

ISSUE DATE:

December 21, 2011



Ontario

Ontario Municipal Board
Commission des affaires municipales de l'Ontario

RECEIVED

DEC 23 2011

TOWN OF MARKHAM
CLERKS DEPT.

C: Legal
Lucy
Scott Heasi

PL110890

RECEIVED

DEC 23 2011

TOWN OF MARKHAM
CLERKS DEPT.

Stringbridge Investments Ltd. 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 2004-196 of the Town of Markham to rezone lands identified as the southwest quadrant of Highway 7 and South Town Centre Boulevard to permit the development of a high-density, mixed use development including a hotel, retail and residential condominium uses
OMB File No.: PL110890

APPEARANCES:

Parties

Stringbridge Investments Limited

Town of Markham

Counsel

P. Foran
S. Loiacono

B. Duxbury

MEMORANDUM OF ORAL DECISION DELIVERED BY R. ROSSI ON DECEMBER 12, 2011 AND ORDER OF THE BOARD

Stringbridge Investments Ltd. (the Applicant) has asked the Board to approve its requested site-specific Zoning By-law Amendment to Zoning By-law 2004-196 to permit the development of a six-storey podium stretching the length of the subject property with four towers ranging in height from 13 to 16 storeys. Briefly, the Applicant proposes to construct commercial and retail uses at grade, a 190-room hotel and up to 500 residential condominium units. Two levels of above-grade and below-grade parking are proposed. The Applicant has also requested permission for additional height to a maximum of 53 metres, a redistribution of the permitted building floor space on the total site and amended setback requirements.

At the commencement of the hearing, the Board was advised that the Parties have resolved these matters and have presented today's version of a site-specific Zoning By-law Amendment (Exhibit 9 and attached to this Order as Attachment 1).

Planner Elizabeth Houson was qualified to provide her planning evidence and expert opinion on the proposed, site-specific Zoning By-law Amendment and to furnish details of the development and the proposed holding symbols for the subject lands.

The site is located in Markham Centre, an Urban Growth Centre under the Growth Plan and which represents Markham's Growth Centre. The subject site is located on the south side of Highway 7 at South Town Centre Boulevard. South of the development site is Clegg Road. The parcel is 1.1 hectares in size and is part of a larger parcel of land. Once rezoned, this parcel will be severed to permit the proposed development to be built.

The Applicant's mixed use project contemplates construction of a 190-room, full-service hotel and an integrated residential condominium development with up to 500 dwelling units. The development includes a convention centre, an event space as well as ancillary restaurant uses, a fitness centre and retail service uses at grade fronting onto Highway 7. The project will have two levels of below-grade internal parking and above-grade parking located within the 6 to 7-storey-high podium structure that will serve as the base for the hotel and residential tower uses.

The Board notes that the Official Plan permits all of the uses. The current Zoning By-law permits all of the proposed uses except for residential uses; hence, the need for the proposed Zoning By-law Amendment to permit the uses and to add four metres to the current zoning's maximum height of 49 metres, bringing the maximum height permitted to 53 metres, which would be necessary to accommodate the proposed 16-storey residential tower at the eastern portion of the subject lands.

There will also be two centre towers about 15 storeys each in height and a west tower about 13 storeys in height. Bridges are contemplated to join the residential

towers. The Board reviewed the Context Plan (Exhibit 5) that shows the two residential towers immediately south of the subject lands. Known as Majestic Court, these two towers are 14 and 16 storeys in height, they comprise an L shape and there is an abutting public park.

The site is designated Community Amenity Area in the Town of Markham Official Plan and is designated Community Amenity – Major Urban Place in the Markham Centre Secondary Plan. This type of medium and high-density development is already contemplated in the Town's Official Plan and may be considered for these lands through proposed redevelopment and rezoning applications. Also, the list of permitted uses for these lands is extensive (including the proposed hotel and ancillary uses) and Ms Houson reviewed all of these elements for the Board.

The Board notes that the Secondary Plan is clear as to the Town's intentions regarding development of these lands: "The highest concentration of development and the greatest variety of activities in the Planning District will be on the lands designated Community Amenity Area – Major Urban Place. These lands are intended to function as the primary mixed use activity areas of the Town Centre" (Exhibit 3, Tab 5, page 194).

Ms Houson advised the Board that the proposal conforms with the Town of Markham Official Plan policies, with the Markham Centre Secondary Plan policies that direct the development and placement of high intensity mixed uses such as that proposed by the Applicant, and to the overarching provincial policies of the Growth Plan, the Provincial Policy Statement and to the Regional Plan, which implements the direction of the Province in respect of growth in this area.

The Town of Markham Council endorsed the proposed Zoning By-law Amendment without changes on November 8, 2011.

Some residents of the condominium building across from the subject site attended these proceedings and expressed concerns about not receiving notice of

these proceedings. Counsel Foran reviewed the extent of public consultation that preceded today's settlement hearing: a statutory public meeting held November 2, 2010 with notice sent out to residents living within one kilometre of the subject lands as per the resolution of Town Council; notice was placed in the local paper; a non-statutory community meeting held in October 2010; two, open public meetings held in early-November 2011; and another non-statutory meeting was held with the Markham Centre Advisory Committee. The Town's Planner, Mr. Heslip, confirmed for the Board that these notices were circulated. Further, the Applicant's Affidavit of Service (Exhibit 1) contains the names of several thousand persons and businesses notified of this matter. While some residents complained of not receiving the notices, the Board is persuaded by both the Applicant's Counsel's evidence that the Applicant met the statutory obligations of circulation of the notice of the proposed development of the subject lands in accordance with the Town's resolution that it do so. Mr. Duxbury, Counsel for the Town, confirmed this and the Board finds no persuasive evidence before it that notice was improperly served. All of the documentary evidence points to the Applicant's compliance with the direction to circulate notice of its application to develop the subject site.

The Board also heard from several residents who requested more information about the development proposal. The Board recessed these proceedings for a short time to allow the residents to learn more about the proposed development by speaking with the Applicant's planning and traffic witnesses. The Town's Counsel and planner also took time to speak with the residents about the proposal. And, as the residents were concerned with the already-busy nature of Highway 7 in this area, and the possible impact the proposed development would have on this condition, the Board invited the Applicant's traffic witness, Transportation Engineer Carl Wong, who was qualified to provide his expert evidence to provide background information on the traffic study and what his firm observed in respect of any traffic impacts.

Mr. Wong explained that before the development is completed, Highway 7 will be widened to six lanes with two new rapid transit lanes to be constructed down the middle

of Highway 7 to accommodate the development and regeneration occurring all along Highway 7. Mr. Wong also explained for the residents what a traffic study is, what it examined and how the information is used. He told the Board that the 2009 study was updated in 2011 to ensure accuracy in its numbers and to reflect any changes. He opined that with the future widening of Highway 7 along this stretch of road and with the transit lanes, it was his uncontradicted evidence that the future traffic to be generated by the proposed development can be accommodated on Highway 7 as well as on the surrounding side streets like South Town Centre Boulevard and Clegg Road. He also specified that the upgrading of Highway 7 to include transit lanes is not simply a response to the proposed development but in fact is being executed to respond to the Town's plans for transit usage that will support this type of development in the form of density and intensification that the Applicant has proposed.

Lastly, Ms Houson reviewed the proposed Zoning By-law Amendment and noted that it places a 500-unit cap on the number of permitted dwelling uses. Two Special Holding Provisions are included in the Amendment. One is to ensure that the development proceeds in a manner acceptable to the Town of Markham (as set out clearly in the proposed Zoning By-law Amendment) and the other is to prohibit residential occupancy until the Town receives notification from the Applicant of completion of a certain portion of the hotel feature.

Mr. Duxbury emphasized the fact that the Town of Markham sees this as an integrated project and that it should be developed as such. Ms Houson explained how the Parties have updated the definition of "hotel", including its "temporary" nature of residency. The Parties are satisfied that the hotel use as defined will ensure that residential use is not permitted as of right without the hotel. Staff advised that the wording of the by-law could specify that residential units can only be built with the integration of a hotel, which the Applicant has proposed. The Board finds persuasive that this integrated development proposal satisfies the Town's requirements in this regard.

Having considered the uncontradicted evidence of Ms Houson that the proposed, site-specific instrument represents good planning as well as the expert evidence of Mr. Wong that the volume of traffic generated by this development can be accommodated along Highway 7 and the surrounding streets, and noting that the Parties have reached an agreement in respect of this matter, the Board allows the appeal and amends Zoning By-law 2004-196 with the Zoning By-law Amendment attached to this Order.

So orders the Board.

"R. Rossi"

R. ROSSI
MEMBER

ATTACHMENT 1

OMB Exhibit #9
OMB File # PL110890

A by-law to amend Markham Centre
Zoning By-law 2004-196, as amended

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

1. Zoning By-law 2004-196, as amended, be and the same is hereby further amended, as it applies to the lands outlined on Schedule 'A' hereto, as follows:

- 1.1 By deleting Schedules C1, C2, C3, C4 and X3 and replacing them with Schedules C1, C2, C3, C4 and X3 attached hereto.
- 1.2 By adding the following new subsection to **Section 6-Exceptions** to By-law 2004-196:

6.XX Lands at the south-west corner of Highway 7 and South Town Centre
Boulevard

Notwithstanding any other provisions of this By-law to the contrary, the following provisions shall apply to those lands denoted by the symbol *XX (Exception XX) on the schedules to this By-law for the additional use permitted by Section 6.XX.1. All other provisions, unless specifically modified/amended by this section, continue to apply to the lands subject to this section.

6.XX.1 Special Use Provisions

- (a) The following additional use is permitted:

A maximum of 500 *apartment dwellings* within the *building* also containing all of the following uses:

- (i) a *hotel* containing not less than 190 guest rooms;

- (ii) a *trade and convention* centre having a minimum *floor area* of 2000 square metres;
 - (iii) one or more *restaurant(s)* having a minimum combined *floor area* of 630 square metres;
 - (iv) a *commercial fitness centre* having a minimum *floor area* of 1000 square metres; and
 - (v) *offices or medical offices or personal service shops or retail stores* having a minimum combined *floor area* of 840 square metres.
- (b) For the purpose of Section 6.XX.1, the following definitions shall apply:

Building shall be defined in accordance with Section 3 and includes all structures linked by shared parking garage below established grade.

Hotel means a *premises* that contains guest rooms that are rented on a temporary basis to the public, equipped to be occupied as temporary accommodation for the public, and which may also contain meeting rooms and *accessory* banquet facilities.

- (c) Note (A) on Schedule C2 shall not apply to the additional use permitted in Section 6.XX.1(a).

6.XX.2 Special Site Provisions

The following special site provisions shall apply:

- a) Dwelling units are permitted on any *storey*, including the first *storey*.
- b) Special Provision (2) to Table A1 shall not apply.
- c) In the case of a *corner lot* with a daylighting triangle, the exterior side lot line shall be deemed to extend to its hypothetical point of intersection with the extension of the front lot line for the purposes of calculating minimum and maximum *setbacks* from *streetlines*. Notwithstanding the above, in no case shall any *building* or *structure* extend into the *public street* right of way.

- d) Awnings are permitted to extend to any *streetline* or *lot line*.

6.XX.3 Special Parking Provisions

The following special parking provisions shall apply:

- a) The *parking space* requirement for *Apartment Dwellings* shall be as follows:

A minimum of 0.8 parking spaces per *dwelling unit* and a maximum of 1 *parking space* per *dwelling unit* plus 0.2 *parking spaces* per *dwelling unit* for visitors. The provision of additional *parking spaces* is not permitted. A maximum of 5% of the *parking spaces* required may be located in a surface parking area.
- b) Where development of a *lot* is phased, the number of *parking spaces* provided in a *parking garage* on the *lot* during the earlier phase(s) may exceed the maximum number permitted under Section 4.14.3 provided that the total number of *parking spaces* on the *lot* shall at no time exceed the maximum number that would be permitted if the entire development was constructed in a single phase.

6.XX.4 Special Holding Provisions

The following special holding provisions shall apply:

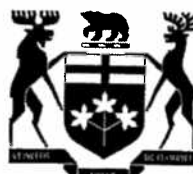
- a) The Lands subject to this Zoning Bylaw shall be subject to two Holding (H) zones. Holding provision – H1 shall only be lifted on all or part of the lands shown on Schedule ‘C1’ hereto and development of the additional use under 6.XX.1 may proceed when the applicable criteria outlined in Section 2.6.1 and all of the following criteria have been met:
 - (i) Approval by the Town of an updated precinct plan for the lands generally bounded by Highway 7, South Town Centre Boulevard, Clegg Road and Rodick Road.
 - (ii) Execution of a Section 37 Agreement between the Town and the Owner pursuant to Section 37 of the Planning Act and in accordance with the Town’s Official Plan policies

regarding Section 37 contributions, to the satisfaction of the Town.

- (iii) That an updated traffic impact study and a TDM (Travel Demand Management) plan have been approved by the Town within the prior 6 months for the lands from which the holding provision is to be removed.
 - (iv) For any development including the additional use permitted by Section 6.XX.1 of this by-law, execution of a Site Plan Agreement between the Town and the Owner for the entire development, pursuant to Section 41 of the Planning Act. The agreement required under this subsection will include an acknowledgement by the Owner that occupancy of dwelling units will not be permitted until the removal of the Holding Provision H10 and a requirement that the Owner obtain acknowledgements from purchasers that they have been advised by the Owner of the requirements under Holding Provision H10.
- b) Prior to removal of the Holding Provision – H10, the building or structure may not be occupied for residential purposes until such time as the Chief Building Official is in receipt of a notice pursuant to clause 1.3.5.1(2)(f) of Division C of the Building Code, O. Reg. 350/06, in respect of the *hotel*, and the Chief Building Official has conducted an inspection which confirms substantial completion of the matters set out in clause 1.3.5.1(2)(f) of the Building Code.
 - c) Driveways, underground parking garages and the first storey above the underground parking garages are permitted to be constructed prior to the removal of Holding provisions H1.
2. All other provisions of By-law 2004-196, as amended, not inconsistent with the provisions of this by-law continue to apply.

ISSUE DATE:

January 16, 2012



Ontario

Ontario Municipal Board
Commission des affaires municipales de l'Ontario

RECEIVED

JAN 17 2012

TOWN OF MARKHAM
CLERKS DEPT.

PL110890

Copy: Legal
Lucy
Scott Heasley

Stringbridge Investments Ltd. 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 2004-196 of the Town of Markham to rezone lands identified as the southwest quadrant of Highway 7 and South Town Centre Blvd to permit the development of a high density mixed use development including a hotel, retail and residential condominium uses
OMB File No. PL110890

APPEARANCES:

Parties

Stringbridge Investments Limited

Town of Markham

Counsel

P. Foran

S. Loiacono

B. Duxbury

**AMENDED DECISION DELIVERED BY R. ROSSI ON DECEMBER 21, 2011 AND
ORDER OF THE BOARD**

The Board's Decision/Order ("Decision") issued on December 21, 2011 is hereby amended by replacing all occurrences of the name "Elizabeth Houson" and "Ms Houson" with "Elizabeth Howson" and "Ms Howson" respectively.

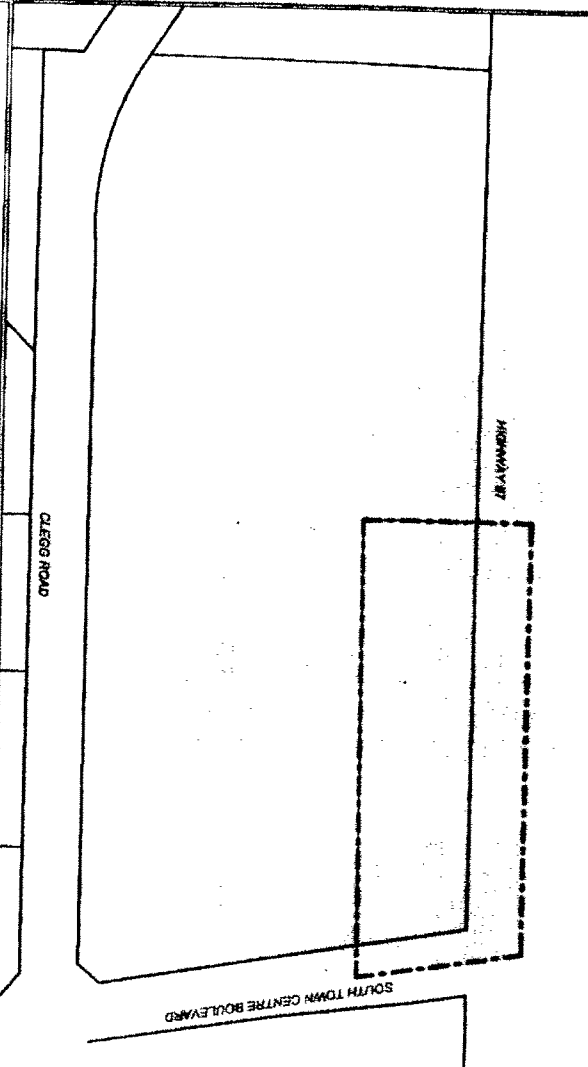

The Board's Decision is further amended by appending the attached documents referred to as Schedule A, Schedule C1, Schedule C2, Schedule C3, Schedule C4 and Schedule X3 onto Attachment 1 of the Decision.

In all other respects the Board's Decision remains the same.

"R. Rossi"

R. ROSSI
MEMBER

SCHEDULE "A"

	
A BY-LAW TO AMEND BY-LAW 2004-196	
THIS IS SCHEDULE "A" TO BY-LAW _____ PASSED _____ MAYOR _____ CLERK _____	 BOUNDARY OF AREA COVERED BY THIS BY-LAW
NOTE: REFERENCE SHOULD BE MADE TO THE ORIGINAL BY-LAW LODGED IN THE OFFICE OF THE CLERK.	

Schedule C1
Location of Zones

THIS IS SCHEDULE C1 TO BY-LAW _____

PASSED _____

MAYOR _____

CLERK _____

A BY-LAW TO AMEND BY-LAW 2004-196

BOUNDARY OF AREA COVERED BY THIS BY-LAW

MOD1 ZONE

MOD2 ZONE

MOD3 ZONE

☐ 4 REFER TO SECTION 6.4 OF THE BY-LAW

☐ 5 REFER TO SECTION 6.5 OF THE BY-LAW

☐ 6 REFER TO SECTION 6.6 OF THE BY-LAW

☒ 7 REFER TO SECTION 6.7 OF THE BY-LAW

NOTE: REFERENCE SHOULD BE MADE TO THE ORIGINAL BY-LAW LODGED IN THE OFFICE OF THE CLERK.

THIS IS SCHEDULE C2 TO BY-LAW _____
PASSED _____
MAYOR _____
CLERK _____

A BY-LAW TO AMEND BY-LAW 2004-196

BOUNDARY OF AREA COVERED BY THIS BY-LAW

4 REFER TO SECTION 8.4 OF THE BY-LAW
5 REFER TO SECTION 8.5 OF THE BY-LAW
XX REFER TO SECTION 8.XX OF THE BY-LAW

NOTE: REFERENCE SHOULD BE MADE TO THE ORIGINAL BY-LAW LODGED IN THE OFFICE OF THE CLERK

Schedule C2
Maximum Permitted
Net Floor Area and
Dwelling Units

Section of By-Law	Maximum Permitted Net Floor Area	Maximum Permitted Number of Dwelling Units
1.1 & 1.2	10,000 sq. ft. (2,927 sq. m.)	30
2	10,000 sq. ft. (2,927 sq. m.)	30

NOTE: Special Provisions for the above areas are contained in a table to be provided and are described below:
(1) Refer to Section 8.4 of the By-Law
(2) Refer to Section 8.5 of the By-Law
(3) Refer to Section 8.XX of the By-Law

THIS IS SCHEDULE C3 TO BY-LAW _____
PASSED _____

MAYOR _____
CLERK _____

A BY-LAW TO AMEND BY-LAW 2004-196

BOUNDARY OF AREA COVERED BY THIS BY-LAW

1. MINIMUM 15m - MAXIMUM 30m
2. MINIMUM 15m - MAXIMUM 40m
3. MINIMUM 15m - MAXIMUM 50m

4. MINIMUM 20m - MAXIMUM 40m
5. MINIMUM 8m - MAXIMUM 23.2m
6. MINIMUM 24m - MAXIMUM 43m

**Schedule C3
Minimum and
Maximum Heights**

Number in Schedule C3	Description
1	Signs of the building height shall be 20 metres or less, and the height of the building shall be 20 metres or less.
2	Signs of the building height shall be 20 metres or less, and the height of the building shall be 20 metres or less.
3	Signs of the building height shall be 20 metres or less, and the height of the building shall be 20 metres or less.
4	Signs of the building height shall be 20 metres or less, and the height of the building shall be 20 metres or less.
5	Signs of the building height shall be 20 metres or less, and the height of the building shall be 20 metres or less.
6	Signs of the building height shall be 20 metres or less, and the height of the building shall be 20 metres or less.

NOTE: REFERENCE SHOULD BE MADE TO THE ORIGINAL BY-LAW LOCATED IN THE OFFICE OF THE CLERK.

Schedule C4 Setbacks

THIS IS SCHEDULE C4 TO BY-LAW PASSED _____ MAYOR _____ CLERK _____

A BY-LAW TO AMEND BY-LAW 2004-196

BOUNDARY OF AREA COVERED BY THIS BY-LAW

CONDITION 1 ☐ CONDITION 2 ☐ CONDITION 3 ☐

4 ☐ REFER TO SECTION 6.4 OF THE BY-LAW
 5 ☐ REFER TO SECTION 6.5 OF THE BY-LAW
 XX ☐ REFER TO SECTION 6.XX OF THE BY-LAW

NOTE: REFERENCE SHOULD BE MADE TO THE ORIGINAL BY-LAW FORWARDED IN THE OFFICE OF THE CLERK

Condition 1: The area within the lot and boundary of the lot shown on the map shall be used for the purpose of the following use only:

Condition 2: The area within the lot and boundary of the lot shown on the map shall be used for the purpose of the following use only:

Condition 3: The area within the lot and boundary of the lot shown on the map shall be used for the purpose of the following use only:

Schedule X3
Holding Zones

THIS IS SCHEDULE X3 TO BY-LAW _____

PASSED _____

MAYOR _____

CLERK _____

A BY-LAW TO AMEND BY-LAW 2004-196

BOUNDARY OF AREA COVERED BY THIS BY-LAW

☐ H1, H2 & H6 ☐ H2 ☐ H7 ☐ H1 & H10

☒ XX REFER TO SECTION XX OF BY-LAW

NOTE: REFERENCE SHOULD BE MADE TO THE ORIGINAL BY-LAW LODGED IN THE OFFICE OF THE CLERK.