THE REGIONAL MUNICIPALITY OF YORK

REPORT NO. 2 OF THE REGIONAL SOLICITOR

**For Consideration by
The Council of The Regional Municipality of York
on October 23, 2008**

1
RETAIL BUSINESS HOLIDAYS ACT
APPLICATION FOR EXEMPTION

1. RECOMMENDATIONS

It is recommended that:

1. Regional Council consider the application from Vaughan Mills (the "Applicant") and determine whether to grant an exemption from the *Retail Business Holidays Act* to allow the Applicant to remain open on Family Day and to extend the existing hours of operation on holidays.

2. The Regional Solicitor be directed to prepare the necessary by-law to give effect to the exemption, if granted by Council.

2. PURPOSE

The purpose of this report is to advise Council of an application for exemption from the *Retail Business Holidays Act* to allow the Applicant to be open on certain statutory holidays.

3. BACKGROUND

Retail Business Holidays Act

The *Retail Business Holidays Act* (the “Act”) requires businesses to be closed on statutory holidays unless they are exempted. The holidays to which the Act applies are:

- New Year’s Day
- Family Day
- Good Friday
- Easter Sunday
- Victoria Day
- Canada Day
- Labour Day
- Thanksgiving Day
- Christmas Day

The Act does not apply to the Civic Holiday in August, and therefore exemptions are not required for that day.

The Act sets out statutory exemptions for certain types of businesses and also provides that Regional Council may permit businesses to remain open for the maintenance or development of tourism. A public meeting must be held to consider the application.

Notice of the public meeting has been advertised in accordance with the Act.

The following application has been received:

Column 1 (Business)	Column 2 (Location)	Column 3 (Holidays)	Column 4 (Hours)
Vaughan Mills	1 Bass Pro Mills Drive Vaughan	New Year’s Day	9 a.m. to 12 p.m. 5 p.m. to 9 p.m. **[note: existing exemption from 12 p.m. to 5 p.m.]**
		Family Day Good Friday * Easter Sunday *	9 a.m. to 9 p.m. [new]

		Victoria Day Canada Day Labour Day Thanksgiving Day * withdrawn	9 a.m. to 10 a.m. 6 p.m. to 9 p.m. **[note: existing exemption from 10 a.m. to 6 p.m.]**

The Applicant originally applied for an exemption in the fall of 2004. A copy of the original application is appended to this report as Attachment 1.

Regional Council granted the Applicant exemption under the Act on November 18, 2004. A copy of By-law No. LI-0008(i)-2004-086 is appended to this report as Attachment 2.

The Applicant is now requesting a further exemption for other holidays and to extend the hours of operation with respect to the existing exemption. Since the advertisement was published, the Applicant has withdrawn its request for exemption for Good Friday and Easter Sunday. Accordingly, the exemption would now include Family Day, and would also capture any other holidays that may be proclaimed in the future. A copy of the application and supporting materials received from the Applicant is appended to this report as Attachment 3.

4. ANALYSIS AND OPTIONS

4.1 Compliance with the Act

The Act provides that Regional Council may permit retail business establishments to open on holidays for the maintenance or development of tourism.

A by-law may be passed only if there is compliance with the tourism criteria set out in the Regulation. In addition, even if the tourism criteria are met, Council is not required to pass the by-law but may exercise its discretion to refuse the application.

4.2 Tourism Criteria

The Regulation sets out the criteria that must be met before Regional Council may pass an exempting by-law. A copy of the applicable Regulation is appended to this report as Attachment 4.

The information provided in the original application submitted by the Applicant stated that Vaughan Mills is one of the largest shopping and entertainment centres in the Region and is a destination for millions of Canadian, American and overseas consumers, and that the facility has a full-time Tourism Director in charge of tourism marketing.

4.3 Proposed additional holiday and extended times

The Applicant is seeking a new exemption for the following:

Holiday:	Hours of Operation:
Family Day	9:00 a.m. to 9:00 p.m.

The Applicant is also seeking a further exemption to extend operating hours. The Applicant currently has been granted an exemption for the following holidays:

Holiday:	Hours of Operation:
New Year's Day	12:00 p.m. to 5:00 p.m.
Victoria Day Canada Day Labour Day Thanksgiving Day	10:00 a.m. to 6:00 p.m.

The Applicant is now seeking a further exemption to allow the mall to be open from 9 a.m. to 9 p.m. on the above days.

4.4 Enactment of By-law

Should Council decide to grant the exemption, the by-law will come into force on the thirty-first day after it is enacted, in this case November 23, 2008. This is to allow for the possibility of an appeal which may be made within thirty days after the passing of the by-law by any person who objects to the exemption. An appeal may only be made if an exemption is granted. There is no provision for an applicant to appeal if an exemption has been denied.

It is open to Council to grant the exemption as requested, or to make amendments with respect to the new application. It would not be appropriate to amend the original exemption at this time, as it is not the subject of the application.

4.5 Amendments to the *Municipal Act, 2001*

Recent amendments to the *Municipal Act, 2001* would permit the Region to directly regulate holiday closings for retail businesses. The relevant sections have not yet been proclaimed in force, however, and no date for proclamation has been announced. Upon proclamation, the Region would be empowered to enact a by-law to govern holiday closings that would supersede the *Retail Business Holidays Act*. This could enable the Region to develop criteria that may not be strictly limited to tourism. Staff await proclamation of this provision and will seek Council's direction as to whether this alternative should be pursued.

5. FINANCIAL IMPLICATIONS

There are no direct financial implications to the Region as a result of this application.

6. LOCAL MUNICIPAL IMPACT

Approval of an exemption under the Act is intended to contribute to tourism in a particular location, in this case in the City of Vaughan.

7. CONCLUSION

An application has been received from Vaughan Mills requesting an exemption from the Act to permit the shopping centre to remain open on Family Day as well as extending the current operating hours.

Regional Council is respectfully requested to review this application and determine whether to enact an exempting by-law, with due consideration to the criteria set out in the Regulation.

If Council elects to pass a by-law, the by-law will come into effect on November 23, 2008.

For more information on this report, please contact Elizabeth Wilson at Ext. 1402.

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

Respectfully submitted,

October 16, 2008
Newmarket, Ontario

J. Hulton
Regional Solicitor

THE RETAIL BUSINESS HOLIDAYS ACT

APPLICATION FOR EXEMPTION

Vaughan Mills (name of business) hereby applies to the Council of The Regional Municipality of York for an exempting by-law pursuant to Section 4(1) of the Retail Business Holidays Act, as follows:

Business	Location	Holidays	Hours
(see attached)			

Enclosed in support of the application is the following (itemize all of the material submitted in support of the application):

1. Centre Facts & Trade Area
2. Market Research / Website
3. Grand Opening Tenant Newsletter
4. Mills Travel Editorial

Continue on separate page if more space required.

Dated at Sept. 3 this 3 day of September, 2004.

Signature

General Manager, Vaughan Mills
Relationship to business (President, Partner, Owner, etc.)

Please provide the following information:

1. Name, address and telephone number of the business.
   See attached

2. Name, address and telephone number of the contact person.
   See attached

3. The name, or a description, including location, of the tourist attraction, or attractions, relied on:
   See attached

4. If the retail business establishment to be exempted is located in the Town of Markham, the Town of Richmond Hill, or the City of Vaughan, is the business within 2 km of the tourist attraction?
   See attached

6. Please indicate the category of tourist attraction (natural; outdoor recreational; historical; cultural; multi-cultural or educational)

see attached

7. Is the retail business establishment directly associated with the tourist attraction? If yes, explain the nature and extent of the association.

see attached

8. Does the retail business establishment provide goods or services on holidays primarily to tourists?

see attached

NOTE: Under the Retail Business Holidays Act the Regional Council is not required to pass an exempting by-law even it the tourism criteria are met.

For further information, please contact The Regional Municipality of York Legal Department, 17250 Yonge Street, Newmarket, Ontario, L3Y 6Z1. Telephone 905-895-1231, ext. 1420, Fax 905.895.3768.

Application for Exemption – Retail Business Holidays Act
York Region

VAUGHAN MILLS hereby applies to the Council of the Regional Municipality of York for an exempting by-law pursuant to Section 4(1) of the Retail Business Holidays Act.

Prepared by:
Donna Owens
Director of Tourism
Vaughan Mills
Tel: 905-879-1777x118

September 2/04

Business	Location	Holidays	Hours
Vaughan Mills	1 Bass Pro Mills Drive	All, except Christmas Day	10:00AM to 6:00 PM (tentative)

1. Business Contact information:

Vaughan Mills
8960 Jane St.
Vaughan, ON L4K 2M9
Tel: 905-879-1777 Fax: 905- 879-1888
www.vaughanmills.com

2. Contact Person:

Carol Hyams
General Manager
Vaughan Mills
8960 Jane St.
Vaughan, ON L4K 2M9
Tel: 905-879-1777 ext 103 Fax: 905- 879-1888

or

Donna Owens
Director of Tourism
Vaughan Mills
8960 Jane St.
Vaughan, ON L4K 2M9
Tel: 905-879-1777 ext 118 Fax: 905-879-1888
donna.owens@themills.com

3. Name/description/location of the tourist attraction or attractions relied on:

- The first Mills centre to be built in Canada, Vaughan Mills will be one of the largest shopping and entertainment centres in the region and a destination for millions of Canadian, American and overseas consumers.
- Vaughan Mills design will be based on the design "DISCOVER ONTARIO" which will celebrate the beauty, diversity and icons of the Province of Ontario.

- The size, value and entertainment experience of Mills projects have more than just regional appeal – Mills projects have become recognized as national and international tourist destinations. Approximately 220 million people visited Mills projects in 2002. Tourist traffic will account for more than 20% of Vaughan Mills' sales volume.

- **SIZE AND LOCATION:**
  Approximately 1.2 million square feet (Gross Leasable Area) located 32 km north of downtown Toronto at the southeast corner of Highway 400 and Rutherford Road in the City of Vaughan/ York Region. 15 minute drive from Pearson International Airport.

- **OPENING:**
  November 4, 2004

- **PROJECT DESCRIPTION:**
  Vaughan Mills will combine manufacturers' outlets, top brand-name retailers and engaging entertainment in a dynamic environment that includes recreation, theme restaurants, live entertainment and interactive retailers.

  During operation, Vaughan Mills and its retailers will employ more than 3,500 individuals on a full or part-time basis.

  Overall Vaughan Mills will generate annually approximately $12.5 million in taxes to the local economy.

  Vaughan Mills will have a full-time Tourism Director dedicated to targeting the local, national and international tourism industry in order to build awareness and increase the number of visitors/ spending to Vaughan Mills and the York Region. No other shopping center in the GTA has full-time staff devoted to tourism marketing.

  A specially designed area within the centre has been built to accommodate servicing tour group arrivals by Mills tourism staff.

  Vaughan Mills will make available a convenient designated tour bus passenger drop-off and concierge area for group travelers.

Q4. If the retail business establishment to be exempted is located in the towns of Markham, Richmond Hill or City of Vaughan, is the business within 2km of the tourist attraction?

- Vaughan Mills itself will be a draw for tourists, however it is worth noting the proximity to Paramount Canada's Wonderland (2 km).

Q5. Missing question on York Region application. Skip to Q6

Q6. Category of tourist attraction:

- Please note, that Vaughan Mills falls into several categories of tourist attractions as defined by Attractions Ontario and the Canadian Tourism Commission: Recreational/Amusement/Entertainment/Commercial (Shopping)/Family Fun

- Tourism is defined as people traveling to and staying in places outside their usual environment for leisure, business and other purposes for no longer than one year. For Canadians traveling within Canada, a trip must be at least 80 kilometers from the traveler's place of residence to be considered as tourist travel. (Source: http://strategis.ic.gc.ca/tourism)

Q7. Is the retail business directly associated with the tourist attraction? If yes, explain the nature and extent of the association.

- **Yes.** Vaughan Mills will combine manufacturers' outlets, top brand-name retailers and engaging entertainment in a dynamic environment that includes theme restaurants, live entertainment and interactive retailers to produce an experience the whole family and tourists will enjoy.

Q8. Does the retail business establishment provide goods or services on holidays primarily to tourists?

- Yes. As a major tourist attraction, it is expected Vaughan Mills will draw visitors from over 10 million people living within a 160 km radius which encompass major centers such as Buffalo, Fort Erie and Niagara Falls. The Mills market research reveals the total number of groups per centre range as high of 4000+ groups per annum resulting in approximately 11 tour bus trips daily. Consequently approximately 190,000 passengers could be expected to visit the Vaughan Mills centre per year by means of tour buses.

THE REGIONAL MUNICIPALITY OF YORK

BILL NO. 86

BY-LAW NO. LI-0008(i)-2004-086

A by-law to amend By-law No. LI-8-95-76
to permit retail business establishments
to be open on holidays

The Council of The Regional Municipality of York HEREBY ENACTS as follows:

1. Schedule "A" to By-law No. LI-8-95-76, being a by-law to permit retail business establishments to be open on holidays, is amended by adding the following:

Column 1 (Business)	Column 2 (Location)	Column 3 (Holidays)	Column 4 (Hours)
Vaughan Mills	1 Bass Pro Mills Drive Vaughan	New Year's Day	12:00 p.m. to 5:00 p.m.
		Victoria Day, Canada Day, Labour Day, Thanksgiving Day	10:00 a.m. to 6:00 p.m.

ENACTED AND PASSED this 18th day of November, 2004.

Regional Clerk

Regional Chair

Council Attachment 3

Ivanhoe Cambridge
Caisse de dépôt et placement du Québec

Ivanhoe Cambridge

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Toronto, Ontario
Canada M5J 2R2

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Direct Line: (416) 369-4446
Fax: (416) 369-3346
E-mail address: fsantini@ivanhoecambridge.com

September 12, 2008

The Regional Municipality of York
17250 Yonge Street
Newmarket, ON
L3Y 6Z1

Attention: **Mr. Denis Kelly, Regional Clerk**

Dear Sir:

Re: Retail Business Holiday Act Exemptions
Vaughan Mills Shopping Centre, Vaughan, Ontario

I am writing this letter on behalf of the owners of Vaughan Mills Shopping Centre. As advised in my earlier letter dated August 28th, 2008, we wish to apply for an amendment to our existing exemption ("the Exemption") under the Retail Business Holiday Act. This letter will serve to provide further details on the amendment that we are seeking.

Prior to the grand opening of the Shopping Centre, the Exemption was obtained permitting the Shopping Centre to remain open on certain specified then existing Holidays (New Year's Day, Victoria Day, Canada Day, Labour Day and Thanksgiving Day). As a result of the recent addition to the statutory holidays (i.e., the inclusion of Family Day); exemptions made available to other shopping centres within York Region and, our continued growth and success as a tourist attraction for York, we are seeking the following amendments to the Exemption:

a) The exemption to apply to "All Holidays except Christmas Day"; and

b) an increase in the operating hours from our current 10 a.m. to 6 p.m. period to, 9 a.m. to 9 p.m., which we believe will help reduce traffic congestion that is prevalent under the current hours of operation of the Exemption,

or, as may otherwise may be approved or recommended by Council.

We respectfully request the opportunity to come before Council which we understand is scheduled for October 23, 2008 in support of our amendment to address any issues.

If you have any questions or comments, please do not hesitate to contact the writer.

Yours truly,

Ivanhoe Cambridge

Fred J. Santini
Senior Legal Counsel
Legal Affairs

Copy: Elizabeth Wilson, The Regional Municipality of York
George Fiddler, Senior Vice-President, Central Region
Chris Long, Regional Director, Operations, Central Region
Emilio Elisio, Director, Legal Affairs and Assistant General Counsel
Gil Small, General Manager, Vaughan Mills Shopping Centre
Sheri McEwen, Property Manager, Vaughan Mills

DO YOU KNOW VAUGHAN MILLS?

October 10, 2008

The Regional Municipality of York
17250 Yonge Street
Newmarket, Ontario
L3Y 6Z1
Attention: Elizabeth Wilson
Senior Counsel

RE: *Retail Business Holidays Act* – Vaughan Mills Shopping Centre

Dear Elizabeth,

With respect to the application made by Vaughan Mills Shopping Centre for amendments to the current Retail Business Holiday Act Exemptions, we kindly ask that the attached materials and the following key points be shared with Council Members for their consideration:

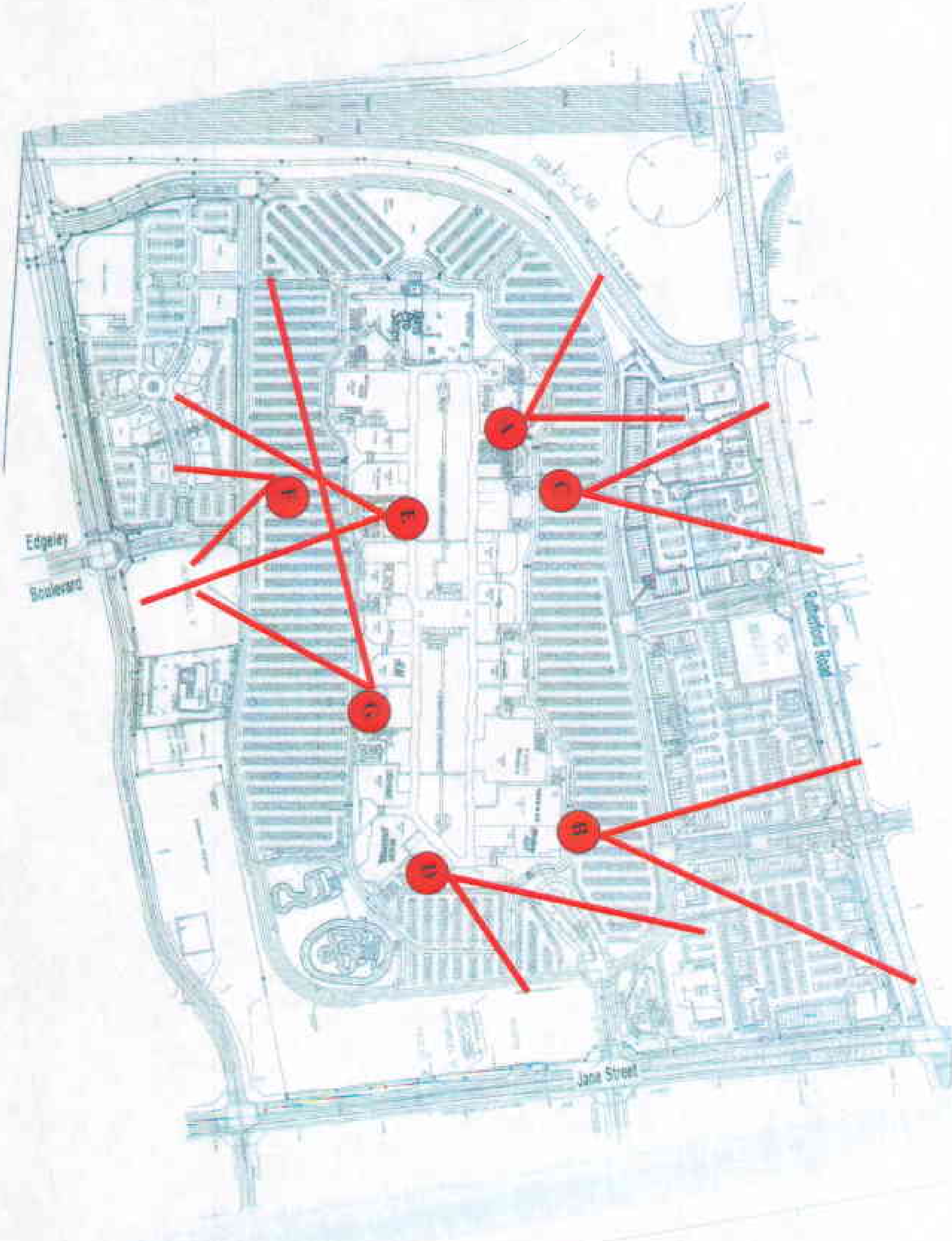
- Traffic to the shopping centre has increased 14.7% over the past year, and the projected annual traffic for 2008 is over 13 million visitors.
- On statutory holidays, we have more visitors coming to the centre than ever before, yet they must all visit during the reduced hours during which we are permitted to be open.
- Foot traffic within the centre is always a challenge on busy statutory holidays; however parking and vehicular congestion are challenges that have become problematic.
- On statutory holidays, the parking lot is overflowing, forcing visitors to park in outparcels and walk through busy parking lots and access roads to get to the centre.
- Traffic flow in and out of the centre, as well as on nearby major roads including Rutherford Road and Jane Street, is also of concern, and we are now seeing an impact on traffic passing by on those busy roads.
- By extending the hours during which we may be open, it is our hope that foot and vehicular traffic congestion may be alleviated or reduced as it would allow visits to the centre to be spread more evenly throughout the day, rather than forced to shop within a short window of time.
- The following pictures, taken on Labour Day 2008, provide visual evidence of the traffic flow and congestion problems we are working to alleviate through our application for expanded hours.

We thank you in advance for your time and consideration.

With kind regards,

Gil Small, General Manager
Vaughan Mills Shopping Centre

cc: F. Santini
C. Long
G. Fiddler
S. Mahant


Edgeley
Boulevard
Jane Street
E
F
C
H
D

View of Northwest corner of parking lot. Note the back up of cars on the ring road, extending off to the left side of photo and beyond. These cars are backed up to exit onto Rutherford Road. See point "A" on site plan.

Northeast access road from Rutherford Road to shopping centre. Note back up of traffic coming in from Rutherford, exiting Outparcel, and driving along ring road. See point "B" on site plan.

Traffic flow driving <u>through Outparcel</u> on North side of property to get to centre. This route is used to avoid back ups at main entrances to centre. See point "C" on site plan.

Northeast corner of parking lot, with Jane Street in background. Note back up of cars on ring road along top of picture, as well as along Jane in the distance waiting to turn left into the centre. See point "D" on site plan.

South side of the property, looking towards Bass Pro Mills Drive and Edgeley Blvd. entrance. Note cars parked in service courts, Outparcel lot and pedestrians crossing ring road on left side of photo, near grassy area. See point "E" on site plan.

Closer view of South entrance at Edgeley Blvd. and Outparcel parking lot. <u>Note pedestrians crossing to get to shopping centre parking lot.</u> See point "F" on site plan.

Parking lot at capacity in late afternoon, South side of property. Note cars still entering via Edgeley Blvd., middle left side of picture. See point "G" on site plan.

Ivanhoe Cambridge

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October 14, 2008

The Regional Municipality of York
17250 Yonge Street
Newmarket, ON L3Y 6Z1

Attention: Mr. Denis Kelly, Regional Clerk

Dear Sir:

Re: Retail Business Holiday Act Exemptions
Vaughan Mills Shopping Centre, Vaughan, Ontario

Further to our letter dated September 12, 2008, in respect to our application to amend the Retail Business Holiday Act Exemptions, after careful consideration and discussion with local councillors and retailers, we would like to amend our application by withdrawing our request to have the exemption apply to Good Friday and Easter Sunday. Accordingly, our amendment to the exemptions should read as follows:

a) The exemption to apply to all holidays except Christmas Day, Good Friday and Easter Sunday; and

b) an increase in the Operating House from our current 10.00 a.m. to 6 p.m. period to 9:00 a.m. to 9 p.m.

We look forward to meet with the Council on October 23, 2008, as originally scheduled. If you have any questions or comments, please do not hesitate to contact the writer.

Yours truly,
Ivanhoe Cambridge

Fred J. Santini
Senior Legal Counsel, Legal Affairs

Copy: Elizabeth Wilson, The Regional Municipality of York
Joyce Frustaglio, Regional Councillor, City of Vaughan (via fax)
George Fiddler, Senior Vice-President, Central Region
Chris Long, Regional Director, Operations, Central Region
Emilio Elisio, Director, Legal Affairs and Assistant General Counsel
Gil Small, General Manager, Vaughan Mills Shopping Centre
Sheri McEwen, Property Manager, Vaughan Mills

S:\tor\...letters\kelly October 10, 2008

50 BEST EMPLOYERS IN CANADA 2008

Retail Business Holidays Act
Loi sur les jours fériés dans le commerce de détail

ONTARIO REGULATION 711/91

TOURISM CRITERIA

Consolidation Period: From November 27, 1991 to the e-Laws currency date.

No amendments.

This Regulation is made in English only.

1. This Regulation sets out the tourism criteria that must be met before a municipality may pass an exempting by-law under subsection 4 (1) of the Act. O. Reg. 711/91, s. 1.

2. (1) A retail business establishment may be exempted if,

(a) it is located within two kilometres of a tourist attraction; and

(b) it is directly associated with the tourist attraction or relies on tourists visiting the attraction for business on a holiday. O. Reg. 711/91, s. 2 (1).

(2) An exemption granted on an area basis may only be given if,

(a) all of the retail business establishments in the area are within two kilometres of the tourist attraction;

(b) the area does not exceed that necessary to encompass all of the retail business establishments for which an exemption is sought; and

(c) at least 25 per cent of the retail business establishments in the area are directly associated with the tourist attraction or rely on tourists visiting the attraction for business on a holiday. O. Reg. 711/91, s. 2 (2).

(3) For the purposes of this section, a tourist attraction is limited to,

(a) natural attractions or outdoor recreational attractions;

(b) historical attractions; and

(c) cultural, multi-cultural or educational attractions. O. Reg. 711/91, s. 2 (3).

3. Each retail business establishment that on days other than holidays normally uses a total area of 2,400 square feet or more for serving the public or normally has four or more employees serving the public must, in addition to meeting the tourism criteria set out in subsection 2 (1), provide goods or services on holidays primarily to tourists. O. Reg. 711/91, s. 3.

4. The two kilometre restriction set out in subsections 2 (1) and (2) does not apply to a retail business establishment located in a local municipality, including a local municipality located in a district or regional municipality or the County of Oxford, having a population of less than 50,000. O. Reg. 711/91, s. 4.

5. (1) Despite any other provision of this Regulation, retail business establishments in a municipality may be exempted for up to five holidays a year during which a fair, festival or other special event is being held in that municipality. O. Reg. 711/91, s. 5 (1).

(2) Subsection (1) does not apply to parades. O. Reg. 711/91, s. 5 (2).

6. (1) An application for an exemption under subsection 4 (3) of the Act shall contain the following:

1. A description of the area or the retail business establishment for which the exemption is sought.
2. The justification, in relation to the seasonal nature, if any, of the tourist attraction, for the time period sought in the exemption.
3. Information establishing that the tourism criteria set out in this Regulation are met. O. Reg. 711/91, s. 6 (1).

(2) An application in respect of a retail business establishment described in section 3 shall be made only by that retail business establishment. O. Reg. 711/91, s. 6 (2).

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