

From: Cam Milani
To: Waller, John; '
Cc: Jeffrey, Barb
Sent: Fri Jun 11 16:29:07 2010
Subject: Regional OP

Dear Ms Jeffrey and Mr. Waller,

I write further to your letter of June 8, 2009 and our subsequent response stating that we disagree with your positions as outlined, this is to further confirm our positions regarding your Official Plan.

First and foremost, as stated in our email of April 7, 2009, we are currently before the OMB/Courts regarding Map 7 (Aggregate Designations) to your official Plan as well as other Regional Official Plan designations on the lands in the attached mapping. As stated by the OMB in the attached decisions, the Oak Ridges Moraine Plan does not apply to our appeals/deferrals or referrals. Those include our appeal of Map 7, which is accurately reflected in the attached former map of Map 7, but not the new attached map of Map 7. At the very least, the current proposed map should show all of our lands as Mineral Aggregate Resource Area in the exact same manner as the map in the existing ROP.

I would like to point out the decision of the OMB in that our matters are transitional under section 15(3) of the Act and are therefore not subject to the Plan (decision attached), while your Leave to Appeal is subject to a deferral order of the Minister, the OMB decision has not been overturned.

Further, we would again like to reiterate our position as stated in the April 7, 2009 email that we object to any more restrictive policies under your new Official Plan that would serve to either complicate or restrict any aggregate uses on all of our lands or our current appeals/referrals/deferrals before the OMB/Courts.

We are currently in without prejudice settlement discussion, regarding our lands in the attached mapping and would suggest that all of our lands be placed in a Special Policy area whereby none of the current processes or policies regarding the Regional Official Plan Review would apply pending either a settlement resolution of the matters or an OMB/Court determination of the matters. Our OMB/Court matters should not be further complicated or prejudiced by the Regional Official Plan Review that you are undertaking.

Yours Truly,
Cam Milani
Rizmi Holdings Limited

ISSUE DATE:

May 6, 2003

DECISION/ORDER NO:

0581



Ontario Municipal Board

Commission des affaires municipales de l'Ontario

PL010732

PL001029

PL957073

Rizmi Holdings Limited and Lucia Milani have appealed to the Ontario Municipal Board under subsection 17 (36) of the *Planning Act*, R.S.O. 1990, c.P. 13, as amended, from a decision of the Regional Municipality of York to further approve those portions of proposed Amendment No. 600 to the Official Plan for the City of Vaughan located on the Oak Ridges Moraine
O.M.B. File No. O020094

Rizmi Holdings Limited has appealed to the Ontario Municipal Board under subsection 34 (19) of the *Planning Act*, R.S.O. 1990, c.P. 13, against Zoning By-Law 327-2000 of the City of Vaughan
O.M.B. File No. R000232

The Minister of Natural Resources has referred to the Ontario Municipal Board under subsection 11 (5) of the *Aggregate Resources Act*, R.S.O. 1990, c.A. 8, as amended, an application for a Class A Licence for the removal of aggregate from lands being composed of Part of Lot 30, Concession 2, in the City of Vaughan
O.M.B. File No. M020096

At the request of Lucia Milani, Lucia Milani In Trust, and Rizmi Holdings, the Honourable Minister of Municipal Affairs has referred to the Ontario Municipal Board under subsection 17(11) of the *Planning Act*, R.S.O. 1990, c. P.13, a portion of the York Region Official Plan, specifically those lands identified as Referral "C" on Maps 2 and 4 and the same portion of Maps 3 and 7 and Sections 2.1, 2.2 and 5.0, insofar as the relate to these lands
Ministry's File No. 19-OP-1994
O.M.B. File No. O 960161

APPEARANCES:

Parties

City of Vaughan

Regional Municipality of York

Toronto Region Conservation Authority

Rizmi Holdings Limited and Lucia Milani

Maple Downs Golf and Country Club
Limited

Counsel*/Agents

N. J. Pepino*
T. Halinski*

C. Grant*

J. Matera*

P. Van Loan*
A. Jeanrie*
C. Butler (student at law)

B. Horosko *

Woodland Acres Ratepayer Association
Group

D. Abrahams

L. Grimaldi

Maplewood Ravines Community
Association

DECISION DELIVERED BY M. F. V. EGER AND ORDER OF THE BOARD

Prehearing Matters

The Board has held two prehearing conferences on this matter and a hearing is scheduled to commence on August 5, 2003 for four (4) weeks. April 28 and 29th were scheduled to consider motions on any preliminary matters and to finalize the issue and witness lists of the parties, as well as the final procedural order.

At this prehearing the Woodland Acres Ratepayers Association Group requested a change from participant to party status. This request was granted. Mr. Grimaldi represents the Maplewood Ravines Community Association and requested party status. The Association is currently unincorporated but intends to become incorporated. The Board granted the Association party status subject to proof of incorporation being filed with the Board and other parties.

Representatives for the two participants were also in attendance – D. Izzard for Storm Coalition Inc. and M. Iafrate for Vaughan C.A.R.E.S.

As the Board's decision on the motion brought by the City, the Region and the Conservation Authority would affect the issues to be dealt with in the prehearing, the remainder of the prehearing was adjourned.

However, based on the Board's decision on the motion –

THE NEXT PREHEARING IS SCHEDULED TO COMMENCE AT 10:30 A.M. ON TUESDAY, JUNE 10, 2003 IN THE COUNCIL CHAMBERS, MUNICIPAL BUILDING 2141 MAJOR MACKENZIE DRIVE, VAUGHAN. NO FURTHER NOTICE WILL ISSUE EXCEPT AS NOTED WITH RESPECT TO REFERRAL 'C' OF THE YORK REGIONAL OFFICIAL PLAN.

COUNSEL FOR THE REGION OF YORK IS TO ENSURE THAT NOTICE IS GIVEN THAT THE BOARD WILL BE CONSIDERING THE REFERRAL 'C' MATTER

AT THE NEXT PREHEARING. NOTICE IS TO BE GIVEN IN ACCORDANCE WITH THE BOARD'S DIRECTIONS TO THE REGION DATED APRIL 4, 2003.

Motion

The City of Vaughan, The Regional Municipality of York and the Toronto and Region Conservation Authority have brought a motion for:

1. an Order of the Board determining that the *Oak Ridges Moraine Conservation Act*, S.O. 2001, c.31 and the Oak Ridges Conservation Plan, enacted by O.Reg. 140/02 apply to the matters before the Board; and
2. an Order dismissing the appeal of Zoning By-law No. 327-2000 of the City of Vaughan or, in the alternative, adjourning the matter *sine die*.

The motion is not granted and the matter is to proceed to a further prehearing where the issues list, witness lists and procedural details will be finalized. However in light of issues raised during the hearing and in the interests of fair and efficient process, the Board requests the parties to consider and make submissions at the next prehearing on a hearing process phased as follows. The first phase would determine the appropriate official plan designations and policies at the local and regional level and the zoning for the subject lands. If the Board allows all or part of Rizmi Holdings Limited appeal against Zoning By-law 327-2000 of the City of Vaughan, and the effect of that decision would permit aggregate extraction on the Rizmi lands, the hearing would then proceed to a further phase to determine details of the license application.

Rizmi Holdings Limited and Lucia Milani (Rizmi) own approximately 350 acres of land located between Dufferin and Bathurst Streets, north of Teston Road in the City of Vaughan. The lands are situated on the Oak Ridges Moraine.

The matters before the Board relate to a portion of these lands, about 100 acres, specifically the west half of Lot 30, Concession 2. At one time a portion of these lands were used for the extraction of aggregate, but this activity ended prior to Rizmi's ownership of the lands in 1979. Since 1991, Rizmi has used the lands for recycling concrete/asphalt to produce granular products for the construction industry. In September 1998, Rizmi made an application for a Class A License under the *Aggregate Resources Act*. The Ministry of Natural Resources referred the Aggregate Application

to the Board in September 2002 for a determination of all issues raised by objectors. This matter was consolidated with other matters before the Board, including a referral request by Rizmi of a portion of the York Region Official Plan and appeals by Rizmi of proposed Amendment No. 600 to the Official Plan for the City of Vaughan and Zoning By-law 327-2000 of the City of Vaughan.

There is a considerable planning, land use and legal history to these lands, fully detailed in the motion records, which the Board does not intend to repeat here. However, it is clear that since 1975, the approved Official Plan designations on the Rizmi lands have not permitted aggregate extraction uses, but the existing zoning permits aggregate uses. The City is seeking, through By-law 327-2000 to bring the "anomalous" zoning into conformity with the designation in their Official Plan. That history also documents Rizmi's reliance on the existing M4- Pit and Quarry Industrial zone, which has been in place since the 1960's, to undertake the concrete/asphalt recycling operation activities and in the future, an aggregate operation. Subsection 12.1 (1) of the *Aggregate Resources Act* stipulates that:

No license shall be issued for a pit or quarry if a zoning by-law prohibits the site from being used for the making, establishment or operation of pits and quarries.

The motion was argued on the basis that as a result of the coming into force of the *Oak Ridges Moraine Conservation Act* (the "Act"), and the enactment of the Oak Ridges Moraine Conservation Plan (the "Plan") aggregate extraction operations on a substantial portion of the Rizmi lands are prohibited and cannot be granted a license. The Plan indicates that the area which is subject to the application under the *Aggregate Resources Act* is designated as Natural Core, in part, and Countryside Area, in part. Subsection 11(3) of the Plan indicates that aggregate operations are not permitted in Natural Core Areas. Further, subsection 6(3) restricts an existing mineral aggregate operation or wayside pit within a Natural Core Area from expanding beyond the boundary of the area currently under license or permit and although aggregate extraction is permitted in the Countryside Areas, it is to strict regulation under the Plan. It was argued that these provisions in the Plan would prevent an aggregate use on the Rizmi lands.

The Oak Ridges Moraine Conservation Plan was established, by regulation, pursuant to subsection 3 (1) of the *Oak Ridges Moraine Conservation Act*. Subsection 7 (1) of this Act requires that decisions made under the *Planning Act* or the

Condominium Act, 1998 conform to the Plan. An application under the *Aggregates Resources Act* is not a decision under either the *Planning Act* or the *Condominium Act, 1998*, and the Plan does not directly apply to such applications. However, the parties agree that because the *Aggregates Resources Act* prohibits the issuance of a license where the zoning does not allow the aggregate resources use, the *Oak Ridges Moraine Conservation Act* and Plan do have an indirect impact on the subject license request.

Under Subsection 15(3) of the Act, outstanding applications, matters or proceedings commenced before November 17, 2001, if a decision has been made in respect of the application, matter or proceeding before that date, are not subject to Subsection 7(1). All the *Planning Act* matters before the Board meet the requirements of Subsection 15(3). Rizmi's position in response to the motion is that the discussion should end there and the Board process should continue. Counsel for the City and other moving parties disagree.

Section 8 of the Act states that, despite any other Act, the Oak Ridges Moraine Conservation Plan prevails in the event of a conflict with the Plan and an official plan amendment, a zoning by-law, or a policy statement issued under Section 3 of the *Planning Act*. The moving parties rely on the fact that there is no provision in the Act or Plan which grants transitional status or an exemption from Section 8 of the Act in concluding that Section 8 "guarantees the paramountcy of the Plan over all inconsistent zoning, official plan policies and Provincial Policy Statement policies" and "by providing transitional rules with respect to the application of s.7 but not s.8, the Legislature's intent to have s.8 apply immediately upon the ORM Act coming into force is clear". The Board does not agree.

The Act is organized into two parts. Sections 3 to 14 fall under the heading the Oak Ridges Moraine Conservation Plan. These sections include directions related to the Plan's establishment, objectives, contents, effect of the Plan, the process for bringing municipal official plans and zoning by-laws into conformity with the Plan and amendments to the Plan. Sections 15 to 25 are under the heading, Transitional Provisions, Regulations and Miscellaneous. Under the subheading Transition, application of s. 7, Section 15 provides guidance as to the applicability of Section 7 based on the status of applications in the planning process. The plain reading of the Act is that applications well into the planning process, before November 17, 2001, would be permitted to continue to completion and not strictly conform to the Plan. The Board

agrees with counsel for Rizmi when he says "the interpretation of section 8 of the Act provided by the Moving Party would have the effect of rendering section 15 of the Act without meaning. There is no need to have transition provisions exempting the need for conformity with the Plan for an application, matter or proceeding commenced before November 17, 2001 if the zoning of a property has already been amended and frozen by the implementation of the Plan through section 8 of the Act".

The Act also provides for a "conformity process". It sets out a tight timeline and process for municipalities to amend their official plans and zoning by-laws to implement the Plan. City of Vaughan Council has endorsed a timeline for this amendment process and anticipates adoption of the required Official Plan Amendment and enactment of the Zoning By-law Amendment in June 2003. Notice has already issued for a May 5, 2003 public hearing regarding the proposed amendments to bring the City's Official Plan and Zoning By-law into conformity with the Oak Ridges Moraine Conservation Plan. The Region of York has already adopted an amendment to its Official Plan to bring it into conformity with the Plan. Notice of adoption of Amendment 41 to the Official Plan for the Region of York issued on March 31, 2003. It is the position of the moving parties that these amendments, because they must be in conformity with the Plan which designates the subject lands Natural Core Area and Countryside Area will preclude aggregate extraction operations on at least the Natural Core Area designated portion of the subject lands.

By-law No. 327-2000 proposes to rezone the subject lands from M4-Pit and Quarry Industrial Zone to OS1 Open Space Conservation Zone and A Agricultural Zone. The OS1 Zone would permit conservation projects and forestry projects. The A Zone would permit agricultural, residential, home occupation, recreational, commercial, cottage industries, wayside pit and quarry uses. The moving parties submit that this zoning would conform to the Plan and because of the "imminent" enactment of the City's conformity instruments, Rizmi's appeal of By-law 327-2000 is moot and ought to be dismissed or adjourned *sine die*. The Board agrees that the timeframe in which the Rizmi matters have taken to come to hearing before the Board against the Act's directives with respect to conformity with the Plan are a frustration for the moving parties. But the Oak Ridges Moraine process itself caused the situation as all applications before the Board were required to be held until the Act and Plan were finalized. The Board finds that on a plain reading of the Act, Rizmi falls within the transition provisions and is entitled to a full and fair hearing of its appeals and referral.

While the Minister of Municipal Affairs and Housing is the approval authority for conformity instruments, the Act provides a process to resolve conflicts and includes the ability for the Minister to confer with persons or a public body who the Minister considers may have an interest in the proposed official plan and zoning by-law amendments. This would include the Minister considering a Board decision on a matter that falls squarely within the transition provisions of the Act.

The hearing should proceed as scheduled. The Ministry of Natural Resources' referral letter with respect to the application for license under the *Aggregate Resources Act*, states that-

Should the rezoning of the subject property be upheld by the Board, the implications of such on the *Aggregate Resources Act* application in general and the proposed rehabilitation end use of the proposed pit, would have to be examined.

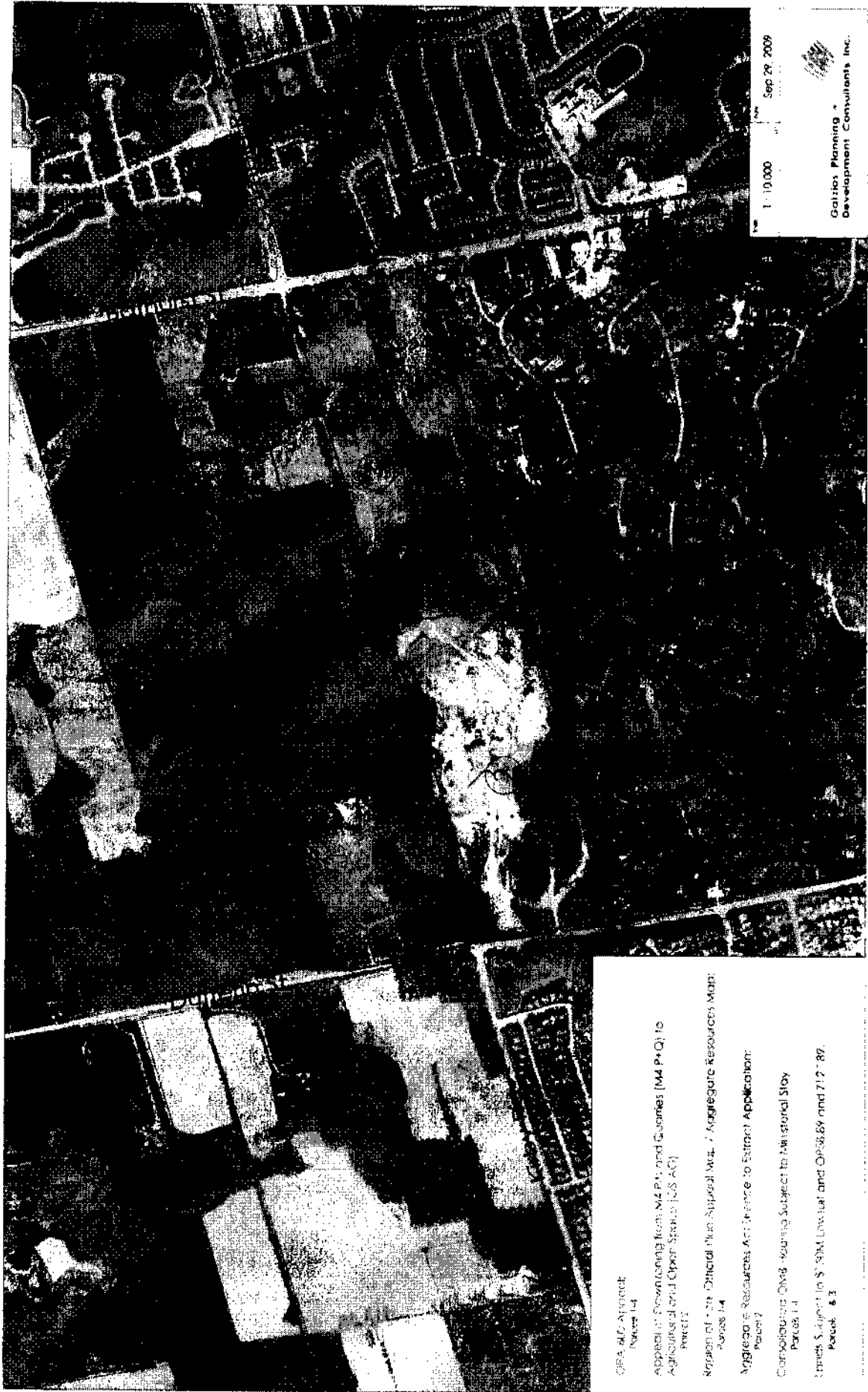
The Board agrees. For this reason, consideration should be given to the hearing proceeding in phases. Phase 1 could determine whether mineral extraction uses are appropriate on any portion of the subject lands. If the Board finds that they are not then as noted above, the *Aggregate Resources Act* would prohibit the issuance of a license. If the Board finds that there is a basis upon which to permit the mineral extractive uses, Phase 2 would determine detailed issues related to the license.

The motion is not granted. This matter is to proceed to prehearing to finalize the procedural order.

I will continue to case manage this matter but am not seized of the hearing.

So orders the Board.

M. F. V. EGER
VICE-CHAIR



1:10,000 Sep 28, 2009

Gallos Planning &
Development Consultants Inc.

CPA AG: A111111
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Appendix 1: Townships from M4 P1, and Guemes (M4 P1 Q) to
Aggregated and Open Space (US AG)

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Region of 1:28 Official Plan Approval Map 1 Aggregate Resources Map:

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Aggregate Resources Act Reference to Extract Application:

Page 12

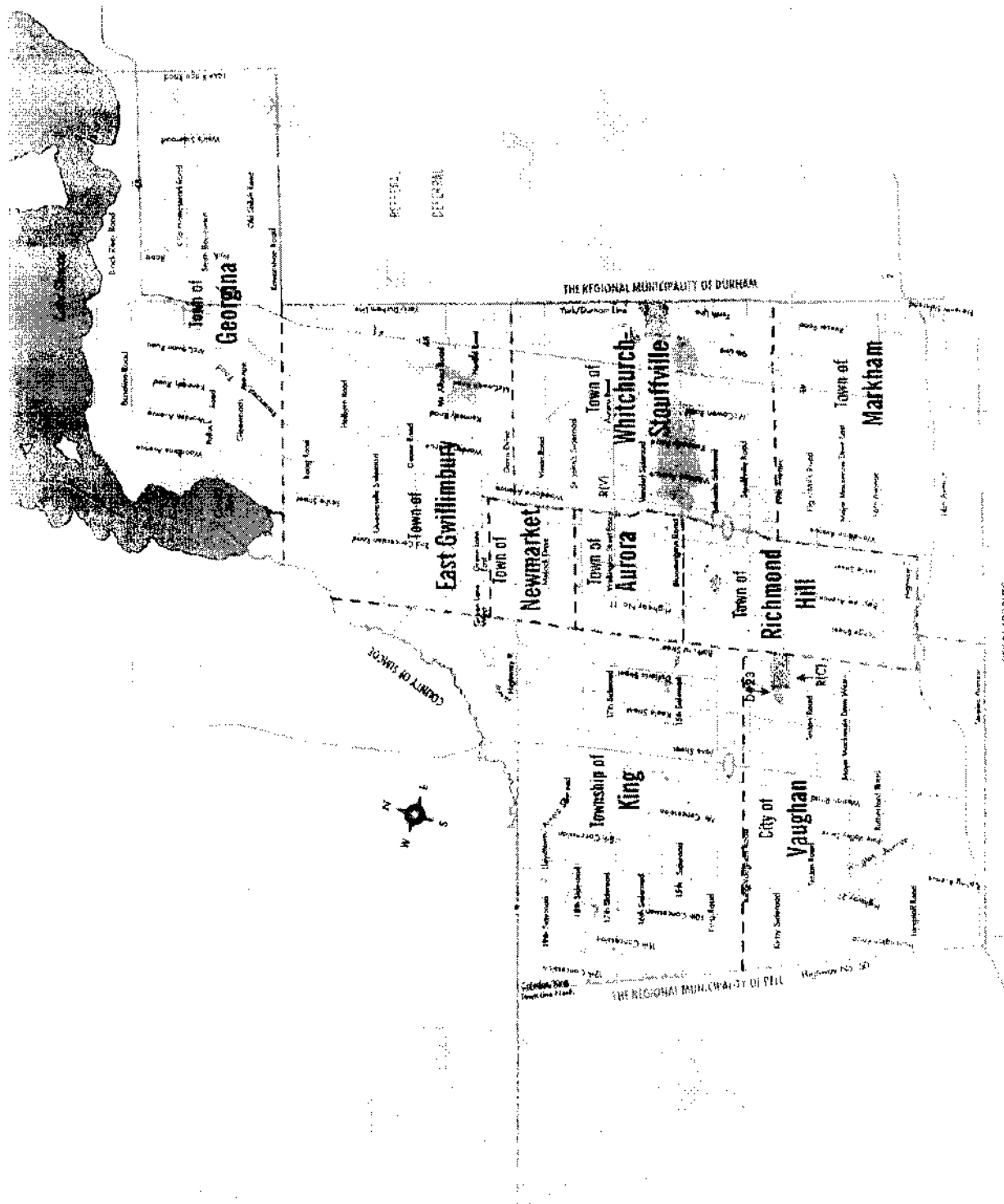
Consolidated Open Space Subject to Ministerial Stay

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Units Subject to S'93M Unit and O'93B and 21' 89.

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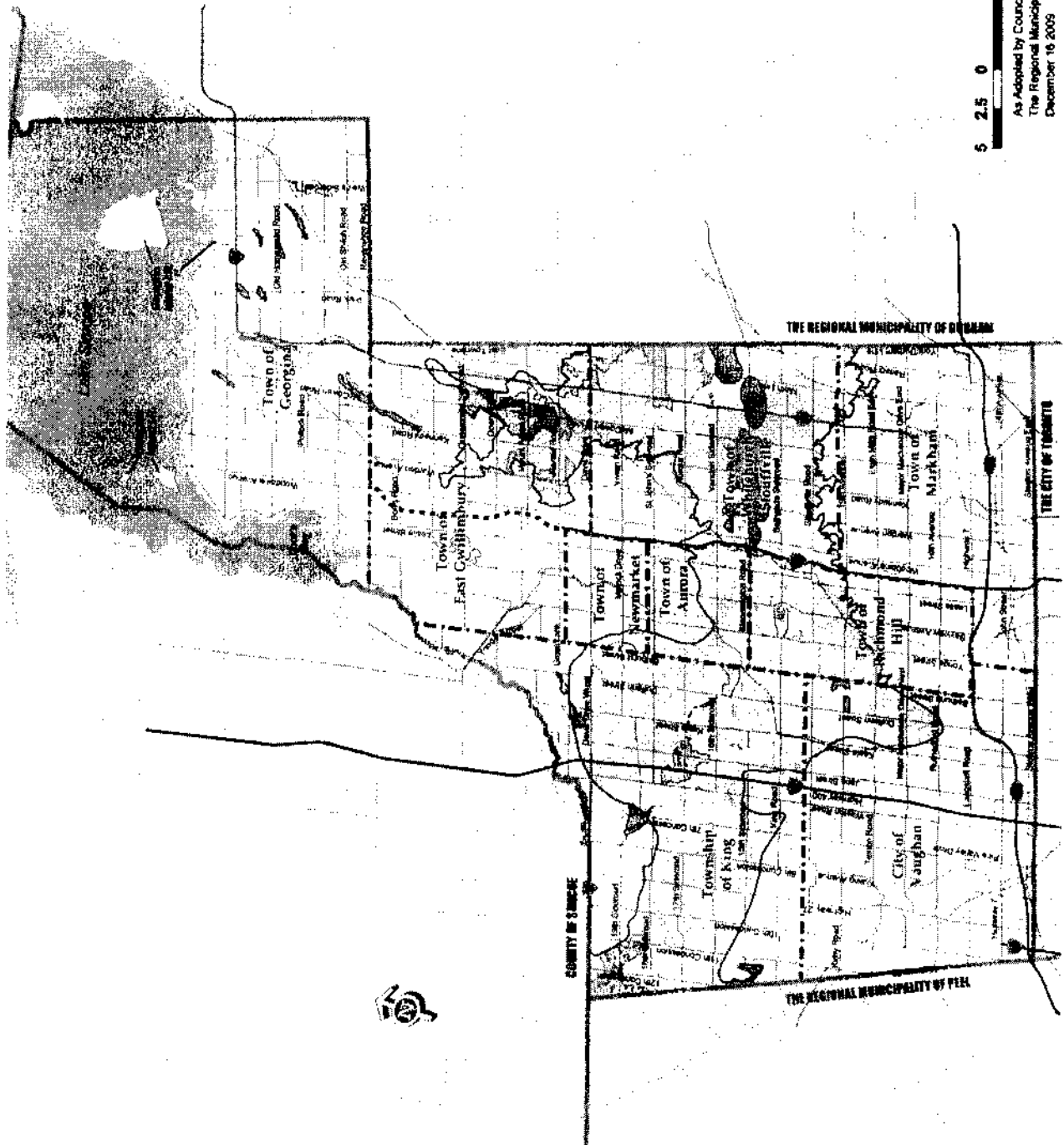


MAP 9

MINERAL AGGREGATE RESOURCES

- Primary Mineral Aggregate Resource Area
- Secondary Mineral Aggregate Resource Area
- Oak Ridges Moraine Conservation Plan
- Oak Ridges Moraine Boundary
- Oak Ridges Moraine Plan Area

- Provincial Highways
- Existing
- Controlled Access Highway
- Under Construction
- Municipal Boundary
- Regional Boundary



5 2.5 0 5 Km

As Adopted by Council of
The Regional Municipality of York
December 16 2005

York Region Geomatics

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