Ontario Land Tribunal
Tribunal ontarien de l'aménagement du territoire

ISSUE DATE: August 03, 2021

CASE NO(S).: PL140839
PL111184

PROCEEDING COMMENCED UNDER subsection 17(36) of the *Planning Act*, R.S.O. 1990, c. P.13, as amended

Appellants (jointly):	Casertano Developments Corporation and Sandra Mammone
Appellants (jointly):	Limestone Gallery Investments Inc. and Damara Investment Corp.
Appellants (jointly):	Granite Real Estate Investment Trust and Magna International Inc.
Appellants (jointly):	H & L Title Inc. and Ledbury Investments Ltd.
Appellant:	Canadian National Railway
Appellant:	Rutherford Land Development Corporation
Appellant:	281187 Ontario Ltd.
Appellant:	Anland Developments Inc.
Subject:	Proposed Official Plan Amendment No. 2 to the Official Plan for the City of Vaughan (2010)
Municipality:	City of Vaughan
OMB Case No.:	PL140839
OMB File No.:	PL140839
OMB Case Name:	Mammone v. Vaughan (City)

PROCEEDING COMMENCED UNDER subsection 17(40) of the *Planning Act*, R.S.O. 1990, c. P.13, as amended

Appellant:	1042710 Ontario Limited (aka Royal Centre)
Appellant:	1096818 Ontario Inc.
Appellant:	11333 Dufferin St et al
Appellant:	1191621 Ontario Inc.; and others
Subject:	Failure to announce a decision respecting Proposed Official Plan Amendment No. New Official Plan
Municipality:	City of Vaughan

OMB Case No.: PL111184
OMB File No.: PL111184
OMB Case Name: Duca v. Vaughan (City)

PLEASE NOTE:

- **Only the appeals filed specifically by Tesmar Holdings Inc. (Appeal No. 4), Sandra Mammone and Casertano Development Corporation (both Appeal No. 45) and Granite Real Estate Inc. and Magna International Inc. (both Appeal No. 110) are consolidated with Vaughan Official Plan Amendment No. 2 – being the Vaughan Mills Centre Secondary Plan – under OLT Case No. PL140839;**
- **Only the appeals filed by Rutherford Land Development Corp. (Appeal No. 34), 281187 Ontario Inc. (Appeal No. 64), H & L Title Inc. and Ledbury Investments Ltd. (both Appeal No. 75), and Anland Developments Inc. (Appeal No. 83), save and except Policy 7.3.3 (Parkland Dedication), are consolidated with Vaughan Official Plan Amendment No. 2 – being the Vaughan Mills Centre Secondary Plan – under OLT Case No. PL140839.**

Heard: June 14 to July 18, 2021 by video hearing

APPEARANCES:

Parties	Counsel
H & L Title Inc., Ledbury Investments Ltd., 281187 Ontario Inc., Anland Developments Inc. ("Appellants")	M. Flowers J. Cole
City of Vaughan ("City")	R. Coburn G. Perhar
Regional Municipality of York ("Region")	B. Ogunmefun
York Region District School Board	J. Easto
Toronto and Region Conservation Authority	T. Duncan

INTERIM DECISION OF THE TRIBUNAL DELIVERED BY S. TOUSAW

INTRODUCTION

[1] The process of land use planning, involving both science and art, often results in difficult choices to be considered, each with its own advantages and disadvantages, but not strictly right or wrong. Here, the Parties ask the Tribunal to adjudicate on which land use designation choice should be approved: Mixed Use ("MU"), as requested by the four Appellants; or Prestige Employment ("PE"), being the preference of the City and the Region. After careful consideration of this difficult choice, the Tribunal finds that, despite various positive attributes of the Appellants' concept plan, the legislative tests call for this area to remain in an employment designation.

[2] Two policy documents are before the Tribunal for adjudication in these appeals:

1. The Vaughan Official Plan ("VOP") adopted by the City in 2010, and while under appeal, modified and endorsed by the Region in 2012; and
2. The Vaughan Mills Centre Secondary Plan ("SP") adopted by the City in 2014 and modified and approved by the Region, also in 2014.

[3] The Appellants appealed both of these policy documents in pursuit of:

- the west half of their lands being designated as MU, including a range of residential heights and densities;
- the SP area to the west of Provincial Highway 400 ("400") being identified as a Primary Centre; and
- additional permitted uses in the PE designation for the east half of their lands.

[4] The Parties agreed to a two-phase hearing, where Phase 1 here will determine the first two requests above, and Phase 2 will address the policy details arising from this Decision as well as the third request above.

[5] The York Region District School Board and the Toronto and Region Conservation Authority, as added Parties in these appeals, attended the first day of the hearing to advise they would not be participating in this Phase 1 Hearing but wish to remain as Parties for Phase 2 matters.

LOCATION

[6] The SP covers the area surrounding the Vaughan Mills Mall at the interchange of 400 with Rutherford Road ("Rutherford"). The SP includes lands west of 400 ("west side") and lands east of 400 ("east side"). In all, the SP area is bounded by Weston Road ("Weston") on the west to past Jane Street ("Jane") on the east, and from Rutherford on the north to Bass Pro Mills Road ("Bass") and its planned westerly extension on the south.

[7] The appeals pertain to the entire west side, except for a stormwater management facility at the southeast corner adjacent to 400. The area subject to appeal includes the Appellants' four large properties plus the properties abutting to the north under different ownership fronting Rutherford. As described later, this case focusses only on a portion of the Appellants' lands where they propose a MU designation.

[8] Vaughan Mills Centre, referred to here by way of the SP and not to be confused with the Vaughan Metropolitan Centre ("VMC"), is a significant and growing community centre within the geographic middle of the City and is designated as a Primary Centre on VOP Schedule 1 – Urban Structure. This SP area at Rutherford is located approximately midway between the Vaughan Hospital Primary Centre at Major MacKenzie Drive to the north, and VMC being a Regional Centre at Highway 7 to the south.

[9] The area under appeal totals 55 hectares ("ha") immediately southwest of the 400 interchange with Rutherford. The Appellants' lands, at 39 ha, comprise 79% of the west side, consisting of vacant, undeveloped land containing some minor outdoor uses such as a garden supply outlet. To their north, within the appealed area, are commercial uses and vacant land along Rutherford. To the west, across Weston, is an extensive low-density neighbourhood consisting primarily of detached dwellings, with their walled, rear yard relationship to Weston. To the south, across the planned westerly extension of Bass, are vacant employment lands and a few industrial uses including storage buildings and transport yards. To the east is 400.

LEGISLATIVE TESTS

[10] In making a decision under the *Planning Act* ("Act") with respect to these appeals, the Tribunal must have regard to matters of provincial interest as set out in s. 2. Under s. 2.1(1), the Tribunal must have regard to any decision of City Council and Regional Council made under the Act that relates to the same planning matter, and the information considered by them in making those decisions. Under s. 3(5), the Tribunal's decision must conform with or not conflict with an applicable provincial plan, being A Place to Grow: Growth Plan for the Greater Golden Horseshoe, 2020 ("GP") in effect at the date of this decision. Also under that section, the Tribunal's decision must be consistent with the provincial interests expressed in policy statements, being the Provincial Policy Statement, 2020 ("PPS") in effect at the date of this decision. In addition, the VOP and the SP, as an amendment to the VOP, must both conform with the Region's Official Plan, 2010 ("ROP") under s. 17(34.1) of the Act.

EVIDENCE

[11] Each of the Parties tendered professional evidence through qualified experts in their field who referenced a joint document book, witness statements, visual evidence and other documents totalling 19 Exhibits ("Ex.").

[12] Without objection from any Party, the Tribunal qualified each of the professional witnesses to provide opinion evidence in their field of expertise noted below. Each witness had signed the Tribunal's Acknowledgement of Expert's Duty form.

For the Appellants:

- Ryan Guetter, Registered Professional Planner ("RPP") – land use planning;
- Audrey Jacob, RPP and Land Economist – land needs analysis and growth management;
- Matt Gunning, Realtor – commercial real estate market; and
- Scott Penton, Professional Engineer – air quality, acoustics, noise and vibration.

For the City:

- David Marcucci, RPP – land use planning.

For the City and Region:

- Russell Mathew, RPP and Land Economist – land needs analysis and growth management.

For the Region:

- Augustine Ko, RPP – land use planning.

[13] In addition, the Weston Downs Ratepayers Association, representing the low-rise residential area west of Weston, filed a Participant statement (Ex. 6) opposing the requested conversion and requesting internal service roads within the employment area to reduce traffic on Weston. The statement also raises other transportation matters that are not at issue in this Phase 1 Hearing.

SUMMARY POSITIONS

[14] Of assistance in focussing this hearing, the Parties agree to:

- the Employment Commercial Mixed Use (“ECMU”) designation in the SP for the lands along Rutherford abutting to the north of the Appellants’ lands, and an expanded list of permitted uses there, with the exception that the City does not support the inclusion of gas stations;
- a Prestige Employment (“PE”) designation on the east half of the Appellants’ lands and an expanded list of employment uses, with only the extent of that designation being the subject of this Phase 1 Hearing; and
- details for the above agreed matters will be finalized in Phase 2 of this appeal process, likely by settlement agreement.

[15] The above resolutions reduce the disputed area to the west half of the Appellants’ lands, extending westward from their proposed Greenway Public Open Space (“Greenway”) designation for Black Creek, and down to the planned extension of Bass to the south. Here the Appellants seek Mixed Use (“MU”) designations for this area of 17 gross ha, or 14 net ha after accounting for internal streets and stormwater management (the subject “14 ha” used for analysis). Within the MU area, residential mixed-use development would range in height and density from High-Rise adjacent to the Greenway, stepping down to Mid-Rise through the central area, and down to Low-Rise along Weston, as set out on the Appellants’ Proposed Land Use Plan (“concept plan” Ex. 2, p. 30).

[16] These disputed lands are identified as Employment Areas (“EA”) on VOP Schedule 1 – Urban Structure (Ex. 2, p. 37), and as Lands Subject to Secondary Plans on VOP Schedule 13 – Land Use (Ex. 2, p. 38). The SP then specifies land use designations of PE and Prestige Office Employment, along with Black Creek and

adjacent Greenway, on SP Schedule B – Height and Density (Ex. 2, p. 39). Until these documents are approved with or without modifications, the City's existing official plan designations remain in effect here, where various amendments have consistently designated the Appellants' lands for employment: including OPA 600, Employment Areas in 1994; and OPA 250, Industrial in 1988 (Ex. 1B, p. 892 and 1025).

[17] The core issue and the focus of this hearing and Decision is the conversion of employment land for non-employment purposes ("conversion"). A determination of the resulting land use designation affects the second issue of whether the SP west side should also be identified as a Primary Centre.

[18] With reference to the extensive written and oral evidence received, the Parties' positions are summarized at a high level below.

Appellants

[19] The Appellants argue in favour of conversion for reasons including:

- The employment designation has failed for three decades to facilitate productive use of these vacant and under-utilized lands, during which time similar lands on the east side were converted to non-employment uses.
- The VOP and SP contain unrealistic employment projections not supported by market assessment.
- The focus on major office development is excessive for this location and unduly competes with the goals for the VMC.
- The agreed PE designation adjacent to 400, along with potential for jobs within the MU area, support significant and suitable employment projections here.

- GP s. 2.2.5.10 applies here because the Region's Municipal Comprehensive Review ("MCR"), in the form of a new ROP, has not been adopted, and the GP's five tests for conversion are all satisfied.
- Land use compatibility is enhanced adjacent to the low-rise neighbourhood across Weston, and compatibility can be achieved with existing and proposed employment uses to the east and south through acceptable nuisance mitigation for generators and receptors.
- Many similar land use juxtapositions occur throughout the City, including some that involved conversions.
- A complete community, suitable for designation as a Primary Centre, is enhanced by balancing the SP area with a MU area on its west side, in support of transit use and a live-work community.

City and Region

[20] The City and Region argue against conversion for reasons including:

- These are prime employment lands given their access and visibility from 400, comprising a continued Weston-400 employment corridor extending from the south.
- Within the SP, these lands provide the Business District on the west side associated with the Primary Centre and its permitted intensification on the east side, together comprising a complete community.
- GP s. 2.2.5.10 is not available here while the Region's MCR is underway, and if found to be applicable, the GP's five tests are not satisfied.
- The proposed MU area here fails to conform with the Region and City's urban structure related to intensification and transit.

ANALYSIS and FINDINGS

Conversion Eligibility

[21] This Decision turns on whether the conversion satisfies provincial policy, which the Parties agree centres on the GP and its connection or overlap with the PPS.

[22] The PPS, applicable across Ontario, addresses conversions as follows:

> 1.3.2.4. Planning authorities may permit conversion of lands within *employment areas* to non-employment uses through a *comprehensive review*, only where it has been demonstrated that the land is not required for employment purposes over the long term and that there is a need for the conversion.
>
> 1.3.2.5. Notwithstanding policy 1.3.2.4, and until the official plan review or update in policy 1.3.2.4 is undertaken and completed, lands within existing *employment areas* may be converted to a designation that permits non-employment uses provided the area has not been identified as provincially significant through a provincial plan exercise or as regionally significant by a regional economic development corporation working together with affected upper and single-tier municipalities and subject to the following:
> a) there is an identified need for the conversion and the land is not required for employment purposes over the long term;
> b) the proposed uses would not adversely affect the overall viability of the employment area; and
> c) existing or planned *infrastructure* and *public service facilities* are available to accommodate the proposed uses.

[23] The GP, applicable within the Greater Golden Horseshoe, addresses conversions in s. 2.2.5 Employment as follows:

> 9. The conversion of lands within *employment areas* to non-employment uses may be permitted only through a *municipal comprehensive review* where it is demonstrated that:
>
> a) there is a need for the conversion;

b) the lands are not required over the horizon of this Plan for the employment purposes for which they are designated;
c) the municipality will maintain sufficient employment lands to accommodate forecasted employment growth to the horizon of this Plan;
d) the proposed uses would not adversely affect the overall viability of the *employment area* or the achievement of the minimum intensification and density targets in this Plan, as well as the other policies of this Plan; and
e) there are existing or planned *infrastructure* and *public service facilities* to accommodate the proposed uses.

10. Notwithstanding policy 2.2.5.9, until the next *municipal comprehensive review*, lands within existing *employment areas* may be converted to a designation that permits non-employment uses, provided the conversion would:

a) satisfy the requirements of policy 2.2.5.9 a), d) and e);
b) maintain a significant number of jobs on those lands through the establishment of development criteria; and
c) not include any part of an *employment area* identified as a *provincially significant employment zone* unless the part of the *employment area* is located within a *major transit station area* as delineated in accordance with the policies in subsection 2.2.4.

[24] At issue is first, whether the GP takes precedence over the PPS for a conversion here, and second, whether this conversion request can be considered today given the Region's MCR being underway.

[25] Under the Act, s. 3(5) requires the Tribunal's Decision to be consistent with the PPS and to conform or not conflict with the GP, being provincial policies and plans "that are in effect on the date of the decision." In this case, the Tribunal must evaluate the appeals to the 2010 VOP and the 2014 SP against the provincial policies in force today.

[26] In the *Places to Grow Act* ("PGA") s. 14(2), the GP "prevails in the case of conflict" between it and the PPS. The GP s. 1.2.3 explains that the PPS applies to the GP area except where the GP provides otherwise. While the GP is to be read in conjunction with the PPS, the GP takes precedence to the extent of any conflict. Where

an overlap occurs, “applying the more specific policies of [the GP] satisfies the requirements of the more general policies in the PPS.”

[27] On the issue of the GP’s precedence, the Tribunal finds sufficient overlap in the above policies and their varying use of similar terminology to justify focussing only on the specific policies of the GP here. With some exceptions for parts of certain policies, the RPPs generally agreed in testimony that both documents cover the issue of conversions and thus focussed their analysis on the GP requirements. The Tribunal is satisfied that applying the GP conversion policies will generally encompass the corresponding matters in the PPS.

[28] Of note in favour of the GP’s precedence here, is its exemption to considering for conversions whether the lands are required for employment purposes over the long term in s. 2.2.5.10(a) as compared to that test remaining applicable to conversions under the PPS s. 1.3.2.5(a). The Tribunal finds that this difference constitutes a conflict under the PGA for which the GP must prevail, as also addressed in GP s. 1.2.3. In addition, these provincial policies define MCR differently as reviewed next.

[29] On the second issue here, being when and how a conversion request may be considered in light of an associated MCR, a more nuanced focus of the terminology within these policies is required. Again, there is little dispute among the Parties that the PPS use of “comprehensive review” and the GP use of “municipal comprehensive review” and their corresponding definitions constitute an overlap of the same subject matter, resulting in the GP taking precedence.

[30] The GP defines MCR as:

> Municipal Comprehensive Review
>
> A new official plan, or an official plan amendment, initiated by an upper- or single-tier municipality under section 26 of the Planning Act that comprehensively applies the policies and schedules of this Plan.

[31] On the totality of evidence and argument on this issue, the Tribunal finds that the Region, while currently engaged in its MCR process, will not have accomplished an official MCR under the GP until its new ROP is adopted or approved. The Tribunal need not determine here whether just Regional adoption or indeed Minister of Municipal Affairs and Housing ("Minister") approval is required to satisfy the GP MCR definition, just that the process of review itself is not a defined MCR. The Region anticipates adopting its new ROP by mid-2022, and until then, the Region will not be in possession of a new official plan, and by GP definition for MCR, will also not have attained a MCR. While the common planning understanding of MCR is a lengthy study process, the Tribunal finds that the GP considers it absent until implemented through a new official plan or amendment.

[32] The definition's reference to the MCR being "initiated" by, in this case, an upper-tier municipality, may suggest that it includes the entire process from a Council's direction to commence the review through to its adoption in an official plan. However, when applying a plain reading of the GP, the Tribunal finds the definition to mean that a MCR is a new official plan or amendment, full stop, and that the reference to whom initiates it assigns responsibility and excludes certain players (e.g., the City here as a lower-tier municipality or through private development applications). It also reinforces that the Region, in this case, is charged with comprehensively applying the policies and schedules of the GP through its new ROP.

[33] Of further assistance to determining when a conversion may be considered, is the MCR definition in the 2006 GP, prior to being amended to the current wording in 2017. Prior to 2017, the GP defined MCR as "An official plan review, or an official plan amendment, initiated by a municipality that comprehensively applies the policies and schedules of this Plan" (emphasis added). Clearly, the 2017 amendment removed "review" from the definition with the effect that the study process was no longer a MCR, leaving only the resulting final official plan as the MCR.

[34] Thus, the Tribunal finds that GP s. 2.2.5.10 is operable here in that “until” the MCR occurs, being at the earliest the date of adoption of the new ROP, or at the latest the date of its approval by the Minister, a conversion of employment lands may be considered in accordance with the specified tests.

[35] The Tribunal acknowledges the complications raised by the City and Region arising from such finding. One result is the near continuous potential for conversion requests under s. 2.2.5.10 despite s. 2.2.5.9’s intent that conversions only be considered through a MCR. Another is the difficulty in considering conversions while a MCR is being prepared, with the potential for different outcomes. Despite these potential incongruities, in the context of this case, the Tribunal is satisfied that on a plain reading of the GP and consistent with the Minister’s communication to the Region (Ex. 19), conversions may be considered while the study phase of a MCR is underway. It is not the Tribunal’s role here to resolve implementation challenges arising from the GP, and the Parties acknowledge that this contested case may be rare given the absence of certain appeal rights now under the Act.

Conversion Tests

[36] Each of the five tests for conversion under GP s. 2.2.5.10 is analyzed below as addressed in whole or in part by every witness. The Parties agree that all five tests must be satisfied to permit conversion to non-employment uses.

Need

[37] Conversions are exempt from satisfying the employment land needs requirements of s. 2.2.5.9(b) and (c). Need, then, applies only to the proposed non-employment use, being mixed-use residential here.

[38] The Tribunal finds that in the context of this case, the test of need is reasonably satisfied given the general agreement among the RPPs that need may be assessed by either or both quantitative and qualitative analyses. The Appellants emphasize the qualitative benefits of the concept plan in support of need, while the Region and City emphasize the absence of quantitative support for additional housing.

[39] In support of the qualitative aspects of need, Mr. Guetter cites the PPS and GP directions for: accommodating growth within the urban boundary; encouraging intensification compatible with surrounding uses; providing a mix of housing; and the development of complete live-work communities. In his view, the concept plan responds to each of these planning principles by: anticipating a community of some 6,000 persons within a mix of housing types within walking distance to the PE area; access to transit on Weston and Rutherford; sufficient transitions to employment areas across the Greenway and across the Bass extension; stepping down in height and density toward Weston recognizing the low-rise neighbourhood to the west; and balancing the SP east side with a mix of housing and employment on the west side. Quantitatively, Mr. Guetter refers to the need for housing given the City’s high population growth rate and the planning merits of infill development that reduces outward urban expansion.

[40] Qualitatively, the City and Region RPPs see no need for a MU designation on the SP west side given ample opportunity for infill intensification of mixed uses on the east side with broader community services and higher order transit, and the intended role of the west side as the SP’s Business Area. Quantitatively, they calculate no difficulty with the City meeting or exceeding the GP’s 50% intensification target within built-up areas based on land area within the City’s centres and corridors as well as development applications exceeding intensification targets to date.

[41] The Tribunal finds the concept plan to acceptably address the qualitative considerations of need. It would establish a new community of housing within reasonable proximity of workplaces and the anticipated commercial uses along Rutherford, and served by transit to the east side and elsewhere. It would provide a mixed-use transition between the employment area along 400 and the low-rise residential community across Weston. While not specifically required to meet the City's quantitative obligations for intensification, the Tribunal agrees that suitable infill development is preferred over outward urban expansion.

[42] Here lies the dilemma with this case: with the above benefits, the concept plan is reasonable, well-thought, and would quite likely become a successful and desirable community over the long-term. However, as reviewed further, each of the GP tests must be satisfied for the Tribunal to permit a conversion.

Viability

[43] The test of viability involves not adversely affecting three components: the employment area, the GP's minimum intensification and density targets, and "other policies of this Plan" (s. 2.2.5.10(a) with reference to 2.2.5.9(d)). Evidence focussed on the first component here, with GP targets being addressed under the test of maintaining jobs, and summary comments covering other policies of the GP. From that evidence, the Tribunal finds that, while the concept plan is not without merit, it fails this test regarding viability and the GP's general policy directions for employment areas.

[44] Mr. Guetter addresses the planning merits of the conversion with reference to the GP's vision for complete communities including: compact development and intensification; connecting to existing services within the built-up area; balancing jobs with a mix of housing to reduce commuting distance and promote active transportation; increasing transit ridership; retaining the PE designation on the east half of the Appellants' lands adjacent to 400; and suitable separations for compatibility between

the MU and PE uses. Mr. Penton confirms that the proposed separations between housing and employment uses, along with reasonable and common mitigation solutions for industry emissions, will enable the continued development of adjacent employment lands. Such arrangement is exemplified further south in this corridor with residential uses to the west of Weston, and in Block 33 to the north where only a local street separates employment from residential uses.

[45] The City and Region's witnesses stress the potential for reduced attraction of the PE area if high density housing is nearby, within direct view and overlooking the employment area, and the potential added costs for industry to comply with environmental standards as acknowledged by Mr. Penton. They note the successful and incremental buildout of the Weston-400 employment corridor to the south, with the Appellants' lands, and sites to the south of Bass, being the next areas for employment growth in this corridor. In Messrs. Marcucci and Ko's view, introducing a pocket of intensive residential use within this long-standing corridor threatens its continued development northward, and if approved, may result in further conversion requests on lands south of Bass. Mr. Mathew relied on similar reasons when he considered but did not recommend this area for conversion when conducting research for the VOP.

[46] Of significance to the Tribunal for the test of viability is the GP Employment policy s. 2.2.5.1 (emphasis added):

> 1. Economic development and competitiveness in the *GGH* will be promoted by:
>   a) making more efficient use of existing *employment areas* and vacant and underutilized employment lands and increasing employment densities;
>   b) ensuring the availability of sufficient land, in appropriate locations, for a variety of employment to accommodate forecasted employment growth to the horizon of this Plan;
>
> …
>
> 5. Municipalities should designate and preserve lands … near *major goods movement facilities and corridors*, including major highway interchanges, as areas for manufacturing ...

> 6. … municipalities … will designate all *employment areas* in official plans and protect them for appropriate employment uses over the long-term. …

[47] There is little dispute that these employment lands constitute an "appropriate location" given their visibility and access to 400. While largely vacant still today, despite considerable development over recent decades within the larger employment area, these lands comprise the north part of a continuous employment corridor between Weston and 400 beginning far to the south near Highway 7. This corridor, in turn, is part of the provincially, if not nationally, significant employment area providing more than 120,000 jobs, anchored by the Canadian National Railway intermodal yard at its centre. The Tribunal finds in accordance with the City and Region's evidence that the area intended for conversion should be protected for its eventual employment use, even if that represents the "long-term" as contemplated by the GP.

[48] Further, the Tribunal finds that a conversion for part of the area will "adversely affect the overall viability of the *employment* area" even though any resulting compliance matters could be addressed as explained by Mr. Penton. The fact that prospective occupants of the employment area must consider and address mitigation to these lands if converted, is found to constitute an effect on the viability of the employment area that does not exist to the same extent if this pocket remains designated as PE. The requested conversion would result in a MU area abutting or near employment lands on three sides, as compared to the existing arrangement where the use interface is only on one side, across Weston.

[49] The Appellants reference several locations within the City where infill, mixed-use development has or is occurring adjacent to industrial uses, with some having been granted a conversion previously. While the Tribunal agrees that these examples demonstrate that high-rise residential uses can co-exist with industry, they tend to reflect intensification adjacent to existing industry, where the residential site and building design account for the juxtaposition. In this case, the proposed residential

intensification is adjacent to largely vacant employment lands, both to the east and south of the conversion area, where, if the MU designation is established, employment uses must assess and address any potential incompatibilities. Such effect is considered a detriment of varying degrees, based on the nature of proposed employment uses, to the viability of the employment area. Again, this case is not about being right or wrong: the Tribunal accepts that if the conversion were granted, sooner or later the employment area would fill with compatible employment uses per Mr. Penton's evidence. However, from a planning standpoint, the introduction of non-employment uses within this employment corridor raises new and more intensive compatibility issues that affect its "overall viability" and fail to satisfy the "other policies" of the GP.

[50] Individual site decisions do not establish precedents for other planning applications, such that a conversion here would not guarantee another conversion south of Bass and further loss of employment lands. However, decisions do establish the land use pattern for an area which may lend support for other applications. Here, no MU intensification areas are permitted east of Weston within this employment corridor. Converting part of the Appellants' lands could lend support for similar treatment on a nearby property. Again, preserving this employment area for the long-term, in both quality and quantity, calls for preventing the establishment of non-employment uses.

[51] Applying Mr. Penton's evidence to the Tribunal's finding here, the eventual employment uses along Weston are likely to be subject to higher, but achievable, compatibility standards in proximity to the residential area to the west, as compared to fewer restrictions to eventual industrial uses to the east, being in the corridor's middle or adjacent to 400. On Mr. Penton's evidence, the Tribunal finds that the lands fronting Weston remain viable for employment uses, and that an intervening MU area is not warranted, as suggested by Mr. Guetter, in an effort to address existing compatibility with the neighbourhood across Weston.

[52] The Appellants posit that these lands, being outside the Provincially Significant Employment Zone ("PSEZ" Ex. 9), may be considered for conversion without spurring similar requests south of Bass which are within the PSEZ and prohibited for conversion by the GP. However, the Tribunal notes that the PSEZ, like all planning documents, is subject to review and amendment such that it alone is not a surety of the continuation of employment lands to the south. As an example, a previous draft of the PSEZ was amended to remove the employment lands here, being to the north of the Bass extension. The Tribunal was also advised that a vacant property within the PSEZ adjacent to previously converted lands southeast of Rutherford and Jane, was converted by a Minister's Zoning Order. The Tribunal acknowledges that the outcomes connected to other Decisions on VOP or SP appeals are without prejudice here, but simply notes that such examples demonstrate that the PSEZ itself is subject to change based on a planning merit analysis.

[53] Also complicating the retention of employment areas for the long-term are the Region's recent endorsements of conversion requests under its current MCR. Several requests have been endorsed, some without the support of its staff recommendations based on planning merits. Relative to this hearing, one endorsed conversion stands out: large areas on either side of 400 proposed for non-employment uses within Block 1 (Ex. 2, p 7). That area shares similarities with the Appellants' concept plan here: located between 400 and Weston, being a northerly repetition of the Weston-400 corridor to the south; lands adjacent to 400 retained as high visibility employment lands; and not located with the PSEZ. Like this case, those employment lands contribute to accommodating the Region's employment projections and must therefore be replaced elsewhere in the new ROP. Mr. Marcucci advised that their replacement will necessitate urban expansion with new designations in the "white belt."

[54] Given such endorsements, the Tribunal understands the position of Mr. Guetter that the relatively small conversion here in comparison to the endorsements underway through the MCR, underscore the qualitative planning merits warranting a conversion

here. The Appellants argue that in the larger context, the loss of 17 gross ha here is not significant to the overall viability of employment areas in the City or Region.

[55] Two factors lead to the Tribunal's inability to accept this argument: the statutory obligation to ensure conformity with the GP; and the Region's endorsements will require eventual approval by the Minister in the new ROP, a decision yet to be made. As described earlier, converting the Appellants' lands here is found to adversely affect the overall viability of this employment area, and fails to satisfy the GP's direction for long-term protection. Further, the Tribunal cannot predict how the new ROP, as finally approved, will address the Region's endorsed conversions.

[56] The eventual location of Black Creek and its associated Greenway was raised in evidence for its potential role in reducing incompatibility. While a modification may not be necessary, the Parties are directed to review in Phase 2 whether any further policy flexibility is required to enable the eventual suitable location of Black Creek to be determined.

Infrastructure and Public Services

[57] In the context of this Phase 1 Hearing for an Interim Decision on general land use, the Parties agree that full services are available to the lands and that public service facilities, such as schools, places of recreation or other services can be considered under Phase 2. The Tribunal finds that this test has been satisfied given the current availability of all necessary physical services for development, and the ability to consider further any necessary public service facilities in Phase 2 to ensure compliance with relevant statutory requirements.

Jobs

[58] Considerable time at the hearing was devoted to whether the conversion will "maintain a significant number of jobs on those lands" (s. 2.2.5.10(b)). On that evidence, the Tribunal finds that the concept plan does not conform with this GP requirement, to the extent that it serves as the primary reason why this conversion request must be denied. Despite the various merits of the concept plan, the jobs requirement is found to be a high bar in the GP.

[59] The SP projects that the Business District, being the west side of 400 under appeal here, will provide 7,590 jobs (SP s. 3.2). Ms. Jacob explains how the SP's projected employment significantly exceeds the projections calculated in the background studies to the VOP and in similar recent studies. On the 39.2 net ha here, the SP's job projection equates to 194 jobs per net ha ("j/ha" being net ha used throughout unless otherwise noted). This job density is found to be almost four times the 49 j/ha, including offices, used in preparation for the VOP. More recent work for the Region's MCR found growth in job density, now ranging up to 70 j/ha including offices, owing to economic growth that results in more intensive use of employment areas and shifts towards a more service- and knowledge-based economy. Despite now being dated, the VOP and SP job projections here remain close to three times higher than realistic and current data. Ms. Jacob opines that the SP job projections could only be achieved through multiple major office developments of a scale similar to that expected in the VMC. Mr. Gunning similarly opines that these office projections are unrealistic in this location, given the absence of higher order transit and the focus of office development occurring in the VMC.

[60] Ms. Jacob and Mr. Guetter estimate the jobs to be accommodated on the west side based on expected build-out and job rates for the concept plan. In comparison to the SP's 7,590 jobs, they opine that a more realistic outcome is 3,583 jobs, or about half that projected by the SP. With a substantial portion of those jobs expected in the ECMU

designation along Rutherford, they anticipate 1,292 jobs on the Appellants' PE lands and 322 jobs in the MU area (100 jobs within mid- and high-rise buildings, and 222 'work from home' jobs) for a total of 1,614 jobs (Ex. 1B, p. 398). They consider this total to be acceptable, given that it exceeds what was anticipated in background studies to the VOP and SP, may become higher if current trends continue, and is more realistic and achievable than projected in the SP.

[61] At issue in meeting this test, is the meaning of "significant" relative to number of jobs and "those lands" relative to the area eligible for consideration. Mr. Guetter opines that the entire concept plan, including its employment area, results in a significant number of jobs, especially considering the near absence of employment there to date. Ms. Jacob opines that the proposed jobs are sufficient to meet this test, while also acknowledging under cross-examination that "those lands" refers only to the proposed converted area intended for mixed-use.

[62] On the matter of "those lands," the Tribunal finds the test to apply only to the area considered for conversion. Policy 2.2.5.10 begins with "… lands … may be converted … provided the conversion would: … b) maintain a significant number of jobs on those lands … (emphasis added). On a plain reading of the policy, the GP seeks to retain a degree of job potential on the lands being converted. While Ms. Jacob and Mr. Guetter's projections are helpful in the context of assessing the VOP and SP's goals, the test for conversion is the significance of projected jobs on the land being converted, here being only the proposed MU area.

[63] On the matter of "maintain a significant number of jobs," the Tribunal finds that comparison must be made with the likely outcome should the area remain for employment use. It is not sufficient to compare projected MU jobs with the near zero jobs on the lands today. The Tribunal agrees with Ms. Jacob that the 194 j/ha derived from the adopted SP is an unreasonable comparator, and prefers as comparators the job densities received in evidence for employment uses, including offices: 45 to 60 j/ha

from the VOP background studies; 82 j/ha along the 400 corridor from recent MCR work; and 88 j/ha derived from Ms. Jacob's projection for the PE area here (1,292 jobs / 14.6 ha).

[64] The 322 jobs projected for the 14 net ha MU area equates to a density of 23 j/ha, representing a range from 26% to 51% of the above comparators. Ms. Jacob agreed that when focussing only on the converted area, the resulting jobs were not significant in number. In the Tribunal's view, a fair comparator is the PE job density advocated in favour of the concept plan, which results in a loss of potential employment close to 75% on the converted lands. Although the projection for the MU area could be marginally higher if potential education and social services jobs were included, this substantially reduced job density is found to not "maintain a significant number of jobs" on the lands to be converted.

[65] As indicated earlier, Ms. Jacob and Mr. Guetter's analysis reveals that the SP job projections for the Business Centre are unrealistic and imply an office density here that is not achievable within the planning horizon based on issues of location and transit. Mr. Marcucci emphasizes that the projection is merely a goal and need not be achieved, although also acknowledged that a lower projection could be supported. Thus, in accordance with GP s. 2.2.5.13(b) to "reflect the current and anticipated type and scale of employment," the Tribunal finds that the projection should be more moderate given this location's subordinate role to the VMC and the absence of planned higher order transit on the west side. The Parties are directed to include job projection modifications for Phase 2 consideration based on job density in the range of that proposed by Ms. Jacob for the Appellants' PE designation (including offices) and based on a wider range of permitted employment uses as agreed by the Parties.

Provincially Significant Employment Zone

[66] As noted earlier, these lands are not contained within the PSEZ and the Parties agree that this GP test for conversion is satisfied. The Tribunal agrees. For clarity, however, no contrary evidence was received to Messrs. Marcucci and Ko's opinion that the City and Region may designate employment areas outside of a PSEZ. The role and value of this employment area was reviewed above under the test of viability.

Primary Centre

[67] Given the Tribunal's finding above to disallow the requested conversion, these lands are appropriately left in the Employment Areas designation on VOP Schedule 1 – Urban Structure. The Tribunal accepts the evidence of the Region and City that a Primary Centre focusses on intensification and mixed-use development served by higher order transit, whereas in the absence of these attributes, the SP Business Centre appropriately fulfills an employment role in proximity to the Primary Centre to the east of 400.

Provincial Policy Statement and Regional Official Plan

[68] Having found that the Appellants have not satisfied the GP for a conversion, it is unnecessary for this Decision to delve into other policies of the PPS not addressed earlier or conformity with the ROP. Suffice it to note that retaining the employment designation here is found to be consistent with PPS s. 1.3.2, including to "protect and preserve *employment areas*" (s. 1.3.2.1) and to "prohibit residential uses" (s. 1.3.2.3). The Tribunal finds that retaining the employment designation on these lands as variously depicted in the adopted VOP and SP is consistent with the PPS and conforms with the ROP.

Planning Act

[69] Similarly, the Tribunal finds that retaining these lands for employment purposes has full regard for the provincial interests of s. 2 of the Act. Subsection (k) “the adequate provision of employment opportunities” is found to be upheld without detriment to the City’s facilitation of subsection (j) “the adequate provision of a full range of housing …”.

[70] Under s. 2.1(1) of the Act, the Tribunal has had regard to Region and City decisions raised in evidence that relate to this issue of conversion. The Tribunal notes their consistent decision under the current MCR denying the Appellants’ request for conversion here. As reviewed earlier, the Tribunal finds that the Region’s endorsements of other conversion requests under the MCR carry no influence here, given their absence of finality and their need to ultimately conform with the GP through the new ROP.

SUMMARY

[71] The conversion sought for 14 ha of employment lands to non-employment (mixed-use residential) land uses is denied on its failure to conform with the GP: primarily for not maintaining a significant number of jobs on the converted lands; and secondarily for its adverse effect on the overall viability of the employment area.

[72] The Tribunal understands the Appellants’ argument, and potential frustration, with the Region and City’s opposition to conversion here, while they concurrently endorse substantial conversions elsewhere through the current MCR. Again, the Tribunal emphasizes that it must make its determination in accordance with statutory requirements, and the Region’s endorsements for conversion remain open unless and until approved by the Minister through a new ROP.

[73] Having found that the sought conversion does not adequately address the statutory tests, the Tribunal finds that retaining the appealed lands as an employment area represents good planning in the public interest.

[74] For the purpose of Phase 2 Hearing matters, the Tribunal directs the Parties to prepare necessary modifications to the VOP and SP in keeping with this Decision as set out in the Order below.

INTERIM ORDER

[75] The appeals addressed in this Phase 1 Hearing, being a request for the conversion of employment lands and the related request to be identified as Primary Centre, are denied.

[76] Arising from this Phase 1 Hearing and/or through prior agreement of the Parties, the Parties are directed to prepare modification documents for Phase 2 addressing:

- Employment designations and a wider range of permitted uses for the appealed lands (Employment Commercial Mixed Use and Prestige Employment, or alternative terminology on agreement);
- A more moderate job projection for the Business District, and any related policy modifications if necessary, as set out in paragraph [65];
- Any policy or mapping modification, if considered necessary, to allow continued flexibility for the final location of the Black Creek corridor, as set out in paragraph [56].

[77] The City of Vaughan is directed to file with the Tribunal within six months of this Decision's date of issuance, a Draft Order with the proposed modifications, either: on consent and supported by a planning affidavit; or with unresolved matters highlighted

and a request for a Phase 2 Case Management Conference in preparation for a hearing.

[78] This Member will remain seized for Phase 2 and may be contacted through the Case Coordinator should issues arise.

"S. Tousaw"

S. TOUSAW
MEMBER

The Conservation Review Board, the Environmental Review Tribunal, the Local Planning Appeal Tribunal and the Mining and Lands Tribunal are amalgamated and continued as the Ontario Land Tribunal ("Tribunal"). Any reference to the preceding tribunals or the former Ontario Municipal Board is deemed to be a reference to the Tribunal.