

THOMSON ROGERS

LAWYERS

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June 9, 2014

VIA E-MAIL ONLY

Chair and Members of Council
Regional Municipality of York
Legal Department
P.O. Box 147
17250 Yonge Street
Newmarket, Ontario
L3Y 6Z1

Dear Sirs/Mesdames:

**2013 City of Markham Official Plan, Part I
Committee of the Whole, June 12, 2014
Our File No. 050917**

We are writing to you on behalf of Colebay Investments Inc., Highcove Investments Inc., Firwood Holdings Inc., Major McCowan Developments Limited, Summerlane Realty Corp., Brentwood Estates Inc., Markham MMM North Development Corp. and Markham MMM South Development Corp. all of whom own land in North Markham located in the concession bordered by Major MacKenzie Drive, Elgin Mills Road East, McCowan Road and Hwy 48. Many of our clients have been full participants in the Ontario Municipal Board proceeding dealing with the Region of York's Official Plan and the consultation process leading up to the adoption of the City of Markham's Official Plan. We have written to Markham Council on their behalf in connection with its proposed new Official Plan on October 8th, April 23rd and January 28, 2013 and September 24th and 25, 2012. A copy of our correspondence is attached for your information.

Council will know from our attached correspondence to Markham Council that our clients support the vision in Markham Staff's original Official Plan report which emphasises "building complete communities" and "increasing mobility/transit options by pursuing a transit culture." Unfortunately, the treatment of Markham's Future Urban Area in its proposed Official Plan and the Region of York's ROPA 3 boundary upon which it is based, do not implement that vision.

Our clients' primary concern with the recommendations before you is that the decision to approve Markham's Official Plan is premature given that the Future Urban Area Boundary set out in the City's Official Plan must conform with the Regional Official Plan and the ROPA 3 boundary. Currently both documents are in dispute as the Phase I decision of the Ontario Municipal Board is the subject of an application for leave to appeal to Divisional Court and the ROPA 3 boundary is the subject of a future hearing of the Ontario Municipal Board.

On review of the May 15, 2014 report of the Commissioner of Transportation and Community Planning concerning the above-captioned matter, our clients were pleased to see the analysis commencing at page 11 concerning the site specific employment conversion requests. Our clients strongly support Staff's proposed modifications to defer the site specific employment conversions to the next municipal comprehensive review. At that time, the amount and deployment of new growth will be tested against applicable Growth Plan and Provincial Policy Statement requirements.

However, our clients continue to be concerned with the matters raised in their earlier correspondence to Markham Council and note that these concerns have not been addressed in the proposed modifications. In particular, they are concerned that:

- The Official Plan fails to consider "transit first" alternatives to the Region's ROPA 3 boundary thereby foregoing the opportunity to create a dense mixed-use node located at the intersection of Major MacKenzie Drive and Hwy 48, and an integrated residential community in the Major MacKenzie Drive and Hwy 48 concession; all with easy access to the Stouffville GO line for enhanced commuting opportunities. Such a location offers the best opportunity to create a truly transit supportive urban community in Markham's future urban growth area.
- Policy 2.4.2 continues to require that 60% of all development be located within the built up area during the planned horizon. Intensification at this level precludes the City's ability to provide a full range of housing choices as required by Provincial policy;
- Policy 2.5 discusses Regional Centres, Regional Corridors/Key Development Areas, etc. We note that Hwy 48 in the vicinity of Mount Joy is only identified as a Local Corridor notwithstanding its close proximity to an important GO station and Major MacKenzie Drive which is identified as a Regional Rapid Transit Corridor in the Regional Official Plan. The potential of the Mount Joy

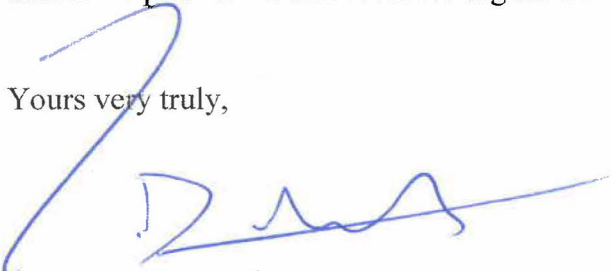
GO Station to provide transit relief suggests the area be identified as a Key Development Area;

- Policy 7.1 deals with transportation systems. We note Policy 7.1.7.5 which makes reference to the introduction of new GO rail passenger service at the east Markham mobility hub. The potential of Mount Joy Station to provide transit relief ought to be recognized. As well, a potential future GO Station along the Stouffville line at Major MacKenzie ought to be planned for and shown on Map 10;
- In recognition of the foregoing, the Markham Structure Plan Map 1 ought to be revised to include a potential Secondary Hub star symbol on the north side of Major MacKenzie east of Hwy 48, and a proposed GO station symbol should be added on the north side of Major MacKenzie east of Hwy 48;
- Similarly, Map 2 – Centres and Corridors in Transit Network, ought to be amended to identify a potential Secondary Hub star symbol on the north side of Major MacKenzie, east of Hwy 48. As well, the lands along Markham Road near Mount Joy Station should be identified as a Key Development Area not as a Local Corridor;
- The last paragraph of Policy 7.1.8 as modified suggests, with reference to noise exposure forecasts, that the forecasts relate to the downsized airport currently being planned by the Federal government. Council should be aware that the Minister's Zoning Order, as it applies to north Markham is currently before the Ontario Municipal Board and that as a result of that process some or all of the MZO provisions related to north Markham may be repealed and the noise forecasts reduced. As a result, it is our view that this policy ought to be deferred;
- In addition, Policy 7.1.8 as modified does not conform with Policy 7.2.90 of the Region's Official Plan. That policy requires "the significant majority of the subject lands (Buttonville Airport) shall be retained for business park use, and the balance for a mix of urban uses." The proposed modification to Markham's Policy 7.18 speaks to an expectation that the site will be redeveloped to "accommodate primarily employment/generating activities". In our view, such a policy is at odds with the Regional Official Plan and may result in a diminution of the business park intention already established in the Region's Official Plan; and

- Policy 8.12.1.4 as modified refers to the number of concession blocks located within the future urban area. Given that the location of the future urban area is currently before the Ontario Municipal Board, such a description is inappropriate and in fact, may be wrong. It is our view that this provision ought to be deferred pending a decision on ROPA 3 by the Ontario Municipal Board. And,
- Of course, all maps will have to be revised to conform with the OMB's ROPA 3 Decision when it is issued.

Given the importance of the City of Markham's Official Plan to the Region's development goals we submit that the appropriate course of action is to ensure that the above matters are addressed prior to Council considering the Markham Official Plan for approval.

Yours very truly,



Stephen J. D'Agostino
Stephen Joseph D'Agostino Law Professional Corporation

SJD/pgf
Enclosures

c. Client

THOMSON ROGERS

LAWYERS

Stephen J. D'Agostino
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September 24, 2012

Delivered by E-Mail

Mayor & Members of Council
Development Services Committee
City of Markham
101 Town Centre Boulevard
Markham, Ontario
L3R 9W3

Dear Sirs/Mesdames:

September 25 Development Services Committee Item 5 & 10, City of Markham Draft Official Plan Our File No. 050917

We are counsel for Colebay Investments Inc., Highcove Investments Inc., Firwood Holdings Inc., Major McCowan Developments Limited and Summerlane Realty Corp. We are also authorized to write to you on behalf of Fairgreen Sod Farms and State Developments. For convenience, all of the foregoing shall be referred to as the "McCowan-48 Owners". The McCowan-48 Owners own land in North Markham located in the concession bordered by Major MacKenzie Drive, Elgin Mills Road East, McCowan Road and HWY 48 ("McCowan-48 Concession").

The McCowan-48 Owners support the vision in staff's report¹ that emphasizes "building complete communities" and "increasing mobility/transit options by pursuing a transit culture." Unfortunately, the Region of York's new Official Plan, including the ROPA 3 boundary does not implement that vision.

Staff's presentation concerning Markham's Transportation Strategic Plan² concludes that "bold solutions are required to address existing and future transportation needs." The

¹ Item 10 on the Sept 25, 2012 Development Services Committee Agenda.

² Item 2 on the Sept 25, 2012 Development Services Committee Agenda.

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upcoming Ontario Municipal Board hearing concerning the Region's Official Plan will consider "transit first" alternatives to the Region's ROPA 3 boundary. If approved, these alternative plans will permit the creation of a dense mixed-use node located at the intersection of two major transit corridors (Major Mackenzie Drive and Markham Road) and an integrated residential community in the McCowan-48 Concession; all with easy access to the Stouffville GO line. Such a location offers the best opportunity to create a truly transit supportive urban community in Markham's future urban growth area.

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The City's Draft Official Plan must conform to the Region's Official Plan and the ROPA 3 boundary once they have been approved by the Ontario Municipal Board. Until then, we believe that consideration of the Future Urban Area lands, based upon the Region's proposed boundary is premature. Consideration of the Future Urban lands could also undermine opportunities to implement the vision embodied in staff's report. For that reason we request that Council defer consideration of the Future Urban Area and Future Urban Area polices in this new draft until such time as the Regional Official Plan and ROPA 3 have been approved by the Ontario Municipal Board.

The McCowan-48 Owners look forward to working with your staff and Council during this important consultation process.

Yours very truly,

Stephen J. D'Agostino
Stephen Joseph D'Agostino Law Professional Corporation

SJD/pgf

THOMSON ROGERS

LAWYERS

Stephen J. D'Agostino
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SENT BY EMAIL ONLY

September 25, 2012

Mayor & Members of Council
Development Services Committee
City of Markham
101 Town Centre Boulevard
Markham, Ontario
L3R 9W3

Dear Sirs/Mesdames:

**September 25 Development Services Committee
Item 5 & 10, City of Markham Draft Official Plan
Our File No. 050917**

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We wrote to you yesterday on behalf of the McCowan-48 Owners who include Colebay Investments Inc., Highcove Investments Inc., Firwood Holdings Inc., Major McCowan Developments Limited, Summerlane Realty Corp., Fairgreen Sod Farms and State Developments requesting that Council defer consideration of the Future Urban Area and Future Urban Area polices in the new draft Official Plan until such time as the Regional Official Plan and ROPA 3 have been approved by the Ontario Municipal Board. A copy of our letter is attached for your convenience.

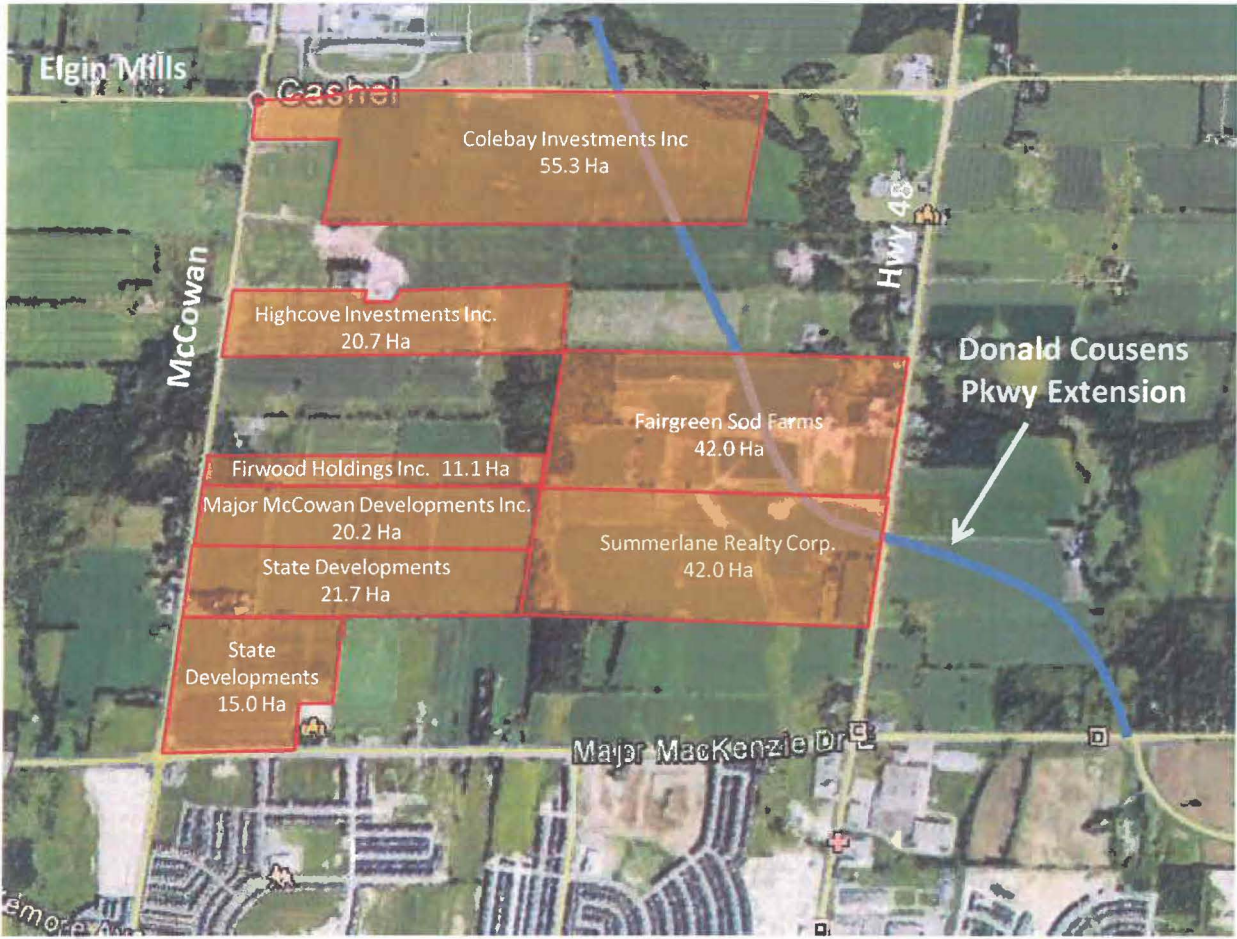
We have prepared a map showing the location of the McCowan-48 Owners lands for Council's information. A copy of that map is also attached.

Yours very truly,

Stephen J. D'Agostino
Stephen Joseph D'Agostino Law Professional Corporation

SJD/sjd

McCowan-48 Land Ownership



Stephen J. D'Agostino
416-868-3126
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January 28, 2013

VIA E-MAIL

Mayor & Members of Council
Development Services Committee
City of Markham
101 Town Centre Boulevard
Markham, Ontario
L3R 9W3

Dear Sirs/Mesdames:

Public Meeting – CF/OT Buttonville Properties LP
Development Services Committee: January 28, 2012
Our File No. 050917

We are counsel for Colebay Investments Inc., Highcove Investments Inc., Firwood Holdings Inc., Major McCowan Developments Limited and Summerlane Realty Corp. (“CHFMS”). CHFMS owns land in north Markham located in the concession bordered by Major MacKenzie Drive, Elgin Mills Road East, McCowan Road and HWY 48. CHFMS has been a long standing participant in the Region of York’s Official Plan process and has previously written to Council expressing concern with Markham’s draft Official Plan. Council will recall that the Region’s Official Plan is currently before the Ontario Municipal Board.

The Regional Official Plan contains site specific policies concerning the Buttonville Municipal Airport land. According to the Official Plan, “the re-use of the Airport is intended to generate a range of quality employment opportunities and expand upon the number of jobs planned for the site.”¹ The Official Plan does not contemplate significant residential or retail uses.

The subject land is designated Industrial on Schedule “A” Land Use to Markham’s current Official Plan. The uses described in the Notice of Public Meeting and staff’s June 12, 2012 report are not contemplated by the Industrial designation. The proposal clearly contains a significant conversion of employment land to non-employment uses.

¹ Region of York Official Plan as partially approved by the Ontario Municipal Board, January 14, 2013, Section 7.2.89

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The *Planning Act* requires that Council's decisions be consistent with the Provincial Policy Statement. Section 1.3.2 of the PPS requires that the conversion of land within employment areas to non-employment uses only occur through a comprehensive review and, only when it has been demonstrated that the land is not required for employment purposes over the long term. The Growth Plan, to which Council's decisions must conform, contains a similar requirement in Section 2.2.6.5. In addition, the Growth Plan requires consideration of the need for the conversion, the municipality's ability to meet its employment forecast and the infrastructure available to accommodate the proposal.

In our view, the proposal is a conversion of employment land to non-employment purposes contrary to the applicable PPS and Growth Plan polices and Policy 4.3.6.8 of the Region of York Official Plan notwithstanding Policy 7.2.88. There is no evidence on the public record that the Official Plan requirements with respect to conversions of employment land have been complied with. As such, consideration of this application is premature.

We also note the subject land is proposed to be designated Business Park in Markham's proposed Official Plan. Markham Council must ensure that the new designation does not amount to a conversion contrary to the requirements of the Region of York's Official Plan, the PPS and Growth Plan without the necessary comprehensive review.

We reserve our right to provide further submissions once the comprehensive review is on the public record. Until that time, it is our view that consideration of this proposal is premature and we request that Council defer consideration of the application until the required studies have been completed and made public.

CHFMS looks forward to working with your Staff and Council during this important consultation process.

Yours very truly,

Stephen J. D'Agostino

Stephen Joseph D'Agostino Law Professional Corporation

SJD/pgf

c. Client

COPY

Stephen J. D'Agostino
416-868-3126
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April 23, 2013

VIA E-MAIL ONLY

Mayor & Members of Council
Development Services Committee
City of Markham
101 Town Centre Boulevard
Markham, Ontario
L3R 9W3

C

Dear Sirs/Mesdames:

O

**Markham Draft Official Plan
April 23 Development Services Committee
Our File No. 050917**

P

We are writing to you on behalf of Colebay Investments Inc., Highcove Investments Inc., Firwood Holdings Inc., Major McCowan Developments Limited, Summerlane Realty Corp., Brentwood Estates Inc., Markham MMM North Development Corp. and Markham MMM South Development Corp. ("CHFMSB"). We wrote to Council in connection with the above-captioned matter on September 24th and September 25th, 2012. We also wrote to Council in connection with the Buttonville conversion on January 28, 2013. A copy of those letters are attached for your convenience.

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Since our submission to Council, we have had an opportunity to review the proposed draft Official Plan. In addition to our concerns outlined in our previous correspondence, including our concern that adoption of the plan is premature until such time as the Ontario Municipal Board has approved ROPA 3 and its boundary, we wish to offer our further concerns as follows:

- Policy 2.4.2 requires that 60% of all development be located within the built up area during the planned horizon. In our view, intensification at this level precludes the City's ability to provide a full range of housing choices as required by Provincial Policy;

- Policy 2.5 discusses Regional Centres, Regional Corridors/Key Development Areas, etc. We note that HWY 48 in the vicinity of Mt. Joy is only identified as a Local Corridor notwithstanding its close proximity to an important GO Station and Major MacKenzie Drive which is identified as a Regional Rapid Transit Corridor in the Region's Official Plan. The potential of the Mt. Joy GO Station to provide transit relief suggests that it should be identified as a Key Development Area;
- Policy 7.1 deals with transportation systems. We note Policy 7.1.7.5 which makes reference to the introduction of new GO rail passenger service at the east Markham Mobility Hub. The potential of Mt. Joy Station to provide transit relief ought to be recognized. As well, a potential future GO Station along the future Stouffville line at Major MacKenzie ought to be planned for and shown on Map 10;
- In recognition of the foregoing, the Markham Structure Map 1 ought to be revised to include a Potential Secondary Hub star symbol on the north side of Major MacKenzie east of HWY 48, and a proposed GO Station symbol should be added on the north side of Major MacKenzie east of HWY 48;
- Similarly, Map 2 – Centres and Corridors in Transit Network, ought to be amended to identify a Potential Secondary Hub star symbol on the north side of Major MacKenzie, east of HWY 48. As well, the lands along Markham Road near Mt. Joy station should be identified as a Key Development Area not as a Local Corridor; and
- Lastly, all the maps will have to be revised to conform to the OMB's ROPA 3 decision.

CHFMSB looks forward to working with your Staff and Council during this important consultation process.

Yours very truly,

Stephen J. D'Agostino
Stephen Joseph D'Agostino Law Professional Corporation

SJD/pgf
Attachments
c. Client

Stephen J. D'Agostino
416-868-3126
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October 8, 2013

VIA E-MAIL ONLY

Mayor & Members of Council
City of Markham
101 Town Centre Boulevard
Markham, Ontario
L3R 9W3

Dear Sirs/Mesdames:

Council Meeting October 8, 2013
Future Urban Area Studies – Report No. 40 – Development Services Committee
Item 6(c), (2) and (3),
Our File No. 050917

We are writing to you on behalf of Colebay Investments Inc., Highcove Investments Inc., Firwood Holdings Inc., Major McCowan Developments Limited, Summerlane Realty Corp., Brentwood Estates Inc., Markham MMM North Development Corp. and Markham MMM South Development Corp. all of whom own land in North Markham located in the concession bordered by Major MacKenzie Drive, Elgin Mills Road East, McCowan Road and HWY 48. We wrote to Council in connection with growth matters in Markham on September 24 and 25, 2012, and January 28 and April 23, 2013.

Council knows from our previous correspondence that our clients support the vision in Staff's original Official Plan Report that emphasizes "building complete communities" and "increasing mobility/transit options by pursuing a transit culture." Unfortunately, the Region of York's new Official Plan, including the ROPA 3 boundary, currently before the Ontario Municipal Board, does not implement that vision. That is why we are asking Council to take a more comprehensive view of the Future Urban Area servicing and subwatershed studies on today's agenda.

Given that the Future Urban Area Boundary set out in the City's Official Plan must conform to the ROPA 3 boundary, and that the boundary is in dispute before the Ontario

Municipal Board, we believe that it is inappropriate to risk time and money on studies which have been limited to the disputed area.

In addition, it is clear from the Province's Growth Plan requirements for the Region of York, up to 2036, that a substantial portion of the Whitebelt in Markham will be designated urban in the near future. The Region will begin its comprehensive review for the 2016-2036 planning period shortly.

C Given that Markham's Whitebelt area is easily defined by the urban area to the South and West, the Greenbelt boundary to the East and the municipal boundary to the North, identifying the long term study area at this point is a simple task.

O Extending the Future Urban Area studies to include the Whitebelt ensures that planning for land use and infrastructure is not done on a piece-meal basis but rather is undertaken comprehensively. We believe that comprehensive planning for the needs of future development by undertaking the subwatershed and servicing studies for the Whitebelt area now will result in a better, more cost efficient and environmentally sustainable solution for the City and its residents. Such an approach would have the advantage of:

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- Ensuring that storm water works, planned on a watershed basis, are designed comprehensively to avoid costs being thrown away in the future by failure to properly size storm water facilities taking into account development likely to occur in the 2036 time period. As well, comprehensive storm water design ensures that facilities will be located where they are most advantageous to the local environment;
 - Allowing the environment, and environmental protection features to be planned comprehensively including key linkages throughout the Whitebelt and connections to the Rouge Park;
 - Designing transportation works and transit accessibility that leverage the Don Cousens Parkway and is focused on the Whitchurch-Stouffville GO line in the most efficient way. The Don Cousens Parkway is a major component in the Whitebelt beyond the current ROPA 3 boundary. Its routing has not yet been determined West of Highway 48. As a result, associated road and transit linkages that connect to Don Cousens Parkway cannot be properly planned which will lead to inevitable "shoe horning" in the future. A comprehensive transportation plan ought to take into account both the future location of the Don Cousens Parkway as well as the development of appropriate linkages to the Whitchurch-Stouffville Go line;

- Leveraging efficiencies in the McCowan trunk sewer that will ultimately be required for the build out of the Whitebelt. Undertaking that study now could permit upstream alignments that minimize long term costs to both the municipality and land owners. Council should be aware that our request is consistent with the Region of York's long-term planning for the York Durham sewage system which includes the location of a connection point and preliminary planning for the North Markham collector sewer on McCowan. In our submission, the Town should follow a similar course of action to ensure the most feasible and long term sustainable servicing solution is provided; and
- Decisions with respect to urban structure can be taken into account having regard for significant environmental and transit goals already set out in the City's draft Official Plan.

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O

As a result of the foregoing, we request that Council direct staff to bring the above captioned reports back for Council's consideration based on a study area that includes the Whitebelt beyond the disputed ROPA 3 boundary.

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Our clients look forward to working with you and your Staff with respect to the foregoing.

Yours very truly,

Y

Stephen J. D'Agostino
Stephen Joseph D'Agostino Law Professional Corporation

SJD/pgf

c. Clients