

AIRD & BERLIS LLP

Barristers and Solicitors

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May 3, 2011

BY EMAIL

Denis Kelly
Regional Clerk
York Region
17250 Yonge Street
Newmarket ON L3Y 6Z1

Dear Mr. Kelly:

**Re: Richmond Hill Official Plan (2010) ("RHOP")
Planning and Economic Development Committee meeting of May 4, 2011**

We act on behalf of Major Mac 404 Realty Inc. We are in receipt of a report to be considered by York Region Planning and Economic Development Committee on May 4, 2011. We were provided with notification of this report on Friday, April 29, 2011. It is clear from this report that the Region of York has not considered the record of submissions received by the Town of Richmond Hill as part of the consideration of the above-referenced Official Plan. In our view, the Region of York, as the approval authority of the RHOP, should consider all of the submissions made to the Town of Richmond Hill as part of the public record forwarded to it by the Town of Richmond Hill pursuant to section 17(42) of the *Planning Act*, R.S.O. 1990, c. P. 13, as amended

Furthermore, it is our opinion that the Ontario Municipal Board does not have the jurisdiction to return the approval authority to York Region as suggested in recommendation 1 of the Planning and Economic Development Committee Report.

In our respectful submission, the Committee should receive the staff report and direct staff to consider all of the written submissions made to the Town of Richmond Hill with respect to the RHOP to ensure proper consideration of those submissions prior to making any decision concerning modifications to that document.

A copy of our submissions on behalf of Major Mac 404 Realty Inc. are attached for ease of reference.

Yours truly,

AIRD & BERLIS LLP


Steven A. Zakem
SAZ/sw
cc. Rice Commercial Group

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June 4, 2010

BY EMAIL

Donna C. McLarty
Clerk
Town of Richmond Hill
P.O. Box 30
225 East Beaver Creek Road
Richmond Hill, ON L4C 4Y5

Dear Ms. McLarty

Re: Draft Richmond Hill Official Plan ("DRHOP")

We act on behalf of Major Mac 404 Realty Inc. with respect to the above-noted matter. Our client owns 29.39 hectares (72.63 acres) of land located on the south side of Major Mackenzie Drive between Leslie Street and Highway 404.

Our client's lands are located within the Headford Secondary Plan Area as established by Official Plan Amendment No. 38 ("OPA 38"). On May 1, 1995 the Town of Richmond Hill adopted Official Plan Amendment No. 139 ("OPA 139") which was approved by the Region of York on October 20, 1995. This amendment had the effect of amending Official Plan Amendments 1, 38 and 41, being the Leslie Industrial Secondary Plan, the Headford Secondary Plan and a portion of the Headford Planning District in order to implement the recommendations of the Beaver Creek Retail Study.

OPA 139 expanded the range of permitted uses in the Secondary Plan areas to better serve the needs of employees while preserving the existing character of employment areas. Among other things, OPA 139 permitted retail warehousing throughout the Headford Business Park (subject to criteria, all of which our client complies with). As such, retail warehousing is permitted on our client's property.

Our client has an outstanding zoning by-law application to implement this existing permission. This existing permission is important when considering the effects of the 2005 Provincial Policy Statement and the Growth Plan and the applicability of those Provincial planning documents to the DRHOP.

The employment areas policies of the 2005 PPS have been interpreted by the Ontario Municipal Board, on multiple occasions, as including all industrial, commercial and institutional uses. In other words, "major retail" uses are "employment uses" for purposes of the 2005 PPS.

The situation is slightly different under the Growth Plan. Section 2.2.6.5 of the Growth Plan prevents the “conversion” of lands within an employment area to a non-employment use, except in accordance with a Municipal Comprehensive Review. For purposes of this policy – and this policy only – “major retail” uses are deemed to be “non-employment” uses. Under all other policies of the Growth Plan, including the Growth Plan’s intensification targets, “major retail” uses are considered to be “employment” uses.

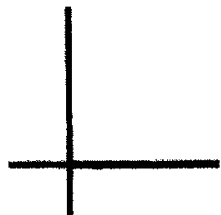
The purpose of section 2.2.6.5 is not to require the purging of “major retail” permissions from employment areas. In fact, in a background paper issued in May 2008 by the Ontario Growth Secretariat, titled “Planning for Employment in the Greater Golden Horseshoe”, the Province recognized that employment areas can have existing permissions for “major retail”:

Recent provincial policy changes require greater justification and coordinated planning for the conversion of lands in employment areas to non-employment uses. For example, the *Planning Act* provided the authority to municipalities to protect employment areas and both the Provincial Policy Statement 2005 and the Growth Plan require a comprehensive review to be undertaken to justify a conversion to non-employment uses. Moreover, the Growth Plan addresses a concern raised by many stakeholders about the conversion of lands in employment areas to major retail uses. The Growth Plan clarifies that where major retail is not already permitted in an employment area, it is considered a conversion of use and must meet certain policy tests before a conversion can occur.

Permissions for “major retail” uses (however defined), as well as other retail uses, can therefore be included in designated employment areas. These permissions can be limited to specific parcels of land (for example, along major transportation corridors) and/or be subject to site-specific assessment criteria. Nothing in either the 2005 PPS or the Growth Plan prevents a municipal authority from including such permissions in their official plans. Council can also take comfort that s. 2.2.6.5 of the Growth Plan would prevent employment area lands that are not assigned such permission from being “converted” to non-employment uses.

In view of the foregoing, it is clear that the retail warehouse and service commercial permissions that exist on my client’s property can continue to exist in full compliance with the 2005 PPS and the Growth Plan. The jobs generated by major retail uses, including retail warehousing, are employment area jobs that will go towards satisfying the anticipated employment targets set out in the Growth Plan and in the DRHOP.

In view of the foregoing, we respectfully request that Council direct staff to maintain the permission for retail commercial uses in the DRHOP, including the permission for retail uses in employment areas. In the alternative, and at a minimum, the existing permissions for retail uses should remain where they are presently permitted, including our client’s lands.



The foregoing general concern will require a number of amendments to the DRHOP. To further assist Council in their deliberations, we have the following specific comments with respect to the DRHOP:

1. Section 3.1.3.2 refers to *centres and corridors* and indicates that they will accommodate the majority of the Town's projected population growth. In addition, projected employment growth will be accommodated in both *employment lands* and in the *centres and corridors*. This policy recognizes that employment growth occurs not only in employment lands, but in many other parts of the Municipality. Major MacKenzie Drive is recognized as a corridor and, as such, will accommodate employment growth. Section 3.1.3.5 anticipates the highest densities and widest range of uses within the Town will be provided at an appropriate scale and intensity within *centres and corridors*. Again, this policy is consistent with our client's proposal for a wide range of uses at an appropriate scale and intensity.
2. Section 3.1.4.5 provides that where a public rapid transit corridor intersects with an *employment land* designation, the mix and range of uses shall be in accordance with the *employment land* policies in section 4.8 of the Plan. Our client's lands fall within this proposed policy provision.
3. Section 3.1.6.3 provides that within *centres and corridors*, the Town shall encourage a mix of commercial and retail uses along with office and residential development. Again, this our client's proposal to redevelop its lands is consistent with this policy.
4. Section 3.3.1 discusses "employment land protection". This section indicates that the Town "...has experienced pressure to convert its *employment lands* to retail, commercial, residential and other non-employment uses." This statement reflects a misunderstanding of the Provincial Policies referenced above. Retail and other commercial uses are employment uses and are permitted within *employment areas*. This misunderstanding requires a reconsideration of the employment policies of the DRHOP.
5. Section 3.3.1.2 provides that the conversion of employment lands to non-employment uses shall only be permitted through a *Municipal Comprehensive Review*. The policy goes on to require that a *Regional Municipal Comprehensive Review* be completed. In our view, there should be no requirement for the completion of a *Regional Municipal Comprehensive Review* prior to the conversion of employment lands to non-employment uses. Richmond Hill should be at liberty to conduct a *Municipal Comprehensive Review* whenever Richmond Hill deems such a review to be appropriate.
6. For the reasons we have outlined, we object to policy 3.3.1.3 (c), which establishes *major retail* as non-employment use. Section 3.3.1.4 provides that in the event of a conflict or inconsistency between section 3.3.1 and the policies of any Secondary

Plan, the more restrictive policies apply. As noted above, the Headford Secondary Plan permits retail warehousing. It is unclear if the Headford Secondary Plan is being brought forward as a secondary plan within the new Official Plan. In any event, this conflict provision could potentially render those earlier permissions void. For the reasons set out above, such a removal of existing permissions is inappropriate and unacceptable to my client.

7. Policy 3.3.3.2 addresses employment within *centres and corridors*. As noted above, our client's property is located within a corridor. Policy 3.3.3.2.3 permits retail or major retail development within *centres and corridors* and encourages them to be integrated with other permitted land uses in a mixed-use format. Again, our client's application would be consistent with this policy and inconsistent with other policies in the Plan that prohibit major retail uses within employment area designations.
8. In section 3.5.1.7, Major MacKenzie Drive is supported as a planned long term public rapid transit corridor.
9. Section 4.8 addresses employment lands. Two employment designations are created; *employment areas* and *employment corridors*. The majority, if not all, of our client's lands are designated *employment corridor*. Any portion not designated *employment corridor* is designated *employment areas*. Policy 4.8.1 references the intent of the *employment area* designation to accommodate uses that may not be accommodated elsewhere in the Town. Such an interpretation is too narrow and does not reflect economic reality. Further, satisfaction of such a policy would require proof of a negative – a concept that is frowned upon at law.
10. In section 4.8.2, the *employment corridor* policies are established. Again, and for the reasons set out above, these policies are too narrow with respect to the permitted uses in this designation. The same characteristics that warrant the *employment corridor* designation are the same characteristics that warrant retail commercial uses. It is, in part, for this reason that OPA 139 was adopted.
11. The minimum height standards set out in section 4.8.2.1.8-11 are unduly restrictive and do not recognize the fact that development in these corridors will occur incrementally over time and intensify over the life of the Plan.
12. For the reasons set out above, we oppose the prohibition of major retail uses in employment corridors as set out in section 4.8.2.5

In the event the Municipality is not disposed to our submissions on a general basis, we would ask that our client's lands be subject to a similar exception (Exception 1) as the lands located on the northeast corner of Leslie Street in Elgin Mills (RioCan/Trinity). This would reflect our client's current application to rezone its lands to implement the current commercial permissions that exist within the Headford Secondary Plan.

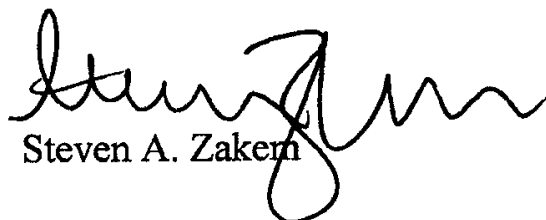
The foregoing submissions are not intended to be exhaustive and may be augmented in the future. For example, our client will be considering the right-of-way widths set out in the DRHOP to determine any impact on its property.

The DRHOP policies are intended to be integrated and, depending upon further changes that may be made as a result of a public consultation, we may have further and additional issues. In addition, any changes made as a result of our submissions may involve consequential changes to other policies in the Plan in order to achieve consistency. It is not our intention in this correspondence to enter into an exhaustive exercise with respect to such redrafting. However, in the event Council accepts our submissions and our request set out herein, we would be pleased to assist City staff in an effort to arrive at such a comprehensive approach.

Please provide this correspondence to members of City Council for their consideration.

Yours truly,

AIRD & BERLIS LLP

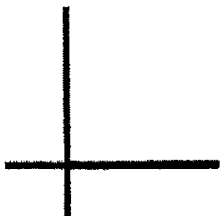


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July 12, 2010

BY EMAIL

Donna C. McLarty
Clerk
Town of Richmond Hill
P.O. Box 30
225 East Beaver Creek Road
Richmond Hill, ON L4C 4Y5

Dear Ms. McLarty

Re: Town of Richmond Hill Draft Official Plan

As you know, we act on behalf of Major Mac 404 Realty Inc. which owns a large parcel of land located on the south side of MacKenzie Drive. Our client owns 29.39 hectares (72.63 acres) of land located on the south side of Major Mackenzie Drive between Leslie Street and Highway 404. In correspondence dated June 4, 2010 we made detailed submissions with respect to the above-noted matter. This correspondence is intended to augment those submissions. I would request that this correspondence be provided to Council and form part of the public record with respect to this matter.

At its meeting of July 5, 2010 the Committee of the Whole approved residential development on lands located at the north side of Highway 7. Council permitted residential development on the northeast corner of Highway 7 and Leslie Street within the Employment Corridor designation fronting onto the Highway 7 Regional Corridor. We believe that a similar permission can and should be adopted in Employment Areas which front onto arterial roads and have Employment Corridor designation such as our client's lands on Major MacKenzie Drive East. Such an approach would be transit supportive and would create a mix and range of uses consistent with good planning principals. We would request that similar consideration be given for our client's property.

Should you have any questions with respect to the foregoing or wish to discuss this matter with us, please do not hesitate to contact me.

July 12, 2010

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Yours truly,

AIRD & BERLIS LLP

for: 
Steven A. Zakem

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