

Local Planning Appeal Tribunal
Tribunal d'appel de l'aménagement
local



ISSUE DATE: March 16, 2021

CASE NO(S): PL111184

The Ontario Municipal Board (the “OMB”) is continued under the name Local Planning Appeal Tribunal (the “Tribunal”), and any reference to the Ontario Municipal Board or Board in any publication of the Tribunal is deemed to be a reference to the Tribunal.

PROCEEDING COMMENCED UNDER subsection 17(40) of the *Planning Act*, R.S.O. 1990, c. P.13, as amended

Appellant: 1042710 Ontario Limited (aka Royal Centre)
Appellant: 1096818 Ontario Inc.
Appellant: 11333 Dufferin St et al
Appellant: 1191621 Ontario Inc.; and others
Subject: Failure to announce a decision respecting
Proposed New Official Plan
Municipality: City of Vaughan
OMB Case No.: PL111184
OMB File No.: PL111184
OMB Case Name: Duca v. Vaughan (City)

PROCEEDING COMMENCED UNDER subsection 12(1) of the *Local Planning Appeal Tribunal Act, 2017*, S.O. 2017, c. 23, Sched. 1, and Rule 9.01 of the Tribunal’s Rules of Practice and Procedure

Request by: City of Vaughan
Request for: Request for Directions

Heard: March 8, 2021 by video hearing

APPEARANCES:

Parties

City of Vaughan

Counsel

R. Coburn and G. Perhar

CRH Canada Group Inc.,
2203012 Ontario Ltd. and
Blair Building Materials Inc.

S. Ferri

Argo Lumber Inc. and
Alpa Roof Trusses Inc.

T. Barlow and S. Turney

**MEMORANDUM OF ORAL DECISION DELIVERED BY R.G.M. MAKUCH ON
MARCH 8, 2021 AND ORDER OF THE TRIBUNAL**

[1] Vaughan City Council adopted Official Plan 2010 (VOP 2010) on September 7, 2010, with modifications being adopted on September 27, 2011, March 20, 2012 and April 17, 2012.

[2] The VOP 2010, as modified, was submitted to the Regional Municipality of York for approval and referred to the former Ontario Municipal Board for failure of the Region to make a decision concerning the approval of the VOP 2010 within 180 days, under the provisions of the *Planning Act* (“Act”).

[3] CRH Canada Group Inc. (“CRH”), Coco Paving Inc. (“Coco”), and Blair Building Materials Inc. (“Blair”) referred to collectively as “MIL” are the registered owners of four parcels of lands known municipally as 10351, 10431 and 10445, 10475 Keele Street, Vaughan, which collectively comprise an area of approximately 12.4 hectares (“ha”) (30.64 acres).

[4] MIL submitted three separate Notices of Appeal on July 22, 2013 pursuant to s. 17(40) of the Act in relation the Region of York’s failure to make a decision on VOP 2010. Each notice set out appeals on an area-specific basis within the Subject Lands, and to certain employment policies on a City-wide basis; specifically Policies 2.2.4.2, 2.2.4.3, 2.2.4.4, 2.2.4.6 and 9.2.2.10(c) (“Employment Policies”).

[5] Argo Lumber Inc. and Alpa Trusses Inc. (“Alpa”) requested and were granted party status on September 10, 2013. Alpa took the position that the Residential Designation should be approved.

[6] Alpa owns lands having an approximate area of 8 ha, which are located on the north east corner of Keele Street and McNaughton Drive ("Alpa Lands"). These lands are currently used for the manufacturing, processing and sale of building supply products and for related distribution and storage.

[7] The MIL Lands and the Alpa Lands are located within a larger tract of lands located north of McNaughton Road, east of Keele Street, south of Teston Road, and west of the former Keele Valley Landfill Site ("Subject Lands"). The Subject Lands are currently occupied by industrial uses including, but not limited to, aggregate related operations, concrete producers, a lumber yard, the manufacture, processing and sale of building supply products, self-storage facilities and related distribution.

[8] The Subject Lands are designated "Prestige Industrial" along the frontage of Keele Street and the remaining lands are designated "Industrial" pursuant to Official Plan Amendment No. 332. The policies and schedules of the VOP 2010 propose to change the designation of these lands from "Industrial" and "Prestige Industrial" to "Community Areas" on Schedule 1: Urban Structure and "Low-Rise Residential" and "Low-Rise Mixed Use" on Schedule 13: Land Use (collectively, the "Residential Designation").

[9] A hearing in respect of the designation of the Subject Lands was scheduled to commence today March 8, 2021 to consider a motion brought by MIL for the partial approval of certain policies for the Subject Lands with the support of the City but opposed by Alpa.

[10] The parties advised the Tribunal at the commencement of the hearing that they have resolved their differences by agreeing to the partial approval of certain Modifications set out below of VOP 2010 as adopted by the City on September 17, 2010, subject to Council modifications on September 27, 2011, March 20, 2012 and April 17, 2012, and as modified and endorsed by the Regional Municipality of York on June 28, 2012 ("VOP 2010") in respect of the Subject Lands.

[11] The Tribunal was advised by the parties that the Modifications, if approved by the Tribunal, will also have the effect of fully resolving MIL's appeals, being Appeal Nos. 129, 130 and 131 in this matter, including MIL's appeals against Policies 2.2.4.2, 2.2.4.3, 2.2.4.4, 2.2.4.5, 2.2.4.6, 9.2.2.10(c), and 12.3 of the VOP 2010. MIL are the sole Appellants to these policies.

[12] The only evidence before the Tribunal is the Affidavit of John Zipay, sworn March 5, 2020. Mr. Zipay was retained by Alpa to provide land use planning advice in connection with VOP 2010 and, in particular, the proposed designation of the Subject Lands. The Tribunal notes that Mr. Zipay was the Commissioner of Planning and Building at the City of Vaughan ("City") when the VOP 2010 was recommended to City Council and adopted.

PROPOSED MODIFICATIONS

[13] The Proposed Modifications will be implemented through revisions to the VOP 2010 as adopted by designating lands and revising policies as follows:

- a. Designate the Alpa lands as "Community Areas" on Schedule 1: Urban Structure (Volume 1);
- b. Designate the remaining lands in the Subject Lands (excluding Alpa's lands) as "Employment Areas" on Schedule 1: Urban Structure (Volume 1);
- c. Amend Schedule 13: Land Use (Volume 1) by greying out the entire Subject Lands and including a note that "Lands subject to Area Specific Policy 12.14";
- d. Identify the Subject Lands as a new 'Area Specific Areas – Chapter 12' entitled "Maple Industrial Area – 12.14" on Schedule 14-B: Areas Subject to Area Specific Plans (Volume 2);

- e. Add Policy 12.14 to Chapter 12, Volume 12; and
- f. Delete the Employment Triangle from Map 12.3.A appended to the City's Keele Valley Landfill Area Specific Policy in Volume 2.

[14] The effect of the Proposed Modifications according to Mr. Zipay will be as follows:

- a. Alpa's lands will be designated Community Commercial Mixed Use Policy Area, a non-employment designation, which will:
 - i. Permit land uses that are generally consistent with the Community Commercial Mixed Use designation in the Official Plan for that designation as well as the existing industrial use;
- b. MIL's lands will be designated Prestige Employment and General Employment, both employment designations, which will:
 - i. Recognize and permit existing land uses on the MIL lands in addition to the uses permitted in those respective designations;
 - ii. Restrict the development of sensitive land uses within 70 metres of the identified Class II industrial facilities on the MIL lands and 300 metres of the identified Class III industrial facilities on the MIL lands;
 - iii. Recognize the existing lot pattern by providing an exemption to 9.2.3.7(c);
- c. All remaining lands, beyond Alpa and MIL's lands within the Subject Lands, will be designated Employment Commercial Mixed-Use Special Policy Area, an employment designation which will:

- i. Permit land uses that are generally consistent with the Employment Commercial Mixed Use designation in the Official Plan for that designation as well as the existing industrial use; and
- d. The modifications will also provide for policies associated with the introduction of Sensitive Land Uses within the Subject Lands to ensure consideration of such land use is given in a manner consistent with all applicable Provincial and municipal policies, including application of the D-Series Guidelines and NPC-300.

[15] Furthermore, the Proposed Modifications have the result of resolving appeals (129, 130 and 131 to PL111184) made by CRH in their entirety according to Mr. Zipay.

DISPOSITION

[16] The Tribunal is satisfied based on the uncontradicted Affidavit evidence of Mr. Zipay, that the Proposed Modifications should be approved because they:

- conform to the Growth Plan for the Greater Golden Horseshoe;
- are consistent with the Provincial Policy Statement, 2020 and have appropriate regard for matters of provincial interest;
- conform to the York Regional Official Plan;
- conform to the general policy intent and direction of the VOP 2010;
- are consistent with municipal practice where sensitive land uses may be introduced into areas where industrial/commercial uses are in place and in operation;

- adequately address the intent of the D-6 Guidelines and NPC-300, by addressing land use compatibility;
- recognize the existing Industrial (Employment) land use permissions applicable to the Subject Lands; and
- constitute good planning.

ORDER

[17] The Tribunal orders that the appeals by MIL are hereby allowed in part and the following Modifications to VOP 2010 are hereby approved and shall come into force and effect forthwith:

- (a) adding the policies and Map 12.14A set out in Attachment 1 to this Order to Chapter 12, Volume 12 of the VOP 2010;
- (b) deleting the “Employment Triangle” from Map 12.3.A, appended to the City’s Keele Valley Landfill Area Specific Policy in Volume 2;
- (c) identifying the Subject Lands as a new ‘Area Specific Areas – Chapter 12’ entitled “Maple Industrial Area – 12.14” on Schedule 14-B: Areas Subject to Area Specific Plans (Volume 2);
- (d) designating the lands located on the north east corner of Keele Street and McNaughton Drive (the “**Alpa Lands**”) as “Community Areas” on Schedule 1: Urban Structure (Volume 1), as shown on the map at the end of Appendix “A”;
- (e) designating the remaining lands in the Subject Lands (excluding the Alpa Lands) as “Employment Areas” on Schedule 1: Urban Structure (Volume 1); and

- (f) amending Schedule 13: Land Use (Volume 1) by greying out the entire Subject Lands and including a note that “Lands subject to Area Specific Policy 12.14”.

[18] The Tribunal further orders that upon receipt by the Tribunal of letter(s) of withdrawal from MIL, which evidence the resolution of the balance of its appeals, Nos. 129, 130 and 131 in this matter, the parties shall submit a draft Order that in recognition of this Order allowing the appeal of MIL in part and otherwise disposing of the MIL appeals, as confirmed by the said letter(s) of withdrawal, policies 2.2.4.2, 2.2.4.3, 2.2.4.5, 2.2.4.6, 9.2.2.10 (c), and 12.3 of the VOP 2010 are hereby approved, in accordance with s. 17(50) of the Act.

[19] The Tribunal further orders that in the event there are issues arising from the implementation of this Order, the Tribunal may be spoken to.

“R.G.M. Makuch”

R.G.M. MAKUCH
VICE-CHAIR

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Local Planning Appeal Tribunal

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ATTACHMENT 1

12.14 Maple Industrial Area

12.14.1 General

12.14.1.1 The following policies shall apply to the lands identified as the Subject Lands on Map 12.14.A.

12.14.1.2 All italicized terms in this Policy shall have the meaning attributed to them in D-1 Guidelines, D-1-3 Land Use Compatibility: Definitions and the Environmental Noise Guideline Stationary and Transportation Sources – Approval and Planning Publication NPC-300, as amended or replaced from time to time. Despite anything to the contrary, and for greater certainty, the term *Sensitive Land Use(s)* shall include *Noise Sensitive Land Use(s)* and the term *Industrial Land Uses* shall include *Stationary Source(s)*.

12.14.1.3 The emission or discharge of *Noise, Vibration, Fugitive Emissions*, or other irritant resulting from a use permitted in accordance with Policy 12.14.2.1 on the lands identified as Area A and/or Area B on Map 12.14.A will not be considered to be a nuisance or to have an adverse effect on neighbouring uses for the purposes of Policy 12.14 and Policy 9.2.2.10(c) of this Plan provided that the emission or discharge has been granted approval by the Ministry of the Environment, Conservation and Parks or an equivalent provincial approval and provided that the emission or discharge meets the requirements of the applicable provincial approval.

12.14.2 Land Use Policies

Employment

12.14.2.1 Within the lands identified as Area A and Area B on Map 12.14.A, in addition to the uses permitted in Policy 9.2.2.10 General Employment and Policy 9.2.2.11 Prestige Employment, respectively, the following uses shall also be permitted in accordance with the following:

a. Within the lands designated Prestige Employment (an employment area designation as per policy 2.2.4.2) the following additional uses are permitted:

i. Production of stucco, including tinting and sale of building materials with both indoor and outdoor display and storage.

b. Within the lands designated General Employment (an employment area designation as per policy 2.2.4.2) the following additional uses are permitted:

i. a concrete batching plant;

- ii. recycling of used concrete, which includes screening and crushing of aggregate materials including concrete;
- iii. an aggregate transfer station;
- iv. outdoor storage; and,
- v. an asphalt plant and/or the recycling of used asphalt provided that the following may only be permitted on the lands identified as Area B on Map 12.14.A:
 - A. crusher(s) and screen(s);
 - B. aggregate dryer and associated dust collection system;
 - C. batch tower and associated hot screens, mixer, and slat conveyors (bucket elevator);
 - D. asphalt cement storage tanks;
 - E. hot mix asphalt storage silos;
 - F. hot oil heater;
 - G. hot mix asphalt load out bays; and,
 - H. screening and crushing of aggregate materials including asphalt and concrete.

12.14.2.2 Where all or any portion of the lands shown as Area A or Area B on Map 12.14.A is used as contemplated in Policies 12.14.2.1.a.i and 12.14.2.1.b.i to 12.14.2.1.b.iv, no *Sensitive Land Use(s)* shall be permitted within 70 metres of the lands identified as Area A and Area B on Map 12.14.A without an amendment to this Plan.

12.14.2.3 Where all or any portion of the lands shown as Area B on Map 12.14.A is used as contemplated in section 12.14.2.1.b.v, no *Sensitive Land Use(s)* shall be permitted within 300 metres of the lands identified as Area B on Map 12.14.A without an amendment to this Plan.

12.14.2.4 Section 9.2.3.7(c) of this Plan does not apply to Employment/Industrial Buildings situated on lands identified as Area A and Area B on Map 12.14.A.

Community Commercial Mixed-Use Special Policy Area

12.14.2.5 Within the lands designated as “Community Commercial Mixed-Use Special Policy Area” (not an employment area designation as per policy 2.2.4.2) on Map 12.14.A, only the following uses shall be permitted:

- a. Office Uses to a maximum of 12,500 m2 GFA per lot;
- b. Data Processing, Research and Development Facilities;
- c. Retail Uses;
- d. Gas Stations, subject to Policy 5.2.3.12; and,

- e. Existing lumber, trusses and trim processing, warehousing, outdoor display and storage, mechanic shop, equipment service and repair, and sale and distribution of building materials.

Employment Commercial Mixed-Use Special Policy Area

- 12.14.2.6 Within the lands designated as “Employment Commercial Mixed-Use Special Policy Area” (an employment area designation as per policy 2.2.4.2) on Map 12.14.A, only the following uses shall be permitted:
- a. Office Uses to a maximum of 12,500 m² GFA per lot;
 - b. Cultural and Entertainment Uses;
 - c. Retail Uses; provided that no Retail unit shall exceed a Gross Floor Area of 3,500 square metres; and,
 - d. Gas Stations, subject to Policy 5.2.3.12.

Sensitive Land Uses

- 12.14.2.7 Notwithstanding the uses permitted in Policy 12.14.2.5 and 12.14.2.6, no *Sensitive Land Use(s)*, shall be permitted in the Employment Commercial Mixed-Use Special Policy Area or Community Commercial Mixed-Use Special Policy Area, inclusive of the Potential Future Residential Area as illustrated on Map 12.14.A, without the approval of an Official Plan Amendment in accordance with the Policies of 12.14.2.8 and shall require site plan approval.

Applications

- 12.14.2.8 Applications for the re-designation of any part of the “Subject Lands” that propose to introduce *Sensitive Land Use(s)* shall be considered only where such part of the “Subject Lands” has been designated Community Commercial Mixed-Use Special Policy Area in this Plan or has been identified for non-employment uses through a municipal comprehensive review in accordance with the Growth Plan and shall:
- a. Comply with all applicable Provincial and municipal policies and/or guidelines as amended from time to time, including the Provincial Policy Statement, the Growth Plan, the York Region Official Plan, Guideline D-6 as amended and the Environmental Noise Guideline Stationary and Transportation Sources – Approval and Planning Publication NPC-300, as amended or replaced from time to time;
 - b. Include with applications for proposed *Sensitive Land Use(s)*, appropriate studies including (i) *Noise*, (ii) air quality, (iii) *Vibration*, (iv) *Fugitive Emissions*, (v) lighting, (vi) overlook and (vii) traffic generation, that demonstrate the proposed use is compatible with all surrounding uses having regard for good planning principles and in accordance with all applicable Provincial and municipal policies and/or guidelines;

- c. Include studies that identify appropriate measure(s) to mitigate impacts from the *Industrial Land Uses* to ensure compliance with all provincial and municipal requirements, laws, policies, and/or guidelines for the *Industrial Land Uses* located within the Subject Lands is maintained. Identified mitigation measures shall be implemented prior to occupancy of any buildings, structures, or other improvements through site plan control and associated agreements as a condition of approval. The identified mitigation measures shall be implemented on the lands subject to the development application except where the owner(s) of the *Industrial Land Uses* and/or *Stationary Source(s)* consent and agree otherwise. The implementation and maintenance of any required identified mitigation measures may, where feasible, be included in appropriate agreement(s) between the developer of the *Sensitive Land Use(s)* and the owner(s) of the *Industrial Land Uses* and registered on title; and,
- d. Be subject to the following conditions:
 - i. Prior to applying for an occupancy permit, the developer of buildings, structures, or other improvements on the *Sensitive Land Use(s)* must demonstrate that compliance with all provincial and municipal requirements, laws, policies, and/or guidelines for the *Industrial Land Uses* located within the Subject Lands is maintained provided that such *Industrial Land Uses* are otherwise in compliance with Policy 12.14.1.2 and all approvals by the Ministry of the Environment, Conservation and Parks or any equivalent provincial approvals. Where compliance for the *Industrial Land Uses* cannot be demonstrated, remedial measures shall be implemented by the developer of the *Sensitive Land Use(s)* prior to occupancy of any buildings, structures, or other improvements provided that such *Industrial Land Uses* are in compliance with all approvals by the Ministry of the Environment, Conservation and Parks or any equivalent provincial approvals and Policy 12.14.1.2;
 - ii. Appropriate design measures and other requirements including restrictions on the permission, occupancy, location, and/or orientation of any proposed building or other potential *Point(s) of Reception*, including the location of *Outdoor Living Spaces* and amenity spaces within buildings, buffering and screening of potential *Point(s) of Reception*, requirement(s) for *Warning Clauses* and, where feasible, appropriate agreements, shall be implemented through the zoning by-law and as condition of site plan approval and/or any related development approvals to ensure that the objectives of NPC-300 and the D-6 guidelines, as amended or replaced from time to time, are achieved; and,
 - iii. As a condition of site plan approval, prior to applying for a building permit in respect of a Sensitive Land Use, the owner shall be required to provide a certificate issued by a professional engineer or other

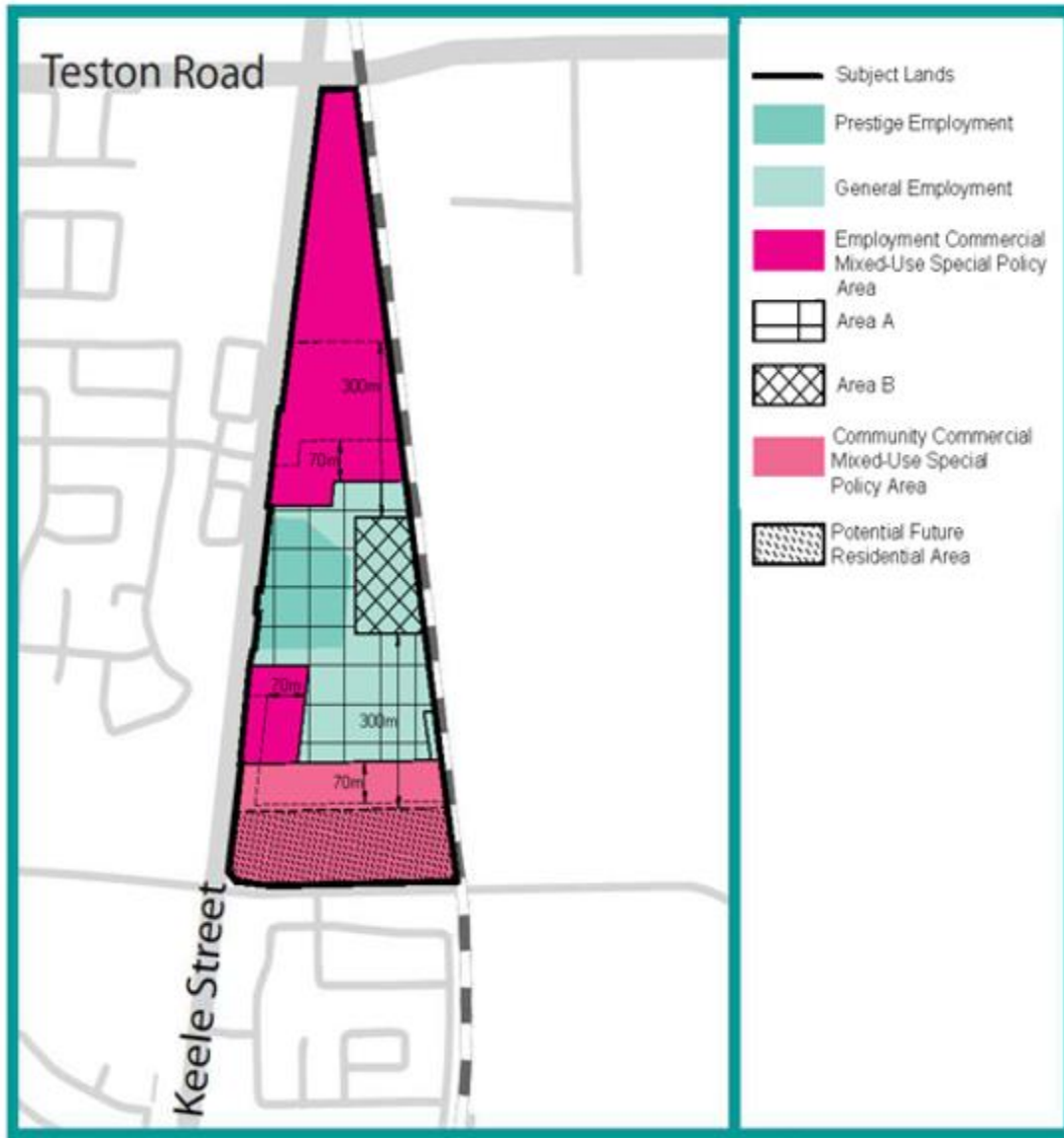
qualified professional, addressed to the Chief Building Official with a copy to the owners of the Industrial Land Uses, certifying that the requirements of this policy 12.14.2.8 have been met.

Monitoring and Mitigation of Waste Disposal Activities

- 12.14.2.9 In addition to the uses permitted in Volume 1 of this Plan and in addition to the uses permitted above, uses related to the monitoring and mitigation of the effects of waste disposal activities are permitted on all of the Subject Lands identified on Map 12.14.A.

Change in Land Use

- 12.14.2.10 Subject to all applicable policies of 12.14, changes in a land use from that which is permitted under the Community Commercial Mixed-Use Special Policy Area designation, including *Sensitive Land Use(s)*, can be considered through the appropriate legislative process and in conformity with all applicable provincial, Regional, and local Plans.
- 12.14.2.11 Non-employment uses, such as Residential/commercial uses, can be considered for lands having an employment area designation as per policy 2.2.4.2 subject to Policy 12.14, through the appropriate legislative process and in conformity with all applicable provincial, Regional, and local Plans, upon the ceasing of employment uses within Area A and B as identified on Map 12.14.A.



Map 12.14A: Maple