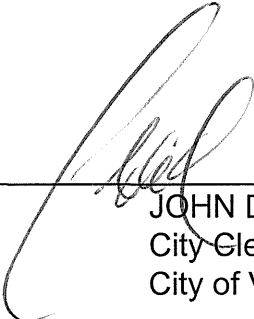


I, JOHN D. LEACH, City Clerk of the Corporation of the City of Vaughan, in the Regional Municipality of York, do hereby certify that attached is a true copy of Amendment Number 481 to the Official Plan of the Vaughan Planning Area, which was approved by the Ontario Municipal Board, with modifications, on the 3rd day of April, 1998.



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JOHN D. LEACH  
City Clerk  
City of Vaughan

DATED at the City of Vaughan  
this 23rd day of April, 1998.

**ISSUE DATE**  
APR 3 1998  
DECISION/ORDER No. 0814



Ontario  
Ontario Municipal Board  
Commission des affaires municipales de l'Ontario

**RECEIVED**  
APR - 9 1998  
CITY OF VAUGHAN PL970497  
CLERKS DEPARTMENT

1177284 Ontario Limited has applied for an Official Plan Amendment to permit the lands located at the northeast corner of Jane Street and Steeles Avenue West, in the City of Vaughan, to be used as a cemetery restricted to crematorium and columbarium uses; etc

OMB File Nos. O970126, R970140, M970047, and M970075

**C O U N S E L :**

David Willans and Donald Sinclair	for	City of Vaughan
N. Jane Pepino, Q.C. and Patricia Foran	for	1177284 Ontario Limited
Thomas R. Lederer	for	City of Toronto
A. Milliken Heisey, Q.C.	for	UPS (Service) Canada Limited
Murray H. Chusid, Q.C.	for	Pat Shaw, president Hullmar South Homeowners' Association; Rosanna Vidale, Finch North Homeowners' Association; Franca Guadagnolo, Hullmar Ratepayers' Association

**DECISION delivered by T. YAO AND ORDER OF THE BOARD**

In January 1996, Vaughan approved the redesignation of lands at the northeast corner of Jane and Steeles to permit a crematorium and columbarium. The land is owned by 1177284, a company controlled by George Damiani. 1177284 sought permission for two buildings, both six stories high. One building would contain six retorts, of which only four were to be operational at any one time. Although the project is in Vaughan, the nearest residents live in North York. North York councillor Dr. Peter Li Preti and his constituents asked Vaughan to reject 1177284's proposal, but were unsuccessful. Dr. Li

Preti then persuaded his council to appeal Vaughan's decision.

On January 29, 1998, one day before the hearing was to begin, the OMB invited the parties to participate in a mediation session. As a result, 1177284 agreed to reduce the number of stories of the buildings to two and four stories. The two storey building would have only two retorts. The City of Toronto (successor to North York's appeal) withdrew from the hearing, leaving only three ratepayer presidents, Pat Shaw, Rosanna Vidale and Franca Guadagnolo to continue the appeal. Only Pat Shaw testified. Other speakers included:

- Ida Degano, Hullmar South Homeowners' Association;
- Ishwar Bisram, York Condominium Corporation No. 206;
- Sylvia Payne, Toronto District School Trustee;
- Errol Young, former North York school trustee;
- Councillors Peter Li Preti and Maria Augimeri,
- Federal Minister of Trade Sergio Marchi;
- Maria Luciani, real estate agent;
- Rosa Casola, grandmother of four;
- Peter Victor, Dean of Environmental Studies, York University;
- Jennifer Sequiera, York University student;
- Basil D'Urzo, restaurant owner;
- Franca Stirpe, Vaughan ratepayer president;
- Fareed Omar, physician;

- Reverend Dalton Jantze;
- Winston Clarke, community leader; and
- Frank and Tony Poretta, air pollution control engineers, Hatch Associates.

This list is not exhaustive. In all, there were 36 witnesses for the ratepayers. The hearing was spread over three weeks including two evening sessions and three day sessions devoted to the ratepayers' case. There were over three hundred letters and petitions. About 147 persons indicated that they waived their right to speak because they agreed with the comments of those who had already spoken. After the hearing closed, we were told that number climbed even higher, based on Dr. Li Preti's comment that the Board only heard less than 1% of those who wished to be heard.<sup>1</sup>

We find three main facts. First, in Toronto, the routine planning process has always placed crematoria in close proximity to residential neighbourhoods, and North York permits them within 100 feet from a residence. This crematorium far exceeds those separation distances. Second, the certificate of approval process was thorough, and resulted in air emissions controls that exceed every other crematorium in Ontario and probably in North America. Its environmental impact is therefore within legal limits, particularly with half the Ministry-approved number of retorts. Third, that Councillor Li Preti overstepped the boundaries of appropriate political activism by actively quarterbacking this case to ensure that the hearing would go on despite the Minutes of Settlement.

#### **The location of crematoria in Toronto**

There are eight crematoria in Toronto, with a total of sixteen retorts. Two new Toronto crematoria were approved after Vaughan's approval of the Jane and Steeles

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<sup>1</sup>Submission by Councillor Peter Li Preti in response to Ms. Pepino, p. 32.

location. Not counting Jane and Steeles, the total number of retorts will be twenty. North York approved two retorts and 3500 niches for Westminster Cemetery (5830 Bathurst Street) on September 17, 1997, and on December 8, 1997, Toronto approved two retorts and 200 niches for St. John's Cemetery, Norway (256 Kingston Road.)

All existing and proposed retorts are closer to residential neighbourhoods than 1177284's. St. James Cemetery and Crematorium, at 535 Parliament St, is 328 feet from a 124 unit apartment building. Over 4000 dwelling units are estimated to be within a 1000 foot radius. Mount Pleasant's crematorium was built in 1973 within 98 feet of the existing residence on Moore Avenue. 117284's retorts are proposed to be 1000+ feet from the apartment building at 4001 Steeles Avenue West, at least 2000 feet to the majority of Hullmar residents and 3000 feet from Mr. Bislam's condominium. At least 25 interested persons living south of Finch attended the hearing and indicated their opposition. They are at least 2 kilometres away.

We turn to the four retorts approved in 1997. Westminster, about which we will say more later, has no persons within 1000 foot radius, the same as 1177284's site. St. John's, Norway has 500 + residences. The local councillors, Joanne Flint and Tom Jakobek, could have made the same objection as did Dr. Li Preti, but chose to act in a responsible and restrained fashion. We think this gives lie to the accusation that the Jane Finch area is being singled out.

The site will be landscaped and have a high standard of urban design. 1177284's planner David Butler stated that "It would be difficult to see the two storey building" from the large apartment buildings across Steeles, and one would be "hard put to have a less prominent building on the site." Unlike other existing crematoria, the stack will be camouflaged into the roof treatment.

Sayid Warsi, a paralegal representing the Asian community, said "We reject and disapprove. It is negative, depressing and dark." The OMB has stated on many occasions

that perceptions of others are not a proper land use planning objection<sup>2</sup>.

Others, including Mr. Butler, may not share Mr. Warsi's view. Even if they do, it is not obvious that the effect is predictable, measurable or concreté. Dr. Li Preti stated he had passed by Forest Lawn's mausoleum at the corner of Yonge and 401 *daily* during the last twelve years as a councillor, without realizing that it contained a crematorium. This handsomely designed series of buildings has the words "Crematorium and Mausoleum" directly on the Yonge street edge. The crematorium is about 40 feet away from the Warner Bros. Entertainment Inc. office building and 98 feet from the nearest residence. Six months ago, the OMB redesignated the MacLean-Hunter Publishing site across the street to permit 2000 new dwelling units and 500,000 sq feet of commercial uses, all of which will be within 1000 feet of Forest Lawn's crematorium<sup>3</sup>, and of course, all closer than any of the ratepayers here. With the new development, the intersection of 401/Yonge is the gateway to downtown North York and contains a crematorium.

We reject the argument that homeowners chose to live here before the crematorium was proposed and therefore should be allowed to veto any land change on 1177284's site. In *Re: Glanbrook Official Plan Amendment No. 13*<sup>4</sup>, Mr. Watty stated:

Although all change must be viewed against the impact of pre-existing and contemplated future uses, the Board finds it unreasonable that any change can be frustrated by any interest merely because they were there first. Their valid rights

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<sup>2</sup>*Grace Villa Nursing Home v Hamilton-Wentworth* (January 29, 1992), Unreported, OMB file nos., O 900070 and R 900283 (T. Yao). In *Memorial Gardens v Whitchurch-Stouffville* (January 28, 1997), 34 O.M.B.R. 424, the Board approved a cemetery adjacent to residences and an industrial subdivision. Some residents were opposed, because of the personal discomfort of their customers and their own cultural background. Vice Chair R.D.M. Owen said, "I cannot find that personal preconceptions are matters that can be addressed in a planning context."

<sup>3</sup>*Westnor Limited v North York (City)*, (Sept. 25, 1997), 35 O.M.B.R. 416, (Vice Chair D. L. Santo)

<sup>4</sup>(December 7, 1995), OMB file nos. R 930224, O 930246.

and concerns must be acknowledged and addressed and these form the context for evaluation of the merits of the change proposed.

We acknowledge that for some, cremations are distasteful. However no OMB case was cited to us nor are we aware of any in which personal distaste, in the absence of concrete land use impact, was a ground for the rejection of an application. We think that Mr. Chusid recognized this in final submissions. He asked us not to respond with "intellectuality" to what he calls a "psychodrama". This approach is odd, and condescending to both his clients and the Board. Ms Pepino's answer was:

If the Board accepts the plea, "Now is the time to accept emotion and sweep aside all this logic", I can see it happen. Fear, anger, hatred about a crematorium. If that is acceptable, why not about a cemetery? A funeral home? There was a hint of that [in *Grace Villa*.] And a funeral home, by the way, is allowed in the Prestige Industrial designation that Mr. Chusid wants, right on that corner.

Then a nursing home. A hospital, a home for aged. I have seen high emotion in hearings about group homes. Where does it stop? That's why. . . this Board has not gone that road. This is a judicial proceeding. It is adjudicative proceeding. Not part of the democratic process. That is what happens when you look at this as judges. That's the reason in the planning construct, where emotion is acknowledged and listened to, but is subjected to adjudicative weighing of logic. Scrutinized. Based in fact. That's the Marquis of Queensberry rules that this Board is operating under. It is the policy of this Board and is appropriate for this Board. And should be relied on the future.

On a complete review of the evidence, (some of which we will elaborate later), we find that the location of this use on this site is appropriate and represents good land use planning.

#### **Vaughan OPA 400**

1177284's opponents' principal planning argument is that s. 4.2.4.5.xi of Vaughan's Official Plan Amendment No. 400 only permits crematoria in cemeteries greater than 4 ha.

1177284's site is 1.74 hectares.

Because the City of Toronto settled with 117728, we did not have the benefit of the planning examination conducted by the City's expert consultants. Nor were we made to understand that this seemingly straightforward argument was going to be the linch pin of Mr. Chusid's case until after the evidence was completed. Mr. Chusid did not subpoena a planner. He did not put a single question on OPA 400 to 1177284's planner, Mr. Butler. His conduct had the appearance of trying to win by a surprise attack, which is totally at variance with the current trend of Board practice. Mr. Chusid seemed to be intent on being his own planner, and also mounting his planning evidence in the submissions phase of the hearing, where he could not be cross-examined.

Ms. Pepino objected on numerous grounds and we agreed that she had a valid objection. Notwithstanding, we ordered that the hearing be reopened and asked Vaughan's planner, Grant Uyeyama, to testify under oath. He said that OPA 400 does not apply to the lands at Jane and Steeles, and even if they did, he was of the opinion that the particular official plan amendment sought by 1177284 took precedence over any general proposition in OPA 400. Despite vigorous cross examination by Mr. Chusid, his opinion remained intact and is persuasive. As we said previously, we have found that this use is justified by the planning evidence. Therefore we reject the argument that OPA 481 (as amended, to permit only two retorts) is contrary to Vaughan's Official Plan.

### **The Certificate of Approval Process**

On December 10, 1996, 1177284's air emissions consultant, Dr. Tony van der Vooren, applied for a certificate of approval for six retorts. Each consists of a primary chamber, which operates at a minimum of 800° C and a secondary chamber, at 1000° C, which ensures complete combustion of less volatile materials. Although the process is centuries old, there have been advances in the last five years, particularly in the area of



process control based on continuous measurements of carbon monoxide, oxygen and smoke. According to Dr. van der Vooren, "In older units, if the secondary chamber is too small, this has led to visible emissions. There are still a number in the province, but they are not under a valid certificate of approval." These older units have caused the majority of complaints to the Ministry of Environment.

Certificates of approval are issued when the applicant proves to the Ministry of Environment that the emissions will meet Regulation 346. In order to assist applicants, the Ministry publishes design guidelines, setting out the basic engineering principles. Part way through the process, the federal Member of Parliament, Sergio Marchi, wrote to the provincial Minister of Environment asking that the project be delayed until new, more rigorous crematorium guidelines were in place. There were also expressions of concern from other levels of elected officials, York University and the public.

These comments led the Ministry to give additional notice of this proposal, including placing it on the environmental registry, and holding a public meeting under the Environmental Bill of Rights (EBR). This occurred on September 17, 1997, at La Pineta Banquet Hall near 1177284's site. There were 42 oral presentations. All the ratepayer presidents were in attendance. 1177284 was required to answer all the objections made at the meeting, which were more extensive and detailed than at the OMB hearing. The matter was now up to the Minister of Environment to study the technical aspects of the proposal.

Concurrently, Mr. Marchi requested that the proposal be designated under the *Environmental Assessment Act*. This would have required an expanded study of the alternatives to the crematorium and potentially led to a hearing by the Environmental Assessment Board. On October 21, 1997, the Director of Approvals branch advised Mr. Marchi that it would not issue an approval until the Ministry was assured that emissions would meet Ontario's strict standards.

On January 23, 1998, the Ministry issued its certificate of approval for 1177284's "6

retort - 4 operational" proposal. In a letter to Mr. Marchi, it explained that additional conditions were being imposed as a result of the sensitive nature of this location. These additional conditions included continuous emissions monitoring, contaminant source testing and operational procedure requirements.

The result of this is that the Ministry considers that Ontario regulation 346 has been met. In addition Dr. van der Vooren testified that the 1177284 crematorium met US EPA and present and proposed Ontario standards for over 50 compounds including dioxins, furans and mercury. The Ministry is composed of experts whose job is to ascertain if the proposal meets Ontario law and decided that it did.

The only argument left to opponents is that Ontario law is insufficiently strict and Frank Poretta, Tony Poretta and Peter Victor made precisely that argument.

We reject their argument. We have no jurisdiction to do what they ask. None of them submitted advance written notice of this position as required by the prehearing order. Mr. Chusid conceded that none of them was to be considered as an expert witness. Frank and Tony Poretta never made this argument in their jobs as consultants for industry, nor did Dr. Victor take this position when he was formerly an assistant deputy minister of the environment. Their remarks do not constitute a basis for a pronouncement that Ontario mercury standards should be revised.

#### **Dr. Li Preti's conduct**

Ms. Pepino asked that Dr. Li Preti's conduct be censured with respect to the "entirety of the Board's proceeding". We interpret this as making findings that certain conduct at the Board is inappropriate because it impedes the resolution of conflict and is not consistent with the obligations of parties before this Board. Because Dr. Li Preti was not present during Ms. Pepino's submissions, we permitted Dr. Li Preti to respond to Ms. Pepino. He rejected any negative connotations for his involvement but did not disagree

with most of the facts she alleged. On several crucial points he offered new explanations of his conduct that were contradictory of evidence he gave under oath. In fairness to Dr. Li Preti, he was faced with the difficult task of being both advocate and witness, but as we will describe, this was a situation entirely of his own making. He asked us not to make findings that would have the effect of injuring his political reputation. Our task was not to harm or enhance anyone's political reputation, but to address the planning issues, on the evidence.

#### **His initial response to Vaughan's planning process**

1177284 recognized from the beginning that if its proposal was to impact anyone, it would be North York's residential neighbourhoods south of Steeles. It met with Dr. Li Preti in September 1996. The same month, Vaughan planners sent a notice of public hearing to all persons within 120 m of the 1177284 site. It said the owner wished to redesignate the lands to permit a "cemetery, mausoleum columbarium and a chapel" and gave a telephone number where interested persons could call to get further information. A crematorium was shown on the enclosed site plan. Since the area of notice included both large apartment buildings of Antica Village, some 662 notices were sent. North York and Metro planning departments were notified. No one appeared at the public meeting except United Parcel Services (UPS) and 1177284.

UPS supported 1177284 since it would be more compatible with its 24 hour operation and frequent truck movements. This is because the 1177284 lands have a *residential* designation resulting from a decision of the Joint Board (September 20, 1994) and Order in Council (January 19, 1995.) These removed the lands from the Parkway Belt West Plan and permitted a six storey apartment having 150 dwelling units designed for seniors and other uses, together with 495 underground parking spaces. These apartments have not been built because funds for affordable housing could not be obtained. Therefore, this Board has already determined that a high activity use is appropriate for this

site and any lesser activity use would be also appropriate.

Dr. Li Preti was aware of the October meeting, but could not attend as he was out of the country. Vaughan holds its public meeting at the beginning of the process. At the meeting, Vaughan's planning committee<sup>5</sup> identified a large number of issues. The matter was then sent for technical review to return to the committee in January 1997.

Dr. Li Preti then met with the three ratepayer groups to plan their opposition. Our notes show the following discussion:

Ms Pepino: At that time, did you meet in a general way with the ratepayers?

Dr. Li Preti: First was with residents. That's in October. But I can't remember. Second was with the full executive plus the same people. I would say it could have been fifteen people. It could have been close to the end of October.

Ms Pepino: Did you take the plans?

Dr. Li Preti: Usually I would bring the plans. It makes me feel they were not left with me as I had very little information. Maybe I did not receive them.

Ms Pepino: Was there a planner present?

Dr. Li Preti: I don't remember if I brought a planner from the city. I discussed it with the planning department. Usually I bring a planner.

Ms Pepino: The community took a position they were going to oppose my client's application?

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<sup>5</sup>In Vaughan, the planning committee is council, sitting as a committee of the whole.

Dr. Li Preti: I suggested they meet with your client. So in all fairness, they waited until the first week of December to meet with the applicant and at that time I insisted we would have all plans. I believe there were about twelve present at the meeting. Including Councillor Augimeri.

At this meeting of December 9, 1996, the three rate payer presidents, Dr. Li Preti and Metro Councillor Maria Augimeri met with 1177284 and its experts at the Vaughan Chamber of Commerce offices. Virtually every issue raised in this hearing was also discussed then. For example, they asked if there would be odour or smoke. The answer was "no, not under normal operating conditions."

Dr. Li Preti: [Previous to the December 1996 meeting] So they told me they were saying, "Oh my gosh, not six burners." They know about environmental concerns. I said, "Relax and then make up your mind."

Ms Pepino: It didn't change their opinion?

Dr. Li Preti: 1177284 had two experts. And I don't remember the name, it could have been van der Vooren. And I believe the people, hearing this, that's when they became very concerned.

Ms Pepino: On their behalf you mobilized city hall?

Dr. Li Preti: I asked the ratepayers, I cannot remember the details. I remember going next day and meeting with Commissioner of Planning and reporting what had occurred. I articulated the fact the residents were opposed and would want to have the City of North York put a planner on this issue. What are the pros and the cons and what is the application about? I don't know if that's "mobilizing North York".

Ms Pepino: Well the planning department had been aware of the application and,

until your visit, had not felt it necessary to bring it to attention of council?

Dr. Li Preti: There was a letter, I don't know if I have it here, from me to the planning commissioner, indicating my need to get a little more information on this. The situation is very clear to me, the Planning Department knew there was going to be a meeting, I discussed this, so they did not take any formal action until I wrote my letter.

However, it is clear that Dr. Li Preti had already made up his own mind when he told the rate payers to "relax", since he obtained Council's resolution to object to the designation one month before, on November 6, 1996.

This resolution is based on a North York planning report, which is the only opposing planning evidence before us. The writers of the report objected to the use on grounds of urban design, ("the accessibility and visibility of this strategic gateway entrance"), lack of need for the service, and lack of compatibility with the surrounding residential neighbourhood.

We conclude North York's planning report is simply an attempt to provide the appearance of professional judgement to disguise what the local councillor had already determined was politically important. Although North York had been given notice of the application, staff did not feel the need to comment, until as Dr. Li Preti put it, "a planner be put on this issue."

The report appears to have been prepared in great haste. From Dr. Li Preti's testimony, it is not clear that North York even had the plans when it commented. Certainly, they could not have the detailed information given by Dr. van der Vooren on December 9, 1996. The report is dated November 6, 1996 and Dr. Li Preti introduced it that evening as a late addition to Planning Committee's agenda. It received unanimous approval. Over the course of the next year, planning staff never issued a revised report dealing with new

information, such as Vaughan council's adoption, the OMB prehearing, nor the certificate of approval process. Other than the December 1996 meeting, Dr. Li Preti never took steps to have the ratepayers talk to 1177284. Nor does he ever seem to have advised the residents that they should, in their own best interests, read opposing expert's reports to maximize their own persuasiveness before this Board. It was to his advantage that the situation at the hearing would be one of two solitudes.

### **Contradiction between North York's appeal and Westminster Cemetery**

The third fact that undermines North York's planning report is Council's later inconsistency dealing with the Westminster Cemeteries crematorium. To understand the inconsistency, one has to examine the geography of the Westminster cemetery. It is in North York, in the centre of the super-block bounded by Finch and Steeles, Dufferin and Bathurst. To the north and east is G. Ross Lord Park. To the south is a hydro easement. To the east is Beth Tzadec Memorial Park.

Westminster has two existing retorts, which are closer to residential areas than those planned for Jane and Steeles. Within 1000 feet there are 66 residences on Robert Hicks Drive south of the hydro easement, while there are none within 1000 feet of the 1177284 retorts. In both cases, just beyond the 1000 foot radius are large apartment buildings, Westminster is close to Wyldewood Apartments, (240 units) and 1177284 is close to Antica Village.

In early 1997, Westminster purchased a .58 ha parcel (1.4 acres) from MTRCA, about 1200 feet from its existing retorts. This new parcel overlooks a dam and reservoir. Although it is removed from residential areas and within a 90 acre cemetery, its relationship to residential areas is exactly the same as 1177284's, that is, both are at least 1000 feet from the nearest residence. In fact, both crematoria are the most isolated in Toronto.

Westminster wished to construct two additional retorts on this parcel, thus creating

a total of four for the cemetery. The new facility required a consent, site plan approval, a minor variance, and a fill permit from MTRCA. Since this was an establishment of a crematorium, consent of the Registrar was required, and under section 4 of the *Cemeteries Act*, North York could, at its election, hold public hearings to determine if the approval was in the public interest. On September 2, 1997, in a two paragraph report, its planning department determined that no public hearing should be held.

No environmental meeting was required and North York did not participate in the certificate of approval process. No concerns were raised about mercury emissions. No request was made for special conditions for continuous monitoring. No requirement was made for special notice should there be a future expansion. No concern was raised about North York's own zoning by-law, which allows for setbacks of only 100 feet for crematoria.

Vaughan did hold a *Cemeteries Act* public meeting in combination with the planning meeting of January 20, 1997. Vaughan made greater effort to seek public input for 1177284, than did North York for the Westminster application. In fact, North York council voted not to hold a public meeting on Westminster on September 17, 1997, the same day Dr. Li Preti and North York's solicitors appeared to oppose 1177284's certificate at the Environmental Bill of Rights public meeting.

On January 20, 1997, Dr. Li Preti asked Vaughan not to approve the application. He said, "My main submission was the community was not aware, please give us an opportunity to let more people know about this." By this time, he had held two meetings with ratepayers and had already secured council's and staff's opposition.

The plea to give residents more time was repeated at the OMB prehearing conference in August 1997. He said,

With Pat Shaw, I came before the Vaughan city council to ask them to give us an opportunity to speak. We were refused. They wanted to deal with this issue. I was ashamed as a politician. And it was almost approved, even before I had a chance



to speak in the final analysis and I object to this. . . . We can send 500 letters in submissions.

He then asked for a second prehearing conference: "In fairness for the residents. Even though notice was given to a wider range, there may be a number of people who have not been involved, that were somehow excluded."

By August 97, Councillor Li Preti had held a large community meeting (on April 24, 1997), for which he sent out "at least 500" flyers. There was a second public meeting on July 29, 1997 for which the notice advises that the three presidents and five other ratepayers have been meeting on "a weekly basis to fight this development." The representation that more time was needed to organize the community was misleading to this Board.

Finally at the start of the hearing, Dr. Li Preti asked us to adjourn indefinitely to permit the exploration of a land swap with MTRCA to find a site further removed from his ward. He said the Mayor was in support of such a deal and "We may be at a solution that could satisfy thousands who may be opposed."

#### **Crossing the line for proper conduct by a councillor**

The mediation occurred January 27 and Toronto Council needed to formally ratify the result. This hearing was adjourned for a week for this to occur. On February 6, 1998, the motion to authorize the entering into Minutes of Settlement was introduced by Dr. Li Preti and he voted *in favour of it*. His explanation for doing this is that he thought it was the best deal for the residents. However, he personally continued to oppose the project and obtained a matching grant of \$10,000 from the City to the residents. In his written submissions to us on March 25, 1998, he wrote, "[Toronto] Council agreed with me and the community to continue to fight this application", which is at direct variance with the written

Minutes of Settlement. We prefer the evidence given under oath, that he was making the best of a bad deal.

Ms Pepino characterized the funding to be a form of champerty, "So what had been settled on one hand was fuelled with money on the other hand."

What is improper conduct on the part of a councillor is set out in *Re Cophorne Holdings Ltd*, (36 O.M.B.R. 122). In that case, Dale Martin appealed his own council's decision. He was represented by a lawyer and offered planning evidence. The Board observed that "if an alderman can appeal either to the Board, the Courts or to Cabinet every time he/she loses a vote at council, municipal activities would come to a halt." and awarded costs against Mr. Martin. In this case, 1177284 does not seek costs against either Dr. Li Preti or the ratepayers because it has agreed not to seek costs from Toronto under the Minutes of Settlement and it regards Dr. Li Preti and the Toronto residents as nominally "the other party".

We are not in this case attempting to set out any rule on what is proper or improper conduct in every future circumstance, since this hearing is unique. Dr. Li Preti's actions may be contrasted with Mr. Marchi's, who, after all, was not under any restriction because of Minutes of Settlement. Mr. Marchi's oral testimony recognized 1177284's right to seek zoning changes and Vaughan's right to legislate under the *Planning Act*. Although he championed his community's interests, he did not organize buses for supporters to come to the hearing. He confined his testimony to his office's direct correspondence with the Ministry of Environment.

In this case, Dr. Li Preti played at least three roles: he was a community leader, spearheading the opposition by obtaining the assistance of staff and North York council. He was agent for ratepayers, despite the fact that they had their own counsel. He took an active part in both the prehearing and hearing, making requests that were tantamount for motions for adjournment. It was he who obtained the presence of all of the witnesses, leaving Mr. Chusid only with the task of cross examination and final submissions. Since

he obtained the matching grant from the City, he also played the role of pay master. Black's law dictionary defines "maintenance" as "intrusive interference by assisting either party financially or otherwise to prosecute a suit which does not concern one." He asked: "How could I not help my community in one of its bitterest fights in living memory?" The answer is that if he wished to help he ought not have voted in favour of the Minutes of Settlement and should have respected the standard for municipal councillors in *Copthorne*. Before he testified, he was warned of the *Copthorne* case by both counsel and the Board. He chose to "take his chances."

1177284's Submissions state that in continuing the requirement to hold a hearing after the City had withdrawn, (the City being the only legal and real appellant), Dr. Li Preti directly contravened the spirit, if not the language of the Minutes of Settlement.

In *Copthorne*, Councillor Dale Martin was motivated by principle. Although the issue of a proper bonusing formula was of public concern, it would be difficult to translate that into widespread voter interest. Here, there is an obvious personal political advantage, which Dr. Li Preti exploited, to the detriment of the OMB's decision-making process.

Although we may have an opinion on Dr. Li Preti's dealings *before* the matter was appealed to the OMB, it is not our business. However, once the matter was appealed, there was an obligation on Dr. Li Preti to show even-handedness, particularly in his dealings with this Board, and in our opinion, he failed to do that by subverting the Minutes of Settlement. We adopt Ms Pepino's submissions:

At the time council makes a decision, it becomes a judicial matter. It is affecting people's rights and discharging a duty which is not politics and it is one of those decisions that, I admit I am old fashioned, should be above politics or tempered by some consideration of the greater public interest.

Suppose that is true that councils are allowed a free for all. The minute an appeal is filed, we are out of the political arena and into the adjudicative field. This Board has regulations and it has its own Act. It has practice directions and a rich tradition of rules and expectations and *those of us who come here are charged with meeting*

*those rules and respecting them and living by them.* That's not rough and tumble, that's not politics.

Dr. Li Preti was perhaps motivated by honest belief or over-zealousness. We do not wish to chill elected officials who are obligated to provide leadership to their communities. But Dr. Li Preti acted as the community's lawyer, without finding out the proper responsibilities that a lawyer has before this Board. It is inconceivable to us that a lawyer would have actively participated in a hearing when he or she had introduced the motion for the settlement in good faith.

### **The Ratepayers**

Ms Pepino asked for a finding that the ratepayers abused this Board's process by not evaluating all available evidence and in other respects. In view of the light of our findings on Dr. Li Preti's conduct, we are not prepared to make any finding on the conduct of the ratepayers.

### **Order Requested**

The Board approves Official Plan Amendment No. 481 in the form attached as Schedule A to 1177284's Submissions of February 26, 1998. These Schedules are filed and to conserve paper, are not attached to this order. The appeal against Zoning By-law No. 100-97 is allowed in part and that by-law is modified as per Schedule B. The Board approves the site plan application under M 970075 for the lands in the form of Schedule C, namely with the modification:

the proposed building on Part A of the subject lands shall not exceed two storeys in height and will have a maximum gross floor area of 3225 m<sup>2</sup>, restricted to crematorium and columbarium uses (maximum 2 operational retorts), and associated

gathering rooms and offices.

The Board approves the application to Vaughan for consent pursuant to the *Cemeteries Act (Revised)* to permit the development proposed in Official Plan Amendment No. 481 and Zoning By-law No. 100-97.

"C. M. Millar"

C.M. MILLAR  
MEMBER



T. YAO  
MEMBER

SCHEDULE "A" to the Order of the Ontario Municipal Board  
issued on the 3rd day of April, 1998.

PL970497  
0 970126 et al

**AMENDMENT NUMBER 481  
TO THE OFFICIAL PLAN  
OF THE VAUGHAN PLANNING AREA**

The following text to Amendment Number 481 to the Official Plan of the Vaughan Planning Area and Schedule "1" constitutes Amendment Number 481.

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

I **PURPOSE**

The purpose of this Amendment is to amend Amendment No. 454 to the Official Plan of the Vaughan Planning Area, to redesignate the subject lands from "Medium Density Residential" to "Commercial Cemetery", to facilitate the development of the subject lands for a cemetery restricted to crematorium and columbarium uses only and accessory gathering rooms and offices.

II **LOCATION**

The lands subject to this Amendment, hereinafter referred to as the "Subject Lands", are shown on Schedule "1" attached hereto as "Area Subject To Amendment No. 481". The lands are located at the northeast corner of Jane Street and Steeles Avenue West, in Lot 1, Concession 5, City of Vaughan.

III **BASIS**

The decision to amend the Official Plan is based on the following considerations:

1. The subject lands are currently designated "Medium Density Residential" by Official Plan Amendment No. 454. The proposed cemetery development would not be permitted in the aforementioned designation. Therefore, an amendment to the Official Plan is required.
2. The redesignation of the site to allow for a cemetery restricted to crematorium and columbarium uses only and accessory gathering rooms and offices, constitutes an appropriate development of the property for the following reasons:
  - a) the proposed development is located at a very visible and prominent intersection at Jane Street and Steeles Avenue West, and is consistent with a high profile gateway development, incorporating a high architectural design of buildings and substantial landscaping, in keeping with City objectives;
  - b) the proposed uses are not considered to impact upon surrounding land uses, with respect to traffic and parking, and the natural environment;
  - c) the proposed uses are considered to be compatible with existing industrial activity on the adjacent United Parcel Service lands to the north and east;

- d) the site is highly accessible to pedestrians using public transit and to vehicles, given its location abutting two major arterial roads (ie. Jane and Steeles), and close proximity to provincial highways (ie. Highway No.'s 7, 400 and 407); this ensures quick dispersal of traffic in the area and negligible traffic impacts, and;
  - e) the proposed uses address an increasing demand for cremation services in the Greater Toronto Area, including the City of Vaughan.
3. On January 27, 1997, Vaughan Council approved applications to amend the Official Plan and Zoning By-law, subject to conditions, to redesignate and rezone the subject lands to permit a cemetery restricted to a crematorium and columbarium uses only, and accessory gathering rooms and offices.

IV DETAILS OF THE ACTUAL AMENDMENT AND POLICIES RELATIVE THERETO

Amendment No. 454 to the Official Plan of the Vaughan Planning Area is hereby amended by:

- 1. Redesignating the lands located at the northeast corner of Jane Street and Steeles Avenue West, shown as "Area Subject To Amendment No. 481" on Schedule "1" hereto, from "Medium Density Residential" to "Commercial Cemetery".
- 2. Deleting Schedules "1", "2" and "3" of Amendment No. 454, and substituting with the Schedule "1", attached hereto.
- 3. Deleting the policies contained in Section IV DETAILS OF THE ACTUAL AMENDMENT AND THE POLICIES RELATIVE THERETO in Amendment No. 454, and substituting with the following development and design policies:
  - a) permitted uses shall be a cemetery restricted to crematorium (*with two retorts, both of which may be operational*) and columbarium uses only, and accessory gathering rooms and offices;
  - b) the cemetery shall not adversely affect adjacent land uses, with respect to traffic and parking, or impact upon the natural environment;
  - c) proponents of cemeteries may be required to submit studies or reports, prepared by qualified professionals in respect of such matters including but not limited to parking,



access and traffic, environmental, etc., to the satisfaction of government approval authorities, including the City of Vaughan, Region of York, *City of Toronto*, Medical Officer of Health, Toronto and Region Conservation Authority, Ministry of Consumer and Commercial Relations;

- d) the overall development of the subject lands for crematorium and columbarium uses shall be compatible with and sensitive to existing and proposed development in the surrounding neighbourhood with respect to the overall height and architectural design of buildings, landscaping and buffering, entry features, parking, lighting, and the Jane Street and Steeles Avenue West streetscape;
- e) buildings shall be constructed on site incorporating a design that is in keeping with a gateway location, and at a scale which is complementary to and compatible with adjacent land uses;
- f) the height of *the southerly building* shall be restricted to not more than 2 storeys, and the height of *the northerly building* shall be restricted to not more than 4 storeys;
- g) *full development of the southerly parcel shall be required in accordance with the approved site plan, whereas the development of the northerly parcel shall be permitted in successive phases;*
- h) the implementing zoning by-law shall rezone the subject lands to permit the subject development, and establish the appropriate floor space index, yard, height and parking requirements for the development;
- i) the cemetery shall be subject to site plan approval, in accordance with the provisions of the Planning Act;
- j) the proposal shall satisfy all licensing and consent requirements pursuant to the Cemeteries Act (Revised);
- k) *notice of any future application to amend the Official Plan or zoning by-law to permit additional retorts on the subject lands shall be given to all persons within a 400 metre radius of the subject lands.*

## V IMPLEMENTATION

It is intended that the policies of the Official Plan of the Vaughan Planning Area pertaining to the subject lands should be implemented by way of an Amendment to the Vaughan Zoning By-law and site plan approval, pursuant to the Planning Act.

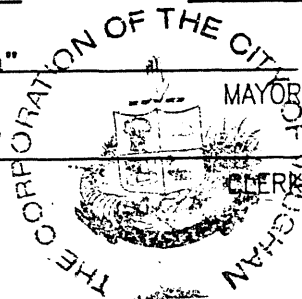
VI INTERPRETATION

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.

THIS IS SCHEDULE "1"  
TO AMENDMENT NO. 481  
ADOPTED THE 10<sup>TH</sup> DAY OF FEBRUARY, 1997.

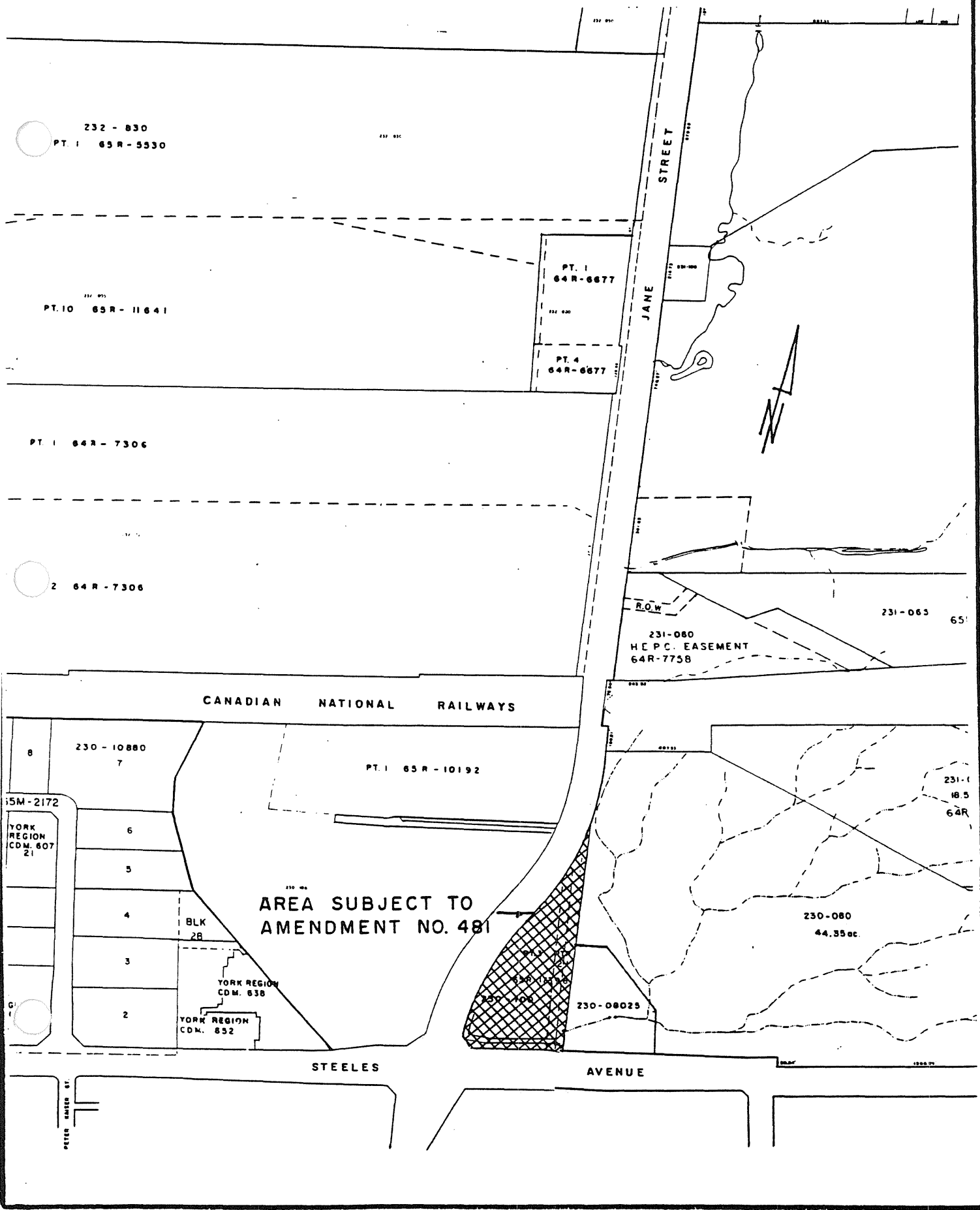
"L.D. Jackson"

"J.D. Leach"



LOCATION: PART OF LOT 1, CONCESSION 5

SCALE : 0 200 m



APPENDIX I

On January 27, 1997, Vaughan Council considered Official Plan Amendment OP.96.022 and Zoning By-law Amendment Z.96.060 (Metropolitan Toronto and Region Conservation Authority), and resolved:

"A. THAT Official Plan Amendment Application OP.96.022 (Metropolitan Toronto and Region Conservation Authority), BE APPROVED, subject to the following:

1. That provisions be included in an official plan amendment that will have the effect of:

- a) redesignating the subject lands to a "Commercial" category for a cemetery use, restricted to columbarium and crematorium only, with accessory office uses.
- b) setting out policies requiring the following:
  - i) a high level of building design, urban design and landscaping reflecting the significance of this gateway intersection location;
  - ii) the appropriate floor space index, yards, height and parking requirements for the development; shall be established in the implementing by-law;
  - iii) Council approval of a site plan application pursuant to the Planning Act, prior to enactment of the by-law;
  - iv) satisfaction of licensing and consent requirements pursuant to the Cemeteries Act.

B. THAT Zoning Amendment Application Z.96.060 (Metropolitan Toronto and Region Conservation Authority), BE APPROVED, subject to the following:

1. That the implementing by-law provide for the following:

- a) rezoning the subject lands to a commercial zoning category, restricted to a crematorium and columbarium uses only;
- b) any exceptions to implement the approved site plan;
- c) a holding zone for the northerly portion of the lands to provide for phasing of the development.

2. That prior to the enactment of the implementing by-law, Council shall have approved the required site plan application(s).

C. THAT with the adoption of an Official Plan Amendment, the Ministry of Consumer and Commercial Relations be advised that the City of Vaughan has no objection to the proposed development of the subject lands for a cemetery restricted to a crematorium and columbarium uses only, and associated gathering rooms and offices."

APPENDIX II


# EXISTING LAND USE

OFFICIAL PLAN AMENDMENT NO. 481

CITY OF VAUGHAN

LOCATION: PART OF LOT 1, CONCESSION 5

LEGEND

-  AGRICULTURAL / VACANT
-  EMPLOYMENT AREA
-  OPEN SPACE

DATE: 97 / 01 / 27

SCALE: 0  200 m

