

**From:** Kevin Doan <kevin@injurylawcentre.com>

**Sent:** Friday, May 07, 2021 11:51 AM

**To:** DeFrancesca, Rosanna <Rosanna.DeFrancesca@vaughan.ca>; Bevilacqua, Maurizio <Maurizio.Bevilacqua@vaughan.ca>; Ferri, Mario <Mario.Ferri@vaughan.ca>; Rosati, Gino <Gino.Rosati@vaughan.ca>; Jackson, Linda <Linda.Jackson@vaughan.ca>; lafrate, Marilyn <Marilyn.lafrate@vaughan.ca>; Carella, Tony <Tony.Carella@vaughan.ca>; Racco, Sandra <Sandra.Racco@vaughan.ca>; Shefman, Alan <Alan.Shefman@vaughan.ca>; Clerks@vaughan.ca; DevelopmentPlanning@vaughan.ca; integrity.commission@vaughan.ca

**Cc:** rsalerno@westondownsra.ca; 'Victor Lacaria' <lacariv@gmail.com>; Antoine, Mark <Mark.Antoine@vaughan.ca>; info@westondownsra.ca; 'Kevin Doan' <kevin@injurylawcentre.com>

**Subject:** [External] 4101 Rutherford Road Vaughan - Velmar Centre Property Limited - FILE OP.19.003; Z.19.008; DA.19.042;

Dear Honourable Mayor, Members of Council, City Clerk, and Integrity Commissioner,

A. **Postponement and Production of Information:**

1. I am writing to respectfully request a postponement or adjournment of the Velmar Centre Property Limited item cited above, on the agenda of the meeting (item 6.(4.)) of Council scheduled for May 12, 2021.
2. I respectfully request that the report not be received by Council at this meeting and until I and community residents have had a proper chance to fully review in order respond to it.
3. I am also respectfully request that no other decision be made by Council at the meeting respecting the report dated May 12, 2021 by City Manager Jim Harnum who recommends, among other things, draft approval of the application.
4. A brief chronology: I opposed the application and had made a deputation on the application before City Council at City Hall in 2019. I have not received any notice from the City relating to this application at least since the pandemic started in about March 2020. I was only first notified of the upcoming May 12, 2021 meeting and its agenda by email in the afternoon of May 4 from Mr. Mark Antoine, Senior Planner, enclosing a "Courtesy Notice" which stated that "A copy of the staff report is available on the City's website at [www.vaughan.ca](http://www.vaughan.ca)." I visited the website but was unable to track the report. I reviewed "PlanIt" planning map on the site and was not able to locate a copy of the report either. I emailed Mr. Antoine at 5:40 A.M. on May 6, and was promptly provided a direct link to the staff report which actually was also signed by City Manager Jim

Harnum above.

5. The report is 33 pages in length and I spent time yesterday trying to understand its reasons. The report also cites other materials or reports which were not attached to nor were made available to me, or, I believe, any to other residents in the communities.
6. At this time, I must respectfully request more time in order to be able to meaningfully participate in the process including further writing and speaking to the application at the scheduled meeting of May 12.
7. In order to facilitate my review, I respectfully request that I and the community residents be provided with all information including, but not limited to, all reports, documents, specific citations and references to policies and guidelines the City Manager relies on in his report of May 12, 2021?
8. I still warmly remember when the first Term of Council Service Excellence Strategic Plan was announced by the Honourable Mayor. I was heartened. It now continues with the 2018-2022 Terms of Council Strategic Priorities which includes Good Governance and City Building.
9. Under City Building, the document confirms its Objective as “To build a world-class city, the City will continue its planning and development in support of key citywide developments and initiatives that encompass good urban design and public spaces that foster community well-being.”
10. Under Good Governance, its Objective is “To effectively pursue service excellence in governance and fiscal responsibility, the City will hold the public’s trust through inclusive, transparent and accountable decision-making, responsible financial management, and superior service delivery and effective communication.” One of its three main stated themes thereunder is to “Ensure transparency and accountability”.
11. I trust that my above requests are reasonable as they promote accountability and transparency in decision making by the City Manager, and by Members of Council. Only when community residents can meaningfully engage, that they may be able to contribute to ensure good urban designs are being implemented.

**B. Role of City Manager and Role of City Council Members**

12. For on-going consideration, I would respectfully also raise the following concerns regarding the roles of City Manager and City Council Members in respect of the City Manager’s report of May 12, 2021.
13. In my perusal of the report, it is unclear to me the role of the report and its legal weight, if any, upon Members of Council.
14. The report does not provide any references to any legislative sources for its authority upon Members of Council. It does not state what its mandate was and under what legislative authority.
15. I respectfully request that the legal role and mandate of the report be stated and described, including legislative sources if any, and provided to me and community

residents.

16. Without a clear understanding of the report's authority, legal or otherwise, community residents and I would be unable to fully understand its role, its context, and therefore its scope and its meaning, in order to properly respond in a focused and proper manner. Furthermore, community residents and I would not know the appropriate remedies or lack thereof as remedies may be dictated by the authority and mandate of the report.
17. In the event that the report is an "expert" report of some kind, residents and I should be provided further information and answers including: (a) what authority permits Council to commission an "expert" report? (b) what exactly is being asked of the expert? (c) what exactly determines who is an expert? (d) is Council abrogating its responsibility as elected decision-makers by improperly delegating its jurisdiction in part to an expert who improperly functions practically as an unelected Member of Council? (e) how long in advance of an appropriate meeting must the report be made available to community residents? (f) are community residents be permitted to fully review the expert report and his supporting records in order to assess and challenge, possibly by another "expert" if any?
18. I respectfully submit that as there are no citations given to any sources of legislative authority for the report, there is no legal obligation to give any weight to the report by Council. Therefore, not just because the report was prepared by three City Staff and signed by two of City's most senior employees, that the report must somehow carry some weight in Council's deliberation.
19. In the event that it is considered to be an "expert" report, please so confirm, and respond to all of the above requests including an adjournment. And if it is an expert report, I will have more to review and further respond, but at this time I would make the following respectful but frank observations:
  - a. The report is notably unbalanced, and it appears as though it was written by an advocate for the developer. Experts owe a duty to be impartial and to provide responsive reasons backed up with supporting references. Failure to discharge that duty disqualifies the experts. Here, the authors of the report appeared to have cherry-picked whatever was "consistent" with the policies while gross inconsistencies with the planning and zoning and other inconsistencies were minimized and casually interpreted away with practically little to no responsive reasons at all. I will provide some examples below.
  - b. It is recalled that under the "City Building Objective" above, the goal for Vaughan is not just mere consistencies with policies and guidelines, but "**good** urban design". Mere consistencies while downplaying gross inconsistencies likely leads to mediocre designs, not good urban design. Our city pursues the higher standards, of a world-class city. We cannot stick, frankly, an eye-sore, grossly out of character of the neighbourhood: a condo building six storey high in a low rise areas. The eye-sore, if approved, will be there for generations to see. It would

build a random striking landmark, when set in the surrounding low rise communities, for no reasons other than for more money for the developer, and give Vaughan another mark and appearance of a random-planning city.

- c. On this issue of an eye-sore, or in planning parlance, “mass and volume”, what does the City Manager have to say in his expert report? The short answer is respectfully nearly nothing. I will explain by looking at only two examples for now:

**Example 1: At pages 12-13, the City Manager stated:**

The Owner is proposing to amend the following site-specific maximum height and density requirements for the Subject Lands in VOP 2010 to permit the Development:

    Increase the maximum permitted building height from 4-storeys to 6-storeys

    Increase the maximum permitted FSI from 1.5 times the area of the lot to 2.72 times the area of the lot

The Development Planning Department can support the proposed amendments to VOP 2010 for the following reasons:

The Development meets the intent of the “Community Area” Policies in VOP 2010

-

Community Areas are considered stable areas not intended to experience significant physical change; however, incremental change is expected as part of a maturing neighbourhood. The Development maintains the intent of the “Community Area” policies in VOP 2010, specifically the following:

    Sections 2.2.3.2, 9.1.2.1 (a) and 9.1.2.2 - new development shall respect and reinforce the scale, height, massing, character, and form of the planned function of the local immediate area

    Section 2.2.3.3 - limited intensification is permitted in Community Areas, subject to development being sensitive and compatible with the character, form, and planned function of the surrounding context

The Development provides for a limited form of intensification with an appropriate transition in scale, height and massing to the existing low-rise residential development located east of the Subject Lands. The Subject Lands abut Velmar Downs Park to the west and south, and Rutherford Road to the north, and provides an appropriate separation distance between the Development and the existing low-rise residential lots to the north (40 m), west (70 m) and south (144 m). To mitigate visual and shadow impact on adjacent properties, the 6-storey portion of the Development is primarily located along Rutherford Road and the west property

line.

The massing along Velmar Drive is reduced to 3-storeys (11.2 m) in height and is setback 3 m from the property line along Velmar Drive. Existing mature boulevard trees along Velmar Drive are proposed to be retained, with additional deciduous tree plantings along the boulevard to further mitigate visual impact and promote privacy. The Development respects and reinforces the criteria established in Section 9.1.2.2 of VOP 2010, and is compatible with, but not identical to, the surrounding neighbourhood.

// **My comments:**

The City Manager cited the legal criteria and policies which I highlighted in blue above. My question is what references, studies, and authorities did he cite to substantiate his expertise and support his conclusion that “The Development respects and reinforces the criteria established in Section 9.1.2.2 of VOP 2010, and is compatible with, but not identical to, the surrounding neighbourhood”? The answer is none. Nothing.

How did he come to the conclusion that the six-storey condo building with some **135** units where the vast majority is one bedroom and den condos (likely smaller than 700 sq. ft. per current condo design trends), all concentrated on a footprint smaller than the 6 single detached houses across the street as “respect and reinforce” the scale, height and character of the local immediate area?

It not only failed to respect, **it did nothing to reinforce.**

It grossly violated the local neighbourhood. Yet, this was barely and obliquely acknowledged. His reasons were that the intensification was “limited”, with a transition in scale, height and massing that was “appropriate”, with a separation of distance what was “appropriate”. There was no further explanation at all as to why that was considered to be “limited”, or how other things were “appropriate”. The short paragraph to interpret the inconsistencies away provided no responsive reasons at all. None.

Such a report, I respectfully submit, is “conclusory”. In other words, it provides just the conclusion but no responsive reasons let alone explaining any expert analysis. Such a report does not provide proper expert opinion. It provides an opinion that any one at the City happens to have, or any residents happen to have.

It is respectfully submitted that as a matter of law, it is unlawful to give any weight to such conclusory opinion, even where an author is allegedly an expert in any way.

**Example 2: At pages 13-14, the City Manager stated:**

The Development meets the intent of the “Low-Rise Mixed-Use” designation in VOP 2010

-

The “Low-Rise Mixed-Use” designation generally applies to existing low-rise commercial lots abutting arterial or collector streets and located within a Community Area. These lots are intended to be redeveloped through limited intensification with low-rise mixed-use buildings, subject to the redevelopment being appropriately integrated into adjacent areas, in accordance with Section 2.2.3.3 of VOP 2010.

The Development maintains the intent and permitted uses of the “Low-Rise Mixed-Use” designation in VOP 2010, specifically the following:

Section 9.2.2.2 (a) and (b) - “Low-Rise Mixed-Use” areas are intended to be developed with a mix of residential and small-scale retail uses intended to serve the local population

Section 9.2.2.2 (e) - sites designated “Low-Rise Mixed-Use” and located within a Community Area, and on a Collector Street, are limited to a maximum of 500 m<sup>2</sup> of retail GFA

The Development represents an appropriately scaled mixed-use building with multi-unit residential and commercial units. The proposed building height and density of 6-storeys (20.2 m) and 2.72 FSI, respectively, reflects an appropriate and modest form of intensification. The Development respects and reinforces the scale of existing development by providing a transition in height to 3-storeys (11.2 m) along Velmar Drive; one-storey lower than the maximum permitted building height of 4-storeys on the Subject Lands.

...

The Development meets the intent of the “Low-Rise Building” criteria in VOP 2010

-

Section 9.2.3.4 of VOP 2010 identifies development criteria for a Low-Rise Building. Section 9.2.3.4(a) defines a “Low-Rise Building” as generally 5-storeys in height. A building over 5-storeys in height is generally defined as a “Mid-Rise Building” in VOP 2010.

The Development provides for a mixed-use building ranging in height from 3 to 6-storeys and meets the intent of the following criteria for a Low-Rise Building in Section 9.2.3.4 of VOP 2010, as follows:

The Development provides for appropriate privacy and sunlight conditions, and does not abut any lots with a residential dwelling (Section 9.2.3.4 (b))

Surface parking and driveways are located interior to the Subject Lands or in an underground parking garage (Section 9.2.3.4 (c))

The rooftop of the Development will consist of green roofs, as shown on Attachment 4 (Section 9.2.3.4 (d))

The “Mid-Rise Building” criteria in VOP 2010 is identical to the requirements of the “Low-Rise Building” criteria, with the exception of a pedestrian-scaled podium being required for any building over 6-storeys in height (Section 9.2.3.5 (b)). The Development is not over 6-storeys in height and a podium is not required. The 6-storey portion of the Development is located on the north and west side of the Subject Lands. On this basis, the Development meets the intent of a “Low-Rise Building” in accordance with VOP 2010.

**//My comments:**

-  
This is another example of unbalanced and partial analysis.

What seems to be a clear starting point is that the development does not comply with VOP2010. Yet this was not acknowledged. The authors did not acknowledge the obviously violating nature of two six-storey larger sides (North and West sides), but instead focused on the small portion (East side) that is three-storey as somehow “respects and reinforces the existing development”. The authors emphasized a small area rather than looking at the whole which is predominantly a six-storey condo building, completely out of character. The language used again is in similar, conclusory and vague terms such as appropriate, modest etc... But what is so modest when the violation is 50% more storeys (6 vs. 4), and 150% more in gross floor space?

However, what is further problematic under this example is that, here, the authors somehow interpreted from “C3 Local Commercial Zone ... that does not permit residential development” (p. 15) - to “Low-Rise Mixed-Use” that has a height limit of 4 storeys – to a “Low-Rise *Building*” which is generally a building of 5-storeys in height with anything higher being a “Mid-Rise Building” in VOP2010. Then somehow, without clear legal authorities cited, the proposed 6-storey condo building – **a 6-storey “Mid-Rise Building” is permitted in a Low-Rise Mixed-Used area with a maximum possible height of only 4 storeys.**

The authors seem determined to find whatever narrowest possible interpretations to push the boundaries to squeeze the condo building into the small lot. There was no discussion of what the best urban designs would dictate, and what most respects the well-being of the people already living in the community (which is an important theme under City Building Objective above). When it comes to sunlight, those in the immediate West of the development will lose sunlight for most of the beautiful summer mornings, and those in the East will lose much of the beautiful summer afternoons and sunset skies. Yet, this was explained away that as long as they had 5 hours a day, that would be somehow fine per some urban guidelines – without regard to the loss of the quality of residents’ quiet enjoyment.

The authors did not acknowledge that there are other areas where intensification for this type of building has been planned for in the City, not this local commercial zone property. They did not acknowledge that the City has apparently and readily satisfied any intensification requirements by the Province elsewhere in the City. The report is distinctly unbalanced and partial.

City Council should, when the proper time for action comes in the future, reject it. Bare minimum, even if met, is simply not good planning, not good enough for a world-class city.

**20. Bonusing of \$622,000 under s. 37 of the Planning Act:**

The report states that the developer and the City “agreed” to the amount of \$622,000 to be paid by the developer to the City in return for the City allowing the extra two storeys, from allegedly 4 to 6.

I have serious concerns about this use of power under s. 37.

An elephant in the room is that for every extra storey, the builder makes a lot of money, and the surrounding area property owners lose a lot of money. No one maintains the same interest, hence demand, in a property in Weston Downs and in Vellore Village when it is next to a six storey building versus a lower building. Lower demand translates to loss of value on the open market. (If the City requires a report in this regard, please inform for our further response.)

To allow this grossly violating of a building into the area practically means that:

(1) the developer is allowed to make the beautiful city park with tennis courts be practically his own amenities, to support a higher price on his units; he nearly annexes the city park although without legal title, and his tenants will dominate the use of the facilities; the tennis courts practically become the private tennis courts for his buyers as they will know easily (they can look down from their living rooms to check availability) when the courts are available, while others who come there randomly will find the courts more frequently busy and discouraged from future attempts to use. The city says it does not intend to sell its park, but the City Manager would allow a very high concentration of households, some 135 new units, to practically block them off;

(2) by taking \$622,000, the City is practically penalizing the local property owners, many retired, with reduced property values, on the one hand, and on the other hand issue permit to make money to the developer. Out of this \$622,000 a fraction goes to build some covered area in the park and other utilities which we would not be surprised will be well under



\$100,000. The balance goes to some East Humber trail, according to the report, which is unknown to me and I assume many community residents. Where is this East Humber trail? And who is benefiting from this? Not us, not remotely.

Is this not effectively a new way of taxation by the City by reducing community property values to allow city to build some revenues? The purpose of s. 37 of the Planning Act could not be intended as a way to increase revenues at the entire expense of local homeowners.

Coupling with a questionable, conclusory report from its City Manager, if the condo goes ahead in such context, the bonusing exercise seems to be an arbitrary exercise of statutory power or discretion. It therefore appears inadvisable if not unlawful.

In conclusion, it is well within Council's authority to reject the application and reject the "recommendations" of the City Manager. The developments breaches many existing policies including bylaws etc... There is no reasonable expectation when the developer bought the property for some \$2 million that it was anything more than a local commercial zone area. He suffers no loss. He cannot be handed a lottery windfall by Council, issuing the developer permits to issue profits – all at the expenses of the long time residents of the areas.

City Council should not continue to test the political wills of local residents, of retirees, of families having much already on their hands. It is not the best practices of a productive, efficient, world-class city. The last thing they need is keeping to fight again and again, against some proposal that penalizes local residents in their quality of life, in their life investments in their homes. Council should be clear to the developer that the sense of fair play by Council will not entertain more than the current height permits as a starter, but even at four storeys, it is far from any guarantee that that would be respecting and reinforcing the local existing development.

Local residents are not taking anything away from the developer. It is the developer who seeks take away local residents' quiet enjoyment and their peaceful lifetime investments that they have been earned here, some for decades before the developer.

The residents and I count in your sense of fair play. Thank you for taking the time to consider my requests herein.

All of which is respectfully submitted,

Kevin Doan.