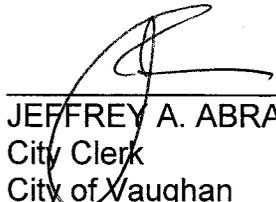


I, JEFFREY A. ABRAMS, City Clerk of the Corporation of the City of Vaughan, in the Regional Municipality of York, do hereby certify that attached is a true copy of Amendment Number 701 to the Official Plan of the Vaughan Planning Area, which was approved by the Ontario Municipal Board as per Order issued on the 28th day of August, 2009.



JEFFREY A. ABRAMS
City Clerk
City of Vaughan

DATED at the City of Vaughan
this 27th day of November, 2009.

ISSUE DATE:

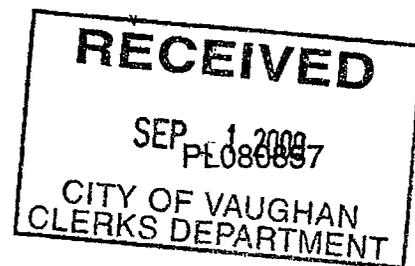
Aug. 28, 2009



Ontario

Ontario Municipal Board

Commission des affaires municipales de l'Ontario



IN THE MATTER OF subsection 17(40) of the *Planning Act*, R.S.O. 1990, C. P. 13, as amended

Appellant: Pine Grove on Seven Inc.
Subject: Failure of the Regional Municipality of York to announce a decision respecting Proposed Official Plan Amendment No. 661
Municipality: City of Vaughan
OMB Case No. PL080857
OMB File No. PL080857

Pine Grove on Seven Inc. has appealed to the Ontario Municipal Board under subsection 22(7) of the *Planning Act*, R.S.O. 1990, c. P. 13, as amended, from Council's refusal or neglect to enact a proposed amendment to the Official Plan for the City of Vaughan, specifically Official Plan Amendment No. 240 (Woodbridge Community Plan), as amended by the City Council approved Official Plan Amendment No. 661 (The Avenue Seven Land Use Futures Study Plan), specifically the policies of the "Prestige Areas-Centres and Avenue Seven Corridor" designation, to increase the maximum permitted building height from 10-storeys or 32 metres, whichever is less, to 17-storeys and 48 metres and to increase the maximum permitted floor space index (FSI) from 3.0 to 5.5 for the purpose of permitting the development of a 17-storey mixed-use commercial/residential condominium building consisting of ground floor commercial and 140 residential units above, with 3 levels of underground parking (166 spaces) and 20 parking spaces on-grade on a 0.276 hectare parcel of land located at the southwest corner of Regional Road 7 and Kipling Avenue, being Lots 10, 11, 12 and 13 on Registered Plan 3762, municipally known as 5263 Regional Road 7 and 7720 Kipling Avenue, in Lot 5, Concession 8, City of Vaughan

City of Vaughan File No. OP.07.009

OMB Case No. PL081341

OMB File No. PL081341

Pine Grove on Seven Inc. has appealed to the Ontario Municipal Board under subsection 34(11) of the *Planning Act*, R.S.O. 1990, c. P. 13, as amended, from Council's refusal or neglect to enact a proposed amendment to Zoning By-law No. 1-88, as amended, of the City of Vaughan to rezone a 0.276 hectare parcel of land located at the southwest corner of Regional Road 7 and Kipling Avenue, being Lots 10, 11, 12 and 13 on Registered Plan 3762, municipally known as 5263 Regional Road 7 and 7720 Kipling Avenue, in Lot 5, Concession 8, City of Vaughan, from "C1 Restricted Commercial Zone" and "R1 Residential Zone" to "RA3 Apartment Residential Zone" with exceptions, for the purpose of permitting the development of a 17-storey mixed-use commercial/residential condominium building consisting of ground floor commercial and 140 residential units above, with 3 levels of underground parking (166 spaces) and 20 parking spaces on-grade

City of Vaughan File No. Z.07.049

OMB Case No. PL081343

OMB File No. PL081343

APPEARANCES:

<u>Parties</u>	<u>Counsel</u>
Pinegrove on Seven Inc.	J. Davies; A. Stewart
City of Vaughan	Q. Annibale; C. Storto; B. Duguid
West Woodbridge Homeowners Association Inc.	I. T. Kagan

MEMORANDUM OF ORAL DECISION DELIVERED BY S. J. SUTHERLAND ON JUNE 25, 2009 AND ORDER OF THE BOARD

The City of Vaughan (City) adopted Official Plan Amendment No. 661 (OPA 661) as it pertains to lands fronting on the north and south sides of the Highway 7 right-of-way, from east of York Road (formerly Highway 27) to Pine Valley Drive, and on the north side of Highway 7 to just west of Ansley Grove Road. Also included are some properties fronting Kipling Avenue north and south of its intersection with Highway 7. OPA 661 is one of five amendments to the City's Official Plan (OP) implementing the recommendations of the Avenue Seven Land Use Futures Study.

Pinegrove on Seven Inc. (Applicant/Appellant), the registered owner of lands municipally known as 5263 Highway 7 and 7720 Kipling Avenue (Subject Property), has appealed OPA 661 under subsection 17(40) of the *Planning Act* as a result of the failure of the Regional Municipality of York to deliver notice of a decision in respect of all or any part of OPA 661 within 180 days of OPA 661 being received by York Region. The letter of appeal is dated June 2, 2008.

Residents of the Kipling Avenue/Highway 7 area, which includes the lands subject to the appeal, have issues with the inclusion and redesignation of low density residential lands on the south side of this intersection by OPA 661. City Council (Council) referred this issue to the Ward 2 Subcommittee on May 12, 2008. The Subcommittee met with local residents and City staff reported back to the Committee of the Whole at a Special Council Meeting on June 3, 2008, and Council subsequently

adopted staff recommended modifications to exclude, generally, low density residential lots in the area surrounding the intersection of Kipling Avenue and Highway 7.

The Appellant, who wishes to construct a 17-storey residential apartment building on the Subject Property at the southwest corner of Kipling Avenue and Highway 7, is supportive of the principles of OPA 661 but disagrees with its performance standards, including height and density restrictions, which, the Appellant argues, will not achieve the intensification sought by this OPA. The Appellant is also concerned with modifications to the OPA as the Appellant is of the opinion that this will cause additional undue restraint.

This hearing was scheduled for 15 days. The Board stood down at the request of the three Parties for part of this period while attempts were made to reach a settlement. A settlement among the Parties was eventually arrived at and presented to the Board.

Prior to the settlement being arrived at, the Board heard qualified land use planning evidence on behalf of the City from Paul Robinson. On the basis of Mr. Robinson's evidence and at the request of the Parties, the Board issued an Interim Order approving OPA 661, except for those lands remaining under dispute, namely the Subject Property.

During the course of the hearing, the Board stood down several times while the Parties worked at negotiating a settlement. At the request of the Parties, the Board also made an unaccompanied visit to the Subject Property.

On June 16, the three Parties informed the Board that they had arrived at a settlement in principle. The Board then directed Counsel for the Parties to provide the affected landowners the terms of the settlement with sufficient notice for a scheduled public hearing on the evening of June 22. Mr. Kagan told the Board that his client, the West Woodbridge Homeowners, Association (WWHA), was not unanimous in its support of the City's position and would vote on the terms of the settlement. He suggested to the Board that the vote would not be unanimous either, but would be conducted in a democratic fashion.

Twenty-three people, most of them members of the West Woodbridge Homeowners' Association Inc., a Party to the hearing, addressed the Board on the evening of June 22 after the terms of the settlement were outlined to the Board.

At this evening session, the Board was informed that, on June 15, the Council of the City of Vaughan agreed to the settlement, and that, on June 14, the WWHA supported, by a two-thirds vote, the terms of the settlement. While there were a number of concerns expressed by the speakers, including traffic and safety during the construction period and beyond, and the quality of life in their now stable neighbourhood, the two most important issues to emerge were the height of the proposed building and the line defining the southern boundary on OPA 661 as it related to their neighbourhood. There was no support for the line extending, as the Applicant/Appellant had originally proposed, to Coles Avenue, and none expressed for the City's original proposal to move it somewhat to the north.

On these two issues, the terms of the settlement state the maximum height of the building shall not exceed 12 storeys or 38.4m, whatever is less, and establish the boundary of OPA 661 to the north of the boundary proposed by the City, as illustrated in Exhibit 36. Several people supported this new boundary. Some felt the height should be eight to ten storeys, not twelve, although some felt the step-backs on the upper storeys dictated by the angular plane were helpful. It was clear from the presentations that not all members of the WWHA supported the settlement, as Mr. Kagan had predicted. The Board commended the speakers for their well-thought-out presentations and for their concern for their neighbourhood.

At the evening session, solicitor Susan Rogers, representing participant John Duca, indicated that she wished to introduce a motion to make Mr. Duca a party in the hearing. Ms Rogers was informed by the Board that the Board would deal with the proposed motion at the hearing the next morning. Ms Rogers stayed at the evening session for a brief period and then left. Mr. Duca remained at the session, but made no presentation.

The following morning, Ms Rogers presented the Board with the following Notice of Motion for:

1. An order of the Board pursuant to subsection 17(44.1) and subsection 17(44.2) of the *Planning Act* adding Mr. John Duca, 1051727 Ontario Ltd. and Daytona Auto Centre Ltd. as a party to this hearing.
2. An order of the Board that the hearing of the repeal with respect to OPA 166 (sic) of the City of Vaughan be adjourned to allow Mr. Duca and the owners of the properties located at 5289 Regional Road 7 and 5309 Regional Road 7 and their counsel and professional advisors to review and consider the impacts of the adjustment of the boundary of OPA 166 (sic) from its position along Coles Avenue and to prepare to address such a proposal in a full hearing before the Board.
3. In the alternative, an order of the Board adjourning that part of this hearing that relates to the adjusted OPA 166 (sic) Boundary line on the property located at 5289 Regional Road 7 and 5309 Regional Road 7, *sine die*, pending the processing of a redevelopment application for those properties.
4. An order of the Board abridging the time for services of this motion.
5. Such further and other relief as counsel may advise and the Board permit.

Ms Rogers told the Board that she was bringing the motion forward at this time because she viewed what has happened at the hearing "as a fundamental breach of the principles of natural justice" and "a failure of fairness in respect to my client." Ms Rogers said her client "went on what was a good-faith understanding of the system, which is that...if anything should affect this property, he would be able to participate fully, be notified and, given that what has affected his property arose out of a settlement discussion, be invited to participate in that discussion.

Ms Rogers said her motion needed to be argued "today". She said she could not be expected to cross examine witnesses giving evidence in respect to the line as it

affects her client's property; nor had she an opportunity to review the document books or any of the evidence.

She told the Board the line agreed upon in the settlement ("the purple line") "will completely detrimentally affect my client's ability to invest in his property."

Mr. Annibale and Mr. Kagan objected to hearing Ms Rogers' motion at all. Mr. Davies believed that the hearing could proceed in a fashion where it would not be necessary to hear Ms Rogers' motion. All three indicated that they were not prepared to argue the motion that day, the materials having only been served yesterday.

In summary, they argued that Mr. Duca, despite having attended a pre-hearing conference where the distinction between a party and participant was explained, and despite having known that the boundary line of OPA 661 as it could affect his property was "in play", chose to become a participant, not a party, and should not now be complaining that a settlement had been achieved without his involvement. He had, in Mr. Annabale's words, "a responsibility to take whatever steps were necessary to protect his property."

Mr. Kagan said he did "not want this hearing hijacked by somebody who comes in at the last minute and tries to upset a settlement that was extremely difficult to work out." He told the Board that "it would be completely inconsistent" for the WWHA, based on the vote it took last night, to have parts go ahead and parts be adjourned." He said Mr. Duca made a choice not to hire a lawyer or a planner, but to limit his participation to his own evidence despite knowing that the neighbours wanted the line further north than either the City or the Applicant/Appellant. As a participant, he did not have the same rights to take part in settlement discussions as he would have as a party.

Counsel for the three Parties agreed that, even as a participant, they would permit Mr. Duca to have counsel, thus affording the opportunity for cross-examination. Ms Rogers indicated that she was not willing to hear the witnesses scheduled for that day, as the three other counsels suggested she do, without any preparation or without a planner present. For that reason, she said, her motion had to be heard that day so her client could become a party and acquire a planner.

The Board has discretionary power in the control of its own procedure. Board Rule 45 states, "A motion may be made at an oral hearing event with the leave of and in accordance with any procedures ordered by the presiding Member." Board Rule 3 states, "These Rules shall be liberally interpreted to secure the just, most expeditious and cost-effective determination of every proceeding on its merits."

Upon consideration of the argument presented to it, the Board issued an oral decision that it was not prepared to hear the motion. To do so would not, in the Board's view, be just, expeditious or cost effective. The reasons why are as follows:

- The hearing had commenced, witness statements and replies had been exchanged, Mr. Robinson's evidence had already been heard.
- Mr. Duca was present at pre-hearing conferences where the distinction between a party and a participant was made clear. He chose to be a participant, knowing full well that the boundary line of OPA 661, which could have an affect on his property, was an issue.
- As a participant, Mr. Duca was not entitled to take part in settlement discussions. As a party he would have been so entitled.
- As to the issue of natural justice: natural justice cuts both ways. Mr. Duca knew from the beginning that the line was in play. So did the homeowners. It was, to a large extent, their issue. They got the ratepayers' association together, engaged counsel, engaged a planner, and, at no small cost to them, became a Party at the hearing. Mr. Duca had the same opportunity, but chose not to exercise it.
- The Board has a procedure in place for a good reason – to guarantee a fair, orderly hearing. The Board was not prepared, in this instance, to upset a hearing already underway to allow Mr. Duca to become a party simply because he was not happy with a carefully negotiated settlement. Yes, the settlement affected his property. There was always that possibility. It also affected, in a positive way, the residential properties already existing on the north and south side of

Coles Avenue. Mr. Duca was not the only person affected by this settlement. Unlike the residents, he decided not to take on the responsibilities of a Party at the appropriate time. To allow Mr. Duca to become a party at this juncture would indeed set an unfortunate and destabilizing precedent for future hearings.

- Mr. Duca did not participate in any public meetings related to OPA 661 as it was being modified by Council.
- The Board, and counsel, were prepared to allow Mr. Duca to cross-examine witnesses despite his status as a participant.
- Counsel for the WWHA made it clear that his client's support was based on a comprehensive settlement. To defer approval of the ~~boundary line of OPA 661 as it affects Mr. Duca's lands until such~~ time, as yet undetermined, as a development application is brought forward for those lands is not reasonable given the crucial nature of that boundary to the WWHA.
- Mr. Duca retains the right to make a development application under the *Planning Act*.

The Board then invited Mr. Duca to participate as a participant in the hearing, with Ms Rogers as counsel. Ms Rogers replied that Mr. Duca would be withdrawing from the hearing and the two left abruptly. The Board heard no evidence from Mr. Duca other than Ms Rogers' presentation.

The Board heard unchallenged expert land use planning evidence in support of the application, as amended by the settlement agreement, from Mauro Peverini, on behalf of the City, and Rosemary Humphries, on behalf of the Applicant/Appellant.

Mr. Peverini is the manager of the City's Planning Department. He is an experienced land use planner, and has been with the City since 1990. He was not supportive of the Applicant/Appellant's original proposal of a 17-storey building on the Subject Property, saying it was "overdeveloping the space...adjacent to a well-established low density residential community" (Exhibit 2, Tab 2). He expressed

concern about the scale of intensification represented by the original application, saying it was “inappropriate”, and said that application “did not represent good land use planning” because it was not compatible with the surrounding land use context”. Mr. Perverini supported the application, as revised by the terms of the settlement agreement, with its five storey height reduction. He also supported the revised boundary for OPA 661. He said there is no dispute that the subject lands should be intensified, or that the uses being proposed are appropriate.

Rosemarie Humphries is a land use planner with considerable experience. It was her opinion that the application, as modified by the settlement agreement, for the Subject Property, was appropriate, represented good planning and should be approved. She told the Board that provincial, regional and local policy documents all have the common direction of achieving sustainable direction “through a new urban structure that is compact, efficient, intense and transit supportive” (exhibit 4). She pointed to OPA 661, which identifies intensification opportunities along the Highway 7 corridor. She said the proposed building setbacks for the 12-storey building, as dictated by the 45 degree angular plane, adequately address any privacy and overlook issues and provide an appropriate transition between the adjacent lower density area to the south and the emerging higher density area to the north. She said that the proposed landscaping and urban design feature also assist in addressing any impacts on the surrounding area.

 Having considered all the expert evidence and opinion presented to it during the course of this hearing, the Board Orders that the appeal is allowed in part and Amendment No. 661 to the Official Plan of the City of Vaughan is modified as set out in Amendment 701 to the Official Plan of the Vaughan Planning Area, appended to this Order as Attachment “1”.

The reasons are as follows:

- the scale of development, as represented by the settlement, is consistent with the existing community;
- the application, as modified by the settlement, represents good planning for the intersection of Kipling Avenue and Highway 7; including substantial intensification of the subject property in accordance with the direction in the Provincial Policy Statement (PPS);

- Provincial, Regional and Area municipal planning policies support housing intensification within existing urban areas, as outlined by Mr. Johnston in his testimony;
- the adjustment of the boundary line for OPA 661, as represented in the settlement, helps protect the character of the well-maintained neighbourhood, the proposed development borders, and represents good planning.
- the settlement is in the public interest.

The evidence given by the expert witnesses in regard to these matters was uncontradicted and convincing.

~~So Orders the Board.~~

"S. J. Sutherland"

S. J. SUTHERLAND
MEMBER

ATTACHMENT "1"

**AMENDMENT NUMBER 701
TO THE OFFICIAL PLAN
OF THE VAUGHAN PLANNING AREA**

The following text to Amendment Number 701 to the Official Plan of the Vaughan Planning Area and Schedule "1" constitute Amendment Number 701.

Also attached hereto but not constituting part of the Amendment are Appendices "I" and "II".

I PURPOSE

The purpose of this Amendment to the Official Plan is to amend the provisions of the Official Plan of the Vaughan Planning Area respecting Amendment No. 240 (Woodbridge Community Plan), as amended by OPA #661 (The Highway Seven Futures Land Use Study).

The subject Amendment will add site-specific exceptions to OPA #240, as amended, by OPA #661 to facilitate the development of the lands shown as "Area Subject to Amendment No. 701" on Schedule "1" hereto with a 12-storey residential condominium building with ground floor commercial uses on the Subject Lands.

II LOCATION

The lands subject to this Amendment (hereinafter referred to as "Subject Lands"), are shown on Schedule "1" attached hereto as "Area Subject to Amendment No. 701". The Subject Lands are located on the southwest corner of Regional Road 7 and Kipling Avenue, municipally known as 5263 Regional Road 7 and 7720 Kipling Avenue being Lots 10, 11, 12, and 13 on Plan 3762, in Lot 5, Concession 8, City of Vaughan.

III BASIS

The decision to amend the Official Plan to permit the development of the "Subject Lands" with a 12-storey residential condominium building with ground floor commercial uses is based on the settlement reached between the parties to an Ontario Municipal Board (OMB) Hearing (File PL080857) for which the OMB considered and accepted evidence in support of this Amendment.

IV DETAILS OF THE AMENDMENT AND POLICIES RELATIVE THERETO

Amendment No. 240 (Woodbridge Community Plan), as amended by OPA #661 (The Highway 7 Futures Land Use Study) of the Vaughan Planning Area, is hereby amended by:

1. Adding the following Paragraph to the end of PART 2 Section 8.3, Subparagraph 2) f) 2) "Policies for Transit Stop Centres", after Paragraph vi):

"(701) vii) Notwithstanding the above, the following policies shall apply to the Subject Lands located at the southwest corner of Regional Road 7 and Kipling Avenue, municipally known as 5263 Regional Road 7 and 7720 Kipling Avenue, being Lots 10, 11, 12, and 13 on Plan 3762, in Lot 5, Concession 8, City of Vaughan:

- a) the maximum Floor Space Index (FSI) shall be 3.99. The FSI shall be calculated based on a lot area of 2763.8m²;
- b) the maximum number of dwelling units shall not exceed 120;
- c) there shall be appropriate height transition between development of the Subject Lands located within a Transit Stop Centre to adjacent sensitive land uses. New development on the Subject Lands shall:
 - i) generally respect a 45 degree angular plane measured from the south property line. The maximum building height shall not exceed 12 storeys or 38.4m, whichever is less; stepping down to a maximum height of 4 storeys or 12.8 m, whichever is less, towards the lands designated "Low Density Residential" to the south and shall be defined in the implementing Zoning by-law; and,
 - ii) minimize shadow impacts on adjacent sensitive land uses demonstrated through the preparation of sun / shadow diagrams to the satisfaction of the City;
- d) a landscape buffer area shall be provided abutting all lands designated "Low Density Residential";
- e) the ground floor of any building fronting onto Regional Road 7, the daylighting triangle, and approximately six (6) metres of the northerly portion of the building fronting onto Kipling Avenue shall be used for street related commercial / retail uses only. Commercial / retail uses shall not be permitted for the balance of any building fronting onto Kipling Avenue; and,
- f) appropriate development standards shall be established in the implementing Zoning By-law. (701)"

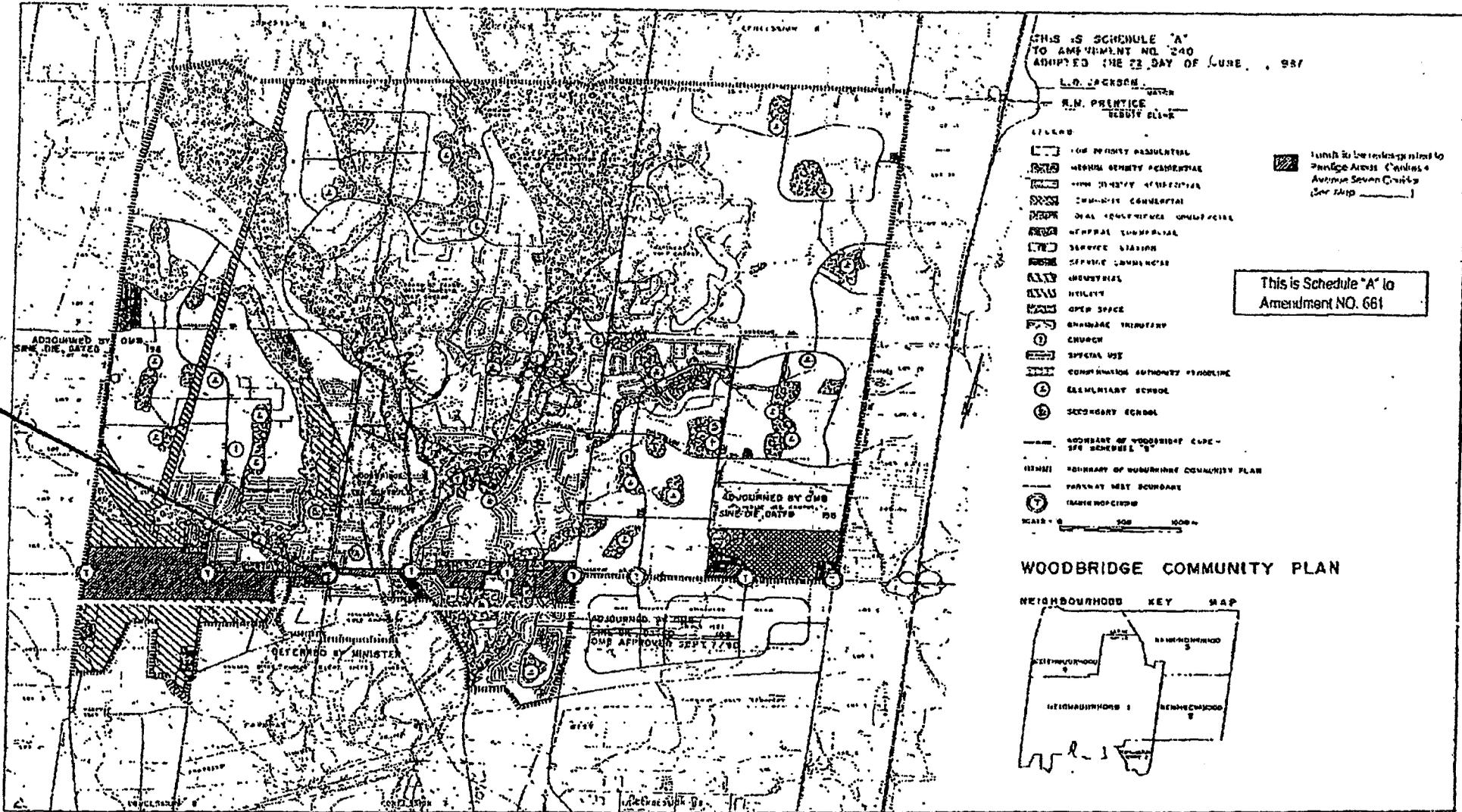
V IMPLEMENTATION

It is intended that the policies of the Official Plan of the Vaughan Planning Area pertaining to the subject lands will be implemented by way of an amendment to the City of Vaughan Comprehensive Zoning By-law 1-88, Site Plan Approval, and Draft Plan of Condominium/Subdivision Approval, pursuant to the Planning Act.

VI INTERPRETATION

The provisions of the Official Plan of the Vaughan Planning Area as amended from time to time regarding the interpretation of that Plan shall apply with respect to this Amendment.

Area Subject to
Amendment No. 701



FILES: OP.07.009, Z.07.049
LOCATION: PART LOT 5, CONCESSION 8
APPLICANT: PINEGROVE ON SEVEN INC.
CITY OF VAUGHAN

THIS IS SCHEDULE "1"
TO AMENDMENT No. 701
ADOPTED THE _____ DAY OF _____, 2009

SIGNING OFFICERS
BOARD ORDER
ISSUE DATED
AUG. 28 / 09
MAYOR
CLERK

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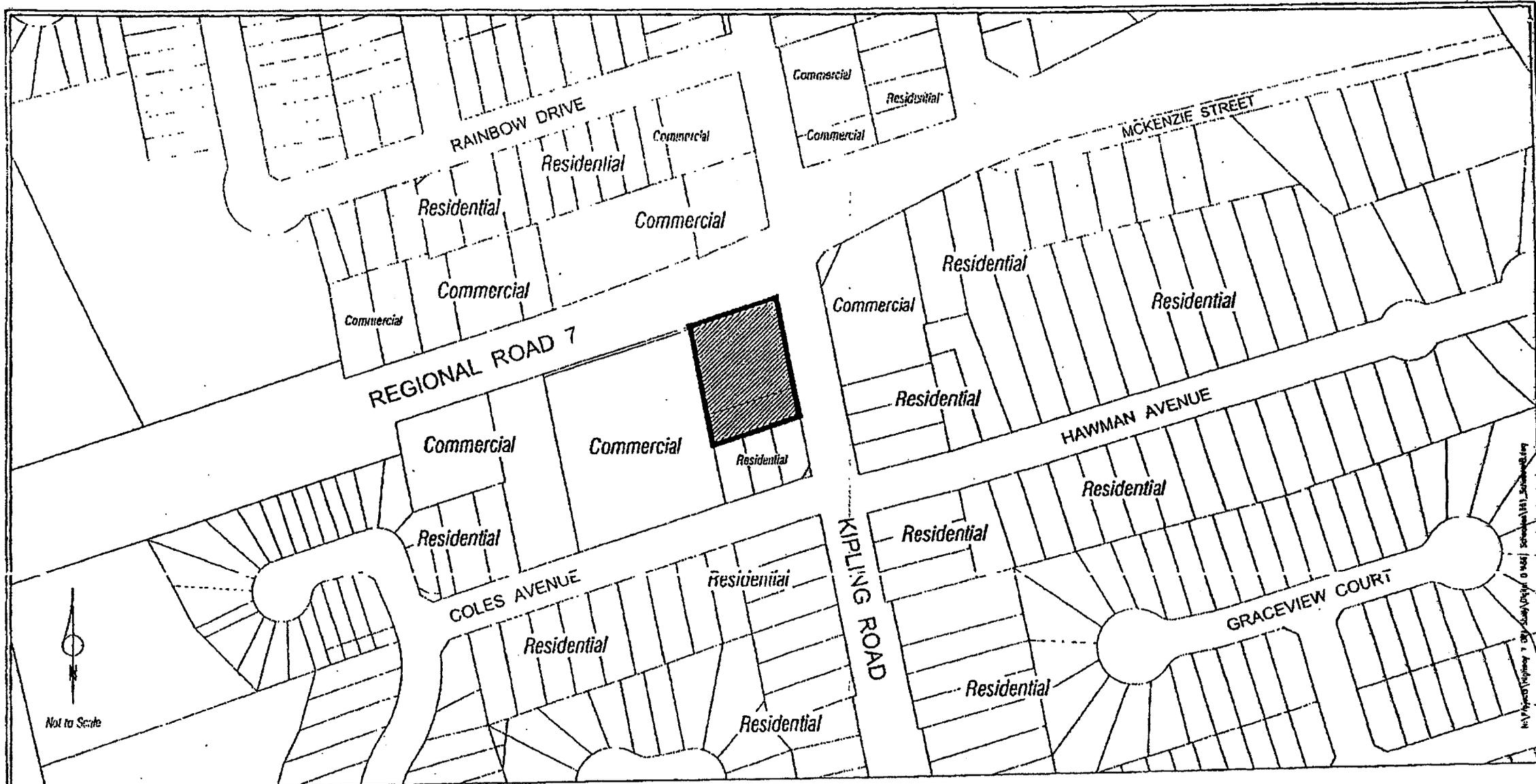
APPENDIX 1

The Subject Lands are located on the southwest corner of Regional Road 7 and Kipling Avenue, municipally known as 5283 Regional Road 7 and 7720 Kipling Avenue being Lots 10, 11, 12, and 13 on Plan 3762, in Lot 5, Concession 8, City of Vaughan.

On June 15, 2009, Council considered and endorsed a settlement of the Ontario Municipal Board (OMB) appeals related to the Subject Lands. This Amendment to the Official Plan reflects the settlement in accordance with the Minutes of Settlement filed with the OMB.

6/25/2009

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FILES: OP.07.009, Z.07.049
 LOCATION: PART LOT 5, CONCESSION 8
 APPLICANT: PINEGROVE ON SEVEN INC.
 CITY OF VAUGHAN

APPENDIX II
EXISTING LAND USE
 OFFICIAL PLAN AMENDMENT No. 701


 SUBJECT LANDS

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