

ISSUE DATE:

June 9, 2005

DECISION/ORDER NO:

1504



PL041188

Ontario Municipal Board

Commission des affaires municipales de l'Ontario

Trinison Management Corporation, Danigire Holding Incorporated, Star Oak Developments Limited et al. have appealed to the Ontario Municipal Board under subsection 22(7) of the *Planning Act*, R.S.O. 1990, c. P.13, as amended, from Council's refusal or neglect to enact a proposed amendment to the Official Plan for the Town of Oakville to establish the North Oakville East Secondary Plan for the land in the general area bounded by Dundas Street, Sixteen Mile Creek, Hiway 407 and 9th Line
Approval Authority File No.42.12I.11
OMB File No. O040214

APPEARANCES:

Parties

Town of Oakville

Region of Halton, Conservation Halton

Halton Catholic District School Board

Halton District School Board

Mattamy Homes Limited, Eno Development Limited, Oakville 23-2 Inc. Bressa Developments Inc.

Trinison Management Corporation

Star Oak developments Limited and Mel Oak Developments Inc.

Osmington Inc. and Danigire Holding Incorporated

Green Ginger Developments

808306 Ontario Limited, Grandee Holdings Limited and Diam Contractors Limited

Belmont Properties Inc.

Memorial Gardens Canada Limited

Counsel

Julia Ryan and David Bronskill

Stephen Waqué and Rick Coburn

J. Pitman Patterson

W. Thatcher

Roger Beaman

Randy Smith

Russ Cheeseman

Ira Kagan

Tom Lederer

Ron Webb and Ellen Pefhany

Jeffrey Davies

Tom Barlow

DECISION DELIVERED BY R.D.M. OWEN FROM A PRE-HEARING CONFERENCE

This is the first pre-hearing conference on what could be known as the North Oakville Secondary Official Plan Amendment East Section, a private application by a number of property owners in this area of the Town. A number of parties appealed the failure of the Council to hold a public meeting on their application within the statutory time limit.

In this pre-hearing conference the appellants and various other landowners, who sought and were granted party status as set out above, sought a hearing date for late November for some nine months of hearing time and a series of pre-hearing conferences and other procedural dates. It is their position that in accordance with Official Plan Amendment 198, settled between most of the same parties that seek this secondary plan, that all the necessary reports called for in Official Plan Amendment 198 accompanied the original application for the amendment filed on March 5, 2004. Whether their application is premature is an issue for a hearing. They contend that all the provisions of Official Plan Amendment 198 have been met and the Town has chosen not to respond to their application, but to proceed to prepare their own Official Plan Amendment. The *Planning Act* gives the applicants a right to a hearing. It is their hearing and should not be subsumed into the Town's Official Plan Amendment.

The Town's position is that it is important "to get it right". The Town has been diligently working on this secondary planning process even before the approval of Official Plan Amendment 198 and continue to do so. A recent action by the Ontario Realty Corporation, owners of a substantial acreage in the west section of north Oakville, declaring some 750 acres to be protected and not available for development has impacts for both the west and the east sections of north Oakville. Council has instructed staff to prepare a "what to do now" report. This consideration is important to the development of the east section and the applicants' own Official

Plan Amendment. The Town suggests "reserving" a date in April 2006 for nine or 12 months of hearing time.

The Region supports the Town and is concerned about a number of regional issues that they argue need to be addressed before a hearing. Mr. Webb's clients also support the Town.

In reply, the Applicants argued that their Official Plan Amendment needs to be determined and that would "inform" the outstanding issues that concern the Town and Region as to the development of the west and east section, servicing and other matters.

The Board has considered the submissions of all parties and is struck by the substantial hearing time all parties suggest they need - nine months to a year for a hearing. This suggests to the Board that the parties have not attempted to do any real or concerted negotiations or considered mediation. The best land use planning does not always result from an OMB hearing. By its very nature an OMB hearing is adversarial. Alternate dispute resolution and in particular mediation can serve if not to settle a dispute at least substantially narrow and define the issues. The Board emphasises the use of mediation in all of its proceeding and encourages parties to voluntarily enter into mediation. It is appropriate here. Having said that, it is clear that the Town must focus on the proposal from the developers group and not only on their own proposal. The Town must clearly delineate what the issues are with the proposed Official Plan Amendment application and the studies in support. The Board is aware of the challenge to a municipality with a planning exercise of this size, but the matter has been under review and development for a number of years and there needs to be a degree of finality in the process. The Board notes Official Plan Amendment 198 calls for two secondary plans, one for the east section, the subject lands and one for the west section. While there is an interconnection, clearly the Official Plan Amendment 198 does not require that both proceed as one.

The Board will not fix a hearing date at this time. At this time, the Board is satisfied that it is premature to proceed to set a hearing date until good faith negotiations have been attempted and issues established. The Board will set a pre-hearing conference for the early fall on a date to be agreed upon between counsel for the parties, failing which the Board will set the date. This will provide the parties with some four months in which to enter into meaningful discussions about the applicants proposed Official Plan Amendment. It is not good enough for the applicants to simply say: here it is what's wrong with it. Nor is it appropriate for the Town or Region to say: we are too busy with our plan and more studies so you will have to wait. At the fall pre-hearing conference the Town and Region must have an issues list prepared to address the Official Plan Amendment application. The Board will determine if mediation is reasonable and will hear further submissions on fixing a hearing date.

Mr. Burton on behalf of Clean Air Coalition Inc. sought party status and this was opposed by the appellants. This issue will be determined at the next pre-hearing conference if Mr. Burton brings the necessary motion in accordance with the Board's rules.

Various persons sought either participant status or wished to be kept advised of proceedings and they are set out in the Attachment 1 to this decision.

This member will case manage the matter and will preside at the next pre-hearing conference.

A handwritten signature in black ink, appearing to read "R. D.M. Owen". The signature is fluid and cursive, with a large initial "R" and "O".

R. D.M. OWEN
VICE-CHAIR

Attachment 1

Ontario Municipal Board

**LIST OF INTERESTED PERSONS FROM THE
PRE-HEARING CONFERENCE (MAY 17, 2005)**

Those seeking (but not yet granted) party status:

1. Clear the Air Coalition Inc.
c/o Rob Burton
380 Aspen Forest Drive
Oakville, ON L6J 6H5
nosp@cleartheaircoalition.com
(F) 905.358.1200
(T) 905.358.1200

Granted Participant status:

1. David Bazar
257 Randall Street
Oakville, Ontario L6J 1P8
bazar@bazarmcbean.com
(F) 905.338.0545
(T) 905.338.0330, x. 28
(owner/resident at 1205 Burnhamthorpe Road West)
2. BCIMC Realty Corporation
c/o Heather Jenkins
Director, Asset Management
Bentall Investment Management
55 University Avenue, 3rd Floor
Toronto, ON M5J 2H7
(landowner, 186 acres west of Bronte Road)
3. Igino and Giuseppina Mella
(address at 4116 Fourth Line)
c/o Dennis Mella
430 Parkridge Crescent
Oakville, Ontario L6M 1B2
(T) 905.847.5536
4. Oakvillegreen Conservation Association Inc.
c/o Hendrik Rodenburg
180 West Lynn Road
Oakville, Ontario L6L 4Z4
hrodenburg@cogeco.ca
(T) 905.849.8979

5. Drago Peric
c/o Mark Peric (or Slav Peric)
4060 Fourth Line
Oakville, Ontario L6J 7R4
cronnox@globalserve.net
(F) 905.257.2154
(T) 905.257.2148

6. Residents' Association North of Dundas (RAND)
c/o Laura Knowlton
38 Burnhamthorpe Road West
Oakville, Ontario L6M 4K4
laura.knowlton@sympatico.ca
(F) 905.257.1663
(T) 905.257.1663

7. Shapira/Resnick In Trust and Rosko Developments Inc.
c/o Michael Shapira
Fogler, Rubinoff LLP
95 Wellington Street West, Suite 1200
Toronto-Dominion Centre
Toronto, Ontario M5J 2Z9
mshapira@foglerrubinoff.com
(F) 416.941.9700
(T) 416.941.8854
(re. land west of Bronte Road, with a southern
boundary at Dundas and a northern boundary
North of Highway 407)

(Courtesy copy to:
Hessie Rimon, PMG Planning Consultants
227 Bridgeland Avenue
Toronto, Ontario M6A 1Y7
(F) 416.787.0004
(T) 416.787.4935)

8. Ministry of Municipal Affairs and Housing : Attention I. Shachter

Those seeking notification:

1. Elizabeth Asik
64 Brookshire Circle
Thornhill, Ontario L3T 7B3
2. George Bekiaris and Associates
519 Clendenan Avenue
Toronto, Ontario M6P 2X7
(re. 4022 Fourth Line)
3. G&D Tank and Trailer
c/o Dennis Mella
55 Steeles Avenue East
Milton, Ontario L9T 1X9
dmella@gdtank.com
(F) 905.876.0377
(T) 905.876.2444
4. Mr. and Mrs. Brian King
1130 Burnhamthorpe Road
Oakville, Ontario L6M 4K8
5. John Mackenzie
Ontario Realty Corporation
11th Floor, 77 Wellesley Street West
Toronto, Ontario M7A 2G3
6. Frank Mattuci
24 Buxton Road
North York, Ontario M3M 1Y5
7. Redthorn Co.
c/o Pino Policelli
1196 Jonathan Drive
Oakville, Ontario L6J 7H6
(T) 416.999.5335
8. Dr. Jack Sakarya
1227 Yonge Street
Toronto, Ontario M4T 2T8
9. Chris Tyrrell
80 Commerce Valley Drive East
Thornhill, Ontario L3T 7N4