

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



**ISSUE DATE:** April 17, 2020

**CASE NO(S):** PL180073  
PL110189

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(24) of the *Planning Act*, R.S.O. 1990, c. P.13, as amended

Appellant:	10870 Yonge Street Limited
Appellant:	Saad Askandar
Appellant:	Dogliola Developments Inc.
Appellant:	Richmond Hill Retirement Inc. et al; and others
Subject:	Proposed Official Plan Amendment No. OPA 8
Municipality:	Town of Richmond Hill
OMB Case No.:	PL180073
OMB File No.:	PL180073
OMB Case Name:	Askander v. Richmond Hill (Town)

**PROCEEDING COMMENCED UNDER** subsection 34(19) of the *Planning Act*, R.S.O. 1990, c. P.13, as amended

Appellant:	10870 Yonge Street Limited
Appellant:	Saad Askandar
Appellant:	Dogliola Developments Inc.
Appellant:	Richmond Hill Retirement Inc. et al; and others
Subject:	By-law No. 1117-17
Municipality:	Town of Richmond Hill
OMB Case No.:	PL180073
OMB File No.:	PL180074

**PROCEEDING COMMENCED UNDER** subsection 22(7) of the *Planning Act*, R.S.O. 1990, c. P.13, as amended

Applicant and Appellant:	Yonge MCD Inc. Inc.
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Subject: Request to amend the Official Plan - Failure of Town of Richmond Hill to adopt the requested amendment

Existing Designation: "Key Development Area" and "Neighbourhood"

Proposed Designated: "Key Development Area" and "Neighbourhood" with amended policies

Purpose: To permit a mixed-use commercial/residential high-rise building, 3 high rise residential buildings, 22 street townhouse dwelling units, 160 condominium townhouse dwelling units, 8 single detached dwellings, and a public park

Property Address/Description: Various Addresses

Municipality: Town of Richmond Hill

Approval Authority File No.: D01-16002

OMB Case No.: PL170770

OMB File No.: PL170770

OMB Case Name: Yonge MCD Inc. Inc. v. Richmond Hill (Town)

**PROCEEDING COMMENCED UNDER** subsection 34(11) of the *Planning Act*, R.S.O. 1990, c. P.13, as amended

Applicant and Appellant: Yonge MCD Inc. Inc.

Subject: Application to amend Zoning By-law No. 2523 and By-law 190-87 - Refusal or neglect of Town of Richmond Hill to make a decision Flood (F) Zone and Rural Residential (RR) Zone under By-law No. 2523 and Residential Single Family Six (R6) Zone under By-law No. 190-87

Existing Zoning: Flood (F) Zone and Rural Residential (RR) Zone under By-law No. 2523 and Residential Single Family Six (R6) Zone under By-law No. 190-87

Proposed Zoning: Multiple Family One (RM1) Zone, Multiple Family Two (RM2) Zone, Open Space (OS) Zone and Park (P) Zone with site-specific development standards

Purpose: To permit a mixed-use commercial/residential high-rise building, 3 high rise residential buildings, 22 street townhouse dwelling units, 160 condominium townhouse dwelling units, 8 single detached dwellings, and a public park

Property Address/Description: Various Addresses

Municipality: Town of Richmond Hill

Municipality File No.: D-02-16012

OMB Case No.: PL170770

OMB File No.: PL170771

**PROCEEDING COMMENCED UNDER** subsection 51(34) of the *Planning Act*, R.S.O. 1990, c. P.13, as amended

Applicant and Appellant:	Yonge MCD Inc. Inc.
Subject:	Proposed Plan of Subdivision - Failure of Town of Richmond Hill to make a decision
Purpose:	To permit a mixed-use commercial/residential high-rise building, 3 high rise residential buildings, 22 street townhouse dwelling units, 160 condominium townhouse dwelling units, 8 single detached dwellings, and a public park
Property Address/Description:	Various Addresses
Municipality:	Town of Richmond Hill
Municipality File No.:	D-03-16006
OMB Case No.:	PL170770
OMB File No.:	PL170772

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

Appellants:	Amir-Hessam Limited & 668152 Ontario Limited 583753 Ontario Limited Yonge Bayview Holdings Inc. K.J. Beamish Holdings Limited Signature Developments Inc. TSMJC Properties Inc. Haulover Investments Limited New Era Developments (2011) Inc. Rice Commercial Group and Major Mac Realty Inc. Loblaw Properties Limited E. Manson Investments North Leslie Residential Landowners Group Inc. Montanaro Estates Limited and William & Yvonne Worden Baif Developments Limited Arten Developments Inc. Stonecourt Construction Inc. P. Campagna Investments Ltd., P.A. Campagna and 1480420 Ontario Ltd. Ram Nischal, Rekha Nischal, Neelam Narula and Raj Kumar
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Angelo, Louise and Josephine Cimetta and  
Shiplake Developments Ltd.  
Great Land (Westwood) Inc.  
775377 Ontario Ltd. (Belmont)  
Robert Salna and Robert Salna Holdings Inc.  
AME-SON Holdings Ltd.  
Corsica Development Inc.  
Elginbay Corporation  
Sitzer Group Holdings No. 1 Limited, Grall  
Corporation Limited, Natweiss Investments  
Limited, 967933 Ontario Limited & Loblaws  
Inc. (owners of the Richmond Heights  
Shopping Centre)  
Dickson 48 Property Inc., Sedgewick Property  
Inc., Long Body Homes Inc., & 1419079  
Ontario  
1191621 Ontario Inc.  
1835942 Ontario Inc.  
1122270 Ontario Inc.

Subject: Failure of the Regional Municipality of York to  
announce a decision respecting the proposed  
new Official Plan for the Town of Richmond Hill  
Town of Richmond Hill  
Municipality: PL110189  
OMB Case No.: PL110189  
OMB File No.: Cimetta v. Richmond Hill (Town)  
OMB Case Name:

**PROCEEDING COMMENCED UNDER** subsection 22(7) of the *Planning Act*, R.S.O.  
1990, c. P. 13, as amended

Applicant and Appellant: TSMJC Properties Inc.  
Subject: Request to amend the Official Plan - Failure of  
the Town of Richmond Hill to adopt the  
requested amendment  
Existing Designation: Yonge-Bernard Key Development Area  
Proposed Designation: To amend the public street access, height and  
built form policies to facilitate the proposed  
development  
Purpose: To permit the development of a 16-storey  
residential building located mid-block and a  
row of 3-storey back-to-back townhouses with  
frontage on Yorkland Street for a total of 338  
dwelling units  
Property Address/Description: 10909 Yonge Street/ Block 29, Plan 65M-2819  
Municipality: Town of Richmond Hill

Approval Authority File No.: D01-16003  
 OMB Case No.: PL110189  
 OMB File No.: PL170598

**PROCEEDING COMMENCED UNDER** subsection 34(11) of the *Planning Act*, R.S.O. 1990, c. P. 13, as amended

Applicant and Appellant: TSMJC Properties Inc.  
 Subject: Application to amend Zoning By-law No. 184-87, as amended – Neglect of application by the Town of Richmond Hill  
 Existing Zoning: “CC – Community Commercial”  
 Proposed Zoning: “RM2 – Residential Multiple Family Two”  
 Purpose: To permit the development of a 16-storey residential building located mid-block and a row of 3-storey back-to-back townhouses with frontage on Yorkland Street for a total of 338 dwelling units  
 Property Address/Description: 10909 Yonge Street/ Block 29, Plan 65M-2819  
 Municipality: Town of Richmond Hill  
 Municipal File No.: D02-16018  
 OMB Case No.: PL110189  
 OMB File No.: PL170599

**Heard:** August 12 and 13, 2019 in Richmond Hill, Ontario

**APPEARANCES:**

**Parties**

City of Richmond Hill

Richmond Hill Retirement Inc. and Oakridge Gardens Retirement Partnership

Yonge – Bernard Residents’ Association

Yonge MCD Inc.

Saad Askandar

**Counsel**

B. Kussner

M. Flowers, Z. Fleisher (student-at-law)

J. Cherniak

J. Alati, A. Margaritis

Self-represented

## **DECISION DELIVERED BY C. CONTI AND ORDER OF THE TRIBUNAL**

### **INTRODUCTION**

[1] This is the decision for a hearing dealing in part with appeals of the approval by the City of Richmond Hill (“City”) of Official Plan Amendment No. 8 (“OPA 8”) through which a Secondary Plan was approved for the Yonge-Bernard Key Development Area (“Secondary Plan”). OPA 8 was appealed by a number of parties, and through the Tribunal’s decision on a motion brought by the City, the appeals by Richmond Hill Retirement Inc. and Oakridge Gardens Retirement Partnership (“Richmond Hill Retirement”) and Yonge MCD Inc. (“Yonge MCD”) were separated from the others and scheduled to be brought forward at this hearing. The remainder of the appeals are scheduled to be heard later in 2020.

[2] The Secondary Plan (Exhibit 1, Tab 7) includes policies for the intensification of development in the area of the intersection of Yonge Street and Bernard Avenue. Zoning By-law No. 111-17 (“ZBL No. 111-17”/ “By-law”)(Exhibit 1, Tab 13), which implements the Secondary Plan, was adopted by the City and is also under appeal. An Interim Control By-law (“ICBL”) for the area has been adopted by the City and is in force.

[3] Richmond Hill Retirement owns property within the Secondary Plan area while Yonge MCD’s lands are both within and adjacent to the Secondary Plan area. Both have appealed the Secondary Plan and ZBL No. 111-17. In addition, Yonge MCD has submitted an application to permit development of its property, which is also under appeal. The decision deals with the appeal of OPA 8 and ZBL No. 111-17 by Richmond Hill Retirement and the appeal of the applications by Yonge MCD for the portion of its property outside of the Secondary Plan area. The remainder of the Yonge MCD appeal involving the Secondary Plan is scheduled to be dealt with through a future hearing.

[4] Both appeals were largely settled prior to commencement of the hearing. Only Saad Askandar opposed the appeal of Richmond Hill Retirement and presented evidence against the proposal at the hearing. No evidence was provided in opposition to the Yonge MCD proposal.

### **RICHMOND HILL RETIREMENT APPEAL**

[5] The appeal by Richmond Hill Retirement involves a property in the northeast quadrant of the Secondary Plan area at 70 Bernard Avenue. An existing five-storey building is located on the property, which operates as an independent living facility. Richmond Hill Retirement intends to expand the existing facility by constructing a nine-storey building in the northern part of the property that will connect to the existing building through a raised walkway. The Tribunal heard that the current building is designed for fully independent living of the residents. However, if the residents get to the point where they have a disability they would need to move from the current facility. The new building will provide assisted living and memory care facilities so that it may not be necessary for residents to move.

[6] The Tribunal heard evidence from three witnesses on behalf of Richmond Hill Retirement. Craig Bonham is a Director of CMV Group Architects who has more than 30 years of experience. He was qualified by the Tribunal to provide opinion evidence in architectural design.

[7] Mark Jamieson is a Principal of BA Group. He is a professional engineer who has approximately 16 years of experience in the field of transportation engineering and planning. He was qualified by the Tribunal to provide opinion evidence in transportation planning and engineering.

[8] Roy Mason is Principle Planner with KLM Planning Partners Inc. Mr. Mason is a land use planner with approximately 40 years of experience. He was qualified by the Tribunal to give opinion evidence in land use planning.

[9] Mr. Askandar provided evidence on his own behalf.

[10] None of the other parties provided evidence.

[11] The Tribunal heard that in order for the Richmond Hill Retirement proposal to be permitted, three changes are required to the By-law. No changes are required to the Secondary Plan and no amendment to the Secondary Plan is being sought. The changes to the By-law are set out in Exhibit 1, Tab 22, p. 439 and are intended to be site-specific in application. The changes will allow for the proposed facility to be operated by a private company, will remove fences from being defined as a “structure” under the By-law, and will exclude the above grade parking structure and the elevator shaft from being included in the gross floor area (“GFA”) calculation for the site.

[12] Mr. Mason’s opinion was that the proposed changes to the By-law are appropriate, meet all planning requirements and should be approved. Mr. Mason indicated that the York Region Official Plan identifies the Yonge-Bernard Key Development Area as part of a Regional Corridor, which is intended to accommodate higher densities. In s. 3.5.14, the York Region Official Plan encourages seniors housing to be located in proximity to rapid transit. Through s. 5.3.3, local municipalities were directed to complete and adopt their own intensification strategies based upon the Region’s intensification strategy. The York Region Official Plan identifies Regional Corridors and Centres as primary areas for intensification. Through s. 5.4.31, the York Region Official Plan directs the most intensive and widest range of uses within Regional Corridors to key development areas, which are to be identified by local municipalities (Exhibit 1, Tab 5, p. 139).

[13] Mr. Mason addressed the requirements of the Richmond Hill Official Plan (Exhibit 1, Tab 6). In s. 3.1.2.3, the Official Plan requires that a minimum of 40% of new development is to take place within the built boundary. This is in line with the Region’s requirements. Mr. Mason referred to s. 3.1.3, which indicates that new growth is intended to accommodate people at all stages of life. Through s. 3.1.3.9, the Official

Plan indicates that key development areas are intended to accommodate intensification. In s. 4.1.1.2, the Official Plan identifies permitted uses in centres and corridors, which include hospitals, healthcare centres and ancillary uses and also long term care facilities. Mr. Mason also referred to the policies, which indicate that the Yonge-Bernard key development area is intended for mixed use high density development. He noted that the permitted uses for key development areas in s. 4.4.1.3 are all higher density uses (Exhibit 1, Tab 6, p. 179).

[14] Mr. Mason indicated that s. 4.1.9 of the Official Plan states that 15 storeys is the maximum height that would apply to the property. He indicated that while the policy is under site-specific appeal, it is in force for the subject property. He also noted through s. 4.1.10 where development abuts neighbourhoods, building heights are limited to three storeys except where they abut existing medium and high rise buildings. Mr. Mason indicated that the subject property does not abut a neighbourhood, but it is adjacent to a channel to the north.

[15] Mr. Mason stated that the only angular plane requirement that would apply to the property is the one to be taken along Yorkland Street. He stated that this was confirmed by City staff. The proposal falls within the angular plane from Yorkland Street.

[16] Mr. Mason referred to the density and height requirements of the Secondary Plan. He indicated that the maximum height for the property in the Secondary Plan is 10 storeys and the maximum density allows a floor space index ("FSI") of 2.5 (Exhibit 1, Tab 34 and 35). The proposal meets both requirements in the Secondary Plan.

[17] Mr. Mason indicated that he relied on the shadow studies undertaken by Mr. Bonham. His opinion was that the amount of shadow that would be caused by the proposal is minimal.

[18] Mr. Mason also stated that he relied on Mr. Jamieson's evidence regarding traffic. He indicated that traffic generated by the proposal should not cause concerns.

[19] Mr. Mason's opinion was that the proposed amendments to the By-law are consistent with the Provincial Policy Statement ("PPS") and they conform with the Growth Plan for the Greater Golden Horseshoe ("Growth Plan"). He stated that the proposal will provide for an appropriate degree of intensification of the site and will contribute to the creation of a complete community.

[20] Mr. Mason's opinion was that the proposed amendments to the By-law comply with the Official Plans and do not require modifications to the Secondary Plan. He also stated that it is appropriate and in the public interest to amend the By-law as proposed.

[21] Mr. Askandar raised a number of issues in his oral and written submissions (Exhibit 2). In cross-examination, he acknowledged that the issues list included at Exhibit 2, Tab 21 was dated July 20, 2018 and the proposal has been revised with the current plans dated January 21, 2019. However, it was his opinion that the issues have not been resolved.

[22] Mr. Askandar contended that the density of the building will be 2.8 instead of 2.5 if the parking area is included as part of the GFA. He provided a calculation based upon a total area of the proposed building of 1,055 square metres ("sq m") (Exhibit 2, Tab 19).

[23] Mr. Askandar maintained that the height of the proposed building will impact the neighbourhood to the north. He contended that the closest adjacent neighbourhood property line is to the north, not to the east as suggested by Richmond Hill Retirement. If the angular plane is measured in relation to the neighbourhood to the north, Mr. Askandar maintained that the proposed building will intersect the angular plane.

[24] With regard to the proposed change in the By-law for fences, Mr. Askandar maintained that fences are structures and this should be reflected in the By-law. He questioned if it would be appropriate to change the definition in the By-law simply because one party wants it.

[25] Mr. Askandar maintained that removing the parking area from the GFA calculation and the way the angular plane has been determined has resulted in an increase in height and density of the proposal.

[26] Mr. Askandar indicated that he prepared a shadow study for the proposal using a 30 m height for the building. He maintained that the proposal causes shadowing on the buildings to the north.

[27] Mr. Askandar also referred to the Affidavit of Patrick Lee, the Director of Policy Planning with the City, which he contended discusses matters that will not comply with the Secondary Plan (Exhibit 2, Tab 12 and 13).

[28] The Tribunal has carefully considered the evidence and submissions of the parties. From the evidence, the Tribunal understands that Mr. Askandar's major concern is the potential impacts from the height and density of the proposal, and impacts from the proposed increase in height and density in the Secondary Plan area. Mr. Askandar's residence is on the east side of Yorkland Street.

[29] It is clear from the evidence that intensification of uses in the area is encouraged by the York Region Official Plan and by the City's Official Plan. Intensification of use is required by the PPS and Growth Plan and the intent of the Secondary Plan is to provide for development that is consistent with the PPS and conforms to the Growth Plan. The Secondary Plan is intended to implement the direction for intensification in these higher level planning documents.

[30] Mr. Askandar did not express a specific concern about the height of the building, but as noted above, he raised issues about the angular plane and the shadow caused by the building on the neighbourhood to the north.

[31] With regard to the angular plane, it was Mr. Mason's evidence that the only requirement is for the angular plane to be calculated from Yorkland Street and not from

the neighbourhood to the north. The Tribunal has reviewed the evidence and agrees with Mr. Mason's opinion that the requirement is to assess the angular plane from Yorkland Street and that the proposal meets the angular plane requirements.

[32] With regard to shadowing, Mr. Askandar acknowledged in cross-examination that he prepared his shadow study and he is not an expert in that field. The shadow study submitted by Richmond Hill Retirement was prepared by Mr. Bonham who is an expert and his evidence is considered as expert opinion by the Tribunal. It was Mr. Bonham's opinion that the amount of additional shadowing caused by the proposal is minimal and that the impact will be acceptable and will affect mainly the yard areas of some houses to the north. The Tribunal accepts the evidence on shadowing provided by Mr. Bonham and finds that the amount of shadow caused by the proposal will be acceptable.

[33] Mr. Askandar's concern about density was that the proposal will exceed the requirement of 2.5 in the Secondary Plan if the parking area is not excluded from the GFA calculation. Mr. Mason's evidence was that above grade parking levels are required to limit impacts on groundwater and a geothermal heating and cooling system that is in place and is intended to remain on the site. This has resulted in the density calculation which exceeds the Secondary Plan requirement. The amendments to the By-law will remove the parking area from the calculation of GFA for the property and according to Mr. Mason's evidence, the density for the site then will be 2.5, which will conform to the Secondary Plan. In view of the evidence and the need to provide above ground parking, the Tribunal considers the increased density to be justified in this case. The Tribunal concludes that it represents a minor change from the standard in the Secondary Plan that is required for the proposal. In view of the evidence, the Tribunal finds that the proposed increase in density is an appropriate amendment to the By-law.

[34] In the documents submitted by Mr. Askandar, he raised some concerns about increased traffic resulting from the development of the Secondary Plan. It is not clear if increased traffic from the proposal on its own is a concern for Mr. Askandar, but the Tribunal accepts the opinion evidence of Mr. Jamieson that the increase in traffic from

the proposal will be minimal. Mr. Jamieson's evidence was that trip generation from seniors' residences is generally low. The maximum peak morning and evening trip generation from the proposed expansion is expected to be in the order of 12 to 23 in the morning and 15 to 28 in the afternoon (Exhibit 1, Tab 30, p. 514). It was his opinion that this increase will have little impact on the traffic network, and traffic from the site will likely decrease over time with the improvements of rapid transit along Yonge Street. The Tribunal accepts Mr. Jamieson's opinion evidence and finds that traffic generation from the proposal will be acceptable.

[35] At the beginning of Mr. Askandar's evidence, Mr. Flowers objected to the inclusion of Tab 17 and 18, in Exhibit 2. The Tribunal determined that it would deal with Mr. Flowers concerns in terms of weight given to those documents.

[36] The Tribunal has reviewed Tab 17 and 18 of Exhibit 2 and finds that they do not affect the Tribunal's conclusions about the appeal.

[37] As noted earlier, Mr. Askandar contended that the affidavit of Patrick Lee contained issues related to the Secondary Plan. The Tribunal has reviewed the Affidavit and notes that it does not raise concerns about the proposal and in para. 9 it states that the settlement with Richmond Hill Retirement is supported by City staff and was approved by Council.

[38] Mr. Askandar raised concerns about the process for considering the Richmond Retirement appeal and that allowing the appeal will compromise consideration of the remainder of the Secondary Plan. However, no changes to the Secondary Plan are being proposed by Richmond Hill Retirement and only three site-specific changes are proposed to the By-law. The Tribunal agrees with the submissions of Richmond Hill Retirement and the City, that allowing the appeal will not prejudice the other parties. The Tribunal finds that it will not compromise consideration of the remainder of the Secondary Plan.

[39] Based upon the evidence, the Tribunal accepts the expert evidence provided on behalf of Richmond Hill Retirement. The proposal is within a key development area where intensification of uses is encouraged. The proposal will implement an appropriate level of intensification for the site.

[40] Based upon the evidence, the Tribunal finds that the proposed amendments to the By-law are consistent with the PPS, conform with the Growth Plan, conform with the York Region Official Plan and the City Official Plan and they should be approved.

[41] Based upon the above considerations, the Tribunal will dismiss the appeal of Mr. Askandar and approve the amendments to ZBL No. 111-17 on a site-specific basis. Mr. Flowers provided a draft order, which has been incorporated into the Tribunal order at the end of this Decision. The Tribunal heard that the appeal of the Secondary Plan by Richmond Hill Retirement will be withdrawn with the approval of the amendments to the By-law.

## **YONGE MCD APPEAL**

[42] The Yonge MCD appeal involves approximately 4.65 hectares (“ha.”) of land west of Yonge Street and north of Bernard Avenue. The lands have a frontage on Yonge Street of approximately 197 m. A portion of the eastern part of the property is occupied by a tributary of the Rouge River and is owned by the Toronto and Region Conservation Authority. The north boundary of the property has frontage on Brookside Road. The southern boundary fronts onto Naughton Drive, which becomes a driveway serving a commercial development at its eastern end prior to connecting with Yonge Street. Only the southeast portion of the lands are within the area covered by the Secondary Plan.

[43] Through this proceeding, Yonge MCD is seeking approval for phase 1 of the development, which comprises approximately 3.8 ha. of the property. This area is not

within the Yonge/Bernard Key Development area and is not covered by the Secondary Plan.

[44] Yonge MCD has applied for an amendment to the City's Official Plan ("OPA"), an amendment to the Zoning By-law ("ZBA") and for approval of a plan of subdivision. The proposal calls for medium density residential development in the form of stacked townhouses and apartments. Also two detached dwellings are proposed for Blocks 1 and 2 in the plan of subdivision. Phase 2 of the development involves lands at the southeast corner of the property, which is within the Yonge/Bernard Key Development Area and is covered by the Secondary Plan. However, Phase 2 is not under consideration in this proceeding.

[45] The Tribunal heard from three witnesses called by Yonge MCD in support of the proposal.

[46] Ryan Guetter, Senior Vice President with Weston Consulting is a Registered Professional Planner, who has approximately 17 years of experience. He was qualified by the Tribunal as an expert in land use planning.

[47] Jeff Michael Mark is Principal with Mark Engineering. Mr. Mark is a professional engineer who provides traffic engineering and transportation planning services. Mr. Mark has approximately 50 years of experience in those fields and he was qualified as an expert in transportation and traffic engineering.

[48] Alan Tregebov is a Registered Professional Architect with Tregebov Cogan Architecture. Mr. Tregebov has more than 40 years of experience and he was qualified by the Tribunal to provide opinion evidence in the fields of architecture and urban design.

[49] The Tribunal heard from no other witnesses and no evidence was provided in opposition to the proposal.

[50] Mr. Guetter explained the process through which the current plan for the proposal was prepared. He indicated that there has been extensive consultation with the City, Region and other agencies to arrive at a plan that is acceptable to all. He also stated that there has been substantial engagement with the public.

[51] According to the evidence, the Phase 1 proposal consists of a total of 302 dwelling units consisting of 264 stacked townhouse and lifestyle units, 36 semi-detached units and 2 single family dwellings. The proposal has been designed to provide transition with higher densities being provided close to Yonge Street and lower densities provided progressively to the west toward existing low density residential areas. Wide semi-detached units are located at the perimeter of the development area to assist with the transition. Stacked townhouses are located in the middle portion of the site and a six-storey building is located in the eastern part of the Phase 1 property. Much of the Yonge Street frontage is occupied by the valleyland area of the tributary of the Rouge River (Exhibit 3, Tab 3 and 4). Park and open space blocks encompass the tributary and adjacent areas. The total density of the proposal will be 119.3 units/ha.

[52] Mr. Guetter referred to the proposed amendment to the City's Official Plan (Exhibit 9). He indicated that the amendments to the provisions of the Official Plan are contained in paragraph 1.c. They include a maximum number of units of 302 and an overall density of 120 units/ha. in the portion of the property that will be developed.

[53] Mr. Guetter stated that he considered the opinions of Mr. Mark, Mr. Tregobov and other members of the team that planned the proposal. Mr. Guetter's opinion was that the plan for Phase 1 is appropriate.

[54] Mr. Guetter indicated that the transportation network for the proposal as set out in Mr. Mark's evidence is appropriate and can proceed to facilitate Phase 1. He stated that some adjustments may be required for phase 2.

[55] Mr. Mark described the results of the transportation planning analysis that he completed for the area and his Traffic Impact Study. Mr. Mark analysed the proposed road network for the subdivision in conjunction with other roads in the area and plans for future roads. His Traffic Impact Study was provided in Exhibit 5B, Tab 36. Mr. Mark discussed a number of recommendations including that the connection of the New Road (Street A) in the subdivision with Yonge Street should provide right in/right out movements only rather than a full movement signalized intersection. His overall conclusion was that the road system can function at an acceptable level and that phase 1 of the development can proceed.

[56] Mr. Guetter's opinion was that the proposal meets all applicable planning requirements. He indicated that the proposed plan of subdivision meets all requirements of s. 51(24) of the *Planning Act* ("Act"). He maintained that the site is suitable for the purposes of subdivision of the land, with approval of the OPA the proposal will comply with the Official Plan, and the requirements of the school board are being met.

[57] Mr. Guetter's opinion was that the proposal is consistent with the PPS. It maintains the policies regarding managing and directing growth, providing for housing and protecting natural heritage features.

[58] Mr. Guetter stated that the proposal complies with the Growth Plan. He indicated that the Growth Plan promotes intensification in proximity to transit. Mr. Guetter stated that although the Region has not concluded the process for identifying major transit station areas, the site is included in a major transit station area in a draft report. The proposal will provide a range of housing types. Mr. Guetter's opinion was that redevelopment of the site with higher density in a compact form is in keeping with the Growth Plan.

[59] Mr. Guetter indicated that the subject property is within an area affected by the Oak Ridges Moraine Conservation Plan ("ORMCP") where it is identified as being within

a settlement area. He stated that a natural heritage evaluation and hydrogeological study have been carried out for the proposal. An aquifer located under a portion of the lands has been evaluated. Mr. Guetter stated that appropriate measures will be implemented to protect features in the area. Mr. Guetter's opinion was that the proposal complies with the ORMCP.

[60] Mr. Guetter indicated that the York Region Official Plan seeks to ensure that the lower tier Official Plan policies fulfill certain principles including the intensification of use, the efficient use of infrastructure, and others. The York Region Official Plan provides for planning around major transit station areas and encourages the provision of a range of housing.

[61] Mr. Guetter's evidence was that subject property is designated as Urban Area in the York Region Official Plan. The proposal will provide for intensification of use of the property with a suitable form of housing and provides a transition in density and scale to the areas to the west and north. Mr. Guetter indicated that he considered policies related to natural features, housing, growth, sustainability of cities, intensification, regional corridors and centres. It was his evidence that the proposal conforms to these policies and other applicable policies in the York Region Official Plan.

[62] Mr. Guetter stated that the Phase 1 lands are designated as Neighbourhood and Oak Ridges Moraine Natural Core Area in the City's Official Plan. The northeast portion of the property containing the creek valley is the area designated as Natural Core. The southeast portion of the property, which will be phase 2 of the development, is designated as Key Development Area.

[63] The subject property is identified within the Settlement Area and Built Boundary of the City. Furthermore, Schedule A1 identifies the property as being within a Regional Intensification Corridor, which is intended to accommodate the second highest level of intensification. In view of these provisions, Mr. Guetter's opinion was that the subject property is an appropriate location for intensification and the uses and densities of the

proposal are appropriate. His evidence was that the proposal is consistent with the applicable Official Plan policies by providing a mix of low and medium density residential uses that is compatible with the surrounding area.

[64] Mr. Guetter's opinion was that the proposal provides for protection of natural heritage features consistent with the Official Plan's policies for the Greenway System, and that the proposal responds appropriately to the requirements for the provision of parks and open space. He also indicated that the proposal provides an appropriate range of housing types and built form in response to the housing policies in the Richmond Hill Official Plan.

[65] Mr. Guetter's evidence was that the groundwater features in the area have been evaluated and appropriate measures will be implemented to maintain the water balance consistent with the objectives of s. 3.2.1.11 of the Official Plan. He also indicated that based upon the hydrogeological study, the proposal will not cause negative impacts on hydrological features and that the development is consistent with s. 3.2.2.2 of the Official Plan.

[66] Mr. Guetter indicated that the proposed OPA will permit stacked townhouses and apartments under the definition of medium density residential uses and will allow for greater heights and densities. His opinion was that the proposed site-specific OPA will meet the objectives of the Neighbourhood designation to enhance and strengthen the character of the existing neighbourhood while providing for appropriate transitions of land uses.

[67] His opinion was that the proposal conforms to the requirements of the City's Official Plan and the OPA meets the intent of the Official Plan policies and represents good planning.

[68] Mr. Guetter referred to the South Brookside Tertiary Plan, which affects part of the Phase 1 lands. The Tertiary Plan was adopted by the City but is not a statutory

document. Mr. Guetter indicated that it identifies a road pattern for the area and includes the lands along the western and northern boundary of the plan adjacent to the existing neighbourhood, which are identified as Low Density Residential. The eastern area of the Tertiary Plan, including the area of the subject property west of the watercourse is identified as Medium Density Residential. Mr. Guetter indicated that higher densities and apartment forms are anticipated by the Tertiary Plan in the area of the subject property.

[69] Mr. Guetter's opinion was that the road pattern in the proposed plan respects the road network in the Tertiary Plan. Also, the proposal has located the semi-detached and single detached units in the area identified as Low Density Residential to provide a transition to the existing neighbourhood. Also, the stacked townhouses and six-storey building will be within the area identified as Medium Density Residential. It was Mr. Guetter's opinion that the proposal is consistent with the Tertiary Plan.

[70] Mr. Guetter addressed the City's Zoning By-law, which he indicated requires updating. He stated that the subject property is zoned Flood (F), Rural Residential (RR), and Residential Single Family 6 (RR6). He stated that the ZBA is required to permit apartment buildings and stacked townhouses on the lands as well as permit site-specific provisions for the development. Mr. Guetter referred to the proposed ZBA (Exhibit 10). He stated that the standards have been determined in consultation with City staff. His opinion was that the proposed ZBA conforms to the Official Plan as amended by the OPA.

[71] The Tribunal has considered the evidence. The evidence in support of approval of the OPA, ZBA and plan of subdivision, which would implement phase 1 of the proposal is uncontested. The Tribunal understands that the concerns of the other parties have been resolved through the proposal. The TRCA has been a party to these proceedings, but did not appear at the hearing and the Tribunal understands that they are satisfied. Mr. Kussner confirmed the City's support for the approval of the application.

[72] Based upon the above, the Tribunal accepts the opinion evidence provided by Mr. Guetter, Mr. Mark and Mr. Tregebov. Based upon the evidence, the Tribunal finds that the OPA, ZBA and plan of subdivision are consistent with the PPS, conform to the Growth Plan, the ORMCP and the York Region Official Plan. Furthermore, the OPA meets the intent of the City's Official Plan and should be approved. With approval of the OPA, the ZBA and the plan of subdivision conform to the City's Official Plan. The plan of subdivision has regard for all requirements of s. 51(24) of the Act. Furthermore, based upon the evidence and submissions of the parties, the Tribunal finds that approval of the proposal for the phase 1 lands can proceed in advance of the approval of the Secondary Plan.

[73] In view of the above, the Tribunal finds that it is appropriate to approve the OPA, ZBA and plan of subdivision. Mr. Alati requested that the planning instruments be approved in principle until the Tribunal receives them in their final form. He provided a draft order, which he requested be incorporated into the Tribunal's approval.

[74] Based upon the above considerations, the Tribunal will allow the appeal in part and approve the planning instruments in principle. The relevant provisions from the draft order have been incorporated into the Tribunal's order, which is provided below.

## **ORDER**

### **Appeal of Richmond Hill Retirement Inc. and Oakridge Gardens Retirement Partnership**

[75] The Tribunal orders that the appeals of Saad Askandar against ZBL No. 111-17 of the City of Richmond Hill and against the Yonge - Bernard Key Development Area Secondary Plan are dismissed in relation to the Richmond Hill Retirement Inc. and Oakridge Gardens Retirement Partnership lands at 70 Bernard Avenue, Richmond Hill.

[76] And furthermore, ZBL No. 111-17 is amended for the lands at 70 Bernard Avenue, Richmond Hill, as set out in Attachment 1, and ZBL No. 111-17 is approved and is in force and effect, in respect to the lands at 70 Bernard Avenue.

[77] The Tribunal orders that the approval of ZBL No. 111-17 as amended with respect to the lands at 70 Bernard Avenue shall be strictly without prejudice to any remaining appeals of the Zoning By-law and shall not have the effect of limiting the rights of any other appellant to seek to amend any portions of the zoning by-law in respect of any other lands to which the Zoning By-law applies on a general or site-specific basis, as the case may be, subject to any commitments made by such other appellants to scope their issues in respect of the Zoning By-law.

#### **Appeal of Yonge MCD Inc.**

[78] The Tribunal Orders that the appeal of Yonge MCD Inc. is allowed in part and the revised applications for an amendment to the City of Richmond Hill Official Plan, an amendment to Richmond Hill Zoning By-law No. 190-87, and for a draft plan of subdivision submitted by Yonge MCD Inc. for the phase 1 lands, known as Part of Lots 1, 2 and 23 Registered Plan 1642, Lots 1, 2, 3 and 4 Registered Plan 3600 and Lots 1 and 4, Registered Plan 3766 bearing municipal addresses of 12 and 24 Naughton Drive, 0, 11014, 11034, 11044 and 11076 Yonge Street, and 0, 47 and 59 Brookside Road, depicted in accordance with the Concept Plan submitted as Exhibit 4, Tab 2 are approved in principle,

[79] And Furthermore the Tribunal Orders that its final order will be withheld until the City of Richmond Hill and Yonge MCD Inc. confirm that the following conditions have been satisfied:

1. That the draft Official Plan amendment as set out in Exhibit 9 has been finalized to the satisfaction of the City's Commissioner of Planning and Regulatory Services,

2. The draft Zoning By-law amendment as set out in Exhibit 10 has been finalized to the satisfaction of the Commissioner of Planning and Regulatory Services,
3. The draft plan of subdivision submitted as Exhibit 4, Tab 3 and associated conditions of draft plan approval have been finalized to the satisfaction of the Commissioner of Planning and Regulatory Services,
4. It has been at least 21 days since the Yonge-Bernard Residents Association was given copies of the Exhibits referred to in items 1 to 3 above,
5. The Applicant has paid the applicable fees.

[80] The Tribunal orders that the approval in principle of the plan in Exhibit 4, Tab 2, does not have the intent of fixing or revising the boundaries of the Yonge-Bernard Key Development Area (“KDA”) within the northwest quadrant of the KDA and the approval in principle of these site-specific applications is without prejudice to and will not pre-determine the future determination of the appropriate KDA boundaries as they apply to other lands owned by Yonge MCD Inc. save and except, the Phase 2 lands, which are depicted schematically to form a portion of the proposed street network, which bisects Yonge MCD’s Phase 2 lands and connects to Yonge Street at its easterly terminus. The boundaries of the KDA are to be determined through future proceedings of the Tribunal.

[81] The Tribunal may be spoken to if difficulties arise with regard to implementation of the above orders for the appeals of Richmond Hill Retirement Inc. and Oakridge Gardens Retirement Partnership, and Yonge MCD Inc.

*"C. Conti"*

C. CONTI  
VICE-CHAIR

If there is an attachment referred to in this document,  
please visit [www.elto.gov.on.ca](http://www.elto.gov.on.ca) to view the attachment in PDF format.

**Local Planning Appeal Tribunal**

A constituent tribunal of Tribunals Ontario - Environment and Land Division  
Website: [www.elto.gov.on.ca](http://www.elto.gov.on.ca) Telephone: 416-212-6349 Toll Free: 1-866-448-2248

## Attachment 1

### Proposed modifications to By-law 111-17

Red underlined text indicates an insertion; red text with a strikethrough indicates a deletion.

#### 6.33 Dwelling, Senior Citizen

Means an **apartment dwelling** that is occupied by senior citizens and which is may be, but not limited to being sponsored and/or administered by any public agency or any service **club, place of worship**, or other non-profit organization, either of which obtains its financing from Federal, Provincial or Municipal Governments or agencies, or by public subscription or donation, or by any combination thereof, and may include **accessory** uses and lounge facilities, usually associated with senior citizen developments. A **Senior Citizen Dwelling** shall include **Assisted Living Residence** and **Independent Seniors Living Residence**.

#### 6.41 Fence

Means a structure~~structure~~ constructed of posts, boards, tailings, rails, wire, masonry or similar methods or any combination thereof used to define a property boundary or to enclose any outdoor area. Fencing shall have a corresponding meaning.

#### 6.45 Floor Area, Gross (GFA)

Means the aggregate of the **floor areas** of a **building** above **established grade**, measured between the exterior faces of the exterior walls of the **building** at each floor level but excluding **mechanical penthouses**, loading areas, ~~any portion of a parking structure~~below established grade, elevator shaft and any space with a floor to ceiling height of less than 1.8 metres.

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