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March 31, 2008

TO WHOM IT MAY CONCERN

**Re: O.M.B. File No.: PL080019**  
**O.M.B. Case No.: PL080019**  
**7161 Yonge Street and 7171 Yonge Street**  
**Town of Markham**

We are counsel to 1691126 Ontario Inc. (Liberty Development Corporation), the owner of the lands described above.

We have been directed by the Ontario Municipal Board ("O.M.B.") to circulate a Notice of Prehearing Conference. You will find attached to this letter an O.M.B. Notice of Prehearing Conference, Rules 61 to 65 of the O.M.B.'s *Rules of Practice and Procedure*, a copy of the draft Procedural Order, a copy of the proposed amending by-law and an explanatory note which outlines the existing zoning, the purpose and effect of the proposed zoning by-law amendments, and the nature of the proposed official plan amendment.

Should you have any questions with respect to the proposal, please do not hesitate to contact Ms. Maria Jones of Davies Howe Partners at (416) 977-7088.

If you would prefer to direct your questions to the O.M.B., please contact Mr. Ryan Co, Planning Assistant, at (416) 326-8946.

Yours sincerely,

**DAVIES HOWE PARTNERS**

*Maria Jones*  
for Susan Rosenthal

Enclosure: Notice Package

Copy: Andrew Ferancik, Walker, Nott, Dragicivic Associates Ltd.  
Client

**Ontario  
Municipal  
Board**

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1691126 Ontario Inc. (Liberty Development Corporation) has 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 Markham for the purpose of amending policy 6.4.3.6 in the Thornhill Secondary Plan to allow for an increased maximum combined residential and non-residential density of 3.85 floor/area ratio to permit high density residential uses, at grade retail, and office commercial uses (Approval Authority File No. OP 06-127138)  
OMB File No. PL080019

1691126 Ontario Inc. (Liberty Development Corporation) has appealed to the Ontario Municipal Board under subsection 34(11) 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 Zoning By-law 2237 of the Town of Markham to rezone lands respecting 7161 Yonge Street and 7171 Yonge Street from Highway Commercial General (HC1) and Highway Commercial Automobile (HC2) to a zoning category (to be determined) to permit high density residential uses, at grade retail, and office commercial uses  
OMB File No. PL071195

**NOTICE OF PREHEARING CONFERENCE**

The Ontario Municipal Board will conduct a prehearing conference respecting this matter.

**If you do not attend the prehearing conference, the Ontario Municipal Board may proceed in your absence and you will not be entitled to any further notice of these proceedings.**

**TIME AND PLACE OF PREHEARING CONFERENCE**

A prehearing conference will be held

**at: 10:30 AM**  
**on: Thursday, May 1, 2008**  
**at: Canada Room**  
**Markham Civic Centre**  
**101 Town Centre Blvd**  
**Markham, Ontario**

The Board has set aside **one (1) day** for this conference.

## PURPOSE OF PREHEARING CONFERENCE

The conference will deal with preliminary and procedural matters, including the following:

- **Identification of parties** - these persons have the right to participate throughout by presenting evidence, questioning witnesses, and making final arguments. In order for the Board to determine your status for the hearing, you or your representative should attend the prehearing conference and ask to be added as a party. Groups, whether incorporated or not, who wish to become parties should name a representative. Parties do not need to be represented by lawyers.
- **Identification of participants** - persons who do not wish to participate throughout the hearing may attend the hearing and make a statement to the Board. Such persons should also attend the prehearing conference.
- **Identification of issues.**
- **Start date of the hearing.**
- **Duration of the hearing.**
- **Directions for prefilings of witness lists, expert witness statements and written evidence.**
- **Possibility of settlement of any or all of the issues.**
- **The hearing of motions.**
- **Such further matters as the Board considers appropriate.**

Everyone present should come prepared to consider specific dates for proceedings in this matter.

## EVIDENCE

Evidence or formal statements may also be heard at the prehearing conference in an attempt to settle the matters in dispute. Note that even if no settlement is reached the Board may make a final decision on the evidence it has received.

**All parties or their representatives should attend the prehearing conference.**

*Pour recevoir des services en français, veuillez communiquer avec la Division des audiences au (416) 326-6800, au moins 20 jours civils avant la date fixée pour l'audience.*

DATED at Toronto, this 27th day of March 2008

PATRICK HENNESSY  
SECRETARY

## ONTARIO MUNICIPAL BOARD RULES ON ADJOURNMENT

### ***Comments on Adjournments of Proceedings (Rules 61 to 65 below):***

*The Board will not often grant adjournments (later dates) for hearings or other proceedings. Parties and the Board spend time and money in giving notice, preparing and travelling for hearing events, and this is wasted if they are cancelled at the last minute. If the request is presented at the last moment, the Board may refuse the adjournment and proceed with the hearing. If, on the other hand, settlement discussions are reasonably nearing completion, the Board may agree to a delay. The main consideration is whether an adjournment is necessary to permit a fair hearing, versus the cost of any delay for all parties. Hiring a lawyer or planner shortly before a hearing, for example, is not a reason for an adjournment.*

*Parties should prepare for a hearing shortly after the appeal is submitted. They should not wait until notice of hearing is sent. Performance standards required for tribunals mean that the Board is setting hearing dates earlier than in the past.*

*If a matter is adjourned, the Board will pick a new date for it to proceed unless there is a good reason to leave it undecided (e.g. it is dependent upon a decision of a court).*

**61. Hearing Dates Fixed** Hearing events will take place on the date set unless the Board agrees to an adjournment (later date).

**62. Requests for Adjournment** If All Parties Consent and if all of the parties agree, they may make a written request to postpone a hearing event. The request must include the reasons, a suggested new date and the signed consents of all parties. However, the Board may require that the parties attend in person to argue for an adjournment, even if all of the parties consent.

**63. Requests for Adjournment Without Consent** If a party consulted objects to an adjournment request, the party requesting the adjournment must bring a motion under Rule 34 at least 10 days before the date set for the hearing event. If the reason for an adjournment arises less than 10 days before (see Rule 64), the party must give notice of the request to the Board and to the other parties, and serve their motion materials as soon as possible. If the Board refuses to consider a request made late, any motion for adjournment must be made in person at the beginning of the hearing event.

**64. Emergencies Only** The Board will grant last minute adjournments only for unavoidable emergencies, such as illnesses so close to the hearing date that another representative or witnesses cannot be obtained. The Board must be informed of these emergencies as soon as possible.

### **65. Powers of the Board upon Adjournment Request**

The Board may,

- a. grant the request;
- b. grant the request and fix a new date; or where appropriate, the Board will schedule a prehearing conference about the status of the matter;
- c. grant a shorter adjournment than requested;
- d. deny the request, even if all parties have consented;
- e. direct that the hearing proceed as scheduled but with a different witness, or evidence on another issue;
- f. grant an indefinite adjournment, if the request is made by the applicant or proponent and is accepted by the Board as reasonable, and the Board finds no substantial prejudice to the other parties or to the Board's schedule. In this case the applicant or proponent must make a request that the hearing be rescheduled;
- g. convert the scheduled date to a mediation or prehearing conference; or make any other appropriate order.
- h. make any other appropriate order.

**Ontario Municipal Board Rules on**  
**DOCUMENTS, EXHIBITS, FILING, SERVICE**

**18. Form of Documents** Unless otherwise directed by the Board, every document filed or introduced by a party or participant in a proceeding shall be prepared on letter size paper (8 ½ " x 11") (except for large documents such as plans or surveys), and shall have each page numbered consecutively throughout the entire text and graphic content, even if there are dividers or tabs.

**19. Other Exhibits** Large graphic or other such types of visual evidence should not be glued to foam or other boards. It must be on paper and **be removed from the boards** following the hearing event, and folded to 8 ½ " x 11". Three-dimensional models must be photographed and the photographs must be introduced with the model. A videotape to be used in evidence must be viewed by the other identified parties before the hearing.

**20. Copies of Documents for Parties and Clerk** Subject to the Board making a different order at a pre-hearing conference, a party who will use a document as evidence at a hearing event should provide copies at the beginning of the proceeding for all parties and participants. If it is an official plan, those **parts** of the plan to be used should be distributed to the parties and participants, but a copy of the entire plan must be made available to the Board Member(s) at the beginning of the proceeding. If the Board orders that copies of documents be kept by the clerk of the municipality, they do not need to be certified copies, unless a party objects that they are not authentic copies.

**21. Prefiling of Witness Statement and Reports**

**Experts:** If a hearing is expected to last more than 10 days, the Board **may** require that parties calling expert or professional witnesses serve on the other parties and file with the clerk of the municipality, any experts' witness statements and reports prepared for the hearing at least 30 days in advance of the hearing, or as the Board directs. The Board may also make this order for hearings expected to last less than 10 days if a party requests this. The expert witness statement must contain:

- (a) the expert's name, address and qualifications;
- (b) the issues the expert will address, opinions on these issues and the reason for the opinions; and
- (c) a list of the reports, whether prepared by the expert or by someone else, that the expert will refer to at the hearing.

The expert's complete report may be filed instead of this statement, if it contains the required information.

An expert may not be permitted to testify if this statement or report is not filed. The reports in (c) above do not need to be filed with the Board, but should be supplied to the parties in advance if the parties request them. Participants in the hearing wishing to examine expert reports may do so at the Clerk's office.

**Other Witnesses:** The Board may also require that a witness who is not giving expert evidence, or a participant, provide to the Board and the parties a witness or participant statement. A witness or participant statement should contain a short written outline of the person's background, experience and interest in the matter; a list of the issues which they will discuss and an opinion on those issues; and a list of reports that they will rely on at the hearing. A participant statement should also briefly outline the evidence to be presented. The witness or participant may not be allowed to testify if this statement is not filed.

**22. Amendment of Documents** Documents filed with the Board cannot be amended unless the Board orders it, or the other parties consent. The Board may require that the person requesting an amendment do so by way of a motion under Rule 34 with notice to all parties.

**23. Copies of Board Documents** A person may examine any document filed with the Board, and copy it after paying the Board's fee, unless an Act or a court or Board order provides otherwise. *(This does not apply to documents that the Board has ordered to be confidential, sealed, and not part of the public record.)*

**24. Return of Exhibits** Exhibits *(written or visual evidence)* of all types introduced at a hearing will be kept for 60 days after the Board decision issues. The person introducing an exhibit may ask for its return after this time, and it may be given back if the Board agrees. If no such request is made, it becomes the property of the Board and may be archived.

**25. Final Approval of Plans of Subdivision** When a final plan is prepared for the Board's approval *(rather than the approval authority's, if the Board orders that it be final approved by the authority)*, the owner shall insert on the original plan and copies the following wording:

This plan is approved by the Ontario Municipal Board under file  
[insert OMB case number] pursuant to the *Planning Act*, section \_\_\_\_\_.

Date                                      Secretary, Ontario Municipal Board

***Comment on Faxes (Rules 26 to 31 below):***

*The Rules below respecting faxes apply to all documents filed or served, including notices of appeal, notices of motion, notices of hearing and documents exchanged following a procedural order.*

***Note, however, that the Board cannot extend an appeal period in an Act, so that documents must be served on or before the last day. These Rules merely require that documents be faxed by specific times. For example, staff will be present to receive a fax if it is faxed before 4:30 p.m. (See also Comments and Rules 10 to 12 respecting time.)***

**26. Service by Fax** Where any document is required to be served *(delivered)* or filed, including one commencing a proceeding or a motion, or providing notice, it may be served by fax (unless an Act, or the Board, requires another method of service) and shall be sent to:

- (a) the party's representative, if any;
- (b) where the party is an individual and is not represented by a representative, to that party directly where that party has provided a fax number;
- (c) where that party is a corporation and is not represented by a representative, to the corporation directly to the attention of an individual with apparent authority to receive the document; or
- (d) where served on or filed with the Board, a local board or commission, or any department, ministry or agency of the federal, provincial or municipal government, an individual with apparent authority to receive the document.

27. **If Faxed After 4:30 p.m.** Any document served by fax after 4:30 p.m. is deemed to have been served on the next **business** day.

28. **Permission to Fax if More Than 12 Pages** If a document is more than 12 pages including the cover page, it must not be served by fax between 8:00 a.m. and 4:30 p.m. unless the person receiving the document has given permission in advance. If more than 30 pages, it cannot be served by fax at any time without advance permission.

29. **Contents of Cover Page** The fax cover page must include the Board's case and file number, the type of matter and the municipality in which the matter arose, as well as full identification of the sender and receiver.

30. **Proof of Service by Fax** A confirmation printout received by the sender is proof of the full transmission and receipt of the fax.

31. **No Hard Copy Needed** A hard copy of a faxed document must not be sent by another means of transmission unless requested, and may then be sent by ordinary mail.

June 3, 2004

## **Ontario Municipal Board Rules on PRE-HEARING CONFERENCES**

### ***Comments on Pre-hearings (Board Rules 73 to 82 below):***

*There can be at least three types of activities at a pre-hearing conference, as may be seen from the subjects which may be considered (see Rule 73 below). These are: a settlement conference (which is similar to a mediation), a discussion of procedure for the hearing, and a preliminary hearing (for motions, etc.). There may be no clear division between these procedures, and the Board may switch from one to another whenever it seems appropriate.*

*Before a pre-hearing conference, the Board may send the parties a sample Procedural Order (a copy follows). The parties are expected to study the contents of this sample, and to meet if possible, and to come to the pre-hearing conference prepared to discuss the issues and procedures dealt with in the sample order. Following the pre-hearing, the Board will issue a formal order governing the procedure and issues for the hearing, based on the discussion of the contents of the sample order at the pre-hearing. The Board Member(s) conducting the later hearing must follow the order, unless a party convinces the Member that it is appropriate to change the order.*

*If the Board hears some evidence and/or submissions on the issues in a preliminary hearing mode at the pre-hearing, and decides that it can dispose of some or all of them, it will make formal decisions about the issues (given either during the prehearing or at a later date). These will be set out in the written order following the pre-hearing, and this is a final order on those issues.*

*Note that the pre-hearing Member will not necessarily conduct the hearing. It is usually desirable that this Member preside at the hearing to ensure continuity. A Member may state this at the pre-hearing (it is often stated as "This Member is seized".) However, in order to ensure speedy hearings, the Board may assign another Member or Members where the pre-hearing Member is not available for an early hearing.*

**73. Pre-hearing Conference** At the request of a party or on its own initiative, the Board may direct parties to participate in a pre-hearing conference, which can include settlement conferences, motions or preliminary hearing matters, in order to:

- (a) identify and simplify the issues;
- (b) identify facts or evidence the parties may agree upon or on which the Board may make a binding decision;
- (c) obtain admissions that may simplify the hearing;
- (d) provide directions for pre-filing of witness lists, expert statements and reports; for meetings of experts; and for further disclosure where necessary;
- (e) discuss opportunities for settlement, including possible use of mediation or other dispute resolution processes;
- (f) fix a date and place for the hearing and estimate its length, and encourage the parties to agree upon the dates for any procedural steps;
- (g) discuss issues of confidentiality, including any need to hold a part of the hearing in the absence of the public, or to seal documents; and
- (h) deal with any other matter that may assist in a fair and quick resolution.

**74. Sample Procedural Order and Meeting Before Prehearing Conference** The Board may provide a sample Procedural Order to the parties before the pre-hearing conference. (The sample Procedural Order is attached). Whether or not a sample is sent, the parties should meet before the pre-hearing conference to consider the matters set out in Rule 73, and prepare to make recommendations for the conduct of the hearing



to the Board at the pre-hearing conference. The Board may order that the parties meet before the conference for this purpose.

**75. Serving Notice of a Pre-hearing Conference** The Board will give the applicant a Notice of Pre-hearing Conference which provides the time and place of the pre-hearing conference. The applicant must serve this on (*deliver it to*) those persons entitled to notice of the conference, and provide an affidavit to the Board proving the service at the conference. (*See Board Rule 35 for the form of affidavit.*)

**76. Board Member Presides** The Chair will designate a Member to conduct the pre-hearing conference.

**77. Public Attendance at Pre-hearing** A pre-hearing conference held in person will be open to the public, and one held by electronic conferencing will be open to the public where practical.

**78. Conversion from One Procedure to Another** The Board Member conducting a pre-hearing may conduct a procedural discussion, settlement conference or a preliminary hearing at any time, and may convert from one to another form. The Board will state in the notice of pre-hearing that the parties should arrive prepared for a procedural and settlement conference as well as a preliminary hearing where evidence or formal statements are heard. Even if no settlement is reached, the Board may proceed to make a final decision on any evidence received during the conference.

**79. Results of Failure to Attend a Pre-hearing Conference** If a party fails to attend the pre-hearing conference in person or by authorized representative, the Board may proceed without that party. They are not entitled to notice of future proceedings in the matter (*unless the Board accepts their excuse for not attending as a reasonable one.*)

**80. Preliminary Hearing Following Settlement Conference** If the Board is satisfied that a party reasonably objects to the same Member presiding at a preliminary hearing portion of a pre-hearing conference after conducting a settlement conference, the Board may set a later date for a preliminary hearing before another Member.

**81. Board Order Following Prehearing** The Member conducting the pre-hearing conference will issue an order which may decide any of the matters considered at the conference, as well as provide procedural directions for any proceedings to follow.

**82. Hearing Member Bound** The Member conducting the hearing is bound by the order resulting from the pre-hearing conference, unless the Member is satisfied that there is good reason to vary the order.

June 3, 2004

**O.M.B. PREHEARING CONFERENCE  
EXPLANATORY NOTE**

The following is an explanation of the purpose and effect of the official plan and rezoning applications before the Ontario Municipal Board ("O.M.B."). The application affects a parcel of land municipally known as 7161 Yonge Street and 7171 Yonge Street, in the Town of Markham.

The OMB will consider a proposed amendment to the Town of Markham Official Plan. The proposal would amend Policy 6.4.3.6 in the Thornhill Secondary Plan to permit an increased maximum combined residential and non-residential density of 3.85 F.A.R., whereas a density in the order of 2.0 F.A.R. is currently permitted. Minor technical amendments are also proposed to the Town of Markham Official Plan to permit the proposal.

The OMB will also consider a proposed amendment to the Town of Markham Zoning By-law 2237. The subject lands are zoned Highway Commercial General (HC1) and Highway Commercial Automobile (HC2). The proposal would amend the zoning category to permit high density residential uses, at grade retail and office-commercial uses.

The purpose and effect of the proposed amendments would permit a mixed use development on the subject lands consisting of residential, retail and office uses.

If further information or details of the proposal are required, please contact Ms. Maria Jones of Davies Howe Partners at (416) 977-7088.

# BY-LAW 2006-XXX

## A By-law to amend Zoning By-law 2237

THE COUNCIL OF THE CORPORATION OF THE TOWN OF MARKHAM  
HEREBY ENACTS AS FOLLOWS:

1. Notwithstanding the provisions of By-law 2237, as amended, the development of the lands delineated on Schedule 'A' to this amendment shall be in accordance with the following provisions:
  - 1.1. Notwithstanding the provisions of this by-law, as amended, the lands shown on Schedule 'A' to this by-law shall be used in accordance with the following:

### PERMITTED USES

Permitted uses shall include:

- apartment dwellings;
- retail and service commercial uses;
- supermarkets;
- shopping centres;
- restaurants and take-out restaurants;
- commercial schools;
- places of amusement;
- medical and business offices;
- medical and holistic clinics;
- entertainment and recreational uses;
- home furnishing stores;

### DENSITY

The total Floor Area Ratio (F.A.R.) for all uses shall not exceed 3.85. Notwithstanding the above, the total F.A.R. for all retail and service commercial uses shall not exceed 0.35.

### SETBACKS/HEIGHT

The maximum height and minimum setbacks of all buildings and structures shall be in accordance with Schedule 'B' to this Amendment. Decorative roof top elements, such as spires and chimneys, and mechanical penthouses may extend above the roof of the highest storey by up to 10 metres. Portions of elements and mechanical penthouses extending more than 5 metres above the roof shall not occupy more than 50 percent of the roof surface area, projecting up from the roof surface.

## **GRADE**

For the purposes of measuring building height, grade shall mean the average finished grade measured from the base of the corners of each wall segment.

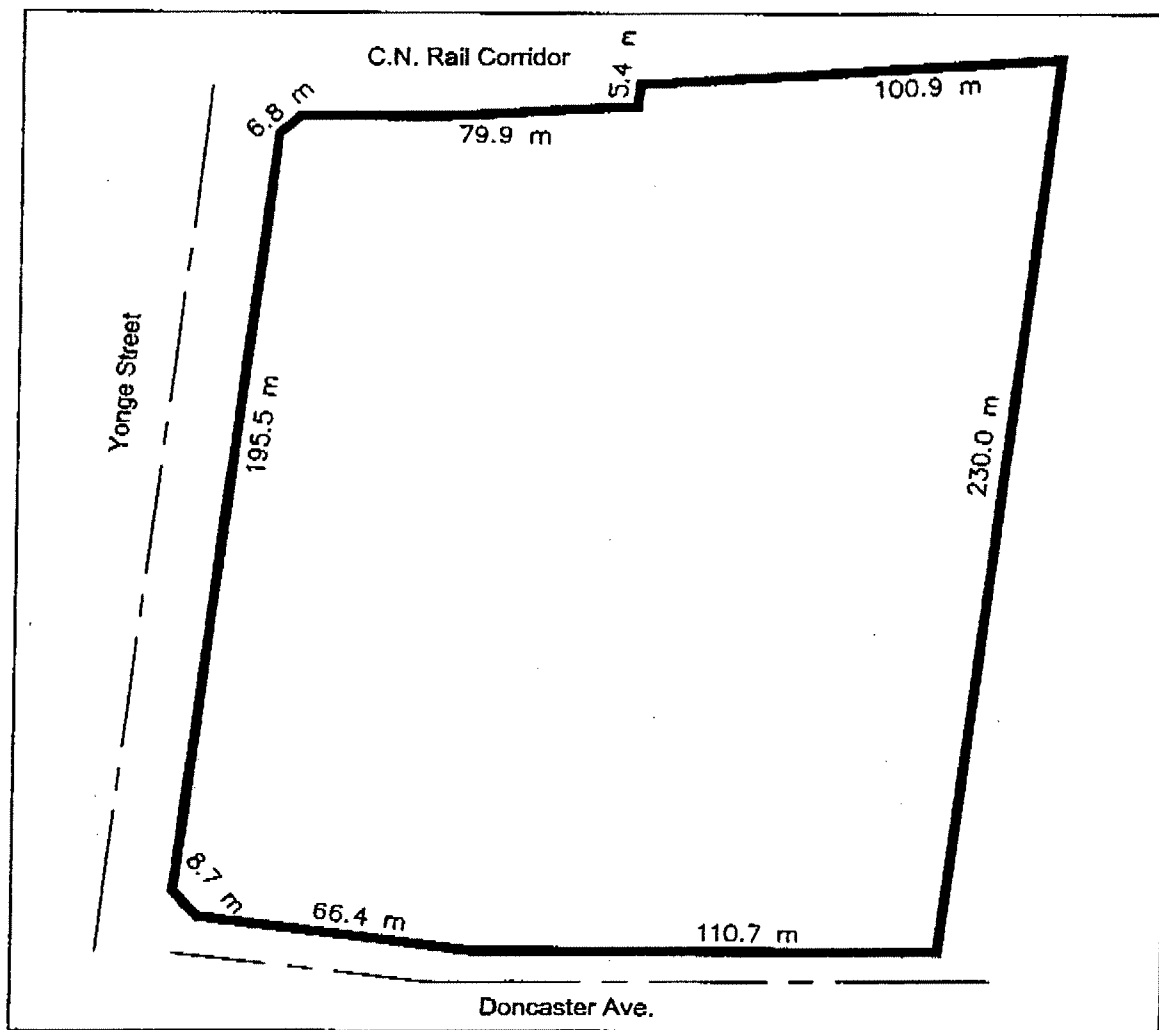
## **PARKING**

Notwithstanding the provisions of By-law 28-97, the maximum parking provided for land uses on the lands delineated in Schedule 'A' shall not exceed 2,410 spaces.

## **COVERAGE**

The maximum building coverage shall not exceed 0.55 times the area of lands shown on Schedule 'A' to this Amendment.

- 1.2. The lands shown on Schedule 'A' shall be treated as one lot for zoning purposes.



 Lands Subject to Town of Markham By-law No. \_\_\_\_

Schedule "A" to Town of Markham By-law No. \_\_\_\_, Being a By-law  
To Amend By-law No. 2237

Doncaster Avenue & Yonge Street  
Town of Markham



N.T.S.  
July 14, 2006  
06576

Walker, Nott, Dragloonic  
Associates Limited  
Planning  
Urban Design  
Environmental Assessment





## SAMPLE PROCEDURAL ORDER

*This is a sample of the Procedural Order that the Board issues for most matters (except expropriation) after holding a prehearing conference. For further explanations and meanings of the terms used, see the attachment to this sample order. Note that the Board expects that the terms of the procedural order when issued will be met. If a party has not complied with a requirement of a procedural order, the Board will decide whether or not any part of or step in the proceeding, or any written or visual evidence or order is not valid as a result.*

### ONTARIO MUNICIPAL BOARD

#### PROCEDURAL ORDER

**This is an appeal (referral)...**

**OMB Case and File Number:**

1. The Board may vary or add to these rules at any time, either on request or as it sees fit. It may alter this Order by an oral ruling, or by another written Order.

#### **Organization of the Hearing**

2. The hearing will begin on ..... (year) at ...a.m./p.m. at .....in the municipality of .....[Optional:.. An evening session will be held on .....]

3. The length of the hearing will be about .....days.

4. The parties and participants identified at the prehearing conference (*see the Attachment for the meaning of these terms*) are: [Optional:...listed in Attachment 1 to this Order.]

5. The Issues are: [Optional:... set out in the Issues List attached as Attachment 2.] There will be no changes to this list unless the Board permits, and a party who asks for changes may have costs awarded against it.

6. Any person intending to participate in the hearing should provide a telephone number to the Board as soon as possible (*preferably before the prehearing conference.*) Any such person who will be retaining a representative should advise the other parties and the Board of the representative's name, address and phone number as soon as possible.

#### **Regulrements Before the Hearing**

[7]. [Optional] Expert witnesses in the same field shall have a meeting before the hearing to try to resolve or reduce the issues for the hearing. The experts must prepare a list of agreed facts and the remaining issues to be addressed at the hearing, and provide this list to all of the parties and the municipal Clerk.

[8]. [Optional] A party who intends to call witnesses, whether by summons or not, shall provide to the Board, the other parties and to the Clerk a list of the witnesses and the order in which they will be called. This list must be delivered at least .....calendar days

before the hearing.

9. An expert witness shall prepare an expert witness statement which shall list any reports prepared by the expert, or any other reports or documents to be relied on at the hearing. Copies of this must be provided as in section [12]. Instead of a witness statement, the expert may file his or her entire report if it contains the required information. If this is not done, the Board may refuse to hear the expert's testimony.

[10.] [Optional] A [witness] [participant] must provide to the Board and the parties a [witness] [participant] statement at least ..... calendar days before the hearing, or the witness or participant may not give oral evidence at the hearing.

11. Expert witnesses who are under summons but not paid to produce a report do not have to file an expert witness statement; but the party calling them must file a brief outline of the expert's evidence, as in section [12].

12. On or before .....[a minimum of 30 calendar days before the hearing date], the parties shall provide copies of their [witness and] expert witness statements to the other parties and to the Clerk of .....

13. [Optional] On or before ....., the parties shall provide copies of their visual evidence to all of the other parties. If a model will be used, all parties must have a reasonable opportunity to view it before the hearing.

14. Parties may provide to all other parties and file with the Clerk a written response to any written evidence within 7 days after the evidence is received.

15. A person wishing to change written evidence, including witness statements, must make a written motion to the Board.

*(see Rules 34 and 35 of the Board's Rules, which require that the moving party provide copies of the motion to all other parties 10 days before the Board hears the motion.)*

16. A party who provides a witness' written evidence to the other parties must have the witness attend the hearing to give oral evidence, unless the party notifies the Board at least 7 days before the hearing that the written evidence is not part of their record.

17. Documents may be delivered by personal delivery, facsimile or registered or certified mail, or otherwise as the Board may direct. The delivery of documents by fax shall be governed by the Board's Rules [26 – 31] on this subject. Material delivered by mail shall be deemed to have been received five business days after the date of registration or certification.

18. No adjournments or delays will be granted before or during the hearing except for serious hardship or illness. The Board's Rules 61 to 65 apply to such requests.

**This Member is [not] seized  
So orders the Board.**



## ATTACHMENT TO SAMPLE PROCEDURAL ORDER

### **Purpose of the Procedural Order and Meaning of Terms**

The Board recommends that the parties **meet to discuss this sample Order before the pre-hearing conference** to try to identify the issues and the process that they want the Board to order following the conference. The Board will hear the parties' comments about the contents of the Order at the conference.

Pre-hearing conferences usually take place only where the hearing is expected to be long and complicated. If you are not represented by a lawyer, you should prepare by obtaining the Guide to the Ontario Municipal Board, and the Board's Rules, from the Board Information Office, 15th Floor, 655 Bay Street, Toronto, M5G 1E5, 416-326-6800, or from the Board website at [www.omb.gov.on.ca](http://www.omb.gov.on.ca).

### **Meaning of terms used in the Procedural Order:**

**Party** is an individual or corporation permitted by the Board to participate fully in the hearing by receiving copies of written evidence, presenting witnesses, cross-examining the witnesses of the other parties, and making submissions on all of the evidence. If an **unincorporated group** wishes to become a party, it must appoint one person to speak for it, and that person must accept the other responsibilities of a party as set out in the Order. Parties do not have to be represented by a lawyer, and may have an agent speak for them. The agent must have written authorization from the party.

**NOTE** that a person who wishes to become a party before or at the hearing, and who did not request this at the prehearing conference, must ask the Board to permit this.

**Participant** is an individual, group or corporation, whether represented by a lawyer or not, who may attend only part of the proceeding but who makes a statement to the Board on all or some of the issues in the hearing. Such persons may also be identified at the start of the hearing. The Board will set the time for hearing this statements. **NOTE** that such persons will likely not receive notice of a mediation or conference calls on procedural issues. They also cannot ask for costs, or review of a decision as parties can. If a participant does not attend the hearing and only files a written statement, the Board will not give it the same attention or weight as submissions made orally. The reason is that parties cannot ask further questions of a person if they merely file material and do not attend.

**Written and Visual Evidence:** **Written evidence** includes all written material, reports, studies, documents, letters and witness statements which a party or participant intends to present as evidence at the hearing. These must have pages numbered consecutively throughout the entire document, even if there are tabs or dividers in the material. **Visual evidence** includes photographs, maps, videos, models, and overlays which a party or participant intends to present as evidence at the hearing.

**Witness Statements:** A **witness statement** is a short written outline of the person's background, experience and interest in the matter; a list of the issues which he or she will discuss and the witness' opinions on those issues; and a list of reports that the witness will rely on at the hearing. An **expert witness statement** should include his or her (1) name and address, (2) qualifications, (3) a list of the issues he or she will address, (4) the witness' opinions on those issues and the complete reasons for the opinions and (5) a list of reports that the witness will rely on at the hearing. A **participant statement** is a short written outline of the person's or group's background, experience and interest in the matter; a list of the issues which the participant will address and a short outline of the

evidence on those issues; and a list of reports, if any, which the participant will refer to at the hearing.

**Additional Information**

**Summons:** A party must ask a Board Member or the senior staff of the Board to issue a summons. This request must be made before the time that the list of witnesses is provided to the Board and the parties. (See Rules 41 and 42 on the summons procedure) If the Board requests it, an affidavit must be provided indicating how the witness' evidence is relevant to the hearing. If the Board is not satisfied from the affidavit, it will require that a motion be heard to decide whether the witness should be summoned.

**The order of examination of witnesses:** Is usually direct examination, cross-examination and re-examination in the following way:

- direct examination by the party presenting the witness;
- direct examination by any party of similar interest, in the manner determined by the Board;
- cross-examination by parties of opposite interest;
- re-examination by the party presenting the witness; or
- another order of examination mutually agreed among the parties or directed by the Board.

**Ontario Municipal Board Rules on**  
**DOCUMENTS, EXHIBITS, FILING, SERVICE**

**18. Form of Documents** Unless otherwise directed by the Board, every document filed or introduced by a party or participant in a proceeding shall be prepared on letter size paper (8 ½ " x 11") (except for large documents such as plans or surveys), and shall have each page numbered consecutively throughout the entire text and graphic content, even if there are dividers or tabs.

**19. Other Exhibits** Large graphic or other such types of visual evidence should not be glued to foam or other boards. It must be on paper and **be removed from the boards** following the hearing event, and folded to 8 ½ " x 11". Three-dimensional models must be photographed and the photographs must be introduced with the model. A videotape to be used in evidence must be viewed by the other identified parties before the hearing.

**20. Copies of Documents for Parties and Clerk** Subject to the Board making a different order at a pre-hearing conference, a party who will use a document as evidence at a hearing event should provide copies at the beginning of the proceeding for all parties and participants. If it is an official plan, those **parts** of the plan to be used should be distributed to the parties and participants, but a copy of the entire plan must be made available to the Board Member(s) at the beginning of the proceeding. If the Board orders that copies of documents be kept by the clerk of the municipality, they do not need to be certified copies, unless a party objects that they are not authentic copies.

**21. Prefiling of Witness Statement and Reports**

**Experts:** If a hearing is expected to last more than 10 days, the Board **may** require that parties calling expert or professional witnesses serve on the other parties and file with the clerk of the municipality, any experts' witness statements and reports prepared for the hearing at least 30 days in advance of the hearing, or as the Board directs. The Board may also make this order for hearings expected to last less than 10 days if a party requests this. The expert witness statement must contain:

- (a) the expert's name, address and qualifications;
- (b) the issues the expert will address, opinions on these issues and the reason for the opinions; and
- (c) a list of the reports, whether prepared by the expert or by someone else, that the expert will refer to at the hearing.

The expert's complete report may be filed instead of this statement, if it contains the required information.

An expert may not be permitted to testify if this statement or report is not filed. The reports in (c) above do not need to be filed with the Board, but should be supplied to the parties in advance if the parties request them. Participants in the hearing wishing to examine expert reports may do so at the Clerk's office.

**Other Witnesses:** The Board may also require that a witness who is not giving expert evidence, or a participant, provide to the Board and the parties a witness or participant statement. A witness or participant statement should contain a short written outline of the person's background, experience and interest in the matter; a list of the issues which they will discuss and an opinion on those issues; and a list of reports that they will rely on at the hearing. A participant statement should also briefly outline the evidence to be presented. The witness or participant may not be allowed to testify if this statement is not filed.

**22. Amendment of Documents** Documents filed with the Board cannot be amended unless the Board orders it, or the other parties consent. The Board may require that the person requesting an amendment do so by way of a motion under Rule 34 with notice to all parties.

**23. Copies of Board Documents** A person may examine any document filed with the Board, and copy it after paying the Board's fee, unless an Act or a court or Board order provides otherwise. (*This does not apply to documents that the Board has ordered to be confidential, sealed, and not part of the public record.*)

**24. Return of Exhibits** Exhibits (*written or visual evidence*) of all types introduced at a hearing will be kept for 60 days after the Board decision issues. The person introducing an exhibit may ask for its return after this time, and it may be given back if the Board agrees. If no such request is made, it becomes the property of the Board and may be archived.

**25. Final Approval of Plans of Subdivision** When a final plan is prepared for the Board's approval (*rather than the approval authority's, if the Board orders that it be final approved by the authority*), the owner shall insert on the original plan and copies the following wording:

**This plan is approved by the Ontario Municipal Board under file  
[insert OMB case number] pursuant to the *Planning Act*, section \_\_\_\_\_.**

**Date**

**Secretary, Ontario Municipal Board**

***Comment on Faxes (Rules 26 to 31 below):***

*The Rules below respecting faxes apply to all documents filed or served, including notices of appeal, notices of motion, notices of hearing and documents exchanged following a procedural order.*

***Note, however, that the Board cannot extend an appeal period in an Act, so that documents must be served on or before the last day. These Rules merely require that documents be faxed by specific times. For example, staff will be present to receive a fax if it is faxed before 4:30 p.m. (See also Comments and Rules 10 to 12 respecting time.)***

**26. Service by Fax** Where any document is required to be served (*delivered*) or filed, including one commencing a proceeding or a motion, or providing notice, it may be served by fax (unless an Act, or the Board, requires another method of service) and shall be sent to:

- (a) the party's representative, if any;
- (b) where the party is an individual and is not represented by a representative, to that party directly where that party has provided a fax number;
- (c) where that party is a corporation and is not represented by a representative, to the corporation directly to the attention of an individual with apparent authority to receive the document; or
- (d) where served on or filed with the Board, a local board or commission, or any department, ministry or agency of the federal, provincial or municipal government, an individual with apparent authority to receive the document.

27. **If Faxed After 4:30 p.m.** Any document served by fax after 4:30 p.m. is deemed to have been served on the next **business** day.

28. **Permission to Fax if More Than 12 Pages** If a document is more than 12 pages including the cover page, it must not be served by fax between 8:00 a.m. and 4:30 p.m. unless the person receiving the document has given permission in advance. If more than 30 pages, it cannot be served by fax at any time without advance permission.

29. **Contents of Cover Page** The fax cover page must include the Board's case and file number, the type of matter and the municipality in which the matter arose, as well as full identification of the sender and receiver.

30. **Proof of Service by Fax** A confirmation printout received by the sender is proof of the full transmission and receipt of the fax.

31. **No Hard Copy Needed** A hard copy of a faxed document must not be sent by another means of transmission unless requested, and may then be sent by ordinary mail.

June 3, 2004

## **Ontario Municipal Board Rules on PRE-HEARING CONFERENCES**

### ***Comments on Pre-hearings (Board Rules 73 to 82 below):***

*There can be at least three types of activities at a pre-hearing conference, as may be seen from the subjects which may be considered (see Rule 73 below). These are: a settlement conference (which is similar to a mediation), a discussion of procedure for the hearing, and a preliminary hearing (for motions, etc.). There may be no clear division between these procedures, and the Board may switch from one to another whenever it seems appropriate.*

*Before a pre-hearing conference, the Board may send the parties a sample Procedural Order (a copy follows). The parties are expected to study the contents of this sample, and to meet if possible, and to come to the pre-hearing conference prepared to discuss the issues and procedures dealt with in the sample order. Following the pre-hearing, the Board will issue a formal order governing the procedure and issues for the hearing, based on the discussion of the contents of the sample order at the pre-hearing. The Board Member(s) conducting the later hearing must follow the order, unless a party convinces the Member that it is appropriate to change the order.*

*If the Board hears some evidence and/or submissions on the issues in a preliminary hearing mode at the pre-hearing, and decides that it can dispose of some or all of them, it will make formal decisions about the issues (given either during the prehearing or at a later date). These will be set out in the written order following the pre-hearing, and this is a final order on those issues.*

*Note that the pre-hearing Member will not necessarily conduct the hearing. It is usually desirable that this Member preside at the hearing to ensure continuity. A Member may state this at the pre-hearing (it is often stated as "This Member is seized".) However, in order to ensure speedy hearings, the Board may assign another Member or Members where the pre-hearing Member is not available for an early hearing.*

**73. Pre-hearing Conference** At the request of a party or on its own initiative, the Board may direct parties to participate in a pre-hearing conference, which can include settlement conferences, motions or preliminary hearing matters, in order to:

- (a) identify and simplify the issues;
- (b) identify facts or evidence the parties may agree upon or on which the Board may make a binding decision;
- (c) obtain admissions that may simplify the hearing;
- (d) provide directions for pre-filing of witness lists, expert statements and reports; for meetings of experts; and for further disclosure where necessary;
- (e) discuss opportunities for settlement, including possible use of mediation or other dispute resolution processes;
- (f) fix a date and place for the hearing and estimate its length, and encourage the parties to agree upon the dates for any procedural steps;
- (g) discuss issues of confidentiality, including any need to hold a part of the hearing in the absence of the public, or to seal documents; and
- (h) deal with any other matter that may assist in a fair and quick resolution.

**74. Sample Procedural Order and Meeting Before Prehearing Conference** The Board may provide a sample Procedural Order to the parties before the pre-hearing conference. (The sample Procedural Order is attached). Whether or not a sample is sent, the parties should meet before the pre-hearing conference to consider the matters set out in Rule 73, and prepare to make recommendations for the conduct of the hearing

to the Board at the pre-hearing conference. The Board may order that the parties meet before the conference for this purpose.

75. **Serving Notice of a Pre-hearing Conference** The Board will give the applicant a Notice of Pre-hearing Conference which provides the time and place of the pre-hearing conference. The applicant must serve this on (*deliver it to*) those persons entitled to notice of the conference, and provide an affidavit to the Board proving the service at the conference. (*See Board Rule 35 for the form of affidavit.*)

76. **Board Member Presides** The Chair will designate a Member to conduct the pre-hearing conference.

77. **Public Attendance at Pre-hearing** A pre-hearing conference held in person will be open to the public, and one held by electronic conferencing will be open to the public where practical.

78. **Conversion from One Procedure to Another** The Board Member conducting a pre-hearing may conduct a procedural discussion, settlement conference or a preliminary hearing at any time, and may convert from one to another form. The Board will state in the notice of pre-hearing that the parties should arrive prepared for a procedural and settlement conference as well as a preliminary hearing where evidence or formal statements are heard. Even if no settlement is reached, the Board may proceed to make a final decision on any evidence received during the conference.

79. **Results of Failure to Attend a Pre-hearing Conference** If a party fails to attend the pre-hearing conference in person or by authorized representative, the Board may proceed without that party. They are not entitled to notice of future proceedings in the matter (*unless the Board accepts their excuse for not attending as a reasonable one.*)

80. **Preliminary Hearing Following Settlement Conference** If the Board is satisfied that a party reasonably objects to the same Member presiding at a preliminary hearing portion of a pre-hearing conference after conducting a settlement conference, the Board may set a later date for a preliminary hearing before another Member.

81. **Board Order Following Prehearing** The Member conducting the pre-hearing conference will issue an order which may decide any of the matters considered at the conference, as well as provide procedural directions for any proceedings to follow.

82. **Hearing Member Bound** The Member conducting the hearing is bound by the order resulting from the pre-hearing conference, unless the Member is satisfied that there is good reason to vary the order.

June 3, 2004