

**ONTARIO MUNICIPAL BOARD**

**PL101128**

**IN THE MATTER OF Subsections 17(44.1) and 17(44.2) of the *Planning Act*,  
R.S.O. 1990, c.P.13, as amended**

Subject: Party Status - Proposed Official Plan for the Regional  
Municipality of York

Municipality: Regional Municipality of York

O.M.B. Case No.: PL101128

O.M.B. File No.: PL101128

**NOTICE OF MOTION**

**MOTION FOR PARTY STATUS PURSUANT TO SECTIONS 17(44.1) and 17(44.2)  
OF THE *PLANNING ACT***

The Huron-Wendat Nation ("HWN") will make a motion to the Ontario Municipal Board ("Board") on Tuesday, July 19, 2011 at 10:30 am, in the Seminar Room, Region of York Administrative Building, located at 17250 Yonge Street, Newmarket, Ontario. The estimated time for this motion is 1 hour.

**THE MOTION IS FOR:**

- (a) An Order granting party status to the Huron-Wendat Nation in the appeal against the York Region Official Plan 2010 (File No.: PL101128);

(b) An order that the Board will state a case for opinion of the Divisional Court pursuant to s.94(1) of the *Ontario Municipal Board Act*, R.S.O. 1990, Chapter O.28 dealing with the question of the constitutionality of the *Planning Act* regulations, specifically Ontario Regulations 544/06, 545/06 and 543/06; and

(c) Such further or other relief as the Board deems appropriate.

**THE GROUNDS FOR THE MOTION ARE:**

**Background**

1. On December 16, 2009 the Regional Municipality of York (the "Region") adopted the York Region Official Plan 2010 ("ROP 2010").
2. Prior to its adoption, the Huron-Wendat Nation was sent correspondence from the Region and the HWN did attend a meeting for First Nations in September 2009 in which the HWN gave input on the ROP 2010.
3. The input given by the Huron-Wendat Nation at the September 2009 meeting is acknowledged in the "Notice of Motion – Motion to Determine the Status of Certain Stakeholders to Appeal Under the Planning Act Section 17(36)" of the Region received by the HWN on May 20, 2011 by email.
4. ROP 2010 was approved by the Ministry of Municipal Affairs and Housing on September 7, 2010.
5. Counsel for the HWN, David Donnelly and Leemor Valin, attended the first pre-hearing conference for the appeal of the ROP 2010 (File No.: P1101128) on May 2, 2011 and registered as a party on that date.

6. On May 9, 2011, the HWN submitted a formal request for party status to the Region stating that the HWN would be sheltering under an already existing appeal of s. 3.4 of the ROP 2010, specifically sections 3.4.11 and 3.4.14.
7. On May 18, 2011, the Region wrote a letter to the HWN denying their consent to the HWN's party status request. The Grand Chief of the Huron-Wendat Nation, Konrad Sioui, has written to the Region expressing the Nation's disbelief at this denial.
8. The HWN is now bringing this motion under sections 17(44.1) and 17(44.2) seeking party status in this appeal of the ROP 2010.

**Granting Party Status under Sections 17(44.1) and 17(44.2) of the Planning Act**

9. Section 17(44.1) of the *Planning Act* allows for "a person or public body who satisfies one of the conditions set out in subsection (44.2)" to appeal an official plan of a municipality.
10. The conditions set out in section 17(44.2) are:
  - 1) Before the plan was adopted, the person or public body made oral submissions at a public meeting or written submissions to the council.
  - 2) The Municipal Board is of the opinion that there are reasonable grounds to add the person or public body as a party.
11. The HWN submit that they have fulfilled both conditions set out in section 17(44.2) and should be granted party status in this appeal accordingly.
12. The HWN have attended consultations with the Region throughout the ROP 2010 process; the policies appealed by the HWN and commercial

developers have a direct impact on the interests of the HWN and other First Nations.

**The HWN Made Submissions to the Region before the Plan was Adopted**

13. As stated earlier, the HWN were involved in some consultation with the Region before the ROP 2010 was adopted, specifically, the HWN attended a meeting in September 2009 with the Region regarding the ROP 2010 and gave their input at that time.
14. As well, the HWN sent a letter dated June 16, 2010 to Barbara Jeffrey, Manager of the Land Use Policy and Environment Department of the Region, explaining some of the outstanding issues the HWN had with the ROP 2010.
15. Both the meeting the HWN attended in September of 2009, and the June 16, 2010 letter occurred before the ROP 2010 was approved on September 7, 2010.

**There are Reasonable Grounds for the Board to add the HWN as a Party to the Appeal**

16. It is reasonable for the HWN to be granted party status in this appeal
17. First and foremost, the HWN is a First Nation that is directly affected by development in the Region.
18. The HWN have written several letters to staff and Council members in the Region as well as in the City of Vaughan and the Province of Ontario outlining the history of the HWN in the area of York Region.
19. In addition, York Region has permitted dozens or possibly hundreds of First Nations' sites to be destroyed by development over the course of the last

several decades. It is time that the Region has an official plan that prohibits this destruction.

20. The Region takes the position that policy change concerning protection of First Nations' sites should occur without the HWN as part of the appeal of their official plan.
21. Thousands of HWN sites have been dug up in southern Ontario over the past century. Many more sites are being found today, the majority of which are being found in the Region of York, including the internationally significant village site of Skandatut, located in the City of Vaughan.
22. The HWN has had to continuously fight to save its sacred burial grounds (ossuaries) as was done in the case of the Teston Road ossuary, located in the City of Vaughan, and to make sure it is consulted and accommodated when it comes to archaeological fieldwork on its significant village sites.
23. The Boyd Park HWN village site was destroyed by the Region to permit a municipal water pumping station, without Notice to the HWN.
24. The City of Vaughan and the Region permitted the re-designation of the Skandatut site, an internationally significant cultural heritage site, to allow for development without Notice to the HWN.
25. The Region did nothing to stop the scraping of the Teston Road village site in September, 2010.
26. The HWN has a strong interest in the outcome of the ROP 2010, especially as it pertains to Section 3.4 Cultural Heritage, and should be granted party status due to their long standing historical connection to the York Region area and the constitutional duty to consult First Nations where their

interests may be threatened [*Haida Nation v. British Columbia (Minister of Forests)* 2004 SCC 73].

### **HWN to Appeal Section 3.4 of the ROP 2010**

27. The HWN are looking to shelter under the appeal of section 3.4 Cultural Heritage of the ROP 2010. This section of the ROP 2010 deals primarily with First Nations' cultural heritage sites.
28. Contrary to the submission of the Region in their Notice of Motion sent on May 20, 2011, paragraph 38(c), which states:

The Huron-Wendat Nation has, based on the Region's understanding of its concerns, not identified issues with the ROP – 2010 that are related to issues under appeal by other proper appellants. Accordingly to grant party status to the Huron-Wendat Nation would expand the appeals beyond the already numerous issues before the Board.
29. The HWN are not identifying issues that would “expand the appeals beyond the already numerous issues before the Board”.
30. The HWN are asking to shelter under the already existing appeal of sections 3.4.11 and 3.4.14 of the ROP 2010 by the following parties: North Markham Landowners Group; Block 27 Landowners Group Inc.; Helmhorst Investments Ltd.; and Dorzil Developments (Bayview) Ltd.
31. These appeals have been listed as issues on the Issue Matrix, now known as Exhibit 4 in this appeal.
32. The HWN believe that the cultural heritage policies described in section 3.4 do not protect significant cultural heritage sites and archaeological

resources, as the section does not address the issue of Notice to First Nations when a development is proposed.

33. As an example of the need for the HWN appeal, the HWN are generally supportive of the City of Vaughan Official Plan policies, which are inconsistent with the ROP 2010.
34. Protection of First Nations' cultural heritage resources cannot be dealt with piece-meal by lower- and upper-tier municipalities, there must be consistency within the entire province.
35. As well, section 3.4 does not have any policies related to enforceability of the policies in the section related to preservation and protection of cultural heritage resources.

#### **Unconstitutionality of ROP 2010 and the *Planning Act***

36. The HWN is also seeking party status in order to raise issues related to the implementation of the ROP 2010 as a whole.
37. Implementation of the ROP 2010 as it stands relies in part on *Planning Act* regulations 543/06, 544/06 and 545/06, which do not provide Notice to interested or culturally affiliated First Nations when applications for development are filed, or when municipal official plans are in the process of approval.
38. The only provision for Notice to a First Nation are for those First Nations that are located 1 kilometre from the development project or from where the plan is to apply.
39. The HWN's Reserve is located in Quebec; therefore, although the majority of aboriginal cultural heritage sites found in York Region are associated

solely with the HWN, the HWN will never get Notice under the *Planning Act*, or the ROP 2010.

40. These regulations are obviously unconstitutional and do not comply with the Supreme Court of Canada's requirement to consult First Nations when there is potential for their interests to be impacted.

41. As stated in *Haida Nation v. British Columbia (Minister of Forests)* 2004 SCC 73:

But, when precisely does a duty to consult arise? The foundation of the duty in the Crown's honour and the goal of reconciliation suggest that the duty arises when the Crown has knowledge, real or constructive, of the potential existence of the Aboriginal right or title and contemplates conduct that might adversely affect it.

42. The HWN has never and will never receive Notice that sites of cultural significance to the HWN are being destroyed, or scheduled for development, under the existing policies under the *Planning Act* and the ROP 2010.

43. The duty to consult obligation is not limited to the federal or provincial governments, but also extends to third parties to whom procedural aspects of the Crown duty are delegated, which can include municipalities [*Haida Nation v. British Columbia (Minister of Forests)* 2004 SCC 73, para. 53]

44. The Ministry of Municipal Affairs and Housing's position is that the duty to consult First Nations applies to municipalities in Ontario in some circumstances, specifically where it involves the following:

- Land-use planning and development processes.



- Policy development and implementation.
- Preparation of archaeological master plans.
- Infrastructure planning and environmental assessment processes.
- Proposed changes to municipal boundaries.
- Policies related to cultural protection and development, i.e., protection of archaeological and burial sites.

[Ministry of Municipal Affairs and Housing, *Municipal-Aboriginal Relationships: Case Studies*, (Queens Printer for Ontario, 2009)]

45. Therefore, as a party to this appeal of the ROP 2010, the HWN is seeking that the Board refer the question of the constitutionality of the *Planning Act* and the ROP 2010 to the Divisional Court pursuant to s. 94(1) of the *Ontario Municipal Board Act*.

46. Counsel to the HWN have clear instructions to proceed to make the Region require all future official plan amendment and plan of sub-division applicants to comply with the Constitution of Canada. Specifically, section 8.1(3) of the approved YROP states:

3. To engage, consult and partner, as appropriate, with First Nations and Métis Nation communities when considering planning applications and studies that may affect their interests.

The rest of the document is silent on how this engagement occurs, defaulting to the archaic policy of only requiring Notice if a Reserve is nearby.

47. The ROP 2010 only promises meaningful engagement, and must be appealed to amend the section by adding the following:

Section 8.3: It is the policy of Council:

To work with communities, agencies, local municipalities and the Province to better co-ordinate the planning review process by such

measures as engaging stakeholders early in the process, eliminating duplication, co-ordinating reviews, simplifying procedures and resolving conflicts, **and to require statutory Notice under the Planning Act for all development applications affecting First Nations interests** [bolded words our addition].

48. The hearing of the appeal of the ROP 2010 is not anticipated until June 2012 at the earliest. This long lead time is sufficient notice to other Parties of the HWN interest and issues.

#### **Legal Authority to State a Case: Legislation and Case Law**

49. Section 94(1) of the *Ontario Municipal Board Act* specifically allows:

##### Stating Case for opinion of Divisional Court

The Board may, at the request of the Lieutenant Governor in Council, or of its own motion, or upon the application of any party, and upon such security being given as it directs, state a case in writing for the opinion of the Divisional Court upon any question that, in the opinion of the Board, is a question of law.

50. In *1373377 Ontario Ltd. V. Ajax (Town)* [2002] O.M.B.D. No. 810, it was determined that the Board will often agree to state a case when, "... the underlying issue is usually a very distinct question of law, best determined by the courts, to assist the Boards in determining the matters before it".
51. In *RE Ellice (Township)* [1995] O.J. No. 4983 (Ont. Div. Ct.), the court opined on the constitutional validity of by-laws.
52. The constitutional validity of Ontario Regulations 544/06, 543/06 and 545/06 of the *Planning Act* requires an analysis of Section 35 of the Canadian Constitution and its application to the rights of First Nations. This

question of law is clearly not within the forum and scope of the expertise of the Board as the Board's jurisdiction is limited to questions of law and fact that falls under the *Ontario Municipal Board Act*, or conferred by any other general or special Act [*Ontario Municipal Board Act*, Section 36].

53. The constitutional question proffered to the Board, is one that is very distinct and involves a judicial opinion on the constitutional validity of specific regulations within *Planning Act*.

**THE FOLLOWING DOCUMENTS WILL BE USED AT THE HEARING OF THE MOTION:**

- (a) Letter from David Donnelly to Stephen Waqué dated May 9, 2011;
- (b) Letter from Stephen Waqué to David Donnelly dated May 18, 2011;
- (c) Letter from David Donnelly to Barbara Jeffrey dated June 16, 2010;
- (d) Notice of Motion – Motion to Determine the Status of Certain Stakeholders to Appeal Under the Planning Act Section 17(36), of the Region of York sent May 20, 2011;
- (e) Letter from Grand Chief Konrad Sioui of the HWN to The Honourable Dalton McGuinty, Premier of Ontario dated March 17, 2009;
- (f) Letter from Grand Chief Konrad Sioui to Regional Chair Bill Fisch (also sent to Stephen Waqué) dated June 27, 2011; and
- (g) Such further or other material as counsel may advise and the Board permit.

**DONNELLY LAW**

David Donnelly

276 Carlaw Ave, Suite 203

Toronto, Ontario M4M 3L1

LSUC#:46236J

Tel: 416-722-0220

Fax: 416-572-0465

Solicitors for the Huron-Wendat  
Nation

**TO: BORDEN LADNER GERVAIS LLP**

Lawyers, Patent & Trade-mark Agents

Scotia Plaza, 40 King St. W., Suite 4400

Toronto, Ontario M5H 3Y4

Stephen Waqué

Tel: 416-367-6275

Fax: 416-361-2708

David Klacko

Tel: 416-367-6352

Fax: 416-361-2432

Solicitors for York Region

**AND TO: ONTARIO MUNICIPAL BOARD**

655 Bay Street, Suite 1500

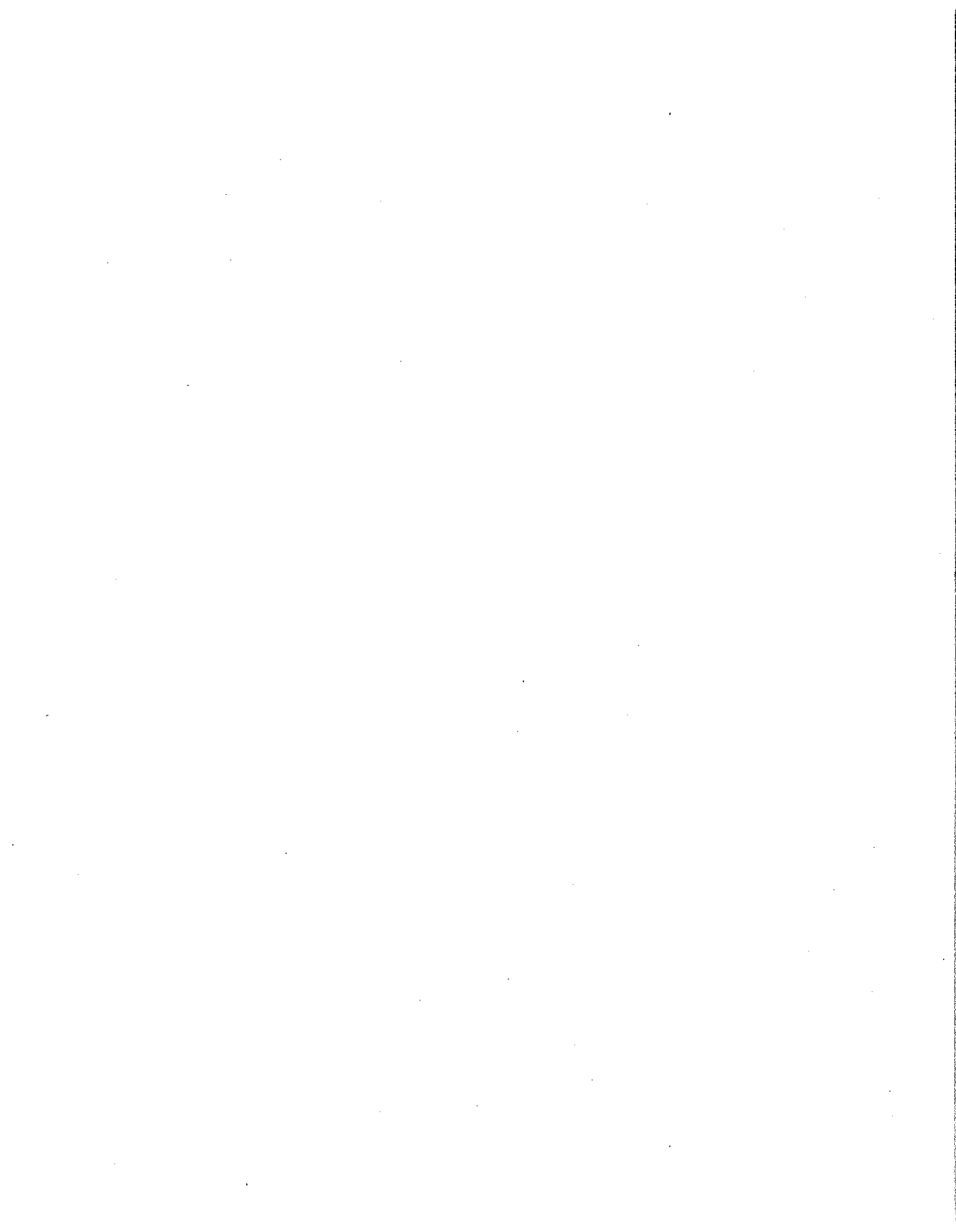
Toronto, ON M5G 1E5

Tome Kondinski

Tel: 326-6799

Fax: 326-5370

**AND TO: All Parties to OMB Case No. PL101128**





May 9, 2011

Stephen Waque  
Borden Ladner Gervais  
Socita Plaza, 44<sup>th</sup> Floor  
40 King Street West  
Toronto, ON M5H 3Y4

Dear Mr. Waque,

**Re: Request for Party Status in OMB Appeal PL101128 (York Region Official Plan 2010)**

Further to the Pre-hearing conference held on May 2, 2011, the Huron-Wendat Nation ("HWN"), as represented by Mr. David Donnelly of Donnelly Law, is seeking to notify the Parties of their request for Party Status in the matter of subsections 17(36) of the *Planning Act* (York Region Official Plan – 2010) and 17(24) of the *Planning Act* (Amendments 1, 2 and 3); OMB Case Numbers: PL101128; PL101233; PL101237; PL101238.

The Huron-Wendat Nation is appealing Section 3.4 of the York Region Official Plan, "Cultural Heritage". This issue has already been identified in the Issue Matrix (Exhibit 4) as being appealed by the North Markham Landowners Group, Block 27 Landowners Group Inc., Helmhorst Investments Ltd, and Dorzil Developments (Bayview) Ltd. The specific sections being appealed are s.3.4.11 and s.3.4.14.

The Huron-Wendat Nation is also seeking Party Status in order to raise issues related to the implementation of the Official Plan as whole. Implementation of the Official Plan as it stands relies in part on *Planning Act* Regulations 543/06 and 544/06, which do not provide notice to interested or associated First Nations when development applications are filed, unless the First Nation has a Reserve located 1 kilometre from the development area. The HWN's Reserve is located in Quebec, therefore, although the majority of aboriginal cultural heritage sites found in York Region are associated with the HWN, they will never get notice under the *Planning Act*, or the York Region Official Plan.

These regulations are obviously unconstitutional and do not comply with the Supreme Court of Canada's requirement to consult First Nations when there is potential for their interests to be impacted. As stated in *Haida Nation v. British Columbia (Minister of Forests)* 2004 SCC 73:

But, when precisely does a duty to consult arise? The foundation of the duty in the Crown's honour and the goal of reconciliation suggest that the duty arises when the Crown has knowledge, real or constructive, of the potential existence of the Aboriginal right or title and contemplates conduct that might adversely affect it: see *Halfway River First Nation v. British Columbia (Ministry of Forests)*, 1997 CanLII 2719 (BC S.C.), [1997] 4 C.N.L.R. 45 (B.C.S.C.), at p. 71, *per* Dorgan J.

In conclusion, the HWN is sheltering under the appeal of Section 3.4 of the York Region Official Plan, and seeking to raise issues as to the implementation of the Plan as a whole.

Please feel free to contact me with any questions regarding the above at [david@donnellylaw.ca](mailto:david@donnellylaw.ca) and 416-722-0220.

Yours Truly,

A handwritten signature in black ink, appearing to read 'D. Donnelly', with a long horizontal flourish extending to the right.

David R. Donnelly

Cc: Grand Chief K. Sioui  
Chief G. Sioui  
The Honourable C. Bentley  
The Honourable R. Bartolucci  
L. Laine  
H. Bastien  
K. Hare



Stephen Waque  
T 416.367.6275  
F 416.361.2708  
swaque@blg.com  
David, M. Klacko  
T 416.367.6352  
F 416-361-2432  
dklacko@blg.com

Borden Ladner Gervais LLP  
Scotiabank Plaza, 40 King St W  
Toronto, ON, Canada M5H 3Y4  
T 416.367.6000  
F 416.367.6749  
blg.com



**File No. 085657/000066**

May 18, 2011

**Delivered by Email (david@donnellylaw.ca)**

David Donnelly  
Donnelly Law  
276 Carlaw Avenue, Suite 203  
Toronto, ON M4M 3L1

Dear Mr. Donnelly:

**Re: Request for Party Status in OMB Appeal PL101128  
(York Region Official Plan 2010)**

We write further to your letter of May 9, 2011 in which you indicate that the Huron-Wendat Nation ("HWN") is seeking party status in the Ontario Municipal Board ("OMB") hearings related to the York Region Official Plan - 2010 ("ROP - 2010") and Regional Official Plan Amendments 1, 2 and 3 ("ROPAs 1, 2 and 3").

The Region is committed to a continuing dialogue with HWN as to its historical and cultural connections to York Region. However, the Region is of the view that this dialogue can best be advanced outside the context of the current OMB appeals and accordingly the Region does not consent to HWN's party status request. We outline for you below the basis for the Region's position.

In your letter you indicate that HWN is "appealing" section 3.4 of the ROP - 2010 and also seeking party status to raise issues related to the implementation of the official plan. At the outset, we note that HWN has filed no appeal of the ROP - 2010 prior to September 28, 2010, which was the last day for appeal. We therefore understand that HWN is in fact seeking status as a party in relation to section 3.4 of the plan, and is not now claiming that it has status as an appellant. The Region's response is based on that understanding.

You have indicated in your May 9, 2011 letter that HWN seeks status in relation to policies 3.4.11 and 3.4.14, and you relate this request to appeals filed by the North Markham Landowners Group, Block 27 Landowners Group Inc., Helmhorst Investments Ltd., and Dorzil Developments (Bayview) Ltd. You also indicated that HWN will seek to raise issues related to the implementation of the ROP - 2010 as a whole.

On May 12, 2011 we wrote to you, along with others seeking status, and requested clarification of HWN's concerns with policies 3.4.11 and 3.4.14, and whether those concerns were in relation to the issues raised on appeal by the appellants identified in your May 9 letter. We also sought clarification of the specific ROP - 2010 implementation policies that were of concern to HWN,

and the appeal(s) to which this aspect of your status requests relates. We received no response to this request for clarification and accordingly are responding on the basis of information in your May 9, 2011 letter, your submissions at the first pre-hearing conference, and your prior correspondence to the Region as noted below.

### **Regional Consultation with First Nations, Including the Huron-Wendat Nation**

In 2006 the Region initiated a growth management exercise known as "Planning for Tomorrow". As part of that exercise, the Region engaged in an extensive process of public consultation, including consultation with First Nations representatives.

In April 2007 letters were sent to First Nations representatives, including HWN, outlining several important Regional initiatives, including "Planning for Tomorrow". At that time the Region invited First Nations input and participation in the process. This 2007 letter was followed in 2008 with another letter at a subsequent stage of the growth management review process, outlining the Region's preferred growth scenario and inviting a presentation of that scenario. This letter was again sent to HWN.

In 2009 the Region initiated the process to update the Regional Official Plan. In recognition of the importance of this process, the Region proceeded with a First Nations consultation programme that was more comprehensive than that prescribed by the *Planning Act*. The process included writing to First Nations representatives (including HWN) in July 2009 presenting a copy of the draft Regional Official Plan and inviting participation in a meeting on September 18, 2009. A representative of HWN was present at that meeting.

This meeting was followed by additional First Nations consultation, including direct consultation with HWN in 2010. This included correspondence with you, on behalf of HWN, in July and August 2010.

### **Regional Response to Party Status Request**

As noted above, the Region widely consulted with First Nations prior to adoption of the ROP - 2010. This included direct consultation with HWN both through its representatives and with your office.

While we understand that HWN seeks to raise concerns related to policies 3.4.11 and 3.4.14 of the ROP - 2010, we respectfully point out that the appropriate manner in which to raise these concerns would have been by way of an appeal of the ROP - 2010 to the OMB. As noted, no such appeal was filed by your client.

Further and in any event, while we have not had clarification of HWN's present concern with these policies, your prior correspondence to the Region and your submissions at the May 2 pre-hearing conference in this matter suggest that your concern is with a framework for consultation with First Nations in relation to archaeological resources. We respectfully note that these concerns differ from the issues that the Region understands to be raised on the proper appeals of these policies. Had HWN sought to raise concerns as to consultation, the appropriate basis was again to do so on appeal. The Region cannot now consent to HWN expanding the scope of the appeals that are properly before the Board so as to add issues not raised on appeal.

We also have had no clarification of what ROP - 2010 implementation policies your client seeks to place at issue, if any. Based again on your prior submissions both in 2010 and at the first pre-hearing conference, we note that HWN has identified concerns with various *Planning Act* regulations pertaining to notice of planning processes. Whatever interest your client may have in advancing those concerns, these OMB proceedings are respectfully not the appropriate forum in which to do so.

Your client's concerns in this regard are with the regulatory process for planning more generally in the province, and not with implementation policies of the plan that is before the Board. Furthermore, any concerns that your client may have had with respect to the application of that regulatory process as it relates to the ROP - 2010 process specifically was addressed by the fact that the Region consulted directly with HWN both prior to and during the ROP - 2010 process. Accordingly there has been no prejudice to your client.

In the event that HWN intends to maintain its request for party status in these proceedings, we look forward to receiving the appropriate motion, with notice to the Region and those identified on the list of registrants which formed Attachment 2 to the Board's May 13, 2011 decision in this matter.

Yours very truly,  
Borden Ladner Gervais, LLP

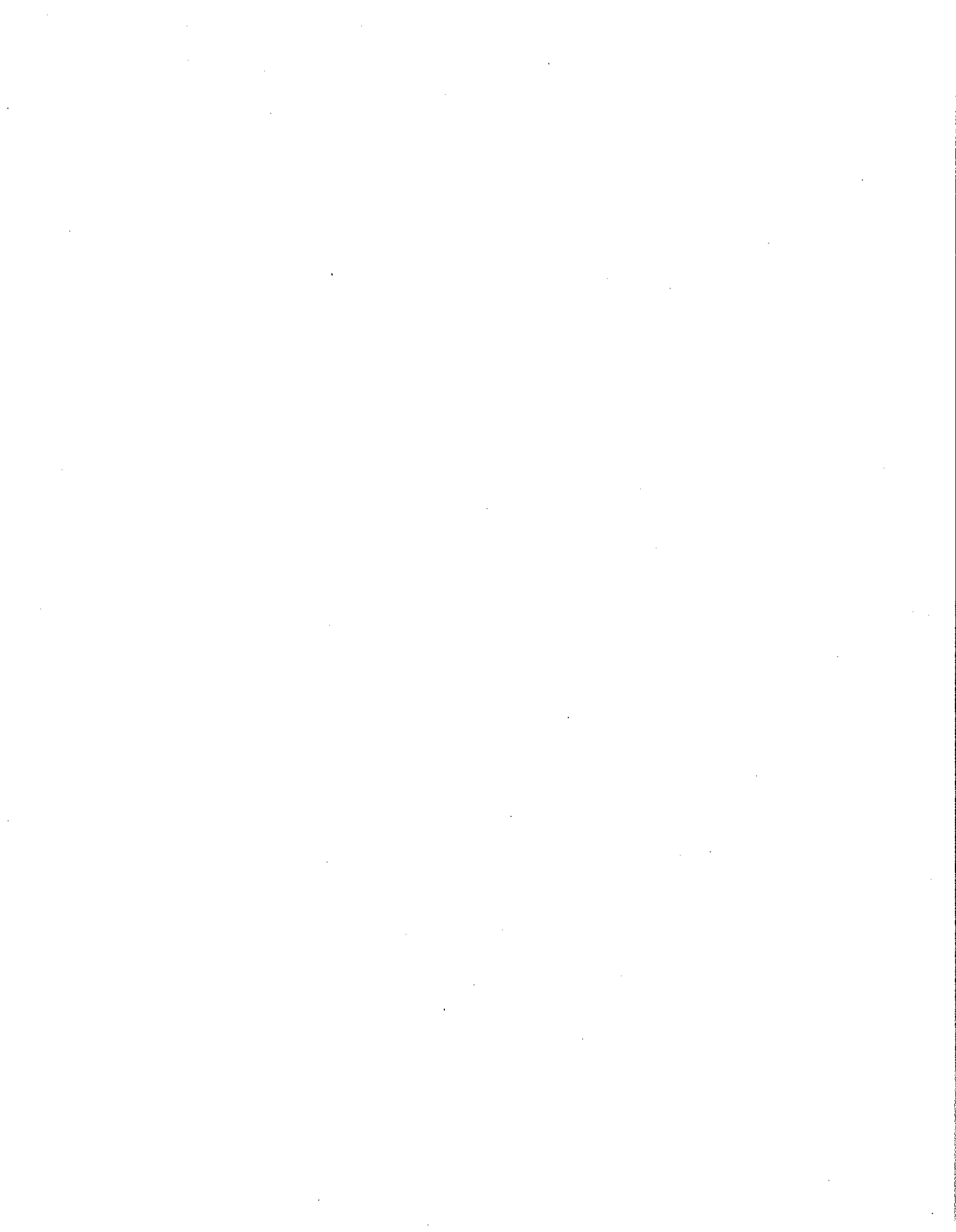


Stephen Waque/David Klacko  
SW:DK:sa

cc(via email):

All persons on Attachment 2 to OMB order dated May 13, 2011  
John Waller, York Region  
Barbara Jeffrey, York Region  
Robert Miller, York Region

TOR01: 4638169: v1





David R. Donnelly, MES LLB  
david@donnellylaw.ca

June 16, 2010

Ms. Barbara Jeffrey, MCIP, RPP  
Manager, Land Use Policy and Environment  
Long Range and Strategic Planning  
17250 Yonge Street,  
Newmarket, ON L3Y 6Z1

Dear Ms. Jeffrey,

**Re: York Region Proposed Regional Official Plan Amendments 1, 2 and 3  
Huron-Wendat Nation Consultation**

We act for the Huron-Wendat Nation in all matters pertaining to their cultural heritage in Ontario. I am writing to you in response to your June 10, 2010 e-mail regarding York Region's Official Plan, proposed Amendments 1, 2 and 3 to this Plan, and the June 16, 2010 statutory meeting in which they will be discussed.

As York Region contemplates amendments to its Official Plan that would authorize the urban expansion of the Town of East Gwillimbury, the City of Vaughan, and the Town of Markham, I would like to remind you of York Region's duty to consult and accommodate the Huron-Wendat Nation and other First Nations concerning matters of cultural heritage. The Huron-Wendat Nation has a constitutional right to be consulted and accommodated with respect to its cultural heritage interests. These rights have been recognized in the successful prosecution of the Ontario Realty Corporation in *R. v. Ontario Realty Corporation* (17 May 2004), Toronto (Ont. Ct. Jus.) and in *Hiawatha First Nation v. Ontario (Minister of Environment)*, [2007] 2 C.N.L.R. 186. As the Supreme Court of Canada stated in *Mikisew Cree First Nation v. Canada (Minister of Canadian Heritage)*, [2005] 3 S.C.R. 388 [Para. 54] "[c]onsultation that excludes from the outset any form of accommodation would be meaningless."

The reports regarding Amendments 1, 2 and 3 - posted online in preparation for the June 16, 2010 statutory meeting - contain no references to Huron-Wendat cultural heritage in the area, nor do they set out any framework for consultation or accommodation. This is in direct contrast to the cultural heritage policies outlined in section 3.4 of the Regional Official Plan adopted by Council on December 16, 2009 which state, among other things, that it is the policy of Council to "require local municipalities to adopt official plan policies to conserve significant *cultural heritage resources*." Policies 10 and 11 laid out in s. 3.4 state that it is the policy of Council:

10. To prepare, in partnership with First Nations, the Métis Nation, and other stakeholders a York Region Archaeological Resources Management Plan which considers:
  - a. the locations of significant or potentially significant archaeological resources, cultural heritage sites, ceremonial sites and sacred sites; and,
  - b. protocols for the protection and management of significant or potentially significant archaeological resources, cultural heritage sites, ceremonial sites and sacred sites.
  
11. That prior to approval of development or site alteration on lands containing significant or potentially significant archaeological resources, a plan for the protection and/or management of these resources will be developed, in cooperation with the local municipality and the Region, in accordance with provincial legislation and guidelines. If the archaeological resources pertain to First Nations and/or Métis Nation heritage, the protection and/or management plan will be developed in consultation with appropriate First Nations and Métis Nation communities. In situations where archaeological resources are to be preserved on site, the Region in consultation with local municipalities shall consider regulatory tools such as zoning restrictions and heritage easements.

The Huron-Wendat Nation cannot endorse the Regional Official Plan as adopted by Council on December 16, 2009, as it does not require the suspension of all Stage 3 and 4 archaeological licences issued without notification and consultation of the Huron-Wendat Nation or adopt the ossuary model for all authorized archaeological procedures.

The Regional Official Plan is deficient in many respects regarding the consultation and accommodation of Huron-Wendat cultural heritage interests. However, it is strange to note that even those policies contained within the Regional Official Plan that are geared towards recognition and protection of Huron-Wendat cultural heritage assets and consultation of the Huron-Wendat Nation, do not seem to have been implemented in Amendments 1, 2 and 3 themselves.

The Huron-Wendat Nation has lost thousands of cultural heritage sites to development over the past several decades. Millions and millions of artifacts, some of profound religious and historical value, have been scattered across private collections, warehoused improperly, abandoned and in a few notorious cases, thrown in the garbage.

Regulations under the *Planning Act*, R.S.O. 1990, c. P. 13 (the "*Planning Act*") do not require notification of First Nations before a planning decision is made by a municipal council or the Minister, unless the development site is located within one kilometre of a reserve. The Huron-Wendat reserve is located outside Ontario. This means that the Huron-Wendat Nation has never and will never receive notice that sites of cultural significance to the Huron-Wendat Nation are scheduled for development or destruction. This violates the Huron-Wendat Nation's constitutional right to be consulted and accommodated with respect to its cultural heritage interests.

It is shocking to us that regulations governing all aspects of the planning process such as consent applications (O. Reg. 197/96), plans of subdivision (O. Reg. 544/06), zoning by-laws (O. Reg. 545/06) and official plans (O. Reg. 543/06) all limit notification of First Nations to those First Nations living within one

kilometre of a reserve. In fact, these regulations put the rights of municipalities, ratepayers, school boards, conservation authorities, utilities, and in the case of O. Reg. 544/06, telecommunications infrastructure providers before the constitutionally entrenched rights of First Nations.

We request that York Region fully recognize its duty to consult and accommodate the Huron-Wendat Nation with respect to its cultural heritage interest in the York Region by informing the Huron-Wendat Nation of all cultural heritage assets that are put at risk through the urban expansion schemes put forward by Amendments 1, 2 and 3, and by ensuring that these assets are protected through consultation with the Huron-Wendat Nation for the implementation of effective protection and/or management plans.

George Smitherman, former Minister of Energy and Infrastructure, has encouraged city officials to consult Aboriginal communities regarding land use planning issues (see Attachment 1: Letter from George Smitherman to Linda Jackson (26 March 2009)). However, York Region has been slow to recognize its duty to consult and accommodate the Huron-Wendat Nation regarding their cultural heritage. We look forward to discussing these issues with you and beginning the process of meaningful consultation.

Yours Truly,

A handwritten signature in black ink, appearing to read 'D. Donnelly', with a long horizontal flourish extending to the right.

David R. Donnelly

Attachment.

cc. L. Lainé  
H. Bastien  
K. Sioui  
C. Strahl

ERROR: undefined  
OFFENDING COMMAND: f'~

STACK:



**ONTARIO MUNICIPAL BOARD****PL101128****IN THE MATTER OF Subsection 17(36) of the *Planning Act*, R.S.O. 1990,  
c. P. 13, as amended**

Appellants: See Attachment "1"  
Subject: Proposed Official Plan for the Regional Municipality of  
York  
Municipality: Regional Municipality of York  
O.M.B. Case No.: PL101128  
O.M.B. File No.: PL101128

**NOTICE OF MOTION****MOTION TO DETERMINE THE STATUS OF CERTAIN  
STAKEHOLDERS TO APPEAL UNDER THE  
*PLANNING ACT* SECTION 17(36)**

The REGIONAL MUNICIPALITY OF YORK will make a motion to the Board on Monday, May 30, 2011 at 10:30 a.m., or as soon thereafter as the motion can be heard, at the Glenway Country Club, Vandorf Ballroom, located at 470 Crossland Gate, Newmarket, Ontario. The estimated time required for this motion is 1 day.

**THE MOTION IS FOR:**

- (a) an order determining that certain stakeholders, as identified on Schedule "A" hereto, are without status under s. 17(36) of the *Planning Act* to commence an appeal against the York Region Official Plan – 2010;

- (b) an order determining that the appeals identified on Schedule “A” hereto are not properly before the Board;
- (c) an order determining that as a result the Board does not have jurisdiction to adjudicate those appeals listed on Schedule “A” hereto, or in the alternative, an order dismissing those appeals listed on Schedule “A” hereto as not properly constituted under s. 17(36) of the *Planning Act*;
- (d) an order directing that the motion to determine the status of three specific stakeholders identified on Schedule “A”, namely Markham Gateway, Yonge Bayview Holdings, and Kau & Associates shall be returnable at the pre-hearing conference scheduled for July 19, 2011;
- (e) such further or other relief as the Board deems appropriate.

**THE GROUNDS FOR THE MOTION ARE:**

**Background**

1. On December 16, 2009 the Regional Municipality of York (the “Region”) adopted the York Region Official Plan – 2010 (“ROP – 2010”).
2. Prior to its adoption, the ROP – 2010 was the subject of an extensive process of public, agency and First Nations consultation. That consultation took place both in 2009 during the process of preparing the ROP – 2010, and also going back as far as 2006 during which the Region was engaged in a growth management exercise.

3. Following its adoption the ROP – 2010 was submitted to the Minister of Municipal Affairs and Housing (“MMAH”) for approval. MMAH approved the ROP – 2010, with modifications on September 7, 2010.
4. Prior to the last date for appeal, MMAH received 51 letters seeking to appeal the ROP – 2010 to the Ontario Municipal Board (“OMB” or “Board”). In total (given that in some cases multiple notices of appeal were consolidated onto one letter) this represented 74 notices of appeal.
5. Statutory authority to appeal the decision of MMAH in the present matter is found in subsection 17(36) of the *Planning Act*.
6. Amongst those who may commence an appeal of an official plan pursuant to subsection 17(36) are:
  1. A person or public body who, before the plan was adopted, made oral submissions at a public meeting or written submissions to the council.
7. Several notices of appeal were filed in these proceedings on behalf of individuals or corporations who, in the Region’s submission, do not satisfy the statutory precondition to appeal in ss. 17(36). These individuals or corporations fall into two categories.

***Category 1 – Stakeholders Who Made No Pre-Adoption Submissions***

8. As set out on Schedule “A”, the following individuals or corporations made no oral submissions at a public meeting or written submissions to Regional council prior to adoption of the ROP – 2010:

1. Allan Eng;
  2. John Hayes;
  3. Paul Jadilebovski;
  4. Peat Farmers of Ontario represented by Phil Comartin;
  5. Peter Antonopoulos;
  6. Phil Comartin;
  7. Property Owners with Rights Association represented by Paul Jadilbovski;
  8. Shai Perlmutter;
  9. Steve DeFreitas;
  10. Mahamevna Bhavana Asapuwa Toronto;
  11. Markham Gateway;
  12. Canada Mortgage and Housing Corporation;
  13. Block 27 Landowners Group Inc.;
  14. Kau and Associates LP;
  15. Sustainable Vaughan;
  16. TACC Developments;
9. For ease of reference in this motion, the stakeholders identified in paragraph 8 1. to 16. above are collectively referred to as the “Category 1 Stakeholders”.

***Category 2 – Fieldgate Developments***

10. Also listed in Schedule “A” is Fieldgate Developments (“Fieldgate”). In light of the following factual distinction, the Region has categorized this one specific stakeholder differently. Fieldgate did in fact file two letters with the Region prior to adoption of the plan. These letters, while containing submissions related to the ROP – 2010, addressed matters or issues unrelated to the matters or issues that Fieldgate ultimately would seek to raise if it is found to have status as an appellant. Having not raised with the Region, prior to adoption, the matters or issues upon which it seeks to appeal, the Region submits that Fieldgate has not satisfied the requirements

for status under s. 17(36). Reasons in support of the Region's submission on this point are provided below at paragraphs 54 to 61.

11. While the Region thus notes this factual distinction between the Category 1 Stakeholders on one hand and Fieldgate on the other, the remedy sought in relation to both categories of stakeholder is the same. The Region submits that none of the stakeholders in either category satisfies the statutory mandate for status as an appellant under ss. 17(36).

**Extensive Public Consultation Prior to and During the ROP – 2010 Process**

12. The Region consulted extensively with the public, agencies and First Nations representatives during both the growth management exercise that preceded the ROP – 2010 process, and in the course of preparing the ROP – 2010.
13. The record of public consultation related to the Official Plan update process and the prior growth management exercise spans several thousand of pages, as is set out in the exhibits to the Affidavit of Barbara Jeffrey, MCIP, RPP which is attached. This record, which includes staff reports, summaries of comments received, notices, letters, minutes, and brochures and similar documents, was generated during a comprehensive program of outreach and consultation that the Region conducted from 2006 to 2009.
14. Some of the most notable aspects of that consultation are summarized in the paragraphs that follow.

15. In late 2005 the Region initiated an exercise known as “Planning for Tomorrow”. Planning for Tomorrow was a Regional initiative to amongst other matters encourage and invite a broad public and stakeholder discussion on the major growth management decisions facing the Region. A core component of this exercise was a public education and engagement process that was designed to:

1. Foster a public and stakeholder discussion on the issues and choices facing the Region;
2. Begin to create a broad public consensus on public policy decisions that needed to be made;
3. Discuss and identify solutions.

16. To advance these objectives the Region developed a consultation process that proceeded in three phases.

#### **Planning for Tomorrow – Phase 1 Consultation - 2006**

17. The first phase of this process occurred in 2006 and included 5 public open houses, notice of which was widely circulated in local newspapers, by mail and e-mail and online. These public open houses were attended by more than 300 people.

18. In addition to these open houses, in 2006 the Region also engaged various special interest groups in consultation, including environmental groups, the Regional Agricultural Liaison Group and the Urban Development Institute.

19. The Region furthermore developed an information kit/brochure, maintained stakeholder contact lists for circulating information, and published information on the Region’s website.

**Planning for Tomorrow – Phase 2 Consultation - 2007**

20. The Region followed its earlier consultation efforts with another round of public consultation in 2007. This second phase of consultation included similar opportunities for input as took place previously in 2006.
21. Again the Region hosted 5 public open houses, which were attended by nearly 300 people. The Region also again produced a brochure which was circulated at open houses, online, and by mail. To support this consultation, the Region maintained stakeholder contact lists, advertised in newspapers, and posted information on the Region's website.
22. In addition to this, as part of its second phase of consultation the Region engaged with First Nations representatives. Details of this First Nations consultation are provided in paragraphs 33 to 35 below.

**Planning for Tomorrow – Phase 3 Consultation - 2008**

23. By 2008 the Region had developed, with input from the 2006 and 2007 consultation, its preferred growth scenario for the Region. This scenario included a requirement for 40% intensification, it forecasted population and employment numbers to 2031 and it allocated those numbers to the local municipalities.
24. This preferred growth scenario also outlined the following policy directions that had been identified through the prior public consultation process: Protecting our Environment; Managing Growth; Diverse Economy; Intensification; Human

Services; Infrastructure; Quality of Place – New Communities and Fiscal Responsibility.

25. To seek the public's input on the preferred growth scenario the Region again conducted public open houses on five separate occasions in 2008. Notice of these open houses was again widely circulated, and more than 170 people were registered in attendance.
26. Stakeholder meetings were also again conducted with the Urban Development Institute's successor organization, the Building Industry and Land Development Association, with environmental groups, and with the Region's Agricultural Liaison Group.
27. Several tools were once again used to support this consultation program, including a brochure, Regional mailing lists, newspaper advertising, and the Regional website.
28. As is outlined in more detail below, First Nations representatives were consulted by way of letter, and invited to receive a presentation of the preferred growth scenario.

#### **Consultation During the 2009 Regional Official Plan Update Process**

29. In 2009 the Region initiated its process to update the Regional Official Plan. This process built upon the foundation set by the Planning for Tomorrow process, and again included extensive consultation with the public, stakeholders, agencies and First Nations.
30. This consultative process is detailed in Ms. Jeffrey's affidavit. As a summary overview, the following core components of that consultation are noted:



1. A statutory Special Meeting of Council was held on April 8, 2009. Notice of this meeting, which was widely attended, was published in 8 York Region newspapers, as well as the Toronto Star, for two consecutive weeks in accordance with *Planning Act* requirements.
  2. A statutory open house was held on September 29, 2009. Notice of this open house, which was also widely attended, was also published in 8 York Region newspapers, as well as the Toronto Star, for two consecutive weeks in accordance with *Planning Act* requirements.
  3. The statutory public meeting was held on October 7, 2009. Notice of this meeting, which was again widely attended, was published concurrently with notice of the statutory open house.
31. In addition to the above statutory open house and meetings, the Region arranged additional public and stakeholder consultation including:
1. Consulting with local municipal councils from July to September, 2009;
  2. Consulting with interest groups such as the Building Industry and Land Development Association, the York Region Agricultural Advisory Liaison Committee and Concerned Citizens of King Township in the summer and autumn of 2009; and
  3. Conducting four public information sessions in Markham, Vaughan, Richmond Hill and East Gwillimbury in September 2009, supported by a brochure entitled "Guide to the Draft York Region Official Plan".

32. First Nations were notified and consulted, and their input into the official plan update was also received. Details of this consultation follows below.

**First Nations Consultation - Planning for Tomorrow and Official Plan Update**

33. Regulations established under the *Planning Act* prescribe the requirements for notice and consultation with First Nations. Based upon those regulations, notice of the Regional process to update its official plan would have been limited in this case to the Chief of the Chippewas of Georgina Island First Nation.
34. In recognition of the important role of the Regional official plan, the Region, with the support of MMAH, elected to proceed in this case with a more comprehensive program of First Nation consultation than prescribed by the *Planning Act*.
35. Specifically the Region:
  1. Sent letters to First Nations representatives, including representatives of the Huron-Wendat Nation in 2007 and 2008 inviting their participation in the Planning for Tomorrow process;
  2. Wrote to First Nations representatives, including a representative of the Huron-Wendat Nation in July 2009 to introduce the draft Regional Official Plan;
  3. Invited the participation of First Nations representatives, including a representative of the Huron-Wendat Nation, to a meeting related to the draft Official Plan;

4. Corresponded with First Nations, including the Huron-Wendat Nation, in the summer of 2009;
5. Hosted a First Nations' meeting in September 2009. This meeting was attended by the Huron-Wendat Nation and their input on the draft Official Plan received;
6. Received a detailed report, prepared on the Region's behalf by First Nations Engineering Solutions Limited, summarizing this program of First Nations consultation.

#### **Anticipated Request for Party Status by the Huron-Wendat Nation**

36. Despite having participated in the official plan update process as noted above, the Huron-Wendat Nation did not appeal the ROP – 2010 to the Board. Rather, they have subsequently advised by letter dated May 9, 2011 that they intend to seek party status in these proceedings to raise issues apparently related to regulations for notice more generally under the *Planning Act*.
37. The Region is committed to continuing its dialogue with the Huron-Wendat Nation as to its historical and cultural ties to the Region. However, the Region submits that this dialogue can best be advanced outside the context of these appeals.
38. While the Region expects that the Huron-Wendat Nation will bring the appropriate motion in the event that it seeks status, and the Region reserves its right to respond accordingly, it is respectfully noted here that:

- a. The Huron-Wendat Nation participated previously in the ROP – 2010 process;
- b. The Huron-Wendat Nation did not commence an appeal;
- c. The Huron-Wendat Nation has, based on the Region’s understanding of its concerns, not identified issues with the ROP – 2010 that are related to issues under appeal by other proper appellants. Accordingly, to grant party status to the Huron-Wendat Nation would expand the appeals beyond the already numerous issues before the Board.
- d. Indeed, the issues that the Region understands to be of concern to the Huron-Wendat Nation are not issues related to the ROP – 2010 itself, which is the policy document now before the Board. Rather, they are issues with the process for notice to First Nations more generally under the *Planning Act*. This is not the appropriate forum in which to raise those concerns.

39. There has further and in any event been no prejudice to the Huron-Wendat Nation since they received notice of the official plan update process and indeed participated in that process.

#### **Local Decision Making Authority and Accountability After Bill 51**

40. Amongst its central purposes, the *Planning Act* gives express recognition to the decision-making authority and accountability of municipal councils in planning. [s. 1.1(f) of the *Planning Act*].

41. This recognition was reinforced by the 2006 amendments to the *Planning Act* contained in Bill 51.
42. Prior to the enactment of Bill 51, there was no restriction on who could appeal an approval authority's decision on an official plan. Rather, the right to appeal was given broadly to "...any person or public body...".
43. Accordingly, under this prior framework any member of the public could commence an appeal to the Board irrespective of whether that person had been engaged in the official plan process when it was before municipal council.
44. As noted above however, the right of a member of the public to commence an appeal pursuant to s. 17(36) is now restricted to those who made oral submissions at a public meeting or written submissions to council before the plan was adopted.
45. This restriction, which was added by the Bill 51 amendments, is in the Region's submission an express recognition on the part of the legislature that municipal council has a central and accountable role in the land use planning decision making process. Section 17, through its public consultation framework, provides the public with the opportunity to raise with council any concerns it may have with an official plan. Council can in turn give due consideration to those concerns and address them as it deems appropriate.
46. Where a member of the public does not make those concerns known prior to adoption, Bill 51 does not in turn allow that person to raise those concerns on an appeal to the Board.

47. Bill 51 similarly restricts those who can be added as a party to a proper appeal to the Board. Subsection 17(44.1) and (44.2) thus provide in relevant part that in an appeal under s. 17(36), a person or public body may be added as a party only in the following circumstances:
- a. Before the plan was adopted, the person or public body made oral submissions at a public meeting or written submissions to council or;
  - b. The Board is of the opinion that there are reasonable grounds to add the person or public body as a party.

**The Category 1 Stakeholders had Ample Opportunity to Participate in the Pre-Adoption Process. They Did Not Participate and Are Not Now Entitled to Appeal**

48. As outlined above, the Region engaged in an extensive process of public consultation throughout 2006, 2007, 2008 as part of the growth management exercise. Further consultation took place in 2009 as a component of the process to update the Region's official plan.
49. Notice of both the Planning for Tomorrow consultation process, and the official plan update consultation process was widely circulated on numerous occasions over a period spanning several years. In particular, notice of the statutory special meeting, open house and public meeting was provided in accordance with the *Planning Act*.
50. Members of the public participated widely in this consultation process, making their views known to the Region in relation to both the Planning for Tomorrow growth management exercise, then the draft Official Plan. The draft Official Plan was

revised to incorporate some, although not all, of the comments received during the consultation process after June 2009 and at the Statutory Public Meeting.

51. Despite having ample opportunity to do so, the Category 1 Stakeholders who are now the subject of this motion did not make their concerns known to the Region, in particular making no oral submissions at a public meeting, nor making written submissions to council prior to adoption.
52. The Region thus had no notice in the manner prescribed by the *Planning Act* of specific concerns that might have been raised by the Category 1 Stakeholders with respect to the draft official plan. Accordingly Regional Council had no opportunity to consider those concerns as they pertained to the Category 1 Stakeholders prior to adoption of the ROP – 2010.
53. Having not previously raised any concerns with the Region, either by way of written or oral submissions prior to the adoption of the ROP – 2010, it is submitted that those stakeholders have failed to meet the threshold requirement for appellant status under the *Planning Act*. They are accordingly, in the Region's submission, barred by s. 17(36) from participating in this OMB process as appellants.

**Fieldgate seeks to appeal on matters not raised by it prior to adoption. To allow it to do so would offend the legislative intent of Bill 51.**

54. As noted above, the factual circumstances related to Fieldgate differ. Fieldgate did file written submissions with council prior to adoption. Those submissions were limited to the following matters or issues:

- a. Urban boundary expansion relating to lands in Block 41 in the City of Vaughan; and
  - b. Urban boundary expansion relating to lands in north Markham.
55. Fieldgate has not sought to appeal in relation to its lands in Block 41, presumably since those lands are proposed to be included in the urban boundary identified in Regional Official Plan Amendment 2. In the case of its lands in north Markham, Fieldgate is properly an appellant in a separate appeal in these proceedings as a member of the North Markham Landowners Group.
56. Fieldgate does however seek to commence additional appeals in relation to other lands it owns or manages elsewhere in York Region. If granted status, Fieldgate would raise the following issues on these additional appeals:
- a. Applicability of the new ROP to existing secondary plan areas;
  - b. The Regional Greenlands System;
  - c. Separation distances and Buffers;
  - d. “No negative Impact”;
  - e. Policy 3.3.13;
  - f. Policy 4.4 and 5.2;
  - g. The Ontario Building Code;
  - h. End user Choice;
  - i. Policies 5.2.22, 5.2.28, 5.5.12, (LEED and Energy Star);
  - j. Phasing;
  - k. Servicing;
  - l. Identifications of Urban Boundary;
  - m. Land Dedication;
  - n. The Planning process;
  - o. Definitions;



57. The issues that Fieldgate would raise on these other appeals if granted status are, with the exception of the issue related to urban boundary in paragraph 56(m) above, wholly unrelated to and fundamentally different from the issues that were raised in Fieldgate's pre-adoption submissions.
58. Those other issues identified in paragraph 56 above were not put before the Region by Fieldgate prior to the plan's adoption. As a result the Region had no opportunity, prior to the adoption of the plan, to consider Fieldgate's concerns as they relate to these issues.
59. If section 17(36) is interpreted in a technical and narrow manner, then the Region acknowledges that Fieldgate would be regarded as having satisfied the s. 17(36) pre-condition for an appeal to this Board, simply by virtue of its having filed written submissions prior to adoption as identified in paragraph 54 above. However, it is respectfully submitted that a narrow and technical reading of this subsection is not appropriate or consistent with the intent of Bill 51.
60. Rather, the Region submits that the Board should look to the purpose underpinning this section, including the *Planning Act's* stated purpose of recognizing local decision making and accountability. In this context it is thus submitted that to allow Fieldgate to raise the issues that it seeks to raise at first instance on appeal would be contrary to the spirit and intent s. 17(36) as it was amended by Bill 51.
61. The Region accordingly submits that Fieldgate ought not be granted status as an appellant to raise the issues it seeks to put before the Board.

62. The following statutory provisions:

- a. subsections 17 (36) and 17(44.1) and (44.2) of the *Planning Act*, R.S.O. 1990, c.P-13, as amended;
- b. the *Planning and Conservation Land Statute Law Amendment Act, 2006*, S.O. 2006 c. 23 (Bill 51);
- c. sections 35, 36 and subsections 37 of the *Ontario Municipal Board Act*, R.S.O. 1990 c. O.28, as amended.

63. Such further or other grounds as counsel may advise and the Board permits.

**THE FOLLOWING DOCUMENTS WILL BE USED AT THE HEARING OF THE MOTION:**

- (a) the affidavit of Barbara Jeffrey, MCIP, RPP sworn May 13, 2011;
- (b) such further or other material as counsel may advise and the Board permit.

**BORDEN LADNER GERVAIS LLP**  
Lawyers, Patent & Trade-mark Agents  
Scotia Plaza, 40 King St. W., Suite 4400  
Toronto, Ontario M5H 3Y4

Stephen Waqué  
416-367-6275 – Tel.  
416-361-2708 – Fax

David Klacko  
416-367-6352 – Tel.  
416-361-2432 – Fax

Solicitors for York Region

TO: Those listed on Attachment 2



# Konrad Sioui

Grand Chef de la Nation huronne-wendat  
Grand Chief Huron Wendat Nation

March 17, 2009

The Honourable Dalton McGuinty  
Premier of Ontario  
Legislative Building, Queen's Park  
Toronto ON M7A 1A1

Dear Premier,

Re: **Huron-Wendat Nation**  
**Protection of our Nation's Aboriginal Rights and Interests in Ontario**

*Copies Simon P.  
Heather B.  
Luc Lamo*

I am the newly elected Grand-Chief of the Huron-Wendat Nation in Wendake, Quebec. The Huron-Wendat Nation and our ancestors occupied south-central Ontario for thousands of years. The Huron-Wendat people never surrendered our ancestral territory in Ontario, our Treaty rights were confirmed by the Supreme Court of Canada and our Section 35 Constitutional rights are not extinguished.

I write to your government to express our critical concern that sacred and important cultural heritage sites in our traditional homeland of Ontario are under direct threat from development. We have received scores of Notices for environmental assessment undertakings, calling us to consultations over projects that affect our rights and interests in Ontario, but there are no resources or funding to facilitate meaningful participation.

While we appreciate being circulated in these cases, a right we won through the courts, we are utterly without capacity to deal with the volume of requests, even though some of these are projects initiated by your government. You have failed to provide us with a response to our previous minimal funding request, which appears to be your obligation given the recommendations of Justice Sidney Linden's report of the Ipperwash Commission of Inquiry.

This unfairness must end immediately either by stopping all of these projects until a proper consultation protocol has been concluded between our two Nations or by providing interim funding to allow us to respond to these requests in a meaningful way while the protocol is being developed.

12

Our long occupation in central Ontario is evidenced by the hundreds of village and ossuary sites, sacred places and significant landforms used by our ancestors. We commend your government for protecting and committing to rename four significant villages on the Seaton lands in Pickering, Ontario and we applaud the City of Toronto for protecting one of our ancestral village sites along the Rouge River through the purchase of lands from a development company as well as their efforts to commemorate another one of our villages called Alexandra in northeast Toronto.

Amidst these few successes, too many important sites are being lost. Our representatives appeared before Justice Linden at the Ipperwash Commission of Inquiry to present evidence of the extraordinary loss of our cultural heritage sites to development. Allow me to quote an extract from Justice Linden's Report:

*"8,000 sites in York, Peel, Durham, and Halton alone have been cleared to make way for development. A quarter (2,000) of these sites were deemed to be significant."*

The majority of the 2,000 significant sites obliterated by development were Huron- Wendat in affiliation. Development permitted by your government is scrubbing the history of our people from the land. This is a profound loss for our Nation and is utterly inconsistent with a generous society like Ontario that is so welcoming to new cultures.

Destruction of our sites continues on your government's watch despite our pleas to commence dialogue. We have not received assurance from your government, for example, that the nationally significant, late sixteenth century Huron town known as Skandatut will be protected. Skandatut sits on a bluff overlooking a major tributary of the Humber River, in Vaughan Ontario. As I write this letter, a developer holds a permit issued by your Minister of Culture to destroy this site. Skandatut was once home to thousands of people at a time when First Nations and early Europeans first made contact. It is at this site that we find the tangible evidence of Huron-Wendat leaders making the decision to confederate with other ancestral Wendat people representing a pivotal moment in our history and the history of Ontario and Canada. How is it then that we have not received assurance that Skandatut will be protected in perpetuity for ours and future generations?

Our people are also terribly disillusioned by the partial destruction of the Teston Road Ossuary when we have evidence that this was an avoidable event. While York Region acted promptly to restore the damage done to this site, we do not have assurances from your government that this will not happen again.

Furthermore, most Huron-Wendat towns in historic Wendake in Simcoe County have no protection whatsoever. Some of these sites are provincially or nationally significant. As recently as January 2009, we received news of a decision of the Ontario Municipal Board permitting construction of a development adjacent to the Atherley Narrows in Orillia, Ontario that contains First Nations human remains and clear evidence of settlement of ancestral Huron-Wendat. The Board's decision was rendered in spite of the fact the City of Orillia opposed the application and desired the protection of our resources. We note that this hearing was conducted without Notice to the Huron-Wendat Nation.

Ontario Regulation (O/Reg. 543/06), a regulation we challenged unsuccessfully in court, puts the rights of municipalities, ratepayers, school boards, conservation authorities, utilities and even Rogers Cable above those of First Nations. Under its terms, Notice to First Nations is only required when a project threatens a site within one kilometre of a Reserve, a provision that ensures that the Huron-Wendat Nation will never receive Notice of any development project that may impact our Constitutionally-guaranteed rights and interests. In our opinion this is unlawful but it is also immoral. Both my predecessor Grand-Chief Max Gros-Louis and Ontario Regional Chief Angus Toulous wrote to your Minister of Municipal Affairs in 2007 on an urgent basis to correct this problem, with no response.

O/Reg 543/06 is a relic of the past; it pre-dates the repatriation of the Canadian Constitution in 1982 and it is profoundly racist. The Canadian Constitution expanded the rights of First Nations creating a concept of First Nations rights that is far greater than matters affecting interests on or nearby Reserves. First Nations are entitled to be on the same footing and receive the same rights of natural justice as Rogers Cable and Canada Post when our sites and history are being threatened and destroyed. Do you not agree?

Premier, to turn a corner on this unfortunate treatment of our heritage, there are human skeletal remains of our ancestors that need repatriation as soon as possible. Indeed, the remains of over 2,000 of our ancestors have been stored in banker's boxes, without our consent, in a building at the University of Toronto. Despite its location in the heart of our traditional homeland, the University does not commemorate or interpret our occupation, no courses are taught about our history at this campus, and we are frustrated by a lack of funding for the repatriation effort, the result of which has been a terribly slow pace at liberating the souls that should never have been disturbed in the first place. The site from which one of the collections of human remains was removed in the 1960s is in your government's hands and is being administered by the Ontario Heritage Trust. The village of Skandatut is connected to this site, known as the Kleinberg Ossuary. This connection presents an unique opportunity to preserve and enhance a sacred landscape by restoring the link between the two sites in their natural setting.

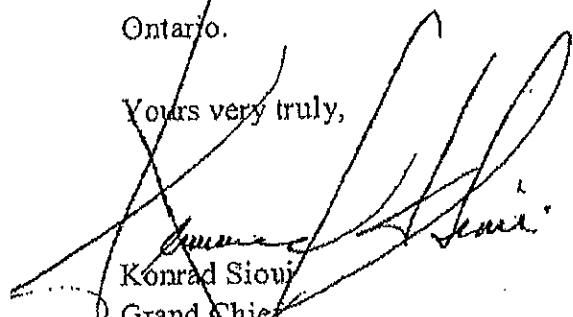
The Honourable Dalton McGuinty  
March 17, 2009

We respectfully request that your government now seize this matter and join us in an urgent effort to repatriate our ancestor's remains to the ground at Kleinberg. We urge you to instruct the Ontario Heritage Trust to secure the Skandatut site and work with us to properly re-inter the remains of which I speak and commemorate properly this sacred landscape. I note that the Ontario Heritage Trust allowed this burial site to be disturbed, against our wishes, as recently as 2007.

We have appointed people to work with your representatives. Council has great confidence in our Liaison Designates for Ontario, Madam Heather Bastien and Mr Luc Laine, and our legal counsels, Mr Simon Picard and Mr David Donnelly.

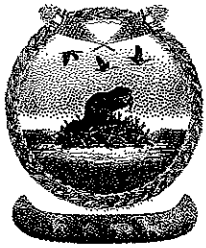
On behalf of my Council, I would like to meet with you as soon as possible to discuss righting the historical and ongoing assault on the history and rights of the Huron-Wendat Nation in Ontario.

Yours very truly,



Konrad Sioui  
Grand Chief

Cc B Fisch, Chairman and Chief Executive Officer, Regional Municipality of York  
R. Anderson, Regional Chair, Region of Durham  
T. Guergis, County Warden, County of Simco  
D. Miller, Mayor, City of Toronto  
B. Duguid, Minister of Aboriginal Affairs  
A. Carroll, Minister of Culture  
J. Watson, Minister of Municipal Housing and Affairs  
L. M. Alexander, Chairman, Ontario Heritage Trust  
D. Petersen, The Chancellor, University of Toronto



NATION  
**huronne-wendat**

255, place Chef Michel Laveau  
Wendake (Québec) G0A 4V0  
Téléphone: (418) 843-3767  
Ligne sans frais: 1-877-712-3767  
Télécopieur: (418) 842-1108

**KONRAD H. SIOUI**

GRAND CHEF DE LA NATION HURONNE-WENDAT  
GRAND CHIEF HURON WENDAT NATION

June 27, 2011

Regional Chair Bill Fisch  
The Regional Municipality of York  
17250 Yonge Street  
Newmarket, (Ontario) L3Y 6Z1

**Re: York Region Official Plan Appeal at the Ontario Municipal Board**

Dear Chair Fisch,

Kwe,

We have instructed counsel to proceed with our request for Party status in the appeal of the York Region Official Plan ("YROP") to the Ontario Municipal Board ("OMB"), case number PL101128.

On May 18, 2011, your legal counsel Mr. Stephen Waque wrote to our Nation, saying it would be "best" if the Huron-Wendat was excluded from the OMB process. This is a highly inappropriate and patronizing response.

We respectfully submit you take immediate action to reverse this position.

York Region has presided over an enormous destruction of First Nation's cultural heritage sites – possibly more than in any other Region. Hundreds of sites have been destroyed to make way for development – much of it urban sprawl. In every case, our Nation did NOT receive Notice of these land use changes and bull-dozing of our sites.

Your Office has not been helpful in the past in stopping this destruction. In 2008, you pledged to then Grand Chief Max Gros-Louis that you would work with the Huron-Wendat Nation to protect the Teston Road site. In September 2010, we alerted you to the fact this site was being excavated without our Nation's knowledge or consent.

York Region did not respond to our request to be notified of any land use changes or site alteration. It is inconceivable to us that situations like this are not remedied by the YROP, and so we are appealing. You should be our ally in righting these historic wrongs, not opposing our Party status.

The Huron-Wendat Nation ("HWN") is also shocked and extremely disappointed that the YROP leaves in place Ontario Regulations 544/06, 545/06 and 543/06 (*Planning Act*), as they are blatantly racist and unconstitutional.

The HWN understand that in order to expunge this law from Ontario legislation, a referral of the question of its constitutionality is needed from the OMB, and that the YROP appeal is the best forum in which to obtain this referral.

The Cultural Heritage policies of the YROP cannot function as intended if the Huron-Wendat Nation and other First Nations are not notified of proposed land use changes, and corresponding implementation of the YROP affecting our cultural heritage sites. There are still scores of significant and/or unevaluated HWN sites in York left vulnerable by the present planning regime you propose with YROP.

We look forward to York Region's corrected course of action to fall in line with the Constitution of Canada and duty to consult and accommodate First Nations.

Onen!



Grand Chief Konrad Sioui

Cc: Chief Gaetan Sioui  
Luc Laine  
Heather Bastien