

**SUBJECT:** RECOMMENDATION REPORT  
Fred Lorusso  
Proposal to amend the Minister's Zoning Order, Ontario Regulation 104/72 (Airport Freeze) to permit an existing basement repair business (Clarke Basement Systems) to continue to operate at 10638 9<sup>th</sup> Line, File No. PRE 14 130717

**PREPARED BY:** Stephen Corr  
Planner II, East District, ext 2624

**REVIEWED BY:** Sally Campbell, M.C.I.P., R.P.P.  
Acting East District Manager, ext. 2645

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**RECOMMENDATION:**

- 1) That the report dated May 19, 2015, titled "RECOMMENDATION REPORT, Fred Lorusso, Proposal to amend the Minister's Zoning Order, Ontario Regulation 104/72 (Airport Freeze) to permit an existing basement repair business (Clarke Basement Systems) to continue to operate at 10638 9<sup>th</sup> Line, File No. PRE 14 130717", be received;
- 2) That the City of Markham inform the Ministry of Municipal Affairs and Housing that it does not support a proposed amendment to the Minister's Zoning Order (MZO), Ontario Regulation 104/72 (Airport Freeze) to permit an existing basement repair business at 10638 9<sup>th</sup> Line;
- 3) That this Recommendation Report be forwarded to the Ministry of Municipal Affairs and Housing (MMAH) and the Region of York; and
- 4) That Staff be authorized and directed to do all things necessary to give effect to this resolution.

**PURPOSE:**

The purpose of this report is to seek Council direction to provide comments to the Ministry of Municipal Affairs and Housing (MMAH) on a proposed amendment to the Minister's Zoning Order (MZO), Ontario Regulation 104/72 (Airport Freeze), to permit an existing basement repair business to continue operating for three years at 10638 9<sup>th</sup> Line (with an option for renewal). This proposal was submitted as an application to the MMAH, which has requested comments from the City, amongst other agencies. A copy of the MMAH Review Memorandum is provided as Appendix 1.

**BACKGROUND:**

The 3.5 ha (8.7 acre) subject property is located on the west side of 9<sup>th</sup> Line, south of Elgin Mills Road East (see Figures 1, 2 and 3). The central portion of the site is developed with an existing single detached dwelling that is currently being used as an office by a basement repair business operating on the property, known as *Clarke*

*Basement Systems.* There are also two accessory structures on the property used for storage, as well as areas used for outdoor/open storage of equipment and materials. The remainder of the site consists of woodlands. According to Map 6 – Hydrologic Features of 2014 Official Plan (not yet in force) there are unevaluated wetlands on the subject lands. The Owner of *Clarke Basement Systems* has indicated the existing business has operated on the site since 2004. The site is surrounded by agricultural uses. Lands to the north and east are within and subject to the Provincial Greenbelt Policies.

### **Provincial Policy**

The subject lands are located within a rural area of Markham, in which the predominant land use is agricultural. Section 2.2.9 of the *2006 Growth Plan for the Greater Golden Horseshoe* directs development to settlement areas, except for the development of rural land uses that cannot be located in settlement areas. The existing basement repair facility is not considered a rural land use. Industrial areas within the settlement area of Markham are better suited to accommodate the basement repair business use, in accordance with the policies of the *2006 Growth Plan for the Greater Golden Horseshoe*.

Section 2.3.1 of the *2014 Provincial Policy Statement* states that ‘prime Agricultural areas shall be protected for long-term use for agriculture’. Further, section 2.3.6 specifies all the criteria to be satisfied if planning authorities are to consider permitting non-agricultural uses in prime agricultural areas, and they are as follows:

1. The land does not comprise a specialty crop area;
2. The proposed use complies with the minimum distance separation formulae;
3. There is an identified need within the planning horizon provided for in policy 1.1.2 for additional land to be designated to accommodate the proposed use; and
4. Alternative locations have been evaluated, and
  - i. there are no reasonable alternative locations which avoid prime agricultural areas; and
  - ii. there are no reasonable alternative locations in prime agricultural areas with lower priority agricultural lands.

A review of the materials submitted to the MMAH to amend the MZO shows that the proponents have not demonstrated that the criteria noted above have been satisfied to qualify the existing use as a use that can be permitted on the subject lands, in accordance with the *2014 Provincial Policy Statement*.

### **Markham Official Plan and Zoning**

The site is designated “Agricultural” in the in-force City of Markham Official Plan (revised 1987). The site is also designated “Countryside” and “Greenway” in the 2014 City of Markham Official Plan (not yet in force). Both the “Agricultural” and “Countryside” designations intend to protect agricultural uses and support farming activities. The “Greenway” designation is applicable primarily to the woodland areas on the subject site. This designation intends to protect woodlands, wetlands, agricultural lands and other ecological features. Commercial and industrial uses, including the

outdoor storage of equipment and materials on the subject land, are not provided for in any of the applicable Official Plan designations.

The site is zoned Rural Residential Two (RR2) under By-law 304-87, as amended. The Zoning By-law permits one single detached dwelling on the subject lands. The existing basement repair business, including the outdoor storage of materials and equipment, is not permitted under the applicable Zoning By-law.

In response to a recent complaint regarding the existing business on the subject site, the City's By-law Licensing and Enforcement Department issued a zoning order against the subject property. Planning staff met with the property owner and representatives of *Clarke Basement Systems* to discuss the potential for a development application as part of a Pre-Consultation request (File PRE 14 130717) submitted to the City. At this meeting, staff identified the above noted City policies and advised that the property is subject to the MZO (Airport Freeze), Ontario Regulation 104/72. Given that Provincial Zoning Orders supercede municipal zoning by-laws, staff recommended that if the proponents intended to apply to keep the business that they first consult with the MMAH regarding an amendment to the MZO before proceeding with any applications to amend the City's Zoning By-laws and/or Official Plan.

#### **Minister's Zoning Order (MZO)**

The Minister's Zoning Order (MZO), Ontario Regulation 104/72 (Airport Freeze), is administered by the Ministry of Municipal Affairs and Housing (MMAH). The MZO, Ontario Regulation 104/72 has been in effect since the early 1970s and its purpose is to regulate development in the vicinity of a possible future airport on lands in Federal ownership in the neighboring City of Pickering. The most recent *Pickering Lands Needs Assessment Study* (March 2010), prepared by the Greater Toronto Airports Authority, concluded that an additional airport will be needed to accommodate future growth in the Greater Golden Horseshoe, and that the Pickering lands should be protected for future aviation needs.

#### **OPTIONS/ DISCUSSION:**

The proponents are not applying to amend the City of Markham's Zoning By-laws and Official Plan at this time. This report provides information regarding the proponents' request to the MMAH to amend the MZO, Ontario Regulation 104/72 (Airport Freeze) as it pertains to the subject property to allow an existing basement repair business to remain on the site for a period of three years, with an option for renewal.

#### **MMAH has Circulated the Application for Comment**

The Region of York, Toronto Region Conservation Authority, and Ministry of Agriculture; Food and Rural Affairs have provided comments to MMAH (see Appendix 2, 3 and 4, respectively). These agencies have each expressed concern with the proposal for various reasons, including impacts to natural features and non-conformity with the City of Markham Official Plan, Region of York Official Plan and the 2014 Provincial Policy Statement.

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**Staff Recommend that the City Not Support the Application.**

MMAH has also circulated the application to amend the MZO (airport Freeze), Ontario Regulation 104/72 to the City for comment. Staff have concerns with the request to a permit the continuation of a use that does not conform to Provincial Policy and to the City's Official Plan policies which intend to preserve and protect agricultural areas and sensitive land uses. The proposal could be precedent setting in allowing industrial land uses, including the outdoor storage of equipment and materials, within agricultural areas not intended for any future urban development. The subject lands and surrounding areas are not contemplated as part of the Future Urban Area in the 2014 Official Plan (not yet in-force). While the application requests permission to continue an existing use for a temporary period of three years, staff note that the proponents have also requested an option for renewal with the MMAH. Staff are concerned that allowing the existing use to continue beyond the initial temporary three year period could result in the permanent use of the basement repair business (or similar use) on the subject property.

**Conclusion**

As noted, the purpose of this report is to seek Council direction to provide the MMAH with comments on a proposed amendment to the MZO, Ontario Regulation 104/72 (Airport Freeze) to permit an existing basement repair business to continue operating for three years at 10638 9th Line (with an option for renewal). The subject basement repair business has existed on the site since 2004. However, given the policy rationale outlined above, and having regard for the comments provided by other agencies, staff do not support the proposed amendment to the MZO, Ontario Regulation 104/72 (Airport Freeze) to permit an existing basement repair business to continue to operate at 10638.

**FINANCIAL CONSIDERATIONS AND TEMPLATE:**

Not Applicable.

**HUMAN RESOURCES CONSIDERATIONS**

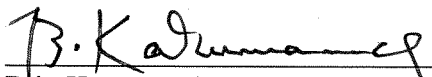
Not Applicable.

**ALIGNMENT WITH STRATEGIC PRIORITIES:**

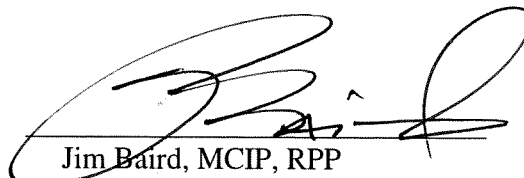
This proposal was reviewed in the context of zoning and growth management.

**BUSINESS UNITS CONSULTED AND AFFECTED:**

Not Applicable.

**RECOMMENDED**

Biju Karumanchery, MCIP, RPP  
Acting Director, Planning and Urban Design



Jim Baird, MCIP, RPP  
Commissioner, Development Services

**ATTACHMENTS:**

Figure 1 – Site Location

Figure 2 – Area Context

Figure 3 – Aerial Photo

Appendix 1 – MMAH Review Memorandum

Appendix 2 – Region of York Comments to MMAH

Appendix 3 – TRCA Comments to MMAH

Appendix 4 – Ministry of Agriculture; Food and Rural Affairs Comments to MMAH

**Applicant Contact:**

Dalen Sharp

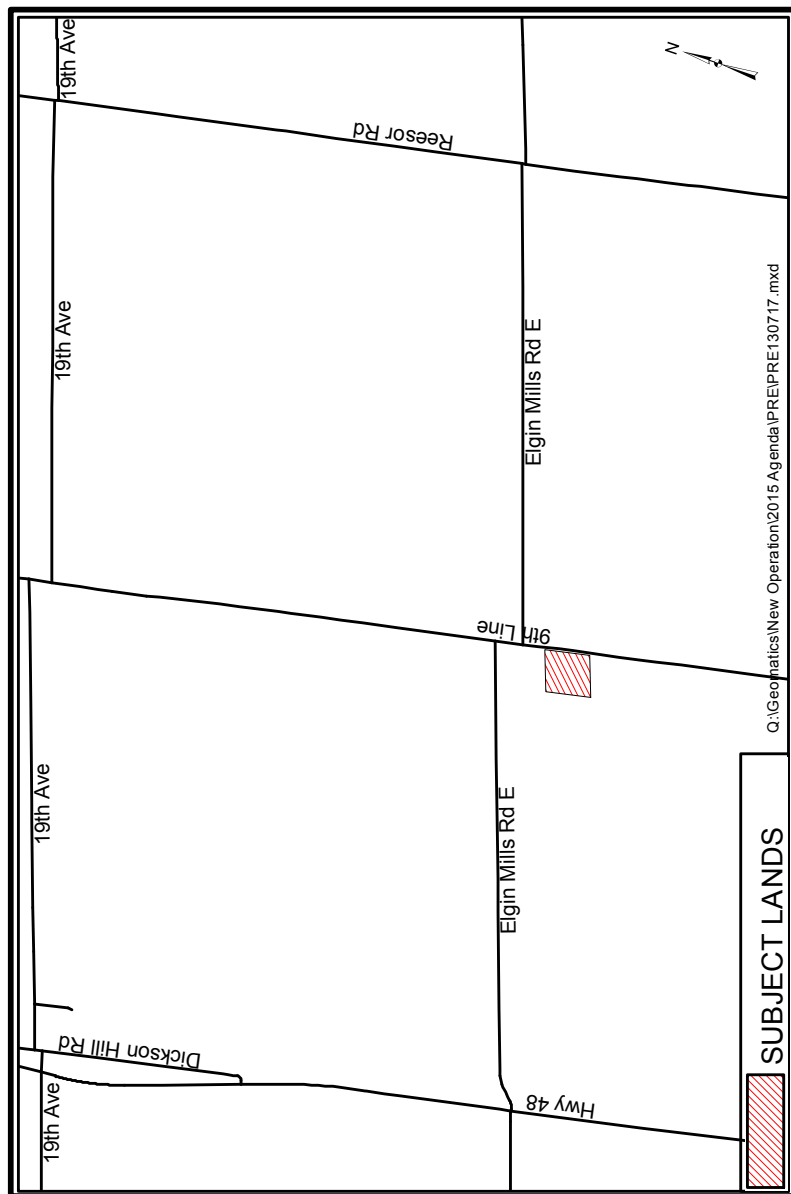
Don Clarke Contracting

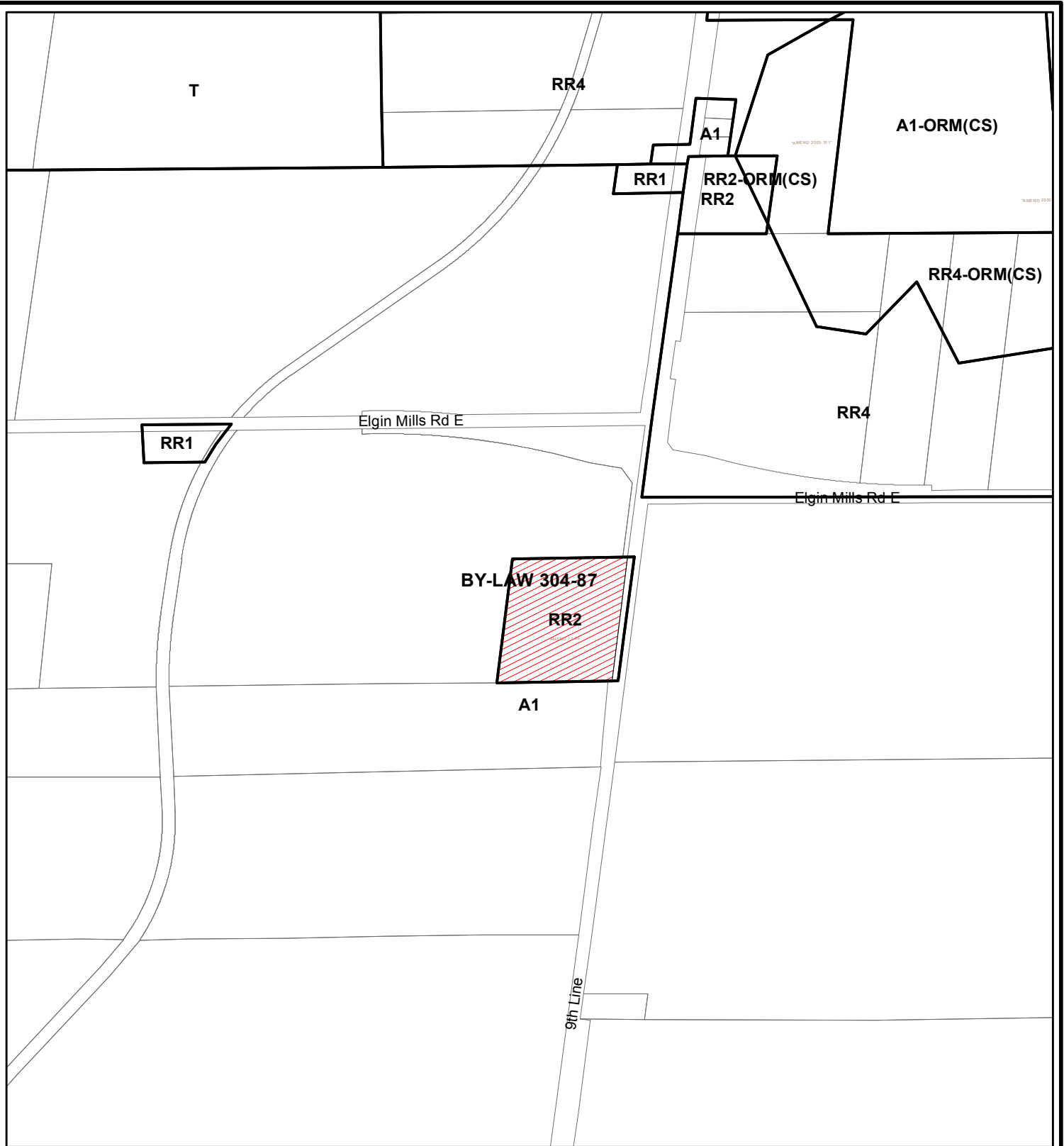
10638 9<sup>th</sup> Line

Markham ON L6B 1A8

(905) 642-4860      [dalen@clarkebasementsystems.com](mailto:dalen@clarkebasementsystems.com)

File path: Q:\Development\Planning\Teams\New East Team\Stephen Corr\Recommendation Report 10638 9<sup>th</sup> Line





# AREA CONTEXT / ZONING

APPLICANT: FRED LORUSSO  
10638 9TH LINE

FILE No. PRE.130717 (SC)

 SUBJECT LANDS

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DATE: 13/04/2015



DEVELOPMENT SERVICES COMMISSION

Drawn By: CPW

Checked By: SC

FIGURE No. 2





# AIR PHOTO

APPLICANT: FRED LORUSSO  
10638 9TH LINE

FILE No. PRE.130717 (SC)

 SUBJECT LANDS

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DATE: 13/04/2015



DEVELOPMENT SERVICES COMMISSION

Drawn By: CPW

Checked By: SC

FIGURE No. 3



**Ministry of  
Municipal Affairs  
and Housing**

Municipal Services Office  
Central Ontario  
777 Bay Street, 13<sup>th</sup> Floor  
Toronto ON M5G 2E5  
Phone: 416 585-6226  
Fax: 416 585-6882  
Toll-Free: 1 800 668-0230

**Ministère des  
Affaires municipales  
et du Logement**

Bureau des services aux municipalités  
du Centre de l'Ontario  
777, rue Bay, 13<sup>e</sup> étage  
Toronto ON M5G 2E5  
Téléphone : 416 585-6226  
Télécopieur : 416 585-6882  
Sans frais : 1 800-668-0230



*By E-mail Only*

February 3, 2015

**ATTN:** Kimberly Kitteringham, City Clerk  
City of Markham  
Markham Civic Centre  
Clerk's Department  
101 Town Centre Boulevard  
Markham, ON L3R 9W3  
kkitteringham@markham.ca

**RE:** Application to amend Minister's Zoning Order, Ontario  
Regulation 104/72  
10638 Ninth Line  
Part of Lot 25, Concession 8  
City of Markham, York Region  
PIN: 03062-0426

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MMAH File No.: 19-MZOA-149342

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The Municipal Services Office- Central Region is reviewing an application to amend Minister's Zoning Order, Ontario Regulation 104/72 at the above noted address.

Please review the documents attached and submit your comments to our office by **Friday, April 3, 2015**.

Please refer any comments/ concerns to Steven Barber, Assistant Planner at 416-585-6085 or via email [steven.barber@ontario.ca](mailto:steven.barber@ontario.ca). Alternatively, contact Caroline Samuel, Senior Planner at 416-585-6741 or via email [Caroline.Samuel@Ontario.ca](mailto:Caroline.Samuel@Ontario.ca).

**Attachments:**

MMAH Review Memo  
Aerial Photo  
Application

# REVIEW MEMORANDUM

Planning System: Planning Act, 1990

File No.: 19-MZOA-149342

Municipality: City of Markham, York Region

Date Application Rec'd: December 1, 2014

Deemed Complete: December 2, 2014

Target Date: June 2, 2014

Location: 10638 Ninth Line  
Part of Lot 25, Concession 8  
PIN #03062-0426

Municipal Water: Private Services

Sanitary Sewers: Private Services

Related Files: N/A

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## **Purpose:**

To amend Minister's Zoning Order (MZO), Ontario Regulation 104/72, to permit a temporary industrial use (basement waterproofing and repair business) for three years with an option for renewal on the above noted lands.

## **Location:**

The subject lands comprise approximately 3.6 hectares (8.9 acres) located at 10638 Ninth Line, in the City of Markham, Regional Municipality of York. The property is situated at the south-western corner of Ninth Line and Elgin Mills Road East, legally described as Part of Lot 25, Concession 8, and more specifically described as PIN # 03062-0426. The lot is accessed from Ninth Line.

## **Background:**

MMAH met with the applicant on November 20<sup>th</sup>, 2014 for a pre-consultation. On December 1, 2014 MMAH received an application from Dalen Sharp of Don Clarke Contracting, on behalf of the property owner, to amend the MZO to permit an existing industrial use on a temporary basis. Clarke Basement Systems, a basement waterproofing and repair business is currently operating on the property. The applicant is seeking the MZO amendment and associated zoning standards, for three years with an option for renewal.

## **Site Context**

Based on the information provided by the applicant, a site visit on December 15, 2014 (please see "Appendix A – Site Photos"), and an aerial photo, the natural features on the subject lands include:

- a watercourse in the western portion of the subject lands;
- unevaluated wetlands in the north-eastern and western portions of the subject lands; and
- a wooded area in the southern portion of the subject lands.

The structures and uses of the subject lands include:

- a garage with secondary rental apartments, an additional residential structure utilized for office space, and a storage structure;
- outdoor storage; and
- roughly 50 parking spaces.

The subject lands appear to be surrounded by predominately agricultural uses.

#### Regional Municipality of York Official Plan

The subject lands are designated as "Agricultural Area" on Map 8: Agricultural and Rural Area, but are identified as "Regional Official Plan Amendment 3 Appeal Lands" currently under appeal as shown on Appendix 2B of the Modified York Region Official Plan (ROP) – 2010 June 20, 2013 Office Consolidation.

The subject lands are designated "Agricultural Policy Area" on Map 8: Agricultural and Rural Areas of the 1994 York ROP – 2010: June 20, 2013 Office Consolidation. As per Section 5.8.1 of the 1994 ROP, the primary use for the Agriculture Policy Area as shown on Map 6 will be farm and accessory uses. Section 5.8.2 states that farm-related uses will be permitted in the Agricultural Policy Area only where they are essential to the agricultural economy and cannot be located in hamlets, towns, villages, urban areas or in the Rural Policy Area. Further, Section 5.8.4 states that new commercial, industrial, institutional and recreational uses shall be directed to hamlets, villages, towns and urban areas.

#### City of Markham Official Plan

The subject lands are designated as A1 Agriculture on Schedule A – Land Use of the Town of Markham Official Plan (OP) (Revised 1987) As Amended – Office Consolidation July 2005 currently in effect. Section 3.7.2 a) of the OP states that where land is designated as Agriculture (1, 2 or 3) on Schedule A – Land Use, the primary and predominant use of the land shall be for farming activity.

Section 3.7.4 outlines the permitted uses on lands designated "Agriculture 1" as land uses related to and supportive of farming activity or the farming community, or compatible with farming activity subject to justification of such uses, and existing rural residential uses. Further, Section 3.7.3 f) of the OP states that no new industrial development shall be permitted. No form of open storage shall be permitted unless such storage is associated with a permitted farming activity and is located on the same farm unit on which the activity takes place.

#### City of Markham Zoning By-Law

The subject lands are zoned as RR2 Rural Residential which is intended for primarily single detached houses on large lots with private water and sewage servicing.

#### **Preliminary Identification of Issues:**

None

### Minister's Zoning Order

The subject lands are within MZO, Ontario Regulation 104/72, which protects for a possible federal airport. Land uses within the MZO are generally restricted to agricultural uses and accessory buildings and structures, including one single dwelling used in connection with each agricultural operation. A successful application to amend the MZO is required to permit the proposed use.

### Provincial Policy Statement, 2014

#### *Settlement Areas*

Section 1.1.3.1 of the Provincial Policy Statement (PPS) states that *settlement areas* shall be the focus of growth and development, and their vitality and regeneration shall be promoted. The subject lands are currently outside of the settlement area.

#### *Airports*

As per Section 1.6.9.1 of the PPS, planning for land uses in the vicinity of airports shall be undertaken so that their long-term operation and economic role is protected, and airports and sensitive land uses are appropriately designed, buffered and/or separated from each other.

Section 1.6.9.2 of the PPS states that airports shall be protected from incompatible land uses and development by:

- a) *prohibiting new residential development and other sensitive land uses in areas near airports above 30 Noise Exposure Forecast/Noise Exposure Protection (NEF/NEP);*
- b) *considering redevelopment of existing residential uses and other sensitive land uses or infilling of residential and other sensitive land uses in areas above 30 NEF/NEP only if it has been demonstrated that there will be no negative impacts on the long-term function of the airport; and*
- c) *discouraging land uses which may cause a potential aviation safety hazard.*

Based on a review of Transport Canada's NEF/NEP contour mapping with respect to the possible airport, the subject lands are not above the 30 NEF/NEP.

#### *Agriculture*

The PPS protects prime agricultural areas for long-term agricultural uses (Policy 2.3.1). In prime agricultural areas, permitted uses and activities are: agricultural uses, secondary uses and agriculture-related uses (Policy 2.3.3.1).

As per Section 2.3.5.1 c) of the PPS, planning authorities may only exclude land from prime agricultural areas for limited non-residential uses, provided that:

- 1. *the land does not comprise a specialty crop area;*
- 2. *there is demonstrated need within the planning horizon provided for in policy 1.1.2 for additional land to be designated to accommodate for the proposed use;*
- 3. *there are no reasonable alternative locations which avoid prime agricultural areas; and*
- 4. *there are no reasonable alternative locations in prime agricultural areas with lower priority agricultural lands.*

Further, impacts from any new or expanding non-agricultural uses on surrounding agricultural operations and lands should be mitigated to the extent feasible (Policy 2.3.5.2).

**Agency Consultation:**

The following agencies should be circulated:

- York Region;
- City of Markham;
- Transport Canada
- Ontario Ministry of Agriculture, Food and Rural Affairs;
- Toronto and Region Conservation Authority
- Ministry of Natural Resources and Forestry

The MZO Application includes the following:

- MZO Application form
- Sketch

As this is a preliminary review, additional concerns may be raised through agency comments or further review. Circulation of this application does not imply Ministry endorsement of the proposal.

**RECOMMENDATION:**

To circulate the application to the above noted agencies.

Prepared by:



Steven Barber  
Assistant Planner  
Municipal Services Office  
Central Region

Date: Feb 3, 2015

Approved by:



Caroline Samuel  
Senior Planner  
Municipal Services Office  
Central Region

Date: Feb 3, 2015

## Appendix A – Site Photos



On-site parking



Garage with secondary apartment and residential structure in use as offices



Outdoor storage



Outdoor storage



Shed / Storage Structure



Shed / Storage Structure  
Side View





Corporate Services

April 7, 2015

Ministry of Municipal Affairs and Housing  
 Municipal Services Office, Central Ontario  
 777 Bay Street, 13<sup>th</sup> Floor  
 Toronto, ON  
 M5G 2E5

Attention: Ms. Caroline Samuel

**RE: Application to Amend a Minister's Zoning Order**  
**Ontario Regulation 104/72**  
**Part of Lot 25, Concession 8**  
**10638 Ninth Line**  
**City of Markham**  
**MMAH File No: 19-MZOA-149342**

The following is in response to your request for comments regarding the above-noted application to amend the Ministers Zoning Order, Ontario Regulation 104/72 to permit a temporary industrial use (basement waterproofing and repair business) for three years with an option for renewal.

The subject lands are approximately 3.6 ha (8.9 acres) located on the west side of Ninth Line, south of Elgin Mills Road, municipally known as 10638 Ninth Line in the City of Markham. There are several natural features on the site including a woodland, unevaluated wetland and watercourse.

#### York Region Official Plan

The York Region Official Plan (YROP-2010) was modified and approved by the Minister of Municipal Affairs and Housing on September 7, 2010 and was subsequently appealed to the Ontario Municipal Board (OMB). As of March, 2015, a majority of the policies of this Plan have been approved by the OMB.

The Regional Official Plan identifies these lands on Map 1 – Regional Structure as possible future expansion to the Urban Area. The location of expansion to the Urban Area is currently under appeal as identified on Appendix 2B as 'Regional Official Plan Amendment 3 Appeal Lands'.

The lands are designated as 'Agricultural Area' on Map 8 – Agricultural and Rural Area and these policies related to this designation are also under appeal. The 1994 York Region Official Plan 2010 (June 20, 2013 Office Consolidation) (YROP-1994) designates the lands as 'Agricultural Policy Area' on Map 6 – Agriculture and Rural Area. The primary use for this designation in both Plans is for farm and accessory uses. The YROP-1994 indicates that new commercial, industrial, institutional and recreational uses are to be directed to hamlets, villages, towns and urban area. A development proposal for a non-farm land use in the 'Agricultural Policy Area' requires an amendment to the Regional Official Plan and would be evaluated in accordance with the Provincial Policy Statements.

The majority of the site is wooded and forms part of a larger 'Woodland' (approximately 6.25 acres) that extends west of the subject lands as identified on Map 5 – Woodlands. In addition, there is also a

watercourse in the western portion of the site and an unevaluated wetland on the property that similar to the woodland extends west of the property. The site is also located within a 'Greenlands System Vision' on Map 2 – Regional Greenlands System. The 'Greenland System Vision' recognizes the general location of corridors within and beyond the Region that will perform major linkage functions on a Regional scale to support the connectivity of the Regional Greenland System.

It is our understanding from correspondence received from the Toronto and Region's Conservation Authority (TRCA) (see attached), that it appears that significant alterations have occurred on the property in the past including the removal of portions of the woodlot and possible grading/vegetation removals partially within the wetland areas. No permit application was ever submitted for these works as required by Ontario Regulation 166/06 or Ontario Regulation 158. RYOP-2010 policies require that these features be properly evaluated and appropriate vegetation protection zones be provided to ensure these features are protected and enhanced where possible.

#### **Markham Official Plan**

Markham Official Plan (1987) designated the lands as 'Agriculture One' on Schedule A – Land Use Map. The 2013 Markham Official Plan, which was approved by the Region on June 12, 2014 and appealed to the Ontario Municipal Board, designated the lands 'Countryside' and 'Greenway System'. Both Plans require that these lands to be protected for agricultural uses and support farming activities. The proposed industrial use and associated open storage is not a permitted use.

#### **Summary**

The proposed amendment to the Ministers Zoning Order seeks to develop the site with a temporary industrial use with outside storage on lands designated agriculture with an option for renewal. There are a number of significant natural features (significant forest, unevaluated wetland, watercourse) on this property which must be protected. However, it appears that the applicant has altered the property by removing portions of the woodlot and grading and removing vegetation partially within the wetland areas without appropriate permits.

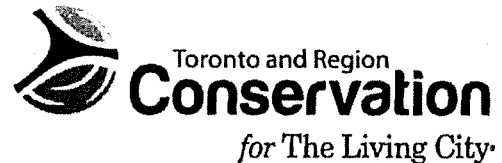
The primary use for this designation in both Plans is for farm and accessory uses. Regional staff are concerned that the use permission being requested through the proposed application could set a precedent for similar potential proposals elsewhere in the Region. The proposed use is not in keeping with the agricultural policies of the Regional Official Plan and Markham Official Plan. There are better suited sites within industrial parks in Markham that could accommodate this use. Based on the above, Regional staff are not supportive of the proposed temporary industrial use with outside storage on this property.

If you require further assistance, please contact Teema Kanji, Senior Planner at 905-830-4444, ext.71507 or by email at [teema.kanji@york.ca](mailto:teema.kanji@york.ca)

Regards,

  
Karen Whitney, MCIP, RPP  
Director of Community Planning and Development Services

C: Stephen Corr, City of Markham  
Anthony Sun, Toronto and Region Conservation Authority



March 23, 2015

CFN:

**BY EMAIL AND MAIL**

Steven Barber, Assistant Planner  
Ministry of Municipal Affairs and Housing  
Municipal Services Office – Central Ontario  
777 Bay Street  
Toronto, ON M5G 2E5

**Dear Mr. Barber:**

**Re: Application to amend Minister's Zoning Order, O. Reg 104/72  
10638 Ninth Line  
Part of Lot 25, Concession 8  
City of Markham  
MMAH File No.: 19-MZOA-149342**

Toronto and Region Conservation Authority (TRCA) staff have reviewed the above-noted application received March 3, 2015. It is our understanding that the purpose of the application is to permit a temporary industrial use (basement waterproofing and repair business) for three years with an option for renewal on the subject lands. It is also our understanding that this is an existing use and that no new development is proposed at this time.

Based upon our review of the subject property and the Review Memorandum prepared by the MMAH, we offer the following comments to submit as part of the ministry's review of the application:

We note that the subject property and the lands to the west contain an unevaluated wetland as identified by the Ministry of Natural Resources and Forestry (MNR). The property and the adjacent lands also contain a woodlot identified under the York Region Official Plan as a Woodland feature.

**Applicable TRCA Regulations and Policies to the site**

**Ontario Regulation 166/06**

Due to the presence of the wetland feature, the subject property is within a TRCA Regulated Area of the Rouge River watershed under Ontario Regulation 166/06 (Development, Interference with Wetlands and Alteration to Shorelines and Watercourses), as amended. Furthermore, as indicated in the MMAH Review Memorandum and aerial photography, there may be a watercourse along the western edge of the property or in close proximity of the property; however, field verification is required by TRCA staff to conclude if this natural feature is present.

In accordance with Ontario Regulation 166/06, a permit is required from the TRCA prior to any of the following works taking place:

- a) straightening, changing, diverting or interfering in any way with the existing channel of a river, creek, stream or watercourse, or for changing or interfering in any way with a wetland;
- b) development, if in the opinion of the Authority, the control of flooding, erosion, dynamic beaches or pollution or the conservation of land may be affected by the development.

Development is defined as:

- i. the construction, reconstruction, erection or placing of a building or structure of any kind,
- ii. any change to a building or structure that would have the effect of altering the use or potential use of the building or structure, increasing the size of the building or structure or increasing the number of dwelling units in the building or structure,
- iii. site grading,
- iv. the temporary or permanent placing, dumping or removal of any material, originating on the site or elsewhere.

#### **General Comments**

While TRCA staff note that no new works are proposed at this time as part of this application, based upon aerial photography between 2005 to 2010, it appears that significant alterations have occurred on the property in the past. These alterations include the removal of portions of the woodlot and possible grading / vegetation removals partially within the wetland areas.

A search of our records does not indicate that a permit application pursuant to Ontario Regulation 166/06 or Ontario Regulation 158 (the predecessor to O. Reg. 166/06) was submitted to TRCA for these works.

TRCA staff are also unsure if Region of York staff are aware of the partial removal of the woodlot and defer any comments relating to this matter to Regional staff.

By copy of this letter, the applicant / property owner is hereby advised that any future works (such as, but not limited to: expansion of the parking or outdoor storage area; construction, reconstruction or expansion of structures; and site grading works) on the subject property may be subject to a permit pursuant to Ontario Regulation 166/06.

#### **Municipal Temporary Use By-law**

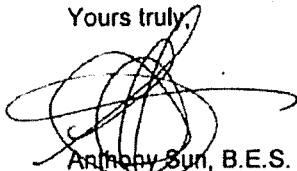
It is our understanding that the current municipal zoning may not allow for the existing / proposed use. Should a temporary use by-law be required from the City of Markham, we recommend that the limit of the wetland be staked by MNRF staff and the limit of the natural feature be established so that the natural heritage system can be placed into an appropriate category.

#### **Conclusions**

Given that no new structures, new grading works or changes in use are proposed, we have **no objection** to the application as proposed.

We trust this is of assistance. Should you have any further questions or comments, do not hesitate to contact the undersigned.

Yours truly,



Anthony Sun, B.E.S.  
Planner II

Planning and Development  
Tel: (416) 661-6600, Ext. 5724

cc: Dalen Sharp, Don Clarke Contracting (e-mail: dalen@clarkebasementsystems.com)  
Duncan MacAskill, York Region (e-mail: duncan.macaskill@york.ca)  
Sandra Malcic, York Region (e-mail: sandra.malcic@york.ca)  
Marg Wouters, City of Markham (e-mail: mwouters@markham.ca)  
Sally Campbell, City of Markham (e-mail: scampbell@markham.ca)

Ministry of Agriculture;  
Food and Rural Affairs

Ministère de l'Agriculture, de  
l'Alimentation et  
des Affaires rurales

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**POLICY DIVISION  
FOOD SAFETY & ENVIRONMENT POLICY BRANCH  
ENVIRONMENTAL & LAND USE POLICY UNIT**

March 17, 2015

*\*By E-mail Only\**

Attn: Steven Barber, Assistant Planner  
Ministry of Municipal Affairs and Housing  
Municipal Services Office – Central

MMAH File No.: 19-MZOA-149342  
Comment type: Concerns

**Re: Minister's Zoning Order Amendment for 10638 Ninth Line, Markham,  
basement waterproofing and repair business**

The Ontario Ministry of Agriculture, Food and Rural Affairs has received your request for comment on a Minister's Zoning Order Amendment (MZO) application for 10638 Ninth Line, City of Markham, York Region.

This application for MZO does not appear to be consistent with the 2014 Provincial Policy Statement (PPS) section 2.3.2 and 2.3.6.

To my knowledge, there is no dispute that the proposal is within a designated prime agricultural area as contemplated by PPS section 2.3.2. The existing basement waterproofing and repair business is not an agricultural use and does not qualify as an on-farm diversified use.

The 2014 PPS policies related to non-agricultural uses have changed. As per PPS section 2.3.6, non-agricultural uses that are proposed in a prime agricultural area may only be permitted within the prime agricultural area designation if said uses have met a number of tests (note that non-farm residential uses remain prohibited). No evidence has been provided that the use complies with the minimum distance separation formulae; that there is an identified need for additional land to accommodate the proposed use; and that alternative locations have been evaluated and there are no reasonable alternative locations which avoid prime agricultural areas (PPS 2.3.6.1.b). Furthermore, the applicants have not provided any discussion that we are yet aware of outlining how impacts from the non-agricultural use on surrounding agricultural operations and lands will be mitigated to the extent feasible (PPS 2.3.6.2).



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The PPS makes no distinction between temporary and permanent uses. Therefore, all of the tests above apply to the proposed MZOA, whether it is temporary or permanent. It would be reasonable to question whether the existing use is intended to be temporary, given that it appears to have already been operating on the site for some time and there is no plan included with the application for eventual relocation.

I trust that MMAH will be examining the other issues concerning the application's non-conformity with the applicable MZO, Ontario Regulation 104/72, which protects this area for a possible federal airport.

Sincerely,

A handwritten signature in cursive script, appearing to read "Arthur Churchyard".

Arthur Churchyard  
Rural Planner

Attachments

cc: David Cooper, Manager, Environmental & Land Use Policy Unit, OMAFRA,  
Guelph