

ISSUE DATE:

May 08, 2008



Ontario

Ontario Municipal Board  
Commission des affaires municipales de l'Ontario

PL061002

IN THE MATTER OF subsection 17(36) of the *Planning Act*, R.S.O. 1990, C. P. 13, as amended

*Appellant:* Romanovich Family Trust, Larry Romanovich  
and Colleen Romanovich  
*Subject:* Proposed Official Plan Amendment No. 149  
*Municipality:* Town of Markham  
*OMB Case No.* PL061002  
*OMB File No.* O060183

**APPEARANCES:**

**Parties**

Larry and Colleen Romanovich

Town of Markham

Region of York

**Counsel**

C. Estrela

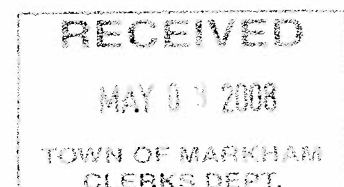
C. Stobo

R. Miller

**MEMORANDUM OF ORAL DECISION DELIVERED BY J. CHEE-HING  
ON APRIL 21, 2008 AND ORDER OF THE BOARD**

The matters at this hearing represent the successful culmination of two Board mediation events held on March 9, 2007 and June 15, 2007. This panel of the Board had mediated those events and a settlement was reached among the parties, which is the subject of these proceedings.

By way of background, Larry and Colleen Romanovich (the "applicant") had appealed OPA 149 of the Town of Markham ("Town"). OPA 149 had designated their lands as Transportation and Utilities, and Business Park. It was the applicant's contention that the portion of their lands designated as Transportation and Utilities was tantamount to an expropriation and that these lands could not be developed or sold to anyone other than a public body. Furthermore, they alleged that this designation would



artificially depress the value of the lands so that a public body would acquire the lands at less than the appropriate market value.

At the hearing, the Board heard planning evidence from Mr. T. Lambe, planning director for the Town, on the minutes of settlement. Mr. Lambe advised the Board that the Town and the Region had agreed with the applicant to make certain modifications to OPA 149, which would address the applicant's concerns without having a significant impact on the intent of OPA 149. Mr. Lambe testified that these modifications clarified the status of the applicant's affected lands and that should the lands not be required to accommodate a full interchange then it will be designated for Business Park Area uses (EX.1). As part of the minutes of settlement, and contingent on Board approval of OPA 149 as modified, the Town would by letter confirm that the valuation of the affected lands will be determined by their highest and best use or the designation that would have otherwise applied to the lands but for the possible interchange, namely Business Park Area. At the hearing, the Region confirmed its support of the settlement.

It was Mr. Lambe's opinion that the modifications to OPA 149 conforms to the Town's OP, the Region's ROP, that it is consistent with the Provincial Policy Statement (PPS), and that it is not in conflict with the Greenbelt Plan.

The Board accepts the opinion evidence of Mr. Lambe, finds the settlement to represent good planning, and is in the broader public interest.

Therefore, the **BOARD ORDERS** that the appeal is allowed in part and OPA 149 to the Official Plan for the Town of Markham is modified as set out in Tab 1A of Exhibit 1 and as modified is approved.

So Orders the Board.

"J. Chee-Hing"

J. CHEE-HING  
MEMBER

## Appendix 'B'

### Proposed Modifications to OPA No 149 Resulting From OMB Mediation

#### **Modification 1:**

Delete the word "Hifgway" in Section 1.8 of Part II and replace it with the word "Highway" as shown below.

- 1.8 Section 1.1.3 c) of the Official Plan (Revised 1987) as amended, is hereby amended by adding a new bulleted item as follows: "Secondary Plan (PD 42-1) for the Highway 404 North Planning District (Official Plan Amendment No. 149)."

#### **Modification 2:**

Delete and replace certain section numbers referred to in Section 1.10 of Part II as follows, and as shown below:

- delete "9.2.27" and replace with "9.2.29"
- delete "9.2.26" and replace with "9.2.28"

- 1.10 Section 9 – SECONDARY PLANS of Part II of the Official Plan (Revised 1987) as amended, is hereby amended by inserting a new sub-section 9.2.29 immediately following sub-section 9.2.28 as follows:

"9.2.29. Secondary Plan PD 42-1 for the Highway 404 North Planning District (Official Plan Amendment No. 149)"

#### **Modification 3:**

Add subsection d) to section 5.2.2 of Part III as follows:

- "5.2.2 d) Development of lands designated "Business Park Area", in the vicinity of the Highway 404 full interchange may also be subject to the applicable provisions of Section 6.1.4."

#### **Modification 4:**

Delete Section 6.1.4 of Part III and replace it with a new section as follows:

"6.1.4 Highway 404 and 19<sup>th</sup> Avenue Arterial Road Full Interchange

- a) The following policies apply to lands identified for the interchange:

- i) The proposed full interchange is shown conceptually by a Transportation and Utilities designation on Schedule AA - Detailed Land Use and on Schedule 'BB' -Transportation;
- ii) Lands required for the full interchange shall be subject to determination through an Environmental Assessment. The configuration of the lands designated Transportation and Utilities on Schedule AA - Detailed Land Use and shown conceptually on Schedule 'BB' -Transportation may be



adjusted, once confirmed through the required Environmental Assessment, without further amendment to this Secondary Plan;

- iii) The Town shall require that sufficient lands, confirmed through the Environmental Assessment to accommodate the full interchange, shall be reserved through approval of development; and,
  - iv) Any lands, not identified through the Environmental Assessment as being required to accommodate the Highway 404 and 19th Avenue full interchange, shall automatically revert to the designation of Business Park Area and may be developed in accordance with the provisions of Section 5.2.2 and other relevant provisions of this Secondary Plan. No amendment to Schedule A - Land Use of the Official Plan or Schedule AA - Detailed Land Use of this Secondary Plan, shall be required to adjust the designations on these Schedules accordingly.
- b) Development of lands designated as Business Park Area, in the vicinity of the Highway 404 full interchange, may only receive development approval following determination of land and design requirements for the full interchange, or if the proponent of the development can demonstrate, to the satisfaction of the Province and the Town:
- that sufficient lands to accommodate the full interchange have been provided or reserved through the development approval process;
  - that development on adjacent lands will not compromise the potential for future construction of a full interchange at Highway 404 and 19<sup>th</sup> Avenue, and
  - to the satisfaction of the Town, that development approval preserves all of the following, to facilitate appropriate development of the lands designated as Transportation and Utilities on Schedule AA - Detailed Land Use (in the event these lands should not be required to accommodate a full interchange), in accordance with the land use provisions for the Business Park Area designation established in Section 5.2.2:
    - direct access from the proposed internal road system,
    - access to the proposed municipal servicing systems, including sanitary, water and stormwater systems, and,
    - sufficient design capacity within the proposed municipal servicing systems.”

