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TOWN OF MARKHAM REQUEST FOR DELETION OF LAND FROM OAK RIDGES MORAINE CONSERVATION PLAN, THE GREENBELT PLAN AND GROWTH PLAN

(Regional Council at its meeting on June 25, 2010 amended this Clause to include recommendation 3 as follows:

- 3. York Region requests, in conjunction with the Town of Markham, that the Minister of Municipal Affairs and Housing and the Minister of Energy and Infrastructure delete the subject lands from the Greenbelt Plan and effect a parallel amendment to the Growth Plan.)**

The Planning and Economic Development Committee recommends receipt of the memorandum from Bryan Tuckey, Commissioner of Planning and Development Services and the adoption of the following recommendations:

- 1. Regional Council advise the Town of Markham and the Minister of Municipal Affairs and Housing and the Minister of Energy and Infrastructure that it concurs with the results of the peer review indicating that the Oak Ridges Moraine Conservation Plan does not apply to the subject lands due to their elevation below the 245 metre contour interval; and**
- 2. The Regional Clerk forward the supporting materials to the Honourable Jim Bradley, Minister of Municipal Affairs and Housing and the Honourable Brad Duguid, Minister of Energy and Infrastructure for their review and consideration.**

(The memorandum referred to in this clause is attached to this report.)



MEMORANDUM

TO: Members of Planning and Economic Development Committee

FROM: Bryan W. Tuckey, MCIP, RPP
Commissioner of Planning and Development Services

DATE: May 21, 2010

RE: Town of Markham Request for Deletion of land from the Oak Ridges Moraine Conservation Plan, the Greenbelt Plan and Growth Plan

Background

Zodiac Developments Inc. own some 36 hectares (89.9) of land on the north side of 19th Avenue between Highway 404 and Woodbine Avenue as shown on the mapping contained in *Attachment 1*.

A portion of the developers' lands (6.3 ha) are within the Oak Ridges Moraine Conservation Plan boundary as defined by Ontario Regulation 01/02.

The balance of the lands are outside the ORMCP boundary and have been designated for employment uses through Regional Official Amendment 46 and industrial uses through approved Markham OPA 149.

In early 2010, the developer approached the Town to have the lands determined not to be subject to the Oak Ridges Moraine Conservation Plan.

Town staff undertook a peer review of the developer's supporting survey and concurred that the lands were below the 245 metre above sea level Canadian Geodetic Datum (m.a.s.l. CGD) contour elevation and therefore not subject to the ORMCP policies. However, the lands remain subject to the Greenbelt Plan, Protected Countryside policies and the Growth Plan.

Subsequent to the report by Town staff, the developers appeared at Council to speak to the Town's staff report. As a result of the delegation, Council of the Town of Markham at its meeting of April 27, 2010 adopted resolutions requesting that the Region ask the Ministers of

Municipal Affairs and Housing and Energy and Infrastructure to delete the lands from the Greenbelt Plan and effect a parallel amendment to the Growth Plan.

The resolution has now come to the Region for action..

Issue

The Markham Council resolution deals with applicability of three separate Provincial Plans – the Oak Ridges Moraine Conservation Plan, the Greenbelt Plan and Growth Plan.

Oak Ridges Moraine Conservation Plan (ORMCP)

The ORMCP permits site specific geodetic surveys for lands east of Bathurst Street to clarify the applicability of the Oak Ridges Moraine Conservation Plan policies to lands above the 245 metre above sea level Canadian Geodetic Datum (m.a.s.l. CGD).

The Town of Markham conducted a peer review of the survey materials submitted by the developer which confirmed that the lands are entirely below the 245 m.a.s.l. CGD. The policies of the ORMCP do not therefore apply, but the lands remain within the ORMCP boundary. The Region concurs with the results of the Town's peer review.

Greenbelt Plan

When the Greenbelt Plan was passed in 2005, Section 2.1 paragraph 2, provided that where lands below the 245 m. a.s.l. CGD were not subject to policies of the ORMCP, they became subject to the Protected Countryside Policies of the Greenbelt Plan.

Section 11 of the *Greenbelt Act, 2005*, indicates that only the Minister has the ability to propose amendments to the Greenbelt Plan. There is no requirement under the *Greenbelt Act, 2005* for a request for a change to the Plan to come from the upper tier municipality.

It is recommended that the Town of Markham resolution be forwarded to the Honourable Jim Bradley, Minister of Municipal Affairs and Housing for appropriate action.

Growth Plan

Section 10 of the *Places to Grow Act, 2005* indicates that if the Minister considers it necessary, the Minister may prepare and propose an amendment to the Plan. Further subsection 10(4) indicates that if the Minister considers the amendment to not have a significant effect on the general applications of the growth plan the proposed amendment need not be submitted to the Lieutenant Governor in Council and the Minister may by order approve the amendment. There is no requirement under the *Places to Grow Act, 2005* for a request for a change to the Plan to come from the upper tier municipality.

It is recommended that the Town of Markham resolution be forwarded to the Honourable Brad Duguid, Minister of Energy and Infrastructure for appropriate action.

Further, an amendment to the York Region Official Plan – December 2009 would be required to designate these lands as Urban Area should the Ministers consider their removal from the Provincial Plans.

Suggested Actions

1. Regional Council, advise the Town of Markham that it concurs with the results of the peer review indicating that the Oak Ridges Moraine Conservation Plan does not apply to the subject lands due to their elevation below the 245 metre contour interval.
2. The Regional Clerk to forward the supporting materials to the Honourable Jim Bradley Minister of Municipal Affairs and Housing and the Honourable Brad Duguid, Minister of Energy and Infrastructure for their review and consideration.

Bryan W. Tuckey, MCIP, RPP

Attachment: Town of Markham Resolution dated April 30, 2010 and Town staff Report

P07 - Planning Committee\2010\June\Memo Town of Markham Request for Deletion of land from ORM



April 30, 2010

Mr. Denis Kelly
Regional Clerk
The Regional Municipality of York
17250 Yonge Street
Newmarket, ON L3Y 6Z1

RE: PEER REVIEW OF OAK RIDGES MORaine BOUNDARY
AT 2780 19TH AVENUE IN MARKHAM (10.0)

Dear Mr. Kelly:

This will confirm that at a meeting held on April 27, 2010, Town of Markham Council adopted the following resolution:

- "1) That the staff report entitled "Peer Review of the Oak Ridges Moraine Boundary at 2780 – 19th Ave in Markham", be received; and,
- 2) That the Survey Certificate prepared by Krcmar Surveyors Ltd dated April 1, 2010 certifying the topographic elevations prepared by Guido Papa Surveying Ltd dated November 2007 be accepted by the Town in accordance with Section 2(4) of the Oak Ridges Moraine Conservation Plan providing for the confirmation of the Oak Ridges Moraine boundary; and,
- 3) That the Town request the Region of York to accept the Survey Certificate prepared by Krcmar Surveyors and the Topographic Survey prepared by Guido Papa Surveying Ltd dated November 2007, for interpretation purposes relative to the Oak Ridges Moraine boundary; and,
- 4) That the Town of Markham requests the Region of York to ask that the Honourable Jim Bradley, Minister of Municipal Affairs and Housing effect a technical amendment to the Greenbelt Plan Area to permit the deletion of the subject property from the area and further request that the Honourable Brad Duguid, Minister of Energy and Infrastructure make a parallel amendment to the Growth Plan Area; and further,
- 5) That Staff be authorized and directed to do all things necessary to give effect to this resolution." (Item 1 of Report No. 21)

If you have any questions, please contact Lilli Duoba, Senior Project Coordinator at 905-477-7000 ext. 7925.

Yours sincerely,

Kimberley Kitteringham
Town Clerk



Report to: Development Services Commission

Date: April 13, 2010

SUBJECT: Peer Review of Oak Ridges Moraine Boundary at 2780 19th Ave in Markham
PREPARED BY: Lilli Duoba, Senior Project Coordinator, Ext. 7925

RECOMMENDATION:

- 1) That the staff report entitled "Peer Review of the Oak Ridges Moraine Boundary at 2780 – 19th Ave in Markham", be received;
- 2) And that the Survey Certificate prepared by Krcmar Surveyors Ltd dated April 1, 2010 certifying the topographic elevations prepared by Guido Papa Surveying Ltd dated November 2007 be accepted by the Town in accordance with Section 2(4) of the Oak Ridges Moraine Conservation Plan providing for the confirmation of the Oak Ridges Moraine boundary;
- 3) And that the Town request the Region of York to accept the Survey Certificate prepared by Krcmar Surveyors and the Topographic Survey prepared by Guido Papa Surveying Ltd dated November 2007, for interpretation purposes relative to the Oak Ridges Moraine boundary;
- 4) And that this report be submitted to the Ministry of Municipal Affairs and Housing for information;
- 5) And that Staff be authorized and directed to do all things necessary to give effect to this resolution.

1. Purpose	2. Background	3. Discussion	4. Financial
5. Others (HR, Strategic, Affected Units)	6. Attachment(s)		

PURPOSE:

The purpose of this report is to respond to a resolution of Development Services Committee on February 2, 2010 that a staff report be presented on the outcome of a Peer Review of the Oak Ridges Moraine (ORM) boundary on property at 2780 Nineteenth Avenue in Markham.

BACKGROUND:

On February 2, 2010, Mr. Stephen Waque, solicitor representing Zodiac Developments Inc., addressed Development Services Committee with respect to the applicability of the Oak Ridges Moraine (ORM) boundary on his client's property at 2780 – 19th Ave (See Fig. 1). The submission requested review of a report prepared by Terraprobe Consulting (Summary of Review of Application of Oak Ridges Moraine Conservation Plan (ORMCP) – February 14, 2008 and June 5 2008 respectively). The Terraprobe report concluded that the property falls entirely below the 245 m.a.s.l. (metres above sea level) contour and therefore should not have been included by the Province as part of the ORM. A detailed topographic survey was provided by the proponents to justify this conclusion.

The 245 m.a.s.l contour is determined by the Province as the southerly boundary of the ORM east of Bathurst Street. This boundary was prepared by the Provincial Surveyor, but because of the scale of the base data used, policies were included in the ORMCP (Section 2.4 of the Plan and Subsection 1(1) of O.R. 01/02) to allow refinement of the applicability of the Plan policies at a site level. At the site level,

if the lands are determined to be above the 245 m.a.s.l contour, then they are subject to the ORMCP, and if below the 245 m.a.s.l contour then they are not subject the ORMCP policies. In either situation, the current ORM boundary does not change in the ORMCP or Region or local Official Plans, just the application of the policy. The applicant has requested confirmation of the ORM boundary for his property. Town staff has coordinated the peer review of the boundary in consultation with Provincial and Regional staff.

The Terraprobe reports undertook a review of the property with respect to topography, geology, natural features and functions and included a topographic survey prepared by Guido Papa Surveyors identifying the 245 m.a.s.l. contour as being located north of the property boundary. The subject property is generally flat, roughly rectangular in shape and covers an area of approximately 36 ha (89.9 acres). The west tributary of the Berczy Creek flows intermittently southward through the central portion of the property in a broad poorly defined swale outside of the ORM boundary. Agriculture is the dominant land use and there are several buildings associated with agriculture (farm house, barn etc) on the property (See Fig. 2).

The lands immediately south and east of the property are designated 'INDUSTRIAL' in the Highway 404 North Planning District (OPA No. 149) and are within the Town's and Region's Urban Area.

As instructed by Development Services Committee, on February 2, 2010 staff retained Krcmar Surveyors (at the expense of the landowner), to peer review the survey prepared by the landowner to confirm the boundary.

OPTIONS/ DISCUSSION:

The Property is confirmed to be below the 245 metre contour

In order for the Town to contemplate supporting the exemption of the subject property from the provisions of the ORMCP, a legal topographic survey is needed to confirm to the 245 m.a.s.l. contour to the satisfaction of the Town, the Region and the Province. The Peer Review of the applicant's survey was conducted by Krcmar Surveyors. The applicant has provided the Town with all benchmark information and digital files necessary to undertake the work. The land subject to the ORM comprises approximately 6.3 hectares.

The results of the peer review indicate that the property is below 245 m.a.s.l. Staff is satisfied with the survey results that indicate that the property is not subject to the policies of the ORMCP. It should be noted that the Province had advised that although the policies of the Oak Ridges Moraine can be deemed to not apply to the subject lands outside of the 245 m.a.s.l., the boundary of the Oak Ridges Moraine as identified in Provincial documents remains unchanged at the present time. The Town and Region may request that the ORM boundary be modified in Provincial documents in 2015 through the mandated 10 year Provincial review of the ORMCP.

Greenbelt Plan

The lands owned by Zodiac Developments Inc. contain lands designated 'Industrial' by OPA No. 149, Oak Ridges Moraine as implemented by OPA No. 117 and Greenbelt Plan by the Provincial Greenbelt Plan (See Figure 1). Exemption from policy provisions of the ORMCP, does not automatically exempt the lands from the provisions of the Greenbelt Plan. The Provincial Greenbelt Plan (2005) followed the release of the ORMCP and section 2.1 states:

"Where, by the operation of subsection 2(4) of the ORMCP, lands are within the Oak Ridges Moraine Area but are not governed by the policies of the ORMCP, the lands are deemed to be within the Protected Countryside and all the policies of the Greenbelt Plan apply to the lands."

The policies of the Greenbelt Plan would therefore still apply to the lands deemed below the 245 m.a.s.l. contour, unless otherwise directed by the Province.

The Town does not have the authority to exempt the lands from the Greenbelt Plan. The Minister of Municipal Affairs and Housing is the only authority empowered under the Greenbelt Act (2005) to recommend the removal of lands from the Provincial Greenbelt Plan to the Lieutenant Governor in Council. In order to remove the Provincial Greenbelt designation a Provincial action is required. Should the Province release the lands from the Protected Countryside of the Greenbelt Plan, an amendment to both the Regional Official Plan and the Town's Official Plan would be required to permit urban land uses.

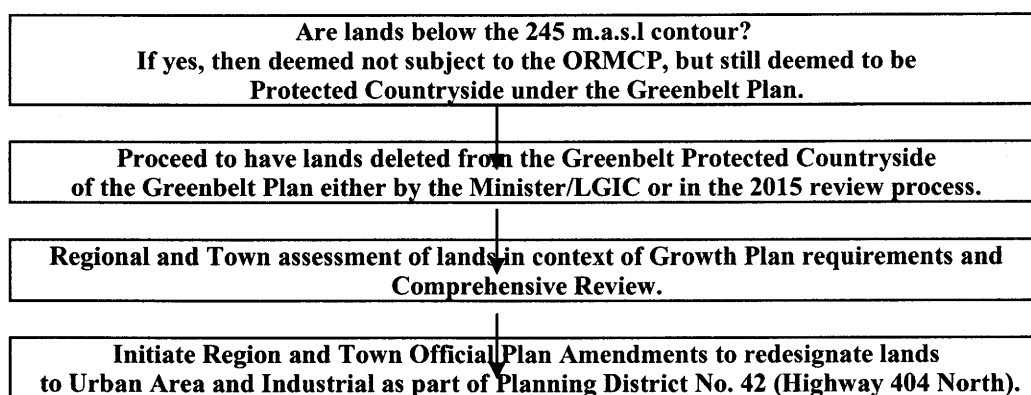
The inclusion of the lands in the urban area of the Region and Town would be subject to assessment as part of the current (or a future) Regional municipal comprehensive review under Places to Grow – The Growth Plan for the Greater Golden Horseshoe.

There is no related issue with the lands currently identified as 'Greenbelt' east of the Oak Ridges Moraine lands. These Greenbelt lands are subject to the transition policies in the Greenbelt Plan (Section 5.2.1) which allow amendments to the Official Plan predating December 16, 2004 and all accompanying implementation applications (subdivisions, zoning etc.) to continue to be recognized for the approved use. As Official Plan Amendment No. 149 is a further approval of Official Plan Amendment 113 which was adopted by the Town in June 2003, OPA 149 is not subject to the provisions of the Greenbelt Plan.

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Next Steps

The Province has committed to review both the Oak Ridges Moraine and Greenbelt Plan in 2015. However, the legislation provides that the Province can consider amendments outside of the 10 year review where there are major unforeseen circumstances. Should the landowner wish to pursue the removal of the Greenbelt designation in advance of the mandated Provincial review, consultations with the Province should be sought. The Oak Ridges Moraine Act and Greenbelt Act do not provide authority to Regional or local municipalities to remove or modify the Greenbelt and ORM boundaries or land use designations to permit urban uses. This action must be approved by the Province. The issue of any urban use of the lands is now further subject to the municipal comprehensive review requirements in the Growth Plan before lands are added to urban areas. The following chart provides a guideline for further actions on the subject lands.

Decision Tree for Further Action**FINANCIAL CONSIDERATIONS AND TEMPLATE: (external link)**

None at this time as the peer review is being paid for by the proponents

HUMAN RESOURCES CONSIDERATIONS

Not applicable

ALIGNMENT WITH STRATEGIC PRIORITIES:

Growth Management, and required conformity with Provincial and regional policy.

BUSINESS UNITS CONSULTED AND AFFECTED:

The confirmation of the Oak Ridges Moraine boundary has been coordinated in consultation with the Ministry of Municipal Affairs and Housing and the Region of York.

RECOMMENDED BY:

Valerie Shuttleworth M.C.I.P, R.P.P
Director of Planning and Urban Design

Jim Baird M.C.I.P, R.P.P
Commissioner Development Services

ATTACHMENTS:

Figure 1 Map showing 2780 – 19th Avenue with 245 m.a.s.l contour
Figure 2 Orthophoto showing 2780 – 19th Avenue
Appendix 'A' Figure 3 Peer Review Confirmation by Kremer Surveyors Ltd

Q:\Development\Planning\MISC\M1204 Oak Ridges Moraine\Applications\DSC April 2010 Zodiac Boundary Adjustment.doc

2780 - 19th Avenue Markham Ontario

Legend

- Subject Lands
- Oak Ridges Moraine
- Greenbelt Plan
- OPA 149 Boundary

OPA 149 Schedule 'A' - Land Uses

- Commercial
- Hazard Lands
- Industrial
- Transportation and Utilities
- Urban Residential

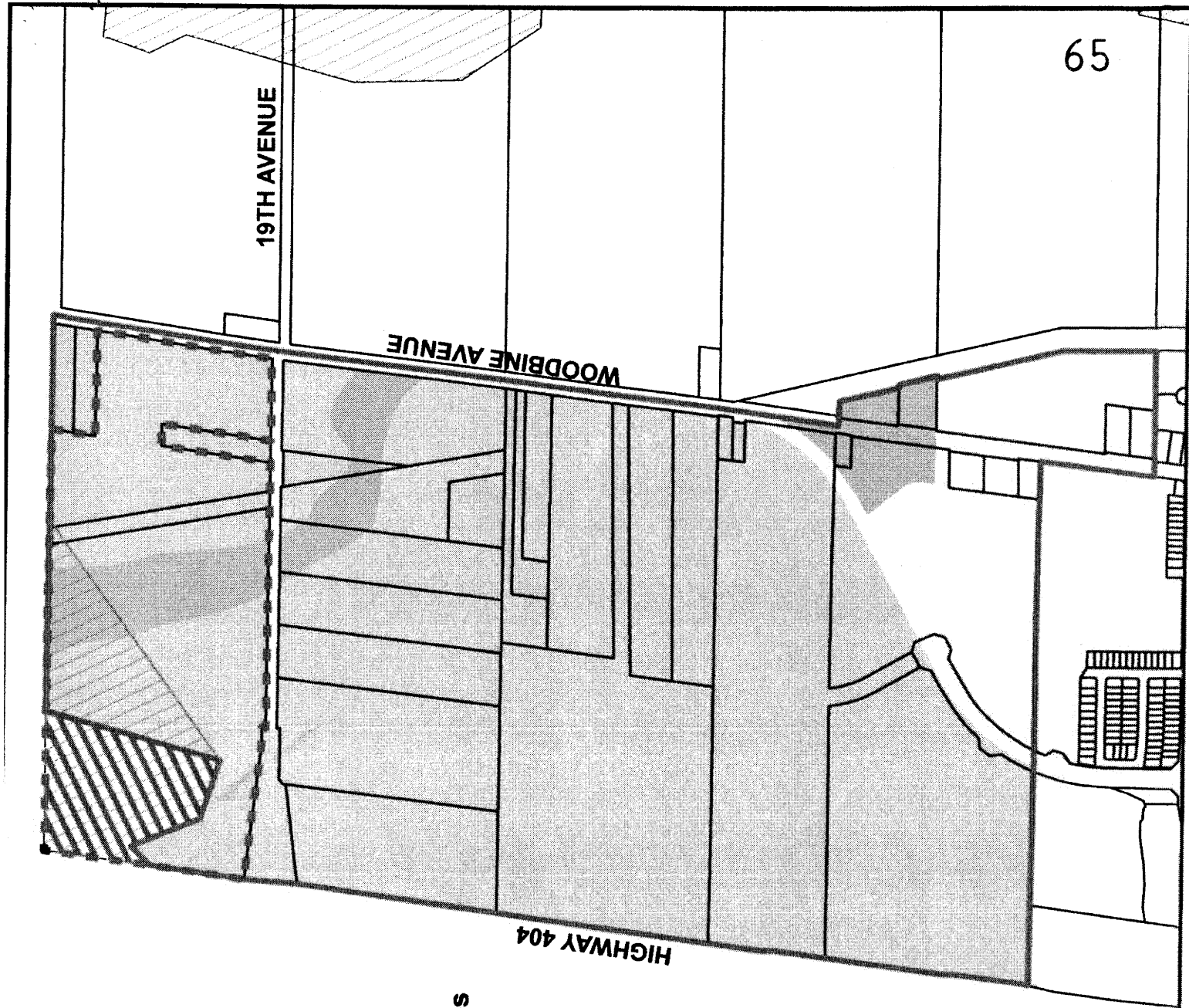
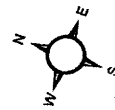


FIGURE 1

2780 - 19th Avenue
Markham Ontario

66
WOODBINE AVENUE

19TH AVENUE

HIGHWAY 404



Oak Ridges Moraine

Subject Lands

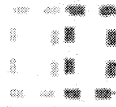


FIGURE 2

March 31, 2010

APPENDIX A

Town of Markham
101 Town Centre Boulevard
Markham, ON L3R 9W3

Attention: **Learie Miller MCIP, RPP, CCEP**
Senior Planner Environmental Policy
Planning & Urban Design Department

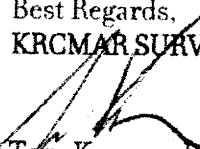
Re: Elevation Confirmation
19th Avenue and Woodbine Avenue
Part of lot 31, Concession 3
Town of Markham

On March 30, 2010 our survey crew attended the site to confirm elevations above 245.00m, as requested. Since the field is presently ploughed and very irregular a typical variance of 0.10m was found throughout the site and particularly within the northwest corner of the property. Through our investigation we found that the average elevation of the site lies below 245.00m and do not produce elevations above 245.00 m.

Accordingly, we concur with the conclusion by Guido Papa Surveying Limited that the land should be designated as outside of the Oak Ridges Moraine Conservation Plan as define through Ontario Regulation 01/02 being described as above the contour elevation 245.00 Canadian Geodetic Vertical Datum.

I trust the above is satisfactory, however, if there are any questions, please feel free to contact the undersigned.

Best Regards,
KRCMAR SURVEYORS LTD.


Tom Krcmar, Principal, OLS

MSKJ110-023 Elevation Confirmation.doc

1137 Centre Street Thornhill Ontario, L4J 3M6
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krcmar surveyors ltd

KRCMAR