

July 10, 2008

York Region Planning and
Development Services Department
York Region Administrative Centre
Box 147, 17250 Yonge Street
Newmarket, Ontario
L3Y 6Z1

Attention: Ms. Heather Konefat, Director of Community Planning

Dear Madam:

**Re: Official Plan Amendment 168 to the Official Plan of the Town of Markham
NOTICE OF APPEAL Pursuant to Section 17(36) of the *Planning Act*
Lindvest Properties (Cornell) Limited**

Please be advised that we represent Lindvest Properties (Cornell) Limited with respect to its lands encompassed by 9th Line on the west, Donald Cousins Parkway on the east, Avenue Seven on the north, and Highway 407 on the south, in the Cornell Secondary Plan within the Town of Markham.

These lands are also the subject of a draft plan of subdivision application that is currently being processed by the Town (Draft Plan Number 19T-M06012). The Application was made on or about May 26, 2006

On June 24, 2008, a Notice of Decision was issued by the Region of York with respect to its approval of Official Plan Amendment No. 168 to the Official Plan of the Town of Markham ("OPA 168"). Prior to approval of this amendment, our client participated in the planning process and made written submissions in relation thereto, which are attached for further reference.

Pursuant to section 17(36) of the *Planning Act*, we hereby appeal all of the provisions of OPA 168 that pertain to the matters raised in this appeal. The reasons for appeal are as follows:

1. OPA 168 provides for a transit terminal on lands that are at the draft plan approval stage pursuant to an application which pre-dates OPA 168. The OPA cannot, therefore, be considered to apply to the lands to be developed pursuant to that draft plan approval, and the transit terminal should not, therefore, be shown or referenced on the OPA, unless and until agreement has been obtained from the owner as to the location, size, and appropriate compensation for the lands to be occupied by the transit terminal.
2. The lands required for the transit terminal under OPA 168 are to be dedicated to the Region by a single owner, rendering the entire plan of subdivision unfeasible.
3. The provision of OPA 168 requiring the lands for the transit terminal be dedicated to the Region is not reasonable having regard to the nature of the subdivision proposed for this land. The approved densities and height restrictions would not effectively support a transit terminal in this

location. Therefore such a provision is not authorized under the *Planning Act* and should be struck from OPA 168. The subject lands should be permitted a higher density and increased building heights.

4. The area designated in the OPA is much greater than for the infrastructure requirements set forth in the *Planning Act*.
5. The intended use of the lands to be dedicated for a transit required terminal also include planned use as a head office, commercial retail and/or office retail use. These additional uses are not permitted by dedication under the *Planning Act*.
6. The provision in OPA 168 requiring the lands required for the transit terminal to be dedicated to the Region constitutes expropriation without compensation, contrary to the laws of the Province of Ontario.
7. As negotiations with the York Region Rapid Transit Corporation (YRRTC), which had been ongoing for two years, were purposely stalled while OPA 168 was approved, the amendment has been passed in bad faith.
8. In the alternative, in the event that the lands are ultimately required for public use, full, fair market value, including loss of profits, must be paid to my client. Further, through written correspondence to our client during the period of negotiation, the YRRTC indicated that they were willing to pay fair market value for the lands. Some of the pertinent correspondence is attached for further reference.

Attached in support of this appeal, please find:

1. OMB Form (A1)
2. Written submissions to the Region of York by Lindvest Properties, dated June 17, 2008
3. Correspondence between the YRRTC and Lindvest Properties
4. A cheque in the amount of \$125 as the required OMB appeal fee
5. A cheque in the amount of \$430.00 as the York Region fee

If you have any questions or concerns with respect to this notice, please do not hesitate to contact the undersigned.

Yours truly,
MARKOFF & SHAIN LLP



Howard Shain
Partner

cc: Michael Savas, Lindvest Properties (Cornell) Limited
Sheila Birrell, Town of Markham