

6

CITY OF VAUGHAN OFFICIAL PLAN AMENDMENT NO. 653

(Regional Councillor Taylor declared a pecuniary interest in this clause as his father is employed by Magna International, which is affiliated with MI Developments. Regional Councillor Taylor did not take part in the discussion relating to the deputations, communications or report and did not vote on this item.)

The Planning and Economic Development Committee recommends the following:

- 1. The following deputations and communications be received:**
 - (a) Lynda Townsend, Townsend Rogers LLP, on behalf of Maurizio Rogato, Solmar Developments Corp., and communication dated August 29, 2007, regarding Tesmar Holdings Inc. and Vaughan Official Plan Amendment No. 653;**
 - (b) Steven Zakem, Aird & Berlis LLP, and communications dated August 24, 2007 and September 5, 2007, on behalf of MI Developments Inc., regarding Tesmar Holdings Inc. and Vaughan Official Plan Amendment No. 653;**
 - (c) Marilyn Iafrate, resident, City of Vaughan and member of the Maple Family School Council;**
 - (d) Communication from A. Milliken Heisey, Papazian Heisey Myers, September 5, 2007; and**
- 2. The recommendations contained in the following report dated August 27, 2007, from the Commissioner of Planning and Development Services, be adopted:**

1. RECOMMENDATIONS

It is recommended that:

- 1. The Ontario Municipal Board refuse the City of Vaughan's Official Plan Amendment No. 653 for the following reasons:**
 - a. To protect the planned function of the employment area that includes the nationally significant CN MacMillan Marshalling Yard.**
 - b. There is no need for additional residential development in this location to meet the residential targets for the City of Vaughan.**

- c. There is a need to retain the strategically located employment lands to meet the Region's and City's employment land requirements.
 - d. The Amendment conflicts with the Region's community building objectives and Vaughan's planned urban structure.
 - e. The application is contrary to the Provincial Policy Statement.
2. The Regional Clerk forward a copy of this report to the Ontario Municipal Board and City of Vaughan.
3. Regional staff be authorized to appear at the Ontario Municipal Board in support of the Regional position.

2. PURPOSE

The purpose of this report is to:

- Provide reasons why Amendment No. 653 to the Official Plan of the City of Vaughan should be refused by the Ontario Municipal Board.
- Establish the basis for the Regional position at the Ontario Municipal Board hearing on this matter. The applicant has appealed the amendment to the "Board" for lack of decision by York Region within the prescribed timeframe.

3. BACKGROUND

3.1 Site Location and Context: Southeast Quadrant of Jane St. and Rutherford Road

The site is located in the southeast quadrant of Jane Street and Rutherford Road; specifically, on the northeast corner of Jane Street and Riverock Gate. (*see Council Attachment 1 – Key Map*) The property is 1.667 hectares (4.1 ac) in size and currently vacant. Adjacent land uses are as follows:

- North – vacant employment lands (development application, OP.06.029, to redesignate from "Prestige Area" to "High Density Residential" to permit 1,730 residential units)
- East – industrial, including the CN marshalling yard
- South – industrial/commercial, including the CN marshalling yard
- West – Jane Street; Vacant Vaughan Mills out-parcels (development application, OP.07.001, to redesignate from "General Commercial" to "High Density Residential" to permit 2,022 residential units)

The subject lands are part of a larger industrial employment area designated under OPA 450, the City's Employment Area and Growth Management Plan. OPA 450 was partially approved by the Ontario Municipal Board on May 3, 1996 and December 12, 1996. This OPA provides policy directions for general industrial, prestige industrial and service

commercial uses. The other three quadrants of the Jane/Rutherford intersection are part of the Vaughan Centre Secondary Plan Area and are intended for a mix of retail commercial uses and residential uses in higher density built forms. The Maple Community Plan (OPA 350) is also located in the north-east quadrant.

3.2 Tesmar Submits the Original Application in August 2005

On August 16, 2005 Tesmar Holdings Inc. (Solmar Development Corp.) submitted an Official Plan Amendment (OPA) application to redesignate the subject lands from “Prestige Area”, under OPA 450, to “Vaughan Centre Secondary Plan Area” and “High Density Residential-Commercial”, within OPA 600 (Vaughan’s residential/commercial urban structure plan). The application proposed an apartment building with a floor space index (FSI) of 2.7.

On November 21, 2005 the statutory public meeting for this application was held, at which time, the Maple Landing Ratepayers Association, Blessed Trinity Expansion Committee, and MI Developments Inc. expressed their objections to the application. Their main assertion was that residential is not an appropriate land use for this property.

On February 10, 2006 York Region Planning staff provided preliminary comments on this OPA application advising that staff did not support the proposed application and additional analysis was requested, including the following:

- The planned function and location of the Vaughan Centre.
- The planned function, and supply of lands, designated for employment uses under OPA 450.
- Compatibility of the proposal with, and transition to, surrounding employment and commercial uses.
- Conformity to City and Regional population and employment forecasts.

On March 6, 2006, Vaughan staff recommended to their Committee of the Whole refusal of the application due to the loss of employment lands. The Committee deferred consideration of the OPA application to allow the applicant to reconsider their development options.

3.3 Tesmar Submits a Revised Application in April 2006

On April 28, 2006 Tesmar, with the assistance of KLM Planning Partners Inc., submitted a revised OPA application to the City that retained the residential component but added a proposed minimum three storey, 5,000 sq. m., office building, with a maximum 1.0 FSI.

On June 19, 2006 the City of Vaughan held a second public meeting at which time the Maple Landing Ratepayers Association, Maple Village Ratepayers Association, and MI Developments continued to express their opposition to and issues with the proposed application.

On August 14, 2006, the applicant submitted a traffic report, a functional servicing report, a phase 1 environmental site assessment, a noise and vibration feasibility report, and a planning justification report.

On September 18, 2006 Vaughan staff recommended to their Committee of the Whole deferring the Tesmar OPA application, and to conduct a land use review of the immediate area. The Committee of the Whole recommended that if Vaughan Council approved the land use review the site specific Official Plan Amendment application should also be approved.

On September 25, 2006 Vaughan Council approved the Committee's recommendations, adopting OPA 653, and directing Vaughan staff to conduct a Land Use Review, "... with respect to the potential for residential development", (Jane Street Corridor Residential Potential Land Use Review). The adopted version of OPA 653 permits a three storey, 5,000 sq. m., office building and two, – 28 storey apartment buildings that could increase to 33 storeys with approved enhanced design features or the provision of public amenity.

3.4 York Region Receives OPA 653 in October 2006 for Approval

On October 10, 2006 York Region Planning staff received Vaughan's OPA 653 for processing and disposition. Planning staff identified three key issues: the need for a peer review of the applicant's noise and vibration study; the revised application still represented a conversion of employment land to residential uses, and the inappropriateness of introducing a residential land use in an employment area.

A peer review was conducted to evaluate the applicant's noise and vibration study including review of the potential impacts from CN's MacMillan Marshalling Yard. The peer review concluded that additional analysis should be undertaken, prior to a decision on the amendment, to evaluate potential noise levels from adjacent existing industrial operations as well as from the CN marshalling yard. The applicant's noise consultant defended their feasibility analysis and suggested that the detailed analysis should be conducted at the site plan control stage.

Regional Planning staff have waited for the completion of the City's *Jane Street Corridor (South of Rutherford Road) Residential Potential Land Use Review*. The Review analyzed the pros and cons of residential uses in the Jane Street corridor south of Rutherford Road and the recommendations of the Review were adopted by Vaughan Council on June 25, 2007.

3.5 Vaughan's Jane Street Corridor Residential Potential Land Use Review Recommends Maintaining Employment Uses on the East Side of Jane Street

The *Jane Street Corridor (South of Rutherford Road) Residential Potential Land Use Review* discussed the pros and cons of residential development in a number of scenarios and recommended:

- a. Retaining the employment designations for lands on the east side of Jane Street as found in OPA 450 be retained;
- b. Conducting a comprehensive review of the Vaughan Centre Secondary Plan Area under the New Official Plan review process; and,
- c. That all applications for residential uses within the review area should be considered premature pending the Vaughan Centre Update study and plan.

3.6 The Provincial Policy Statement Promotes Efficient Use of Land and Resources While Protecting Employment Lands

OPA 653 commenced on August 16, 2005. The 2005 Provincial Policy Statement (PPS) applies to all applications commenced after March 1, 2005. The PPS encourages the development of compact, complete communities that are transit supportive and preserves the planned functions of stable neighbourhoods and employment areas while protecting and enhancing the natural environment.

Section 1.3 Employment Areas of the PPS is of particular importance in the protection of employment lands and promotes economic development competitiveness through such measures as an appropriate mix of employment and land uses; diversifying the economic base that includes taking into account the needs of business; and planning and protecting employment areas for current and future uses. It also permits planning authority to only permit conversions of employment to non-employment lands through a comprehensive review.

3.7 The Growth Plan Further Protects Employment Areas

The Growth Plan for the Greater Golden Horseshoe came into force on June 16, 2006. As OPA 653 commenced prior to the Growth Plan coming into force, it is not mandatory that it comply with the policies of the Growth Plan. However, draft versions of the Growth Plan were released for review and comment at the time the application was submitted. A discussion paper on “A Growth Plan for the Greater Golden Horseshoe” was released in the summer of 2004. A draft version of the “Growth Plan for the Greater Golden Horseshoe” was released in February 2005.

The Growth Plan provides guiding principles on where and how to grow. The Plan manages population and employment growth by:

- protecting employment areas
- identifying urban growth centres
- encouraging general intensification at appropriate locations and intensities
- encouraging further intensification in major transit station areas and corridors
- protecting rural areas
- controlling expansions of settlement area boundaries
- encouraging complete transit supportive communities in the Greenfield areas.

3.8 Bill 51 Amendments to the Planning Act Strengthen Municipal Powers in the Protection of Areas of Employment

Bill 51 was proclaimed on January 1, 2007 and it does not apply to OPA 653; however, it serves to further entrench the prevailing planning policy regime requiring a comprehensive review for conversions as mandated by the 2005 PPS.

As a result of Bill 51, the Planning Act now prescribes that if municipal official plans contain policies dealing with the removal of land from areas of employment, then OPA applications within these areas of employment cannot be appealed to the Ontario Municipal Board for a refusal or failure to adopt a requested amendment. Since this legislation is relatively recent neither the City nor Region currently have this policy regime in place.

3.9 Vaughan Receives Three More OPA Applications for High Density Residential Development in the Immediate Area

Three more OPA applications were received by the City in the immediate area, (*Council Attachment 2* shows the locations of the approved and proposed high density residential developments). These include:

- 1354028 Ontario Inc. (MI Developments) submitted an OPA application, in December 2006, for lands on the south side of Rutherford Road, between the CN pullback track and Keele Street proposing three 18 storey apartment buildings for approximately 636 units.
- Delisle Properties Limited submitted an OPA application, in December 2006, for the lands at the southeast corner of Jane Street and Rutherford Road proposing six apartment buildings ranging in heights from 24 to 32 storeys yielding approximately 1,730 units.

Both of the above applications are within Vaughan's OPA 450 area.

- Casertano Development Corp. (Greenpark Homes) submitted an OPA application, in February 2007, for lands on the west side of Jane Street, south of Rutherford Road proposing six apartment buildings with heights ranging from 22 to 38 storeys yielding approximately 2,022 units. This proposed development is located on the eastern portion of the Vaughan Mills shopping centre, within the Vaughan Centre Secondary Plan area.

4. ANALYSIS AND OPTIONS

Amendment No. 653 should be refused by the Ontario Municipal Board because of the following:

- The Amendment conflicts with the Region's community building objectives and Vaughan's planned urban structure. It is contrary to OPA 450, which is the City's

employment area growth and management plan, and OPA 600 which is the urban structure plan that directs, among other things, where high density residential should occur. OPA 450's planned function is to guide the development of, and protect, employment uses.

- The site forms part of a large, stable, strategically located employment block which should be protected from incompatible residential uses that would destabilize the employment area. Introduction of residential uses would create difficulty for existing business to expand, erode the employment area at its edges, and weaken the economic vitality of the employment area.
- There is no need for additional residential intensification at this location to meet the City's residential intensification targets as set out in the Regional Official Plan.
- There is a need to retain the strategically located employment lands to meet the City's employment land needs as set out in the Regional Official Plan.
- The land is required over the long term for employment purposes for both the City and York Region and the need for the conversion to a residential use has not been demonstrated by a comprehensive review.

The application is contrary to the Provincial Policy Statement (2005) and the Regional Plan for the above noted reasons.

4.1 Protecting the CN MacMillan Marshalling Yard is of National Importance

The employment area's largest land user is the CN MacMillan Marshalling Yard. This is CN's largest rail sorting facility in Canada, handling over a million container cars per year. The marshalling yard is of national significance. The industrial community has developed around it, and there is a collective synergistic, interdependent relationship within the area for the industrial community, often in association with the marshalling yard, or in the form of "spin-off" industries.

Locating residential uses in proximity to the marshalling yard risks impeding the currently uninhibited 24 hour operation of this facility, or the operations of the surrounding industrial activities. Once a sensitive, non-employment land use develops within an area of employment, employment uses have to meet a higher rigour of compatibility tests, creating difficulty for existing businesses to expand, or new businesses to start. The effect of approving the conversion application for residential uses within this employment block will destabilize the land use fabric of the employment block by encouraging other similar applications and by handicapping existing intentions. The effects will increase the propensity to erode, in a piecemeal fashion, the employment area at its edges.

In addition to the Tesmar application, two other high density residential developments are proposed in the employment block. These three applications total 2,966 apartment units.

4.1.1 Vaughan's Land Use Review Supports Retaining the Employment Lands

Conclusions of the City's Land Use Review include retaining the employment lands on the east side of Jane Street. The Review notes that the introduction of residential land uses in close proximity to industrial uses may result in industrial operations having to curtail their activities due to noise, odour, or general working conditions, particularly during times when residents expect to enjoy the comfort of their homes. The Review also indicates that the employment area has a general lack of community services, schools, parkland, and infrastructure to serve residential development if it were introduced in this area. Another conclusion of Vaughan's Review is that development applications for residential uses within the study area should be considered premature, pending completion of the Vaughan Centre Update Study and Plan.

4.1.2 York Region Council Supports the Protection of Employment Lands

York Region Council, at its meeting on June 21, 2007, adopted the recommendations of the Planning and Economic Development Committee regarding a report entitled *Protecting Areas of Employment*. York Region has made it clear that Official Plan Amendment applications to add non-employment uses in employment areas will be considered as a "conversion", are discouraged, and will be deemed premature pending a comprehensive review.

4.2 The Application is contrary to the Region's and Vaughan's Planned Structure

Vaughan's Urban Structure, as set out in its Official Plan (OPA 600), identifies where high density residential communities are planned to develop, and includes: Vaughan Corporate Centre, Vaughan Centre, the Carville District Centre, and the Steeles Avenue West Corridor area. The development of these urban nodes/centres is key to Vaughan's planned vision, a vision that has been reinforced through the Province's *Places to Grow* Plan including the designation of Vaughan Corporate Centre (V.C.C.) as a GTA Urban Growth Node, and the \$2.1 Billion Spadina Subway Extension to Steeles Avenue and the Vaughan Corporate Centre.

As a further commitment to the Highway 7 corridor, on June 25, 2007, Vaughan Council adopted five OPA's (660, 661, 662, 663, and 664) that cover the Highway 7 corridor from Regional Road 50 to just east of Dufferin Street. These amendments encourage compact, transit supportive land uses and densities along Highway 7, a designated Regional Corridor that is proposed to be serviced by a rapid transit system. Preliminary estimates indicate that by 2031 Vaughan can accommodate approximately 35,500 high density apartment units through adopted OPA's (12,500 units) and anticipated intensification (23,000 units), without any site specific conversion of employment land.

Allowing a site specific high density residential development outside of the current boundaries of OPA 600 is contrary to the urban structure under OPA 600 and contrary to

the planned function of the employment area plan, OPA 450. OPA 600 establishes where and how residential development can occur within the municipality. It provides the framework for detailed secondary plans on which communities and neighbourhoods are comprehensively planned, taking into consideration a host of issues, including but not limited to: servicing, transportation, environmental, recreational, and community service issues. OPA 653 proposes to add high density residential land use to an employment area in the absence of a comprehensive community plan. It is contrary to provisions of Section 5.2 - Community Building, of the Regional Official Plan, including comprehensive community planning and design.

4.2.1 Vaughan Centre Has Numerous Approved and Proposed High Density Units – No Demonstrated Need for Additional High Density Residential Units at this Location

There is adequate high density residential development approved and proposed within the existing boundaries of the Vaughan Centre Secondary Plan Area.

The Vaughan Centre Secondary Plan Area, under OPA 600 (Section 4.1.1.vi), anticipates a total population of 3,000 residents. Appendix B of OPA 600 further details the anticipated unit distribution as follows: 326 low density units; 411 medium density units; and, 264 high density units, for a total of 1,001 residential units.

The Ontario Municipal Board approved a high density development application located in the Vaughan Centre Secondary Plan Area: northeast corner of Jane Street and Rutherford Road, proposed by Jane Ruth Developments Inc. (Solmar Development Corp.) (*Council Attachment 2* shows the locations of the approved and proposed high density residential developments). The Board decision could potentially yield 720 units. Through this Board decision, the planned high density unit count has subsequently been increased. The approved supply of high density apartment units currently exceeds what was envisioned by the Vaughan Centre Secondary Plan. Additional high density apartment units should be directed to the Vaughan Corporate Centre.

4.3 The Site is Required for Employment Purposes

Places to Grow includes an employment forecast of 780,000 jobs for York Region. To meet this forecast, the Region will need to attract an additional 325,000 jobs to 2031. These additional jobs will be accommodated both within existing employment areas and within urban expansion areas in newly designated Greenfield lands. It is important that the existing employment land supply is protected for employment uses as they perform a critical role in meeting the employment forecast targets. The continued health and integrity of existing employment areas that are strategically located and also contain critical mass, for example, the CN MacMillan Marshalling Yard with access to Highway 400, is vital to the economic development of the Region. There is a limited supply of strategically located employment lands within the Region and these areas should be protected and encouraged to reach their maximum potential for employment uses.

It would be inappropriate to redesignate the OPA 653 site to residential uses in light of Regional planning staff's preliminary assessment that 2,200 to 3,151 hectares of additional land is required for employment land purposes to meet the Region's employment forecast (refer to Clause No. 7 of Report No. 4 of the Planning and Economic Development Committee, adopted by Council on April 19, 2007). It is important to maintain the current inventory of employment lands and not remove these lands from the employment land base otherwise an even greater amount of land will be required for York Region to meet its employment forecasts. In addition, this site is located within a strategic employment area that offers significant advantages over Greenfield locations.

The City's Land Use Review notes that Vaughan has experience with the potential negative long term impacts of losing employment lands. As a result of a dwindling supply of employment lands, the City is in the process of adding a significant amount of new employment land through an urban boundary expansion along the Highway 400 corridor. Part of the rationale for the addition of these new employment lands is the constraints on the City's west end employment area located in the Highway 427 extension area. As the City is expending considerable effort to increase its employment land base, and has a significant constraint situation in developing the Hwy 427 employment lands, it would not be appropriate to encourage the conversion of suitably designated employment lands for residential purposes.

4.4 OPA 653 is Contrary to Section 1.3 of the Provincial Policy Statement (2005)

The PPS directs Planning authorities to promote economic development and competitiveness by:

- Providing for an appropriate mix and range of employment (including industrial, commercial and institutional uses) to meet long term needs.
- Providing opportunities for a diversified economic base, including maintaining a range and choice of suitable sites for employment uses which support a wide range of economic activities and ancillary uses, and take into account the needs of existing and future businesses.
- Planning for, protecting and preserving employment areas for current and future uses.
- Ensuring necessary infrastructure is provided to support current and projected needs.

The introduction of high density residential land uses in this employment area weakens the critical mass and viability of this strategically located employment area; making it difficult for existing business to expand, and eroding the employment area at its edges. It does not plan for, protect, or preserve the employment area for current and future industrial employment uses.

OPA 653 is also a conversion of employment land to non employment uses and it does not comply with the PPS (2005). The PPS (2005) only permits conversions of employment land to non employment uses if a comprehensive review demonstrates the need for the proposed residential development and that the employment land is not required over the long term.

4.4.1 The Proposed Amendment is a Conversion of Land within an Employment Area to a Non-Employment Use

The site is included in Vaughan's OPA 450, the Employment Area Growth and Management Plan, which provides policy guidance in developing and maintaining the viability of industrial and service commercial lands and uses.

A conversion occurs when non employment uses are introduced to an employment area which generally requires an amendment to an Official Plan to add the non-employment use to an employment area.

OPA 653 proposes to delete the subject lands from OPA 450 and add the lands to Vaughan's OPA 600, the residential/commercial urban structure plan. The OPA application is also requesting a change in land use designation from "Prestige Area", an industrial type designation, to "Vaughan Centre Secondary Plan Area" and "High Density Residential-Commercial". The Amendment as a proposal to introduce residential uses constitutes a conversion from employment uses to non-employment uses.

4.4.2 The Provision of Employment Floor Space In Addition to Residential is still a "Conversion"

The applicant takes the position that the proposed office building will provide more employment jobs than if the lands were developed with employment uses similar to those on neighbouring sites. In the opinion of the applicant, their proposed development will improve the job opportunities; and, therefore should not be considered a "conversion".

The applicant is proposing to add a 5,000 square metre, three storey office building on the subject lands, in addition to the two 32-storey apartment buildings; however, regardless of the proposed commercial use, OPA 653 allows new non-employment use, being residential, to the industrial area, and, therefore, should be considered a "conversion".

4.4.3 The PPS Policies that Protect Employment Lands Are Equally Important to Those That Encourage Urban Intensification, Compact, Mixed-Use Development at Transit Supportive Densities

It is not the intent of the PPS to encourage mixed-use, urban intensification projects without regard for the planned function and municipal urban structure that is in place. One of the tenets of the PPS is to promote orderly development. Adding a residential land use to the edge of an industrial area is no longer possible without a comprehensive review, as defined by the PPS and the Growth Plan.

The applicant contends that their revised application is mixed-use, compact and transit supportive. These attributes of the proposed development are consistent with the policies of the PPS; however, the proposed development, first and foremost, adds a non-employment use to an industrial area and in the opinion of Regional Planning is not consistent with the PPS (2005).

4.4.4 The Protection of Employment Lands has Been Confirmed Through Three Significant Successive Provincial Documents

The Province has enhanced policies and provisions of the Provincial Policy Statement, made amendments to the Planning Act through Bill 51, and brought into force and effect Growth Plan policies, all of which are designed to prevent the erosion of employment land. OPA 653, which deletes lands from Vaughan's employment area and proposes additional residential development, is in contravention to the new Provincial policy regime: to protect employment areas from non-employment uses.

5. FINANCIAL IMPLICATIONS

Official Plan Amendment No. 653 has been appealed to the Ontario Municipal Board. Financial implications for York Region include having Regional Planning staff and Legal Counsel represent the Region's interest at the hearing.

6. LOCAL MUNICIPAL IMPACT

The City of Vaughan adopted the Official Plan Amendment (OPA 653) application to permit non-employment uses in an employment area. Regional Planning staff is of the opinion that the application should be refused.

The Jane Street Corridor Land Use Review and recommendations were recently endorsed by Vaughan Council. Notwithstanding Vaughan Council's adoption of OPA 653, Council subsequently recommended that the employment designations on the east side of Jane Street, which are within the Employment Area Plan (OPA 450), be retained.

7. CONCLUSION

Amendment No. 653 to the Vaughan Official Plan is currently before the OMB. The amendment conflicts with the Region and Vaughan's Vision and urban structure, which calls for higher density uses in critical centres such as the Vaughan Corporate Centre (V.C.C.) The Amendment should be refused. It introduces residential uses into a stable, strategically located, employment area that contains the nationally significant CN marshalling yard. The Amendment is contrary to the Provincial Policy Statement particularly regarding protection of employment areas for current and future employment uses.

For further information about this report, please contact Augustine Ko, Senior Planner, Community Services Branch, at 905-830-4444 ext. 1524 or augustine.ko@york.ca.

The Senior Management Group has reviewed this report.

(The attachments referred to in this clause are attached to this report.)