



David R. Donnelly, MES LLB
david@donnellylaw.ca

September 11, 2023

Via email to: clerks@vaughan.ca

City of Vaughan
Office of the City Clerk
2141 Major Mackenzie Drive
Vaughan, ON L6A 1T1

Communication : C 5
Committee of the Whole (1)
September 12, 2023
Agenda Item # 2

Dear Clerk,

Re: Committee of the Whole, September 12, 2023
RE: Zoning By-law Amendments Z.22.029; Z.22.030; Z.22.031; Z.22.032
Draft Plan of Subdivision File Nos.: 19T-22V006 – 11363 and 11191

Donnelly Law (“we” or the “Firm”) represents the Friends to Conserve Kleinburg Inc. (“FTCK”) and Humberplex Developments Inc. (“Humberplex”) (together our “Clients”) regarding the proposed Block 55 West Block Plan and development at Kirby Road and Regional Road 27 (the “Block Plan 55”).

We write Vaughan Council (“Council”) to inform you of our Clients’ continuing objections regarding the proposed Zoning By-law Amendments (“ZBLA”) Z.22.029, Z.22.030, Z.22.031, and Z.22.032 to the City of Vaughan Comprehensive Zoning By-law 1-88 (“By-law 1-88”) and City of Vaughan Comprehensive Zoning By-laws 001-2021 (“Bylaw 001-2021”).

These comments are remarkably similar to concerns raised in our January 17, 2023 correspondence, which have not been addressed.

Our Clients have been consistent, over the past four years, that greater attention to environmental and compatibility features must serve existing residents first, consistent with your duty to protect the public as your priority with developers as the subordinate interest. In general, this has mostly been the case in Vaughan, making the allowances granted to this development and developer more concerning.

Please note that our Clients and their neighbours did not receive notice from City Staff of this meeting.

I. Block Plan Premature and Non-Responsive to Residents

Regarding the proposed Block Plan, it is our Clients' primary submission it is premature to move forward with Block Plan approval at this time because the Block Plan report does not detail the transition measures on the existing Neighbourhood Community to the south (Humberplex Developments).

One of the key policies in OPA 48 includes:

a) Section 13.48.1.3 of OPA 48 indicates:

Development shall include transition measures for the adjacent existing neighbourhood to the south that may include, but not limited to a berm, fencing, additional and/or existing landscape or a single loaded road(s). The details of the transition measures are to be established through the block plan and draft plan of subdivision applications and secured through zoning by-law(s) and/or restrictive covenant(s).

Critical environmental and compatibility features are presently missing from the Block Plan, which may include but is not limited to a berm, preservation of the existing hedgerow of trees, with sufficient land to maintain the trees, fencing, additional landscaping and a single loaded road. The scoped Block Plan and Draft Plan of Subdivision files concurrently need to further establish the detailed transitional measures with supporting technical analysis.

The proposed 10m buffer along the south Block Plan limit requires further details on the rationale why 10m is sufficient; but in any event, is not nearly sufficient to preserve the trees. It is apparent from the aerial plan, a number of the existing trees in the hedgerow are located outside the 10m setback zone and therefore will need to be removed. This is unacceptable from both an ecological and neighbourhood compatibility perspective.

Our Clients are persuaded a 50m buffer is sufficient to protect the mature vegetation in place, and is consistent with the OP 48 policies concerning the environment. In addition, a single loaded road to the north of the buffer will also add to the community amenity and allow the City full access required to maintain the buffer properly.

The Block Plan Report does not mention if a Detailed Tree Inventory, Assessment and Preservation Plan was ever prepared for the South limit of the Block Plan. This document will provide the technical support and recommendation for the 10m buffer or more based on the location of existing trees and proposed grading for the surrounding new development. The existing trees in the proposed buffer shall

require some edge management works to ensure their long-term survival within an urban context, this should be identified through the Tree Inventory, Assessment and Preservation Plan. Humberplex Developments did not require a buffer along the Copper Creek golf course because as an operating golf course land-use, the buffer was not required in the City's Official Plan for future residential development.

The OPA 601 Kleinburg Nashville Community Plan Schedule 'A' clearly depicts a 30m wide buffer that transition the Treelawn Community from the Humberplex Community. It was noteworthy that there was no existing vegetation between the two properties. Therefore, a precedent has long been set and it is expected that this 30m wide buffer should also be provided as a minimum buffer between the north limit of Humberplex Community and the south limit of the proposed new Copper Creek Development. The proposed 30m buffer should be augmented to preserve the existing mature vegetation with a linear walkway outside of the vegetation buffer, so as to preserve the existing large tree hedgerow.

It is very difficult to preserve trees on private property through restrictive covenant because these covenants expire after 40 years, and in our experience they do not restrict homeowners from performing landscape improvements, installing pools that undermine root systems, constructing sheds etc. that have a negative impact on the long-term survival of existing trees and will result in them being removed and or not replaced.

Our Clients have consulted an expert regarding examples of tree preservation on private property from past experience working for the City of Vaughan, where a restrictive covenant was attempted without success.

In the Renaissance Court Development located in Thornhill at Westmount and Graywood Boulevard, the owners of large lot properties with existing mature trees were ordered to protect the trees on their private property. The owners proceeded to perform very extensive landscape improvements including pools, outdoor entertainment areas and structures.

All these improvements resulted in a number of the existing trees being removed or damaged that were never replaced. The City has no control on restrictive covenant and trees must be preserved through public ownership as part of open space, park or single loaded road with buffer system.

In other words, our Clients do not accept that homeowner covenants are a solution that will result in tree preservation. The immediate neighbours expect these mature, 30- to 40-foot trees will be preserved, which is both reasonable and consistent

with OP 48. Finally, this is consistent with what Council and Staff has recommended and approved for over four years.

For over four years, our Clients have been forced to expend significant resources, including time, effort and money concerning: the Block Plan 55's transition compatibility; density and lot sizes; the impacts to the valley; the woodlands and vegetation protection zone; and the development's lack of responsiveness to climate change; traffic; and stormwater management, among other issues.

II. This Developer's Accommodations

As you are aware, the Local Planning Appeal Tribunal's approval of Official Plan Amendments 47 ("OPA 47") & 48 ("OPA 48"), that coincide with the Block Plan are currently under appeal by our Clients (the "Plaintiffs") in the Superior Court of Justice of Ontario (Divisional Court).

Notwithstanding the Judicial Review application launched by our Clients, the City appears to have permitted substantial site alteration and grading despite the lack of a rezoning and subdivision approval to the point that the road network is clearly visible from Kirby Rd.

This is especially alarming given that no prior public consultation has taken place with respect to the substantial site alteration that has already started. This destruction of the landscape pending the Block Plan, Zoning and Draft Plan of Sub-Division is unprecedented, in our Clients' experience. May we know exactly how many times this extraordinary benefit has been extended to other developers in Vaughan?

It would not surprise our Clients to learn this is the first time such an expansive reading of the Building Code has been extended to a developer in Vaughan.

Regarding the Block Plan, it is our Clients' experts' opinion that the Block Plan will result in a significant loss of open space in the Kleinburg Community as well as the broader City of Vaughan. The implications of this loss of open space were not assessed as part of the consideration of both OPA 47 and OPA 48 but needs to be now.

Furthermore, the Region of York has not completed its Municipal Comprehensive Review (MCR) to address the extended time horizons and population forecasts of the Growth Plan (2019). The MCR is required to establish the updated allocation of population forecasts to the City of Vaughan. Consideration of the Block Plan is premature until such time as the updated allocation of population forecasts is completed.

To make matters worse, the substance of the Judicial Review is that the Government of Ontario adopted a regulation prejudicial to residents' appeal rights – at the request of the City of Vaughan Council!

Prior to September 3, 2019, the *Local Planning Appeal Tribunal Act* contained sections 38 – 42 which were repealed once the current amendments came into effect on September 3, 2019. The repealed sections required that oral submissions be limited to Parties, and then only to the amount of time prescribed by the regulations. They also prohibited Parties from calling or examining witnesses.

On September 3, 2019, all this changed as planning appeals were once again governed by rules that made appeals fairer and more open.

On or about September 27, 2019, the City of Vaughan Interim Manager Mr. Tim Simmonds sent an unsolicited letter on City of Vaughan letterhead to the Honourable Doug Downey, Attorney General of Ontario, regarding Transition Regulation O. Reg. 303/19 (the “Letter”).

Mr. Jason Schmidt-Shoukri at the time was employed by the City to oversee planning matters, including the Copper Creek *Planning Act* application, and was copied on this letter.

The contents of Mr. Simmonds' letter falsely intimates that Vaughan had multiple third-party appeals:

O. Reg. 303/19 as currently enacted has the unintended and undesired effect of substantially delaying the final approval of development applications by allowing third parties (not the applicant) who appealed the Council approval, to restart the appeal process and not be bound by the Bill 139 regime. [emphasis added]

Third party appeals are generally appeals involving the challenge of unsustainable development by citizens' groups, such as the Friends to Conserve Kleinburg Inc.

The appeal of the Friends to Conserve Kleinburg Inc. (formerly the Appellants S. Recine and B. Patterson) was the only outstanding third party LPAT appeal in Vaughan at the time.

On October 7, 2019, the City of Vaughan convened a Special Council Meeting – authorizing T. Simmonds to write AG requesting amendments to Transition Regulation i.e. take away third party appeal procedural rights. This authorization was given ten days after Mr. Simmonds wrote the letter.

No explanation has ever been provided for this extraordinary series of events. This current Council should be seeking an immediate investigation of this episode.

O/Reg 382/19 prejudiced our Clients, by making it illegal to cross-examine witnesses before the LPAT, and limiting or eliminating the direct testimony of expert witnesses.

This site alteration and these applications have occurred against the backdrop of rising residents' anger over developers receiving preferential treatment by the government. Recently, media reports have identified a number of developers who have benefitted from the Ford government's removal of certain protected land from the Greenbelt, including the ZBLA's Applicant.¹

III. Non-Conformity with the Greenbelt Plan

In my opinion, OPA 48 does not conform with the Greenbelt Plan and those lands that are scheduled to be taken out of the Greenbelt should remain protected Greenbelt lands, or should be part of the government's recently announced Greenbelt review.

The Applicant is relying on Section 5.2.1 of the Greenbelt Plan to develop 0.8 ha of these lands for urban uses. Section 5.2.1 addresses "Transition" policies and indicates: 1) permits Official Plans that pre-dated the approval of Greenbelt Plan to continue to be recognized and 2) does not require future applications to implement these Official Plans to conform to the Greenbelt Plan.

Specifically, Section 5.2.1 states:

Where an official plan was amended prior to December 16, 2004 to specifically designate land use(s), this approval may continue to be recognized through the conformity exercise addressed in section 5.3 and any further applications required under the Planning Act or the Condominium Act, 1998 to implement the official plan approval are not required to conform with this Plan; and,

Applications to further amend the site-specific official plan or zoning by-law permissions referred to above for uses similar to or more in conformity with the provision of this Plan are also permitted. All such applications should, where possible, seek to achieve or improve conformity with this Plan.

In my opinion, OPA 48 obviously does not represent similar residential development described in the City's predecessor OPA 601 that was in effect in 2004 and therefore cannot be sheltered under the Greenbelt Plan transition policies. According to OPA 601 the following policy directly applies to the East Kleinberg lands: "This area is designated as "Special Use Golf" and is encouraged to develop as a major open space and landmark feature to the community.

¹ [Who are the GTA developers set to benefit from Ford government's Greenbelt land swap? | CBC News](#)

Limited residential development of a minor nature may be permitted as part of the adjacent Residential Phase 2B development, provided the development is clearly ancillary to, and does not detract from, the major use of the lands as a golf course and subject to satisfactory servicing, environmental protection and enhancement and overall integrated design being achieved.” OPA 601 also establishes a population estimate for the redevelopment of the Subject Lands.

According to Table A, Kleinburg-Nashville Community Plan Population Estimates under OPA 601 a population yield of 220 people was expected for the “residential development” permitted on the East Kleinburg Site. In comparison, the Applicant’s current proposal yields a population of 1,590 people on the East Kleinburg lands, over 7 times the density envisioned by OPA 601.

Furthermore, OPA 48 does not include “uses similar to or more in conformity with the provision of this Plan”. FTCK’s experienced land use planner stated:

In my opinion the small lot residential uses permitted under OPA 48 are not similar to the large lot residential uses identified in OPA 601 and are not more compatible with the limited range of uses allowed within Natural Heritage System of the Protected Countryside of the Greenbelt Plan.

Therefore, the proposed land use designations under OPA 48 that permit urban development on Greenbelt lands do not conform with the Greenbelt Plan.

OPA 48 will also facilitate a future rezoning and subdivision plan that includes retrofitting an existing golf course related irrigation pond on the abutting valley lands to the south as a stormwater management pond to deal with urban runoff.

The proposed stormwater management pond also does not conform with Section 4.2.3 (3) of the Greenbelt Plan that states: “Stormwater management systems are prohibited in key natural heritage features, key hydrologic features and their associated vegetation protection zones”. The stormwater management system as proposed, in addition to the substantial increase in residential development, is a very significant intrusion that does not belong in the Humber River valley and Greenbelt.

IV. Conclusion

Our Clients are concerned about the four proposed ZBLAs for By-laws 1-88 and 001-2021 due to the lack of compatibility, efficiency of land use, negative environmental impacts, and public transit issues that it may cause. Residents deserve the opportunity to work with Staff – whom they employ – instead of having to wait for the final report before having the opportunity to make technical submissions.

Our Clients are seeking an immediate timetable and protocol to meet with Staff, their experts and the community to ensure that each of these issues are addressed

in the context of an Environment First approach to development approval, which has been lacking in Vaughan to date.

Our Clients respectfully request that Council refuse the Application, for the reasons given above.

Please do not hesitate to contact me at 416-572-0464, or by e-mail to david@donnellylaw.ca, should you have any questions or comments concerning this correspondence.

Yours truly,

A handwritten signature in blue ink, appearing to read "D. Donnelly", with a long horizontal flourish underneath.

David R. Donnelly

cc. Clients
G. Borean