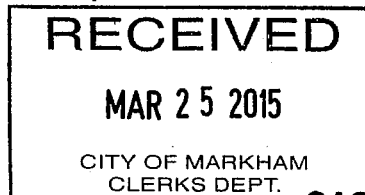


**Ontario Municipal Board**  
Commission des affaires municipales  
de l'Ontario



copy: Gary Sellar:

Legal  
Lucy

**ISSUE DATE:** March 23, 2015

**CASE NO(S):** PL140614

**PROCEEDING COMMENCED UNDER** subsection 22(7) of the *Planning Act*, R.S.O. 1990, c. P. 13, as amended

**Applicant and Appellant:**  
**Subject:**

King David Inc.  
Request to amend the Official Plan - Failure of the City of Markham to adopt the requested amendment

**Existing Designation:**

"Urban Residential" in the Official Plan and "Urban Residential – Medium Density" in the Cathedral Community Secondary Plan

**Proposed Designation:**

"Commercial" & "Community Amenity Area" in the Official Plan and "Cathedral Precinct" in the Cathedral Community Secondary Plan

**Purpose:**

To permit the Phase 1 (lands to the west of the Cathedral of the Transfiguration) development of two 4-storey buildings with a total of 206 residential units and 24 ground floor commercial units

**Property Address/Description:**

10340, 10350 & 10370 Woodbine Avenue

**Municipality:**

City of Markham

**Approval Authority File No.:**

OP 13 109102

**OMB Case No.:**

PL140614

**OMB File No.:**

PL140680

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

**Applicant and Appellant:**  
**Subject:**

King David Inc.  
Application to amend Zoning By-law No. 304-87, as amended (to delete lands from the designated area of By-law 304-87) and Zoning By-law No. 177-96, as amended (to incorporate lands into the designated area of By-law 177-96) - Refusal or neglect of City of Markham to make a decision

**Existing Zoning:**

"Agricultural (A1)" by By-law 304-87, as amended

Proposed Zoning: To incorporate the lands into the "Community Amenity Two" zone within By-law 177-96, as amended

Purpose: To permit the Phase 1 (lands to the west of the Cathedral of the Transfiguration) development of two 4-storey buildings with a total of 206 residential units and 24 ground floor commercial units

Property Address/Description: 10340, 10350 & 10370 Woodbine Avenue

Municipality: City of Markham

Municipal File No.: ZA 13 109102

OMB Case No.: PL140614

OMB File No.: PL140681

**PROCEEDING COMMENCED UNDER** subsection 51(34) of the *Planning Act*, R.S.O. 1990, c. P. 13, as amended

Applicant and Appellant: King David Inc.

Subject: Proposed Plan of Subdivision - Failure of the City of Markham to make a decision

Purpose: To permit the Phase 1 (lands to the west of the Cathedral of the Transfiguration) development of two 4-storey buildings with a total of 206 residential units and 24 ground floor commercial units

Property Address/Description: 10340, 10350 & 10370 Woodbine Avenue

Municipality: City of Markham

Municipal File No.: SU 13 109102

OMB Case No.: PL140614

OMB File No.: PL140682

Heard: March 9 and 10, 2015 in Markham, Ontario

## **APPEARANCES:**

### **Parties**

King David Inc.

City of Markham

### **Counsel**

Michael Melling and Meaghan McDermid

Steven Ferri

**DECISION DELIVERED BY J. de P. SEABORN AND ORDER OF THE BOARD**

## INTRODUCTION

[1] King David Inc. ("Applicant") has appealed the failure of the City of Markham ("City") Council to make a decision in connection with a proposed Official Plan Amendment ("OPA"), Zoning By-law Amendment ("By-law"), draft plan of subdivision and site plan. The City appeared and requested that the application be denied. Alternatively, the City requested that the appeals be adjourned or the decision on Phase 1 be reserved, pending certain reviews or, in the further alternative, it recommended that any approval should be subject to several conditions. The Applicant did not oppose the conditions for the draft plan of subdivision, subject to one additional condition (Exhibit 14) that was subsequently revised, resolved and recommended on consent (Exhibit 19).

[2] The City did not call any expert evidence and there were no other parties. Participants who testified in opposition to the appeals included: Bishop John Pazak; Tammy Armes, on behalf of the Cathedral Town Ratepayers Association; Mayrose Gregorios; Wing Liu; Ria Jayaram; and Wilfred Yu.

## EVIDENCE AND FINDINGS

[3] Robert Forhan, qualified to provide opinion evidence in the discipline of land use planning, described the applications, revisions made to them by the Applicant, the review undertaken by City staff and the basis for his recommendation that the appeals be allowed in part and that a further pre-hearing conference be convened to address Phase 2 and 3 of the development project. Other than the participants, there were no other witnesses.

[4] By way of background, the Applicant is the owner of 8 hectares ("ha") of land bounded by Donald Buttress Boulevard and Pope John Paul II Square to the south, Woodbine Avenue to the east and Anthony Roman Avenue to the north. The Cathedral of the Transfiguration ("Cathedral") is situated in the middle of the lands, a temporary

sales office is located near the northeast corner, and the remainder of the lands are vacant. Townhouses and a four-storey apartment building are being constructed to the north of the site and a stormwater management pond, the Carlton Creek valley and a park are to the northeast of the lands. To the west is Cathedral High Street where mixed commercial and residential units are under construction and to the south are townhouse, single-detached and semi-detached homes.

[5] The Applicant intends to develop its lands (in three phases) with mixed residential and commercial development and a place of worship (part of Phase 2). Phase 1 relates to the development of Blocks 1, 2 and 3 with mixed use commercial/residential and a public roadway. Phase 2 relates to several additional Blocks, including development of the Cathedral and Phase 3 relates to the most easterly portion of the site, adjacent to Woodbine Avenue and south of what is shown on the draft plan (Exhibit 2.1, Tab 16) as the "proposed lake".

[6] The OPA, By-law and subdivision application were deemed complete in July 2013 and each are appealed on the basis that no notice of decision has been given by the City. Mr. Forhan testified that following several public information meetings with local residents and based on extensive consultation with City staff, the application was revised to remove from the proposal any increase in height and density. As a result the revised proposal respects the existing limits on density at 2.0 floor space index ("fsi") and heights generally between four and six storeys. The revised proposal also takes into account and incorporates several other comments made by the various reviewing agencies. As a result, detailed conditions are proposed.

[7] City staff prepared a Recommendation Report, June 16, 2014 ("Staff Report") for consideration by the Development Services Committee. The Staff Report recommended approval of the revised application submitted by the Applicant to amend the in-force Official Plan ("OP") and the Cathedral Community Secondary Plan and to amend the City's new adopted OP for Phase 1 of the draft plan of subdivision (Exhibit 2.1, Tab 22). There were several other recommendations, each of which contemplated approval of

the development project and approval of the planning instruments under appeal, subject to phasing and a series of conditions. The Staff Report said, among other things, that development "within the Cathedral Precinct is expected to maintain the prominence and visibility of the Cathedral. The development of these lands will provide a focal point for the Cathedral community and ensure that it is a complete community with services for its residents. The design principles for the Cathedral Precinct are outlined in the Community Design Plan approved by the City in 2004" (Exhibit 2.1, Tab 22, pp. 283-284).

[8] The matter went to City Council on June 24, 2014 and no decision was made and the matter was deferred, thereby prompting the appeals. According to the minutes from the September 23 and 24, 2014 meeting, Council received a confidential report (legal advice) and the City Solicitor (or her delegate) was directed to attend the hearing to oppose the Applicant's appeals.

[9] As indicated at the outset, the City did not call any evidence. Nevertheless, the position taken at the hearing was that the applications are deficient insofar as certain studies should be completed. Specifically, it was the submission of the City that an approval, even of Phase 1, is premature pending further review of the traffic study followed by the filing of a comprehensive community design plan.

[10] The issues raised by the participants were largely related to parking, traffic, over-intensification, the adequacy of parks and open space in the community generally and the status of the "proposed lake". Dealing first with parking, the main concern from several witnesses was the potential for spill-over parking within the community once the Cathedral is in use. With respect to Phase 1, the parking will be largely underground and parking (and general traffic issues) associated with the Cathedral will be addressed in later phases of the hearing. On the matter of the "proposed lake" Ms. Armes, testifying as a representative of the local resident's association, indicated that the promise of a lake adjacent to the community is long overdue. While she is not opposed to the development concept, her concern is that the promise of a proposed lake should

be secured prior to any approval of the planning instruments required to move forward with Phase 1 of the project. Ms. Armes indicated that any approval is premature. Ms. Jayaram testified that there was a lack of parkland in the community. It was her view that the children in the area require more open space and including, among other amenities, a better soccer field. Her testimony was well organized and presented forcefully. While additional parks and/or plans to upgrade existing facilities would be a positive contribution to the community, in the context of this development application, landscaping, park and open space requirements have been addressed. Plans going forward in future phases with respect to the proposed lake (which is City owned land) should assist and no doubt the City has noted the concerns of the residents with respect to completing existing parks and providing for more open space in the Cathedral community generally. Ms. Liu provided a detailed submission and explained that any development going forward must correct "errors" from the past and that any approval for the development is premature. Traffic and intensification are each issues that require further resolution. Ms. Gregorios also testified that intensification was problematic for the Cathedral area and there is too much on-street parking and traffic in the area generally. The testimony of the residents provided a useful context within which to evaluate the appeals, as set out below.

[11] Mr. Forhan's opinion was that each of the planning instruments under appeal should be approved. I adopt and rely upon his opinion and find that the appeals should be allowed. The OPA re-designates the lands from Urban Residential to Commercial in the City's OP and also re-designates the lands to Cathedral Precinct in the Cathedral Community Secondary Plan, established by OPA 42. OPA 42 was amended by OPA 123 and therefore the lands are currently designated Cathedral Precinct and Urban Residential Medium Density. The By-law (which amends two existing City by-laws) includes both permitted and prohibited uses and special site provisions which set out clear and detailed development standards. The By-law amendment was also recommended by staff. The draft plan of subdivision identifies each block and associated land use and confirms the public road pattern roadways. The Staff Report stated that draft "plan approval of the subdivision will allow the City to tie the completion

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of certain works and studies, including the re-design of the stormwater management pond/lake, with the release of future Phase 2 and 3 lands. The plan of subdivision can be draft approved at this time, and does not predetermine density or zoning details for Phases 2 and 3. Likewise, proceeding with Phase 1 OPA and Zoning at this time does not pre-empt the City's consideration of Phases 2 and 3, in consultation with area residents" (Exhibit 2.1, Tab 22, p. 285). Mr. Forhan's evidence, which I rely upon, was consistent with the position of staff. The City was supportive (as alternative relief) of the conditions agreed upon between the Applicant and staff. I accept Mr. Forhan's planning opinion that the conditions are appropriate and should be approved. Similarly, the site plan provides a sufficient level of detail to proceed with the project. On this basis, the planning instruments under appeal are approved, as described in the decision and order set out below.

[12] With respect to the relief requested by Mr. Ferri, there was no evidence called to substantiate the necessity for a further traffic study or the preparation of what would be an additional community design plan. On these matters, I accept the opinion of Mr. Forhan that a parking solution for Phase 1 has been accepted by City staff and the details surrounding parking for Phases 2 and 3 will be addressed when those approvals go forward. The parking for all proposed uses for Phase 1 will be underground and the Cathedral's parking requirements will be delineated as part of Phase 2. City staff had already reported that a more comprehensive parking study\strategy will be required prior to the approval of Phase 2, as a condition of draft plan approval, to address appropriate timing, phasing location and supply of parking for retail and residential uses. The parking strategy for Phase 1 does not affect the parking for the Cathedral. On this basis, a further traffic study, as it relates to Phase 1, is not required. A Cathedral Community Concept Plan is already in place and sets out the key elements of the Community Design Plan (2005, amended 2009). In this regard Mr. Forhan referred to the applicable policies, including the criteria for development and guiding principles. An update, if any, will form part of Phases 2 and 3 of the Applicant's project. With respect to the issues raised by the participants, some of their concerns will either be resolved in later phases of the development or are in fact addressed in the detailed conditions. In

particular, the matter of the proposed lake is now resolved as between the City and the Applicant and the plan going forward as set out in the revised condition appears to substantially address the concern raised by the residents in this regard. On the matter of the availability of parkland in the area, no doubt the City is aware of the concerns raised by the residents, which is unrelated to the approval sought by this Applicant.

[13] In arriving at this decision I have had regard to the matters of provincial interest set out in s. 2 of the *Planning Act* ("Act") and I find that the planning instruments are consistent with the Provincial Policy Statement ("PPS") and conform to all applicable provincial plans, as required under s. 3(5) of the Act. In this regard, Mr. Forhan reviewed the relevant provincial policy context and I adopt his analyses and opinions. As indicated at the outset, the Applicant's appeals were made because no notice of decision had been given. Council subsequently directed the City Solicitor to appear at the hearing and oppose the appeals. Mr. Ferri argued that this "direction" is a decision that I must have regard to. In my view, it is clear that Council did not make a decision, *per se*, on the appeals and as a result s. 2.1(a) of the Act is not triggered. Council did, however, direct that the appeals be opposed and I have taken into account that direction. In this instance, that opposition did not include any evidence offering a contrary opinion to that provided by Mr. Forhan. While the lack of a contrary opinion is not determinative of the matter, I find that Mr. Forhan's testimony was thorough and compelling. The best evidence from the City addressing the substance of the appeals is found in the Staff Report, referred to above, which recommended approval of the planning instruments, subject to detailed conditions. These conditions were developed by staff and the Applicant, with input from all relevant agencies and I find that they should be adopted and approved. The wording of an additional condition (Exhibit 14) proposed by Mr. Ferri to address construction of the proposed lake was resolved during the course of the hearing and Mr. Melling agreed that the revised wording (Exhibit 19) should be incorporated as part of the draft plan conditions (Exhibit 2.1, Tab 17). The cooperation between Mr. Ferri and Mr. Melling on this matter was helpful and the condition agreed upon is as follows:

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*Prior to final approval of Phase 2 of the draft plan, the Owner shall submit detailed engineering drawings prepared by a qualified consultant for the construction of the proposed lake with a fountain feature or enhanced landscape for the stormwater management pond (E3) (subject to the approvals from the City of Markham, the Toronto and Region Conservation Authority, and other applicable agencies having jurisdiction) and overland routes to the satisfaction of the City. Should the construction of the proposed lake with a fountain feature or enhanced landscape for the stormwater management pond be approved by the City and applicable external agencies, the Owner shall construct the proposed lake with a fountain feature or enhanced landscape for the stormwater management pond with the construction of Phase 2 of the draft plan (Exhibit 19).*

## **DECISION AND ORDER**

[14] The Board's decision and order is as follows:

1. The appeal is allowed in part and the proposed OPA (Phase 1) is approved in accordance with Exhibit 2.1, Tab 14. The balance of the appeal is adjourned to a further pre-hearing, to be arranged by counsel, and convened in late spring or early summer, 2015.
2. The appeal is allowed in part and the proposed By-law amendment (to By-law No. 304-87 and By-law No. 177-96) is approved in accordance with Exhibit 2.1, Tab 15. The balance of the appeal is adjourned to the further pre-hearing conference.
3. The appeal is allowed and the proposed plan of subdivision is approved in accordance with Exhibit 2.1, Tab 16 including the conditions set out at Tab 17, subject to the replacement of condition 9.2 with Exhibit 19.
4. The appeal is allowed and the site plan for Phase 1 and the applicable drawings are approved as set out in Exhibit 2.1, Tab 13.

[15] Counsel should contact the Case Coordinator to arrange for a further pre-hearing. I will continue to case manage the appeals, subject to the constraints of the Board's calendar.

*"J. de P. Seaborn"*

J. de P. SEABORN  
VICE-CHAIR

**Ontario Municipal Board**

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