By-law rezones the Cesaroni property located at 10757, 10759, and 10761 Woodbine Avenue from Single Family Rural Residential to General Commercial. The uses permitted are now to include small scale commercial offices and retail. The development proposed is a 2 storey structure connected to an existing heritage structure to be maintained. The heritage characteristics of the existing building and the features of the Hamlet's heritage are reflected in the overall development. The Board finds based upon the evidence of planner Maria Gatzios, that the rezoning by-law conforms with the existing in force Official Plan permitting small scale commercial to serve local residents of the Hamlet, and conforms with the new OP amendment No. 182. The By-law is consistent with the Provincial Policy Statement and conforms with the Growth Plan. The By-law conforms with the Region of York Official Plan and amendments to it. The Rezoning By-law represents good planning and is in the public interest.

As a result, the Board on consent and without objection, allows the Cesaroni Appeal and amends By-law 83-73 in the form of Exhibit 11 attached hereto as Attachment "1". The Board so orders in respect to the Zoning By-law Amendment in Attachment "1".

"N. C. Jackson"

N. C. JACKSON
MEMBER

ATTACHMENT "1"

EXPLANATORY NOTE

BY-LAW 2010-xxx

A By-law to amend By-law 83-73, as amended

Cesaroni Holdings Limited
10757, 10759 and 10761 Woodbine Avenue

LANDS AFFECTED

The By-law applies to lands located on the east side of Woodbine Avenue and north of Elgin Mills municipally known as 10757, 10759 and 10761 Woodbine Avenue in the Town of Markham.

EXISTING ZONING

The lands subject to this By-law are presently zoned Single Family Rural Residential (RRH) by By-law 83-73, as amended.

PURPOSE AND EFFECT

The purpose and effect of this By-law is to rezone the subject site to the General Commercial (C1) zone to permit a small scale commercial/office building, consisting of a new two storey commercial addition for business and professional office uses and includes restoration and re-use of the existing residential dwelling. A site specific exception also forms part of the proposed Zoning By-law amendment relating to the General Commercial (C1) performance standards. The site specific exception would reduce the minimum front yard setback, reduce the minimum side yard setbacks, and reduce the minimum lot area within the General Commercial (C1) zone performance standards to meet the existing conditions on site with the existing heritage dwelling.

BY-LAW 2010-XXX

*A By-law to amend By-law 83-73, as amended
To rezone the lands at 10757, 10759 and 10761 Woodbine Avenue to permit a small scale
commercial and office development*

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

1. That By-law 83-73, as amended is hereby further amended as it applies to the lands outlined on Schedule 'A' attached hereto as follows:

- 1.1 By re-zoning the lands from Single Family Rural Residential (RRH) to General Commercial (C1).

2. Notwithstanding any other provision of By-law 83-73, as amended, the provisions in this Section shall apply to only those lands denoted on Schedule 'A' attached hereto. All other provisions of this By-law unless specifically modified/amended by this Section, continue to apply to the lands subject to this Section.

2.1 Only Uses Permitted

The following uses are the only uses permitted:

- a) Bake Shops
- b) Business and Professional Offices
- c) Medical Offices
- d) Personal Service Shops
- e) Repair Shops
- f) Retail Stores
- g) Institutional Uses
- h) Convenience Retail Store

2.2 Zone Standards

The following specific zone standards apply:

- | | |
|--|---------------------|
| a) Minimum Front Yard Setback | 1.65 metres |
| b) Minimum Side Yard Setback (north) | 0.75 metres |
| c) Minimum Side Yard Setback (south) | 6.0 metres |
| d) Minimum Lot Area | 2,300 square metres |
| e) Minimum Front Yard Landscape Buffer | 1.65 metres |
| f) Minimum Landscape Buffer (north) | 0.75 metres |

2.3 Special Site Provisions

The following additional provisions apply:

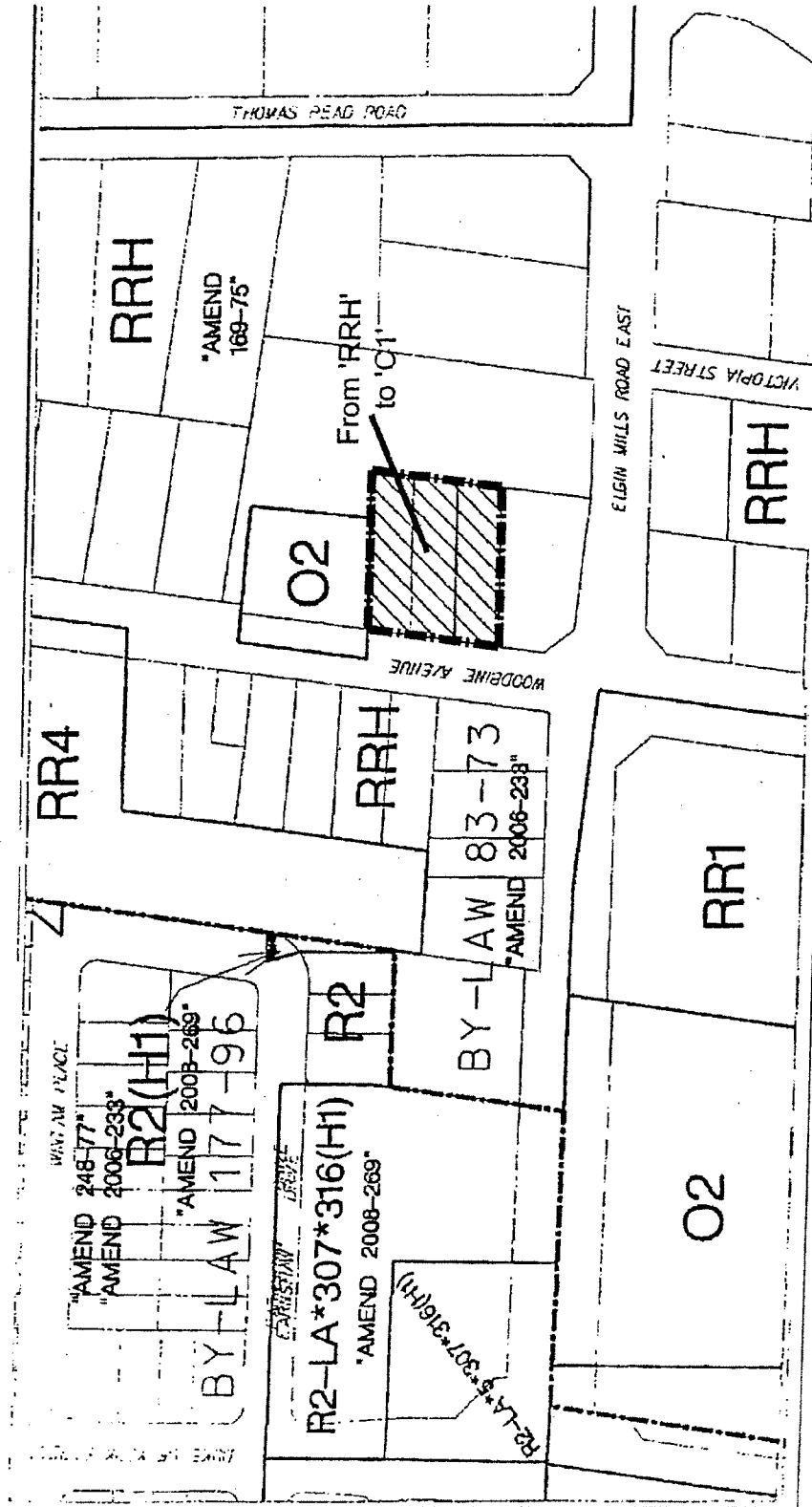
- a) Maximum gross floor area for Bake Shops, Personal Service Shops, Repair Shops, Retail Stores and Institutional Uses – 300 square metres
 - b) Maximum gross floor area for Medical Offices – 300 square metres per office
3. All other provisions of By-law 83-73, as amended, not inconsistent with the provisions of this by-law shall continue to apply.

READ A FIRST, SECOND, AND THIRD TIME AND PASSED THIS xx DAY
OF xx, 2010.

CLERK

MAYOR

Schedule 'A'



A BY-LAW TO AMEND BY-LAW 83-73

BOUNDARY OF AREA COVERED BY THIS BY-LAW