

STIKEMAN ELLIOTT

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BY E-MAIL

September 21, 2006
File No.: 010340-1002

Corporate Services Department
York Region Administration Building
17250 Yonge Street, 4th Floor

Attention: Denis Kelly, Regional Clerk

Dear Sir:

Re: Highway 404 North Secondary Plan
2705 - 19th Avenue, Markham, Ontario (the "Property")

We are the solicitors for the Owners of the Property, the Romanovich Family Trust ("Romanovich").

This letter is further to our letters to The Corporation of the Town of Markham ("Markham") of February 8 and March 7, 2006, (which are enclosed with this letter) in which we, on behalf of Romanovich, expressed our objection to re-designating the Property "Transportation and Utility".

Based on our review of Report No. 7 of the Planning and Economic Development Committee, which was prepared for Regional Council Meeting of September 21, 2006, we understand that Romanovich is likely the landowner referenced in section 4.3 of that report.

On behalf of Romanovich, we hereby renew our objection to re-designating the majority of the Property "Transportation and Utility". This objection is discussed in greater detail in the attached letters and we submit same for your review and consideration.

Should you have any questions in respect of Romanovich's position in this matter, please feel free to contact the undersigned directly.

Yours truly,



Aaron Platt

AP/lm

encl.

CC: Larry & Colleen Romanovich

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DELIVERED

February 8, 2006
File No.: 010340-1002

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

Attention: T. J. Lambe, Manager, Policy and Research Division,
Planning and Urban Design Department

Dear Mr. Lambe:

Re: Highway 404 North Secondary Plan
2705 - 19th Avenue, Markham, Ontario (the "Property")

We are the solicitors for the owners of the Property, the Romanovich Family Trust ("Romanovich").

On behalf of our client, we have reviewed the proposed amendments to the Highway 404 North Secondary Plan (the "Amendment"). Upon review of the Amendment, and given the Property's proximity to Highway 404 and Markham's expressed desire to develop an interchange between Highway 404 and 19th Avenue (the "Interchange Development"), it appears that a majority of the Property will be re-designated for Transportation and Utility uses with the remainder being re-designated for Business Park uses. While our client has no problem with the latter re-designation, the former re-designation (the "Transportation Re-designation") is a cause for major concern.

The Transportation Re-designation will have a number of detrimental effects, namely:

1. it will prohibit all future development of the Property other than for public purposes, resulting effectively in an expropriation of our client's land use rights without compensation;

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2. it will render the Property almost valueless for anyone except for a public body; and
3. it will artificially depress the value of the Property so that a public body may acquire it at a reduced value.

Furthermore, as the Amendment contains no deadline by which a public body must acquire the Property for the Interchange Development or any other public purpose, if re-designated "Transportation and Utility" there is nothing preventing the Property's nearly worthless condition from continuing for an indefinite number of years.

There is law which states that where lands are re-zoned for the benefit of the public at large, a Municipality must be prepared to acquire those lands within a reasonable time or the zoning will not be approved.

It is likely that this position is applicable to the re-designation of the Property, as the re-designation is for a public purpose and will strip the Property of all development potential for anything but public uses. Thus, Markham should be required to expropriate the Property.

The Ontario Municipal Board also follows a policy known as the *Nepean Principle* under which it will often prohibit approval of a zoning law where a municipality acquires lands for public purposes without expropriating the lands and paying compensation to the former owner. It is likely that the *Napean Principle* will be equally applicable to this situation.

Thus, if it is the intention of Markham to develop the Interchange Development, then it should either expropriate the Property now or grant the Property the same designation as its neighbours to the east. It would be unjust to be permitted to perform the Transportation Re-designation without expropriating it contemporaneously with that re-designation. Markham should not be allowed to re-designate the Property for such a restrictive use (thereby setting a new lower price for the Property) and later expropriate the Property at the reduced price resulting from the Transportation Re-designation.

However, the current form of the Amendment does not contain any policy with respect to the expropriation of either the Property specifically, or of lands necessary to complete the Interchange Development.

This position is based on what appears to be Markham's intention to have the Property, or the necessary portion thereof, donated by a developer through the development approval process. However, it is unlikely that events will unfold in this manner.

If the Property is designated "Transportation and Utility", it is unlikely that any developer, unless required, would ever purchase the Property as a majority of the Property will (likely) have to be donated to Markham prior to receiving necessary development approvals.

As stated above, the lack of a deadline by which a public authority must acquire the lands for the Interchange Development could leave the Property nearly worthless for an indefinite period of time. This situation is further exacerbated by the additional requirements for the Interchange Development which are contained in the Amendment. Based on Markham's proposed amendments to its Official Plan (the "Official Plan") and the Highway 404 North Secondary Plan, a re-designation of the Property would likely occur substantially before any steps are taken by Markham to assess the land requirements for, expropriate, and begin construction of, the Interchange Development.

For example, 4.3.42.1 of the Official Plan is to be amended by adding that "The configuration of the proposed interchange at Highway 404 and 19th Avenue ... shown on Schedule 'C' - TRANSPORTATION, are schematic only and will be subject to further study and determination of final location, land and design requirements through Environmental Assessments, or other appropriate studies." The Amendment also calls the proposed interchange at Highway 404 and 19th Avenue "conceptual" and shall that it be subject to further review through an Environmental Assessment. Environmental Assessments are time consuming and costly. As such studies will not be commenced until there is demand for the improvement and Markham has devised a way to finance such a project (i.e. through development charges or provincial infrastructure grants, etc.). Consequentially, the Property may remain in its re-designated state for some time before Markham proceeds with the Interchange Development.

Thus, if the Property is re-designated "Transportation and Utility", its real estate value will be dramatically reduced and the Property may be "frozen" in such a state for an indeterminate length of time.

However, should Markham choose not to re-designate the Property "Transportation and Utility", it will not foreclose on its ability to plan for the Interchange Development. A transportation map or mapping overlay could be incorporated as a schedule to the Amendment which could identify the Property as a potential site for the desired interchange. This would allow the Property to carry the same land use designation, "Business Park", that is proposed for the lands to the east while permitting Markham to plan appropriately for the Interchange Development.

This technique will preserve *both* the Property's the real estate value prior to its expropriation *and* Markham's ability to plan for the Interchange Development in the manner best suited to its needs.

Based on the above, it is not clear why Markham requires that the Property be re-designated "Transportation and Utility" before any formal steps are taken to expropriate the Property.

As such, if a portion of the Amendments related to the Interchange Development are to remain unamended Markham should either:

1. re-designate the Property "Business Park" and incorporate the transportation planning requirements of the Amendment as a separate schedule to the Amendment, for example, a transportation map or mapping overlay ; or
2. expropriate the Property contemporaneously with the receipt of approval of the Amendment from the Minister of Municipal Affairs and Housing.

To further protect Markham's interest, Markham could impose a comprehensive Secondary Plan development approval condition, such that no development approvals within the Amendment area may proceed until a Developer's Group Cost Sharing Agreement is entered into with one of the conditions of that Agreement requiring the acquisition of the Property and/or compensation for the Property for eventual donation to Markham.

Finally, as Markham may be required to expropriate even a small portion of the land necessary to complete the Interchange Development, The Amendment should be revised to include a provision allowing Markham to effect such an expropriation.

If you have any questions about any of the foregoing, please feel free to contact the undersigned directly at the number or address listed above.

Yours truly,



Aaron Platt

AP/

cc: Larry & Colleen Romanovich, *Romanovich Family Trust*
Jim Harbell, *Stikeman Elliott LLP*

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FACSIMILE (905) 479-7771

March 7, 2006
File No.: 010340-1002

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

Attention: Clerk

Dear Ms. Bavington:

**Re: Highway 404 North Secondary Plan
2705 - 19th Avenue, Markham, Ontario (the "Property")**

We are the solicitors for the owners of the Property, the Romanovich Family Trust ("Romanovich").

Upon review of the proposed amendments to the Highway 404 North Secondary Plan (the "Amendment") and upon consideration of the presentation by Mr. Lambe at the Community Information Meeting held on February 15, 2006, on behalf of our client's, we hereby object to the approval of the Amendment in its current form.

It appears that a majority of the Property will be re-designated for Transportation and Utility uses with the remainder being re-designated for Business Park uses. As stated in our letter of February 15, 2006, while our client has no problem with the latter re-designation, the former re-designation (the "Transportation Re-designation") is a cause for major concern.

The Transportation Re-designation will have a number of detrimental effects, namely:

1. it will prohibit all future development of the Property other than for public purposes, resulting effectively in an expropriation of our client's land use rights without compensation;

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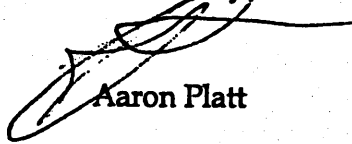
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2. it will render the Property almost valueless for anyone except for a public body; and
3. it will artificially depress the value of the Property so that a public body may acquire it at a reduced value.

Please ensure that our firm is provided with notice of any developments in relation to, or the passage of, the Amendment.

If you have any questions about any of the foregoing, please feel free to contact the undersigned directly at the number or address listed above.

Yours truly,



Aaron Platt

AP/

CC: Larry & Colleen Romanovich, *Romanovich Family Trust*
Jim Harbell, *Stikeman Elliott LLP*