

ISSUE DATE:

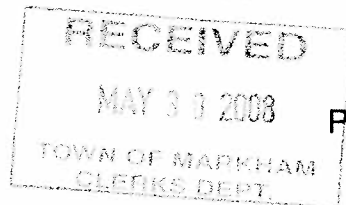
May 28, 2008



Ontario

Ontario Municipal Board

Commission des affaires municipales de l'Ontario



PL060904

Robert and Deborah Tiberio have 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 Site-Specific Zoning By-law 2551, as amended, of the Town of Markham, to allow for the operation of a pool installation company, a roof installation company, and a general contracting/landscaping business, with associated outdoor storage for a temporary basis on lands located at 196 and 198 Langstaff Road East, which are currently zoned as Rural Industrial – (H)R.IND, with respect to lands located at 196 Langstaff Road East, and Residential - R1, with respect to lands located at 198 Langstaff Road East

O.M.B. File No. PL060575

O.M.B. File No. Z060087

Cosini Properties Inc., M.A.N. Enterprises Ltd. and A.G.S. Consultants Ltd. have 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 Site-Specific Zoning By-law 2551, as amended, of the Town of Markham, for a temporary use permission to allow the operation of an office, contractor yard and the outdoor storage of new vehicles on lands located at 201, 203 and 205 Langstaff Road East, which are currently zoned Residential (R1), as well as on lands located at 3 and 5 Essex Avenue, which are currently zoned Rural Industrial with a holding provision [(H)R.IND.]

O.M.B. Case No. PL060904

O.M.B. File No. Z060117

Cosini Properties Inc. 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 Site-Specific Zoning By-law 2551, as amended, of the Town of Markham, for a temporary use permission to allow the operation of an office, contractor yard and the outdoor storage of new vehicles on lands located at 195 Langstaff Road East, which are currently zoned Rural Industrial with a holding provision [(H)R.IND.]

O.M.B. Case No. PL060904

O.M.B. File No. Z060119

Cosini Properties Inc. and A.G.S. Consultants Ltd. have 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 Site-Specific Zoning By-law 2551, as amended, of the Town of Markham, for a temporary use permission to allow the operation of an office, contractor yard and the outdoor storage of new vehicles on lands located at 139 Langstaff Road East, which are currently zoned Rural Industrial with a holding provision [(H)R.IND.]

O.M.B. Case No. PL060904

O.M.B. File No. Z060120

Cosini Properties Inc. and M.A.N. Enterprises Ltd. have 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 Site-Specific Zoning By-law

2551, as amended, of the Town of Markham, for a temporary use permission to allow the operation of an existing landscaping and snow removal business, which includes permitting the existing 1-storey dwelling to be used for offices purposes and the rear yard to be used for the open storage of building materials, equipment, scrap metal, skids, debris, vehicles and trailers on lands located at 21 Essex Avenue, which are currently zoned Rural Industrial with a holding provision [(H)R.IND.]

O.M.B. Case No. PL060904

O.M.B. File No. Z060123

APPEARANCES:

Parties

Counsel

Cosini Properties, M.A.N. Enterprises Ltd.
and A.G.S. Consultants Ltd.

R. Jarvis

R. & D. Tiberio

D. Hindson

Town of Markham

C. Conrad

MEMORANDUM OR ORAL DECISION DELIVERED BY M.A. SILLS ON APRIL 18, 2008

This matter relates to a series of appeals pursuant to subsection 34(11) of the *Planning Act*, and results from Council's refusal or neglect to enact a proposed amendment to Site-Specific Zoning By-law 2551, as amended, of the Town of Markham. The proposed amendment would provide permission for temporary uses at the property known as numbers 139, 195, 196, 198, 201, 203, and 205 Langstaffe Road East, and numbers 3, 5 and 21 Essex Avenue. The intended temporary uses would permit office space, contractor yard space, a landscaping and snow removal business, and outdoor storage of new vehicles.

The parties have reached resolution of the issues as set out in the provisions of Minutes of Settlement (Exhibit 2), set out in Attachment 1. At the request of the parties, the Board approved the inclusion of a "cat rescue facility" as a permitted use to

Schedule "A" - Appendix (ii) attached to the Minutes of Settlement. Attachment 1 includes a copy of the executed Minutes of Settlement, but due to its length, not the Schedules. The Board confirms that the Schedules to the Minutes of Settlement are approved as part of this decision.

Mr. Ben Quan is a professional planner who gave evidence on behalf of the Applicants/Appellants in support of the settlement. The planner told the Board that as a land use study is required to establish the assembly of land for residential growth, sanitary servicing of this area is not expected to be available until about 2012. He said the proposed temporary use by-laws, which are intended to be in effect for a three-year period, meets the criteria set out in the Town of Markham Official Plan, and the Thornhill Secondary Plan. He said that potential environmental effects of the existing non-conforming uses have been addressed through a peer-reviewed environmental study. It was his opinion that the proposed settlement represents good planning.

In accordance with the uncontested expert evidence presented by the planner, and on Consent of the parties, the Board finds that the provisions set out in the Minutes of Settlement represent good planning.

The Board withholds the Order related to this matter until the Letters of Credit have been received from the applicants, as set out in subsection 4) of the Minutes of Settlement.

"M. A. Sills"

M. A. SILLS
MEMBER

ATTACHMENT 1

ONTARIO MUNICIPAL BOARD

EXHIBIT #2

PL060575

PL060904

MINUTES OF SETTLEMENT

Robert and Deborah Tiberio have 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 Site-Specific Zoning By-law 2551, as amended, of the Town of Markham, to allow for the operation of a pool installation company, a roof installation company, and a general contracting/landscaping business, with associated outdoor storage for a temporary basis on lands located at 196 and 198 Langstaff Road East, which are currently zoned as Rural Industrial – (H)R.IND, with respect to lands located at 196 Langstaff Road East, and Residential – R1, with respect to lands located at 198 Langstaff Road East

O.M.B. Case No. PL060575

O.M.B. File No. Z060087

Cosini Properties Inc., M.A.N. Enterprises Ltd. and A.G.S. Consultants Ltd. have 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 Site-Specific Zoning By-law 2551, as amended, of the Town of Markham, for a temporary use permission to allow the operation of an office, contractor yard and the outdoor storage of new vehicles on lands located at 201, 203 and 205 Langstaff Road East, which are currently zoned Residential (R1), as well as on lands located at 3 and 5 Essex Avenue, which are currently zoned Rural Industrial with a holding provision [(H)R.IND.])

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O.M.B. Case No. PL060904

O.M.B. File No. Z060119

Cosini Properties Inc. and A.G.S. Consultants Ltd. have 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 Site-Specific Zoning By-law 2551, as amended, of the Town of Markham, for a temporary use permission to allow the operation of an office, contractor yard and the outdoor storage of new vehicles on lands located at 139 Langstaff Road East, which are currently zoned Rural Industrial with a holding provision [(H)R.IND.)]

O.M.B. Case No. PL060904

O.M.B. File No. Z060120

Cosini Properties Inc. and M.A.N. Enterprises Ltd. have 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 Site-Specific Zoning By-law 2551, as amended, of the Town of Markham, for a temporary use permission to allow the operation of an existing landscaping and snow removal business, which includes permitting the existing 1-storey dwelling to be used for office purposes and the rear yard to be used for the open storage of building materials, equipment, scrap metal, skids, debris, vehicles and trailers on lands located at 21 Essex Avenue, which are currently zoned Rural Industrial with a holding provision [(H)R.IND.]

O.M.B Case No. PL060904

O.M.B. File No. Z060123

OMB Case No.'s PL060575, PL060904 and OMB File No.'s Z060087, Z060117, Z060119, Z060120, and Z060123.

B E T W E E N:

ROBERT TIBERIO and DEBORAH TIBERIO
of the Town of Markham, in the Regional
Municipality of York, **COSINI PROPERTIES INC.,**
M.A.N. ENTERPRISES LTD., A.G.S. CONSULTANTS
LTD., private Ontario corporations incorporated
under the laws of the Province of Ontario

(hereinafter referred to as the "Applicants")

PARTY OF THE FIRST PART

-and-

THE CORPORATION OF THE TOWN OF MARKHAM

(hereinafter referred to as the "Town")

PARTY OF THE SECOND PART

WHEREAS the Parties hereto recognize the need for the redevelopment of the Langstaff area as defined in By-law 2551 for the Town of Markham ("Langstaff");

AND WHEREAS the Parties hereto, apart from Robert Tiberio, Deborah Tiberio and the Town have embarked upon a land assembly program, filed applications for an Official Plan Amendment, and an Implementing Zoning By-law for that area of Langstaff lying east of the CNR right-of-way;

AND WHEREAS the Applicants acknowledge their responsibility to apply for and obtain an amendment to the Town's Official Plan and, once approved, to obtain an amendment to the Town's zoning by-law, to permit the redevelopment of their lands and to apply for water and sewer allocation for their lands.

AND WHEREAS the Applicants have filed Applications for Temporary Use By-laws for those uses set out opposite the respective properties as detailed in Schedule "A" attached hereto and forming part of this Agreement;

AND WHEREAS the Town has to date, refused to grant such Temporary Use Applications which said refusals have been appealed to the Ontario Municipal Board (OMB) and a Procedural Order has been issued by the OMB setting out, among other items, a Hearing Date commencing February 4th, 2008 for ten (10) days;

AND WHEREAS the Applicants hereto acknowledge and agree that no additional uses other than those set out in Schedule "A" attached hereto are to be permitted nor are any of the buildings erected on the Schedule "A" Lands to be used for other than their present use unless approved by Council or the OMB.

AND WHEREAS the Parties hereto, including the Town, acknowledge the approval of the Temporary Use By-laws are for a three (3) year period, subject to a limited right to apply for extension under specific circumstances as hereinafter set out, is an expedient and appropriate land use planning tool to accomplish the mutual objectives of the Parties hereto;

AND WHEREAS the Applicants acknowledge and agree that the Town's consent to the approval of the Temporary Use By-laws is not an admission that the uses made of the Applicants' lands to date are lawful or lawful non-conforming;

AND WHEREAS the Parties hereto are desirous of setting out the terms under which the Temporary Use By-laws are to be approved;

NOW THEREFORE the parties hereto, by the execution of these Minutes of Settlement and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, agree to the following:

- 1) The Parties hereto acknowledge the accuracy of the recitals heretofore set forth.
- 2) The Applicants shall provide the Town with draft Temporary Use By-laws for the respective properties and such evidence as the Town may reasonably require to confirm that the uses carried on, on the respective properties, are environmentally benign by January 23, 2008.
- 3) These Minutes of Settlement and specific Temporary Use By-laws shall be prepared by the Applicants and submitted to the Town for its consideration by January 23, 2008 for purposes of obtaining the Town's consent to the Temporary Use By-laws prior to March 18, 2008.
- 4) The Applicants herein shall file one or more Letters of Credit in the aggregate of One Hundred Thousand Dollars (\$100,000.00) in the form(s) attached hereto as Schedule "B" to this Agreement to ensure the covenants of the Applicants herein are carried out.
- 5) (a) The Applicants covenant and agree not to apply for an extension of the Temporary Use By-laws or any of them unless:
 - (i) An Official Plan Amendment for the redevelopment of the Langstaff area lying east of the CNR right-of-way has not been approved or:
 - (ii) An Application for water and sewer capacity has been made by the Applicants and an allocation has not been granted for either water and/or sewer services for the subject lands by the appropriate authority.
- (b) Except as permitted by any extensions granted pursuant to subsection 5(a) above, all of the property owners in Schedule "A" hereto covenant and agree to discontinue their existing uses within sixty (60) days of the later of the termination of the three (3) year period granted under the Temporary Use By-laws or any extension thereof.
- (c) Provided that if the Applicants or any of them fail to discontinue their existing uses as required by clause 5(b) above, or the Applicants, or any of them, apply for an extension of the Temporary Use By-laws except on the terms or circumstances set out in clause 5(a) above, the Town may, without further recourse or notice, cash the Letters of Credit set out in Schedule "B" attached hereto, as liquidated damages, and not as penalty.
- (d) Provided that the Applicants covenant and agree that the Town shall have the right to evaluate any applications filed for extensions of the Temporary Use By-laws filed in compliance with clause 5(a) above, in accordance with their usual practice and the Town's discretion to approve or refuse

approval in respect of those applications or any of them, shall not be fettered by any matter other than as set out in this Agreement.

- 6) The Applicants shall be responsible for reopening the Mediation Proceedings to effect the terms of these Minutes of Settlement on January 23, 2008.
- 7) The Town will withdraw the charges for contravention of the permitted uses under By-laws 2551 against the following:
 - Dr. Sylvester Chuang – C.O.B. Volva Villa - Tenant
 - Transoceanic Fine Cars Ltd. - Tenant
 - William S. Baird C.O.B. Richmond Hill Honda - Tenant
 - A. Gordon Stollery
 - Brian Constans
 - Cobra Power Inc.
- 8) The Town will stay prosecution of charges against the following defendants charged until after the expiry of the Temporary Use By-laws referred to herein and provided that all of the Applicants have complied with these Minutes of Settlement:
 - Cosini Properties Inc.
 - M.A.N. Enterprises Ltd.
 - A.G.S. Consultants Ltd.
 - Robert Tiberio – Owner and Tenant
 - Deborah Tiberio - Owner
- 9) Pending the approval of the Temporary Use By-laws by the Ontario Municipal Board and the preparation and execution of these Minutes of Settlement and the Schedules attached hereto, the Parties agree to waive the necessity of the filings required under the Procedural Order issued by the OMB in respect to the files herein.
- 10) The parties hereto consent to an order of the Ontario Municipal Board approving Temporary Use By-laws, in a form satisfactory to the Town's Solicitor for each of the properties.
- 11) The Applicants covenant and agree to undertake such improvements to the properties or each of them as are required by the Town's Director of Planning to

ensure compatibility of uses, appropriate streetscape and maintenance of the lands in an environmentally benign state. The Applicants covenant and agree that there shall be no major construction or investment by the Applicants, so that the Applicants will not suffer any undue hardship when required to restore the properties to uses that comply with the zoning by-law, upon expiry of the temporary use by-laws.

- 12) The Applicants acknowledge and agree that no additional uses other than those set out in Schedule "A" attached hereto shall be permitted nor are any of the buildings erected on the Schedule "A" Lands to be used for any use other than their present use unless approved by Council or the OMB.

DATED at Markham this day of January, 2008.

SIGNED, SEALED AND DELIVERED
in the presence of:



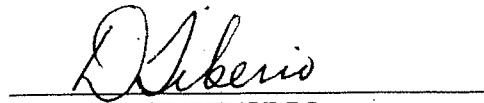
Witness:



ROBERT TIBERIO

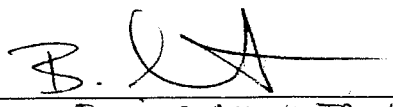


Witness:



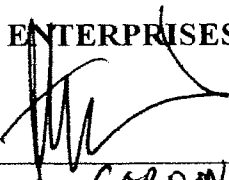
DEBORAH TIBERIO

COSINI PROPERTIES INC.

Per: 
Name: BRIAN CONSTANT
Title: PRES

I have the authority to bind the corporation.

M.A.N. ENTERPRISES LTD.

Per: 
Name: GORDON STOLLER
Title: PRES.

I have the authority to bind the corporation.

A.G.S. CONSULTANTS LTD.

Per: 

Name: GORDON STOUERY
 Title: Pres.

I have the authority to bind the corporation.

THE CORPORATION OF THE TOWN
 OF MARKHAM



Per: 

Frank Scarpitti, Mayor

Per: 

Sheila Birrell, Clerk

APPROVED TOWN OF MARKHAM	
COUNCIL <input checked="" type="checkbox"/>	RESOLUTION # <u>4</u>
CMTE <u>IC</u>	REPORT # _____
BY-LAW # _____	DATE <u>JAN. 22/08</u>
<u>CVW</u>	

Schedule "A" to the Minutes of Settlement

Dated January 2008

Property	Owner(s)	Temporary Land Use By-laws
1. 196 and 198 Langstaff Rd. E.	Robert Tiberio and Deborah Tiberio	Draft By-law attached [Appendix (i)]
2. 201 Langstaff Rd. E.	Cosini Properties Inc. Cosini Properties Inc. M.A.N. Enterprises Limited A.G.S. Consultants Limited M.A.N. Enterprises Limited	No.'s 2 to 6 are contiguous properties, accordingly, only one Draft By-law for these five properties [Appendix (ii)]
3. 203 Langstaff Rd. E.		
4. 205 Langstaff Rd. E.		
5. 3 Essex Ave.		
6. 5 Essex Ave.	M.A.N. Enterprises Limited	
7. 195 Langstaff Rd. E.	Cosini Properties Inc.	Draft By-law attached [Appendix (iii)]
8. 139 Langstaff Rd. E.	A.G.S. Consultants Limited	Draft By-law attached [Appendix (iv)]
9. 21 Essex Ave.	M.A.N. Enterprises Limited	Draft By-law attached [Appendix (v)]

