

Ontario
Municipal
Board

Commission des
affaires municipales
de l'Ontario

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VIA FACSIMILE

June 10, 2010

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Dear Mr. Beaman and Mr. Miller:

**Re: Section 43 Request for Review
Decision of James R. McKenzie, Issued March 16, 2010
OMB Case No. PL020446**

The Board is in receipt of two Requests for Review (the "Requests") of the Decision issued by Vice-Chair James McKenzie on March 16, 2010, in OMB case number PL020446 (the "Decision"). The Requests are filed by legal counsel representing the Town of Richmond Hill and the Region of York. Both municipalities (upper tier and lower tier) rely upon the same grounds in their Requests which they have copied to each other. This disposition is the Board's response to both Requests.

Rules 110 to 119, inclusive, of the Board's *Rules of Practice and Procedure* (the "Rules") set out the process whereby the Board may review a decision. A review request will not be successful if it is an attempt to reargue the merits of an appeal. Rule 115 sets out that the Board will review a decision only if there is a "convincing and compelling" case that the Board acted outside its jurisdiction, violated the rules of natural justice, made an error of law or fact such that the Board would likely have reached a different result, or heard false or misleading evidence from a party or witness that was discovered after the hearing and could have affected the result. The Board strives for finality in its decisions and requires very good reasons for granting a request.

The grounds raised in the Requests are twofold. The Requests assert that the Vice-Chair misapprehended the evidence of Mr. Grimes and misapprehended the implications of preferring the evidence of Mr. Grimes over that of Mr. Simpson. Mr. Grimes testified on behalf of the landowners and Mr. Simpson provided evidence on behalf of the Requestors. Both witnesses testified on the subject of market analysis, to address the issue as to whether there is a need for additional Employment lands, over

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and above what is currently designated in the Town's Official Plan. This evidence was directed to issues number 1 and 9, listed on page 8 of the Decision.

Neither Request specifically references Rule 115. However, the content of each Request is clearly premised on the relief that may be exercised by the Chair or his/her designate, pursuant to Rule 115.01 (c).

I have determined that the Requests do not meet the threshold set out in Rule 115.01 to warrant a review of the Decision. The Requests do not present a "convincing and compelling" case to establish that the Vice-Chair erred in fact or in law, such that it is likely that this Board would reach a different decision.

The Board heard evidence from nine witnesses that addressed three subject areas: market analysis, urban design and land use planning. The Requests are directed to the findings and conclusions arrived at by the Vice-Chair, in respect of the market evidence. The Requests fail to acknowledge that the determination by the Board, as to the appropriate designation on the Review Lands, considered a wide array of factors within the subject areas of market analysis (the need for Residential and Employment land), urban design and land use planning. This is evident from the entirety of the Decision, and in particular the summary comments found at the top of page 27. The Vice-Chair references the unique features of these Review Lands and concludes that in this particular circumstance, their proximity to a 400 series highway does not support an Employment Land designation. The first full paragraph on this page, that summarizes the evidence, serves to illustrate this point:

"The fragmentation of developable lands by intervening natural heritage features and the Greenbelt, discontinuities in the land use pattern along this section of Highway 404; land characteristics and other factors militating against efficient lot configuration and road patterning, and significantly higher development costs for employment uses associated therewith: all are factors that have persuaded the Board that the Review Lands are not suitable for an Employment designation despite being proximate to the Highway 404 corridor. Equally compelling was Mr. Sorenson's opinion that the Review Lands, if designated for Employment purposes, would likely not be taken up for development within the planning period to 2031 given their shortcomings and the availability of other more attractive Employment lands in Richmond Hill".

This quote illustrates that the evidence on market analysis was just one factor in support of the Employment Land designation that was relied upon as a basis for the Decision. The Vice-Chair also relied upon the evidence presented on urban design and the site specific planning analysis. These factors take into account important considerations that stand apart from or are distinct from the issue of whether there is a "need" for additional Employment lands. Mr. Simpson also raised the concern that the appropriate designation of the Review Lands is to be determined by planning principles, and not strictly by a mathematical exercise. The Decision takes this into account by assessing a wide array of design and planning considerations.

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Another important consideration in the analysis of the appropriate designation of the Review Lands is the appropriate planning period or the Official Plan horizon. It is noted on page 10 of the Decision that the Region's Official Plan does not contain population or employment forecasts for the Town of Richmond Hill. Mr. Grimes and Mr. Simpson addressed this fact, (which the Vice-Chair referred to as a "vacuum") by agreeing to an employment forecast number for Richmond Hill of 100,600 persons over a period extending to year 2031. Mr. Grimes undertook an employment forecast to the year 2031 and testified that 100,600 jobs are "very achievable" on lands currently designated Employment Lands in Richmond Hill. He concluded that no additional Employment designated lands are needed in the Town to the year 2031. The Requests assert that even if this evidence is accepted, that it should not follow that no additional Employment Lands are needed. However, the Requests are silent on the significance of the agreed 2031 horizon to undertake this land needs forecast. The Requests also ignore the Board's findings on Residential lands over this period. Employment projections are interrelated to the plan horizon and the assessment of the need for Residential land supply. In the absence of this corresponding analysis, I have no basis to exercise my discretion pursuant to Rule 115.01 or to conclude that there is a misapprehension of evidence sufficient to warrant a review.

I have concluded that the grounds for the Requests attempt to reargue issues that were thoroughly canvassed at the hearing. The Board heard extensive evidence from both Mr. Grimes and Mr. Simpson. The Board preferred the evidence of Mr. Grimes, and his application of the market forecast methodology. The Board also noted that for the most part, Mr. Simpson agreed to the application of the market forecast methodology by Mr. Grimes. The differences in opinion on this subject are thoroughly canvassed on pages 37 to 39 of the Decision. The Board found that there are "very few things about which he (Mr. Simpson) and Mr. Grimes disagreed" (Decision page 37). The Requests only address a component of the evidence of land supply analysis although the Decision recognizes the substantial agreement of the witnesses on the forecast methodology.

At the hearing of an appeal the Board is required to make independent findings based on the evidence presented. I have no basis to conclude that the Vice-Chair misapprehended the evidence, based on the grounds advanced in the Requests. For all of the reasons set out above, I have determined that the Requests fail to establish a convincing and compelling case to warrant a motion for review or a rehearing. Accordingly, this Decision remains in force and effect.

Yours truly,



S. Wilson Lee
Executive Vice-Chair