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AMENDMENT 41 TO THE OFFICIAL PLAN FOR THE REGIONAL MUNICIPALITY OF YORK STATUS OF RIZMI HOLDINGS AND LUCIA MILANI LANDS

The Planning and Economic Development Committee recommends the following:

- 1. The following communications and deputations be received:**
 - (a) Paul De Buono, Vaughan Watch, April 27, 2004; and**
 - (b) Glenn Lucas, Lucas and Associates, May 4, 2004, on behalf of Rizmi Holdings Limited and Lucia Milani;**
- 2. The recommendations contained in the following report, May 5, 2004, from the Commissioner of Planning and Development Services be adopted:**

1. RECOMMENDATIONS

It is recommended that:

1. This report be received for information purposes and forwarded to the Ministry of Municipal Affairs and Housing, City of Vaughan, Rizmi Holdings and parties to the on-going Ontario Municipal Board Hearing.
2. That the Region advise the City of Vaughan that applications OP.59.89 and Z.127.89 will not be included on the Region's list but that the City resolution of March 8th, 2004 will be referred to the Ministry of Municipal Affairs and Housing.
3. That *Attachment 3 a) and b)* being a List of Transitional Files and a Map showing their Location appended to this report be received for information and forwarded to the Ministry of Municipal Affairs and Housing in accordance with their request.

2. PURPOSE

The purpose of this report is to:

- Clarify for Committee and Council, references to the various applications on lands owned by Rizmi Holdings and Lucia Milani in Lots 30 and 31 Concession 2 in the City of Vaughan vis à vis the Report of the Commissioner of Planning and Development Services on the Minister's modifications to Regional Amendment 41.
- Advise Committee and Council of the Regional Official Plan and Oak Ridges Moraine Conservation Plan status of these lands.
- Respond to the City of Vaughan request that two applications on the Rizmi Holdings/Milani lands be identified on the Regions' list of transitional files.
- Advise Committee and Council of all other comment letters received and acknowledgements sent on the Minister's modifications to ROPA 41.

3. BACKGROUND

Rizmi/Milani Ownership

Rizmi Holdings and Lucia Milani own some 350 acres of land in Lots 30 and 31 Concession 2, City of Vaughan. The total Rizmi/Milani Holdings are shown outlined in Red on appended *Attachment 4* - Figure 1. Parcels subject to applications are denoted by a letter as follows:

Parcel A: Lands outlined in yellow (approximately 23 ha) are subject to an application for aggregate extraction which has been referred to the OMB along with Map 7 of the ROP, parts of City of Vaughan OPA 600 and By-law 327-2000. The hearing has been stayed by the Minister of Municipal Affairs and Housing pursuant to section 18 of the *Oak Ridges Moraine Conservation Act, 2001*.

Parcels B and C:

Each parcel is approximately 50 acres in area with the westerly parcel (C) containing the Milani home. These parcels are subject to City of Vaughan applications OP.59.89 and Z.127.89

Rizmi/Milani also owns the lands north of Parcel B and east of Parcel C, which encompasses an area of some 150 acres. There are no outstanding applications on these lands.

Regional Official Plan Status

The Minister's approval of the Regional Official Plan in October 1994, included a referral to the Ontario Municipal Board covering the entire 350 acres of Milani/Rizmi lands as follows:

- as Environmental Policy Area on Map 2, Significant Natural Features
- as Significant Forest on Map 3, Forest Resources
- as part of the Regional Greenlands System on Map 4, Regional Greenlands System,
- as part of a Mineral Aggregate Resource Area on Map 7, Mineral Aggregate Resources
- section 2.1, Greenlands
- section 2.2, Land
- Chapter 5, Regional Structure and Growth Management.

In 1999, following lengthy discussions and an agreed settlement between Rizmi/Milani, the Region, City of Vaughan and TRCA, the Board dismissed the appeals and approved all Regional Official Plan map designations and policy sections on the lands, save and except for Map 7 dealing with Mineral Aggregate Resources. At the same time, the Board also approved the sections and maps of Vaughan Amendment 400 which were also before the Board. It is this remaining ROP referral (and outstanding appeals of OPA 600 and Vaughan Zoning By-law 327-2000) that are cited within the list appended to this report as *Attachment 3*.

Map 7 was not approved by the Board in order for it to be resumed by the Minister to be considered along with the Deferral 23 which was a deferral of the Mineral Aggregate Resource Area designation on adjacent lands.

Despite this resumption, in April 2000, at the request of the new solicitor for Rizmi Holdings, the Map 7 designation in the Regional Official Plan was once again referred to the Ontario Municipal Board, to be considered along with the aggregate application, parts of Vaughan Amendment 600 and Vaughan zoning by-law 327-2000, which proposed to zone the lands subject to the aggregate applications to agriculture and open-space.

Application to Extract Aggregate Resources

In 1998 Rizmi Holdings applied for a licence to extract aggregate on approximately 40 ha of their overall holdings within the west half of Lot 30 Concession 2, City of Vaughan. A subsequent revision of the application reduced the lands subject to the aggregate licence application to those shown outlined in Yellow on *Attachment 4* - Figure 1.

This aggregate application, as well the Region of York Official Plan (Referral C - Map 7) and sections of OPA 600 in the City of Vaughan and Vaughan By-law 327-2000 were referred and appealed to the Ontario Municipal Board in 2000. Regional Council first opposed the aggregate application at its meeting of October 22, 1998 and re-iterated this objection to a revised aggregate application on September 26, 2000. In addition to the Region, the City of Vaughan, TRCA, several ratepayers groups and an adjacent property owner are all parties in opposition to this aggregate application.

Following the introduction of the Oak Ridges Moraine Conservation Act and Plan, a series of pre-hearing conferences, decisions by the Board and the commencement of Divisional Court action by Vaughan, the Region and TRCA, in July 2003, the Region and the City wrote to the Minister of Municipal Affairs and Housing requesting that he defend the principles set out in the *ORMCA* to resolve the dispute by deferring the matter before the Board and amending the City of Vaughan zoning by-law to conform with the *ORMCP*.

On December 16 2003, in conjunction with the introduction of Bill 27, the *Greenbelt Protection Act, 2003* the Minister stayed the Ontario Municipal Board hearing pursuant to his powers under the *Oak Ridges Moraine Conservation Act, 2001*. The Minister took no action on the second part of the Region's and City's request to amend the Vaughan zoning by-law.

Referral of the aggregate application, as well as the outstanding referral of Map 7 of the ROP, City Vaughan OPA 600 and By-law 327-2000 remain stayed, pending further action by the Ministry.

Official Plan and Zoning By-law Amendment (OP.59.89 and Z.127.89 City of Vaughan)

In October 1989, Rizmi/Milani submitted applications for an amendment to the City of Vaughan Official Plan and an amendment to the Zoning Bylaw for lands in the west half

of Lot 31 and the east Half of Lot 30 Concession 2 to permit rural residential development. The parcels subject to this OPA and Zoning application are shown labelled as Parcels “B” and “C” on *Attachment 4 - Figure 1*.

The applications do not contain supporting information nor unit counts and were never acted upon by the City. In February 2003, following over 12 years of inactivity, the City closed these files.

On March 2, 2004, in commenting on the proposed Ministry modifications to Regional Amendment 41, Glen Lucas on behalf of his clients Rizmi Holdings Limited and Lucia Milani wrote to the Region requesting the inclusion of these applications on the Region’s list in *Attachment 3b)* entitled “Other Applications In Vaughan on Moraine but not yet Forwarded to Region by Area Municipality”. *Attachment 1a)* is a copy of this letter. An acknowledgement letter will be prepared in response to this letter.

On March 8, 2004, Vaughan Council adopted a resolution directing the City Manager and Commissioner of Planning to advise the Region of York, “immediately that applications OP.58.89 and Z.127.89 are open and are considered “transitional” applications according to the definition under the Oak Ridges Moraine Conservation Act/Plan and should be included as such in any Modifications to Regional Amendment 41 as requested by the Minister of Municipal Affairs.” *Attachment 1b)* is a copy of this Resolution and the covering letter to the Commissioner of Planning.

A response to this request is contained in Section 4.3 of this report and will be forwarded to the City upon completion of consideration of this matter by Regional Council.

4. ANALYSIS AND OPTIONS

4.1 Regional Official Plan Conformity

The land use designation of the total Rizmi/Milani property on Map 6 – Agriculture and Rural Area of the Regional Official Plan was approved by the Minister in 1994 as Rural Area. As previously indicated, parts of the total Rizmi/Milani holdings are also subject to environmental designations as Environmental Policy Area, Significant Forested Area, part of the Regional Greenlands System and subject to the concomitant ROP policies relating to these environmental designations. These maps and policies as well as policies in Chapter 5 of the Regional Official Plan dealing with growth management and estate residential development were all approved by the OMB in 1999, on the consent of the applicant.

The sole remaining referral to the Regional Official Plan involves the identification of the lands as Mineral Aggregate Resource Area on Map 7 Mineral Aggregate Resources.

While the specific policy framework under which the residential applications would require assessment may be a subject of some legal debate should this matter ever proceed

to hearing or the courts, Regional staff is of the opinion that if applications OP.58.89 and Z.127.89 were brought forward now for consideration they should be assessed against the 2004 Policy framework, including Regional Official Plan policies approved in 1999 by the OMB with the consent of the applicant and at least the prescribed provisions of the Oak Ridges Moraine Conservation Plan.

This assessment would include the environmental policies as well as other policies of the Regional Official Plan, including the policies dealing with estate residential development contained in Section 5.9 of the Regional Plan. Within this section, areas considered to be unsuitable for estate residential development include those “within, adjacent to or within one concession block of an existing hamlet, town, and village or urban area.” (Policy 5.9.6 a) Since these applications are within the 1 kilometre distance, they would not comply with at least this policy in the existing approved Regional Official Plan.

There is no outstanding Regional Official Plan application filed for these lands to change the designation to permit the rural residential (estate residential) uses nor has there ever been one filed for such uses on the subject lands. As such, these applications are not capable of being approved or even adopted at the local level as they fail to comply with the Regional Official Plan.

If Rizmi/Milani now submitted a Regional Official Plan Amendment application to permit the uses, the Region would be obliged to deny the application under the provisions of the *Oak Ridges Moraine Conservation Act, 2001* (Section 7) and the Regional Official Plan.

4.2 Oak Ridges Moraine Conservation Plan Designations

Since filing of the Moraine Plan in April 2002, the land use designations and applicable planning provisions have been provided by the Moraine Act and Plan. ROPA 41, adopted by Regional Council on March 25, 2003 brings the Regional Official Plan into conformity with the ORMCP.

The lands subject to applications OP.58.129 and Z.127.89 are wholly within the ORMCP Natural Core Area and Natural Linkage Area designations. Changes to the extent and area of these designations are not contemplated within the Act. Neither of these designations identifies rural residential or estate residential housing as a permitted use in that land use designation.

In addition to the land use designations, significant portions of the lands subject to the OP and Zoning applications are identified as Key Natural Heritage and Hydrologically Sensitive Features. The provisions of the ORMCP prohibit development within these features and within the minimum vegetated protection zone surrounding them. Attachment 5 - Figure 2 attached shows the locations of these features on the subject lands.

4.3 Oak Ridges Moraine Transitional Files

Section 15 of the *Oak Ridges Moraine Conservation Act, 2001* establishes the rules for applications which had been commenced and were in some stage of consideration when the *ORMCA, 2001* came into force.

The Rizmi/Milani OP and zoning applications were closed by the City and at the direction of City Council re-opened. They may be subject to the transition provisions of the Moraine Plan, however, the onus is on the applicant to prove the transition status. In the event of a dispute, then the OMB or the courts court make a determination.

In the case of applications which have been commenced but not decided upon, within the Natural Core, Natural Linkage and Countryside Area, the ORMCP (but not the Act) requires an application satisfy the “prescribed provisions” of the ORMCP, but not the ORMCP sections that deal with permitted uses in those land use designations. It is not known whether the Rizmi/Milani official plan and zoning applications, even if assumed to have transition status, could meet the tests contained in the prescribed provisions and we understand there is no supporting information within the files to assist in this assessment.

Further, the outstanding applications at the City of Vaughan do not include a Plan of Subdivision nor is there a Regional Official Plan Amendment application. Section 17 of the *ORMCA*, as proposed to be modified through Bill 27, and the Minister’s modifications to Regional Amendment 41 and the City of Vaughan Amendment 604 require that an application for a Plan of Subdivision and a Regional Official Plan Amendment be treated as a new application, subject to all the provisions of the ORMCP. As such the applications would fail the first test of conformity to the permitted uses within the land use designations of the ORMCP and could not be adopted pursuant to Section 7 of the Act.

In summary, even if the applications are “transitional”, it is not known whether they could meet the tests of the prescribed provisions. Further, without a Regional Official Plan Amendment application, the local official plan application cannot proceed.

4.4 Regional List of Transitional Files

The Ministry in it’s letter of January 15, 2004 specifically requested the Region to identify “those applications that are either before the Region for approval or had been before the Region for approval but had been appealed to the Ontario Municipal Board. These would include any planning applications requiring Regional approval that fall within Section 15(2) of the *ORMCA* and are located within Natural Core, Natural Linkage or Countryside designations”. A copy of this portion of the Ministry letter is appended as *Attachment 6*.

The list and Map appended to the March 3, 2004, Planning and Economic Development Committee was drafted prior to the City of Vaughan reopening the Rizmi/Milani Official Plan and Zoning By-law application files. If additional applications similar to the Milani files were to be forwarded to the Region now, such files are unlikely to be processed due

to basic conformity issues with the Regional Official Plan, In addition there may be other applications at the local level that the Region has not been made aware of and we have consistently advised the Ministry to rely on the detailed information from the local municipalities regarding transition files.

As such, it is recommended that the Region advise the City of Vaughan that the applications will not be included on the Region's list but that the City resolution of March 8th, 2004 will be referred to the Ministry of Municipal Affairs and Housing.

4.5 Other Comments Received on the Minister's ROPA 41 Modifications

At the date of the Council meeting of March 25, 2004, Regional staff had received 9 letters of comments on the proposed Ministry modifications, including the request from Glen Lucas on behalf of Rizmi/Milani. *Attachment 1* to this report contains a full list of the comments, their comment letters and the acknowledgements.

Several of the comments for minor changes to policies and map depictions and clarification can be supported as detailed in the acknowledgement letters. Regional staff will continue to work with the Ministry and stakeholders to finalize the amendment and have it approved in the near future.

The acknowledgement of the Lucas letter on the Rizmi /Milani lands will be drafted following consideration of this report by Committee and Council, however, the Ministry of Municipal Affairs has already been advised of the Lucas letter and of the City of Vaughan's resolution regarding the two files.

5. FINANCIAL IMPLICATIONS

The Region of York has been involved in legal action with respect to parts of this property since 1994. It is anticipated that further Board hearings or hearings pursuant to the *Oak Ridges Moraine Conservation Act* could ensue, as could further Divisional Court action. The existing Planning Department staff complement is sufficient to provide support for these activities. Legal representation for this and subsequent actions on site will be reviewed and provided either through in-house counsel or through retention of outside counsel, subject to additional budget allocations.

6. LOCAL MUNICIPAL IMPACT

Council of the City of Vaughan has reopened files OP.58.129 and Z.127.89 and identified these applications as "transitional". Further the City has requested that they be included on the Regions' list of transitional files. It is recommended that the Region advise the City of Vaughan that applications OP.59.89 and Z.127.89 will not be included on the Region's list but that the City resolution of March 8th, 2004 will be referred to the Ministry of Municipal Affairs and Housing. The applications are included on the City's

list of transitional files and the Ministry is free to make any decisions that it wishes regarding transitional files and modifications to policies contained in ROPA 41.

7. SUMMARY

The following is a summary of this situation:

- The applications for Official Plan and Zoning Bylaw Amendments (OP.58.129 and Z.127.89) to permit rural residential (estate residential) development on the Rizmi/Milani lands do not comply with the approved Regional Official Plan.
- There is no Regional Official Plan application outstanding, nor has one ever been filed to permit this development.
- The applications at the City of Vaughan are not complete applications.
- If the applications were to come forward for assessment at this point in time they would be assessed against the planning framework and context of 2004 not 1989 when they were opened.
- The current planning policy context includes:
 - Approved Regional Official Plan policies to which the applications do not comply.
 - Does not comply with the intent Vaughan OPA 600 but policies have been appealed.
 - Oak Ridges Moraine Conservation Plan and identifications of key natural heritage and Hydrologically sensitive features on the lands.
 - Adopted Amendments to bring the Regional Plan and City Official Plan and Zoning By-law into conformity with the ORMCP.
- Regarding ORMCA transition status, status is granted by legislation, not a list or map. The onus is on the applicant to prove transition status.

8. CONCLUSIONS

The Rizmi Holdings/Lucia Milani lands are located within the Oak Ridges Moraine on the east side of Dufferin Street in the City of Vaughan. The lands have been subject to referral requests to the Regional Official Plan, however, the majority of these were withdrawn and the designations and policies approved by the OMB on the consent of Rizmi/Milani in 1999. The sole remaining referral involves the identification of the lands as Mineral Aggregate Resources Area on Map 7 of the ROP.

Applications OP.59.89 and Z.127.89 were filed with the City of Vaughan in 1989, however, the files are apparently incomplete and have not been acted upon by the applicant. The City closed the files in February 2003, but on March 8, 2004, by Council resolution directed the City Manager and the Commissioner of Planning to “inform the Region of York immediately that applications OP.58.89 and Z.127.89 are open and are considered “transitional” applications according to the definition under the Oak Ridges Moraine Conservation Act/Plan and should be included as such in any Modifications to Regional Amendment 41 as requested by the Minister of Municipal Affairs.”

These files were never forwarded to the Region and do not comply with the Regional Official Plan Policy framework approved by the OMB, with the applicant's consent in 1999.

"Transitional" status of files under the *Oak Ridges Moraine Conservation Act, 2001* is not defined by inclusion on a list. Transition status is determined through the *Oak Ridges Moraine Conservation Act* and the onus is on the applicant to prove that he meets the provisions of the Act.

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It is recommended that Regional Council:

- Receive this report as information on the status of the Rizmi Holding/Milani lands vis à vis the Regional Official Plan and the Oak Ridges Moraine Conservation Plan.
- Advise the City of Vaughan that applications OP.59.89 and Z.127.89 will not be included on the Region's list but that the City resolution of March 8th, 2004 will be referred to the Ministry of Municipal Affairs and Housing.
- Receive *Attachment 3* for information and forwarding to the Ministry of Municipal Affairs and Housing in accordance with its request of January 15, 2004.

The Senior Management Group has reviewed this report.

(A copy of the attachments referred to in the foregoing is included with this report and is also on file in the Office of the Regional Clerk.)