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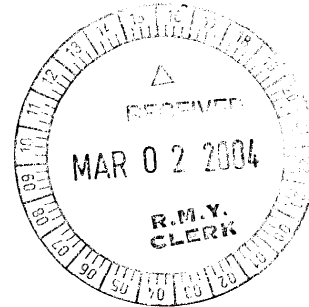
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File No.: 66490

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Date: March 2, 2004

No. of Pages: 9
(Inc. Cover Sheet)

MESSAGE

**Re: ROPA 41 and Minister's Modifications: Planning and Economic
Development Committee Meeting March 3, 2004**

Mr. Kelly,

Could you please ensure the attached correspondence is placed before the Planning and Economic Development Committee for its meeting being held tomorrow, March 3, 2004.

Patricia Foran

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March 2, 2004

BY FAX # 905.895.3031

Our File #66490

Regional Municipality of York
Planning and Economic Development Committee
17250 Yonge Street
Newmarket, Ontario
L3Y 6Z1

Dear Sirs/Madames:

**Re: ROPA 41 and Minister's Modifications: Planning and Economic
Development Committee Meeting March 3, 2004**

We are the solicitors for E. Manson Investments, the owner of lands located at the northwest corner of 19th Avenue and Leslie Street, in the Town of Richmond Hill. Our client has appeals of its local Official Plan amendment and Regional Official Plan amendment applications before the Ontario Municipal Board ("OMB") for consideration as part of the North Leslie Secondary Plan OMB hearing.

Part of our client's lands lie north of the 245m surveyed contour of the Oak Ridges Moraine ("ORM"). In response to a motion brought jointly by our client and the Town of Richmond Hill last year, the Ontario Municipal Board issued a decision (relevant extract attached) which recognized that all of our client's applications were subject to the transition policies of the *Oak Ridges Moraine Conservation Act, 2001* ("ORMCA"). This would include not only our client's local and Regional Official Plan amendment applications, but also its related draft plan of subdivision and zoning amendment applications.

We have reviewed proposed amended ROPA 41 and have previously corresponded with you respecting the recognition of the Board's determination in any conformity amendment to be adopted by Regional Council. We understand that proposed ROPA 41 is to be amended under proposed section 33 to reflect changes to the ORMCA proposed under the Province's draft legislation, Bill 27. However, we are concerned that such draft legislation may be, at a minimum, amended prior to an adoption by the Provincial Legislature. Accordingly, we believe that ROPA 41 should only reflect the in-force ORMCA and, in particular, the transition provisions set out in section 17 as they exist today.

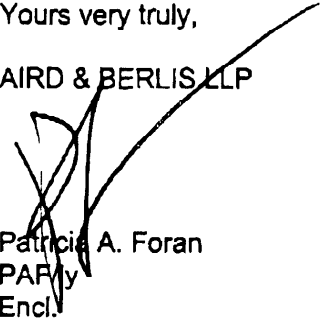
March 2, 2004
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Alternatively, and in order to avoid any possible interpretation that section 33 as drafted would alter our client's accrued and recognized full transition status, we would request that you amend section 33 in the draft ROPA 41, to specifically reflect the transition status of all of our client's development applications.

In addition to the foregoing, we note that proposed Map 13 – Areas of High Aquifer Vulnerability, which your staff have concluded is not required, may not reflect more refined and up-to-date mapping undertaken by the proponents, TRCA and York Region, in the context of the North Leslie OMB hearing. Accordingly, we believe that Map 13 should be excluded or it should be amended to reflect more up-to-date mapping.

Yours very truly,

AIRD & BERLIS LLP


Patricia A. Foran
PAF/ly
Encl.

cc: E. Manson Investments
B. Jeffrey, Region of York Planning Department

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RECEIVED

AUG 13 2003

ISSUE DATE:

Aug. 12, 2003

DECISION/ORDER NO:

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Ontario

PL020446

Ontario Municipal Board
Commission des affaires municipales de l'Ontario

Lionheart Enterprises Ltd., 583753 Ontario Limited, 625734 Ontario Inc. and others (collectively called Bayview East Landowners Group) have appealed to the Ontario Municipal Board under subsection 22(7) of the *Planning Act*, R.S.O. 1990, c. P.13, as amended, from Council's refusal or neglect to enact a proposed amendment to the Official Plan for the Town of Richmond Hill to redesignate lands composed of Lots 26 to 30, Concession 2 and 3, E.Y.S., to establish the North Leslie Planning District and to implement a Secondary Plan for the North Leslie Area in order to facilitate the expansion of the Town's urban boundary
Town's File No. D01-00011
OMB File No. O020073

Lionheart Enterprises Ltd., 583753 Ontario Limited, 625734 Ontario Inc. and others (collectively called Bayview East Landowners Group) have appealed to the Ontario Municipal Board under subsection 22(7) of the *Planning Act*, R.S.O. 1990, c. P.13, as amended, from Council's refusal or neglect to enact a proposed amendment to the Official Plan for the Regional Municipality of York to redesignate lands composed of Lots 26 to 30, Concession 2 and 3, E.Y.S., from "Agricultural Policy Area" to "Urban Area" and to add the lands to the "Urban Transit Area"
Region's File No. D05 102.41
OMB File No. O020096

E. Manson Investments has appealed to the Ontario Municipal Board under subsection 22(7) of the *Planning Act*, R.S.O. 1990, c. P.13, as amended, from Council's refusal or neglect to enact a proposed amendment to the Official Plan for the Regional Municipality of York to redesignate lands composed of Lots 26 to 30, Concession 2 and Part of Lots 26 to 30, Concession 3 E.Y.S. in the Town of Richmond Hill from "Agricultural Policy Area" to "Urban Area" and to add the lands to the "Urban Transit Area"
OMB File No. O030043

E. Manson Investments has appealed to the Ontario Municipal Board under subsection 22(7) of the *Planning Act*, R.S.O. 1990, c. P.13, as amended, from Council's refusal or neglect to enact a proposed amendment to the Official Plan for the Town of Richmond Hill to redesignate lands composed of Lots 26 to 30, Concession 2 and Part of Lots 26 to 30, Concession 3 E.Y.S. from "Agricultural Policy Area" to "Urban Area"
OMB File No. O030046

APPEARANCES:

Parties

Bayview East Landowners Group

Counsel*/Agent

J.L. Davies* and M. Melling*

Monday, November 3, 2003 at 10:00 a.m. It is hoped that facilities in the Richmond Hill Offices can be made available for this. However, they may be undergoing renovations; the location will be one of the subjects to be discussed at a further future pre-hearing conference.

The witness lists have already been exchanged based on the previously issued order, but all other dates have now been modified and re-issued in the revised procedural order, issued with this decision as Attachment 1.

The proponents have requested an additional status hearing to be held before the hearing commences to ensure that all the arrangements are set. This will be held on Thursday, September 4, 2003 beginning at 10:00 a.m. It will be held in Region of York facilities located at 50 High Tech Road, 3rd Floor, Richmond Hill (near the intersection of Yonge Street and Highway 7.)

Some of the parties have also suggested that OMB sponsored mediation may be useful in dealing with some of the issues and parties. The Board remains open to this and will re-visit the question with the interested parties at the next pre-hearing in September and set in place the procedures as necessary.

→ July 17

Motion by the Mr. Beaman for the Town and Ms Foran for Manson

The Town, represented by Mr. Beaman, and E. Manson Investments Ltd., represented by Ms Foran, filed countering motion materials to assist the Board in dealing with the question of the application of the *Oak Ridges Moraine Conservation Act* ("the Act") to the lands of E. Manson Ltd. ("Manson"). Because of a ruling made by our predecessor panel in this file, the appeals relating to the Manson lands have been consolidated with the matters generally now referred as the Bayview East Landowners Group *et al.* appeals. The Manson lands are located north of 19th Street, outside the block represented in the main appeal. However, Mr. Lee's ruling included the Manson lands as related and warranting combined consideration. It was made clear however, that the decision to consolidate did not automatically grant an equal status to the Manson lands as are applicable to the Bayview East Landowners lands.

In a nutshell, the totality of the lands under appeal fall into three main categories. The first are those that are unaffected by the *Oak Ridges Moraine Conservation Act* and are outside the Plan Area. A large portion of the lands in the Bayview East *et al.* appeals fall into this category. Parties representing these lands have little interest in today's debate.

The next group comprises those properties that are within the Plan Area and are affected by the Act, but because applications were filed for them before November 17, 2001 (the date identified in Section 15(1) of the Act) for which no decision had yet been made, they enjoy the benefits of a transition process identified in the Act. The transition provisions permit some development, but only within the constraints set out in accordance with the designations and policies of the Plan. A portion of the Bayview East Landowners properties and that of some other property owners falls indisputably in this category by virtue of applications filed in advance of the relevant date. The "others" include, as Mr. Melling asserts on behalf of Mr. Kagan (DeMelo) and others, all landowners whose lands fall within the area that is the subject of the Bayview East Landowners' formal application, even though the application pertaining to their lands may have been made by Bayview and not by the specific owners. There is little apparent dispute of this and the Board agrees and so rules.

The final group comprises lands that are in the Plan and are affected by the Act, but have no applications suitably filed for them. These lands are subject to an effective prohibition on development based on their location in the Plan Area.

It is important to note, again with the assistance of Mr. Melling, that the Board is not dealing with the location of the line associated with the Oak Ridges Moraine. This is firmly set in the law and the Plan and cannot be modified by a ruling or the Board. Rather, the question under consideration is one pertaining to the status of lands within the line, based on any outstanding development applications, and the application of the Act.

Mr. Beaman, along with Ms Foran, helpfully set out the circumstances and reviewed what they regarded as the key decisions that had accumulated on the issue to date, for the assistance of the Board. However, Mr. Beaman did not argue a firm position, but instead was under instruction to seek direction from the Board on how the

Manson lands should be treated. While there were some modest differences of interpretation, these had more to do with emphasis rather than with firm positions.

Ms Foran asserts that the Manson lands should enjoy the same status as the Bayview East Landowners by virtue of applications filed in 1997 and maintained since then without interruption. She explained that her client became involved as applicants at the time that development was approaching their lands in the mid 1990s. They played a part in a consultative process sponsored by the Town at the time, and following this, they made applications that asserted a clear intention to seek development approvals. The applications were accepted by the Town and no question was raised at the time by the Town as to their appropriateness or whether they were complete.

In the further pursuit of their applications, they became involved as parties in the ill-fated OPA 200 appeals, and have never abandoned their plans to develop. Ms Foran firmly asserts that this is not simply the resuscitation of an old application, but instead, the clear continuation of an ongoing and active plan to have their lands included for eventual development in this round of planning approvals. In short, Ms Foran claims that there is a clear "nexus" or a consistent aspiration by her client that establishes a firm right to have their application shelter under the transition provisions of the Act and the Plan.

None of this was firmly contested and is a matter of common ground more or less. The issue is whether the subsequent application for a Regional Official Plan Amendment ("ROPA") which corresponds to the prior applications would also enjoy the protection of the transition section of the Act. The ROPA was applied for in 2002 well after the November 17, 2001 date stipulated in the Act. The Act is not as clear as it might be at section 17(1) where this subject is discussed:

- 17(1) If a decision made under the *Planning Act* or section 9 of the *Condominium Act*, 1998 with respect to land to which the Oak Ridges Moraine Conservation Plan applies is conditional on further approvals under either of those acts, the decision on the application for the further approval shall be made in accordance with same requirements of the Act that applied to the original decision. (emphasis added)

The logic of the transitional section (section 15) is to provide that lands for which an application is made before November 17, 2001 shall enjoy a certain status. This is a continuation of the Board's common practice of applying the policy regime extant on the date of the application, and not to require a retroactive application of policy.

The purpose of section 17(1) is to provide clarity where, as is commonly the case, the planning process requires more than one application for a single proposal. The logic of this section, as Mr. Beaman correctly infers, is that once an application for development is filed - for instance an amendment to the local plan - that pre-dates November 17, 2001, then any further applications needed for the development to proceed - for instance a subdivision or site plan - should be treated under the same rules and should enjoy the same status as the first application, even if it comes after November 17, 2001.

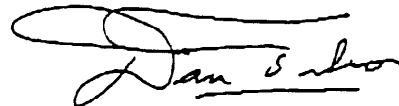
My colleague, Mr. Daly, found this to be a reasonable interpretation of the section 17(1) words "is conditional on further approvals" (*Sandhill Aggregates Limited v. Township of Uxbridge*, O.M.B. Decision/Order No. 0693, May, 2002). He concluded that any further applications and decisions meant to implement or carry out the first application should enjoy the same status. While this clearly applies to matters that are implementary of the first decision and where the first decision is "conditional on further approvals," it does not necessarily follow that it should also apply to an application which is a precondition to proceeding, such as a Regional Official Plan Amendment passed after the relevant date. Mr. Beaman is not sure. Mr. Sinclair offers no firm submissions, but appears to doubt that the ROPA should automatically enjoy a similar protection based on Section 17(1).

My colleague, Ms Eger, established a useful principle which is of some assistance in dealing with this question (*Rizmi Holdings Limited et al. v. City of Vaughan*, O.M.B. Decision/Order No. 0581, May, 2003). She concluded that it would only make sense that once a clear intent is established by way of a completed and acceptable application (whatever may be its merits), all related applications should be assessed using the same set of rules. To do otherwise would be to presume an absurdity on the part of the legislation, one that would contemplate assessing one aspect of an application by one set of rules and policies, and another aspect of the same proposal under another, perhaps drastically different set of rules.

The Board concludes from all this that the intent of section 17(1) of the Act is to solve a problem created by the administrative necessity of making several applications for what is effectively and ultimately one common proposal for development. Whether those applications are implementary of a prior application or are a pre-condition to the first application, they together express and represent the same proposal. By any measure of fairness, a proposal and its proponent should be made to comply with only one set of rules. To require adherence to separate conflicting policy regimes or to apply policies retroactively simply because separate administrative aspects of the same proposal were applied for at different times, is both unfair and unnecessarily complex.

The ruling of the Board is therefore, that all aspects of the application by owners of the Manson lands, including the Regional Official Plan Amendment filed in 2002 should enjoy a similar status and should be considered together under the transition sections of the *Oak Ridges Moraine Conservation Act*.

So orders the Board.



D. TILSON
VICE-CHAIR



B.W. KRUSHELNICKI
MEMBER