

July 28, 2023

Hon. Steve Clark
Minister of Municipal Affairs and Housing
777 Bay Street - 17th Floor
Toronto, Ontario
M7A 2J3

Dear Minister Clark;

**Re: Durham Region Official Plan
ERO Number 019-7195
Ministry Reference Number 18-OP-237796**

**Durham Region Official Plan
Conversion Request - 1,3 5, & 7 Rossland Rd. E. and 901 Harwood Ave., Ajax
Modification of Plan, or Referral to Tribunal**

**Lands at 1,3,5, & 7 Rossland Road East and 901 Harwood Avenue in Ajax Should
be Converted From Employment to Community Area By Modification to the
Regional Official Plan, or the Matter Should be Referred to the Tribunal**

We act for Belmont Equity Partners Inc., owners of lands at 1, 3, 5, and 7 Rossland Road East and 901 Harwood Avenue in Ajax. We are writing to request that Durham Region Official Plan be modified to convert the lands at 1, 3, 5 and 7 Rossland Road East and 901 Harwood Avenue from Employment to Community Area permit their development for residential purposes, and continued use as a retail shopping centre.

The subject lands are a remaining tiny island of employment designation, where all other employment lands in the area have been converted to permit other uses, including residential. In fact, an enormous tract of land to the north of the site was converted from employment by the Region without any request from the landowners.

The Rossland Road lands in question are already a shopping centre, generally not a use anticipated or permitted by employment area designation. Thus, de facto, the lands are already effectively converted from employment - but only to a shopping centre, not mixed use. The refusal by Ajax Council to support conversion appears unreasonable and inconsistent with decisions on other lands in the area that were converted. Of note, the Mayor supported conversion.

The parcel in question is small in size (3.9 hectares). Based on its size, location, and surrounding uses, it will never be developed for warehousing or manufacturing (the uses for which employment designation protects land). As such, its continued designation as employment makes no sense from a planning perspective. The only result is that the lands will remain frozen and a portion will remain vacant for a decade or more awaiting the next municipal comprehensive review. The portion that is currently vacant, and identified by the owners for residential development, is 0.6 hectares in size. The proposed residential development will potentially add 300 new homes to the community, at a location that is ideal for residential intensification,

The Belmont Lands, Conversion Request CNR-14 (Approx. 0.6 ha) and Additional Area 2 – North Harwood Avenue Cluster



With the change in the definition of “area of employment” in the Planning Act, focussing the definition clearly on manufacturing and warehousing uses, continuing designation of the subject lands as employment makes no sense whatsoever. The development of the subject site for either manufacturing or warehousing is a virtual impossibility, as it is a small parcel within a shopping centre.

Under the Minister's approval powers, the Minister should modify the mapping of the land at 1,3,5 & 7 Rossland Road and 901 Harwood Avenue so that it is designated as Community Area, and no longer designated as employment. This request is also supported by the enclosed planning opinion from Zelinka Priamo.

In addition, site specific Policy 10.3.9 (which applies only to this Rossland Road site) should be renumbered to 10.3.4 and modified to read as follows:

Permit and encourage, notwithstanding any other policies of this Plan to the contrary, residential intensification in the form of high-rise apartments as defined in the area municipal plan, the retailing of goods and services and personal service uses in excess of 500 square metres. And major retail uses may also be permitted on the northern 4 hectares of a parcel of land fronting Rossland Road East and Harwood Avenue North, municipally known as 1 Rossland Road East, being Part of Lot 7, Concession 2, in the former Township of Pickering, in the Town of Ajax, identified as Assessment #18-05-020-015-01400. The inclusion of appropriate designations, policies and provisions to reflect the permitted residential, including high-rise apartments, and commercial uses shall be further defined in the area municipal official plan and zoning by-law.

In the alternative, the Minister should refer the question of the appropriate designation of the lands to the Tribunal for a hearing - while approving the balance of the official plan. Such a partial referral would allow development to proceed elsewhere in the Region, while allowing the unusual and anomalous decision respecting the subject lands to be properly studied by the Tribunal.

Minister has the Jurisdiction to Modify, or to Refer the Subject Lands to the Tribunal for a Hearing

Under section 17 of the Planning Act, the Minister of Municipal Affairs is the approval authority for the Durham Region Official Plan resulting from its Municipal Comprehensive Review process. Under section 17 (34) (a) of the act, the Minister, in acting as the approval authority, may "approve, modify and approve as modified or refuse to approve a plan". This would allow the Minister to modify the designation on the lands in question to remove the employment designation, without delaying the coming into force of all other aspects of the Regional Official Plan.

In the alternative, under the Minister's referral powers established by Bill 109, the Minister could refer the proposed employment designation for the lands to the Ontario Land Tribunal for a hearing, while still approving the balance of the Official Plan. Under section 17(55), the Minister may, "before making a decision under subsection (34), refer all or part of the plan to the Tribunal for a recommendation". Taking the provisions of the planning act together, the Minister can refer the designation of 1,3,5 & 7 Rossland Road and 901 Harwood Avenue (conversion) to the Tribunal, and then approve the balance of the official plan. Thus, a referral on the conversion can take place, without delaying the balance of the Official Plan from being approved and coming into force.

The Site Satisfies the Growth Plan Policy Requirements for Approval of a Conversion

In policy 2.2.5.9, the Growth Plan for the Greater Golden Horseshoe sets out the tests for approval of a conversion:

- A) need
- B) lands not required for purpose designated
- C) sufficient lands maintained in municipality for forecast employment growth
- D) proposed uses will not affect the overall viability of employment area
- E) Infrastructure and public services are available

The 1, 3, 5 and 7 Rossland Road East and 901 Harwood Avenue site satisfies the required criteria for approval of conversion.

NEED - There is a clearly demonstrated need for additional housing. Ontario is undergoing a serious housing supply crisis - which is reflected in escalating housing prices. According to data from the Toronto Region Real Estate Board, housing price increases in Durham Region have been higher over the past decade (June 2013 to June 2023) (277%) than is the average in the Toronto area (222%). Prices for homes in Ajax have also risen at a higher level (258%) demonstrating the depth of the supply crisis in Ajax and Durham. Durham Region and Ajax face particular challenges in delivering an adequate supply of approved sites for residential intensification. This site, as a logical extension of residential neighbourhoods to the west, is ideally located to contribute to satisfying that need for housing.

LAND NOT REQUIRED FOR EMPLOYMENT - The subject lands are effectively already de facto converted, having been developed for what is essentially a local shopping centre, anchored by a community-serving Longo's supermarket. While the site has been identified in the Ajax planning documents as "Employment Land", it has never been developed for either manufacturing or warehousing - the intended purpose of employment lands. No manufacturing or warehousing users seeking potential locations for their operations, have ever expressed any interest in this site. Its existing development as a shopping centre is not compatible with a potential employment use. In addition, the land parcel is too small to represent a viable site for an employment use (the undeveloped portion of the site, identified as a potential apartment condominium site, is only 0.6 hectares in size). It is anticipated that the established retail uses including the Longo's Supermarket will continue to operate on site, even as the vacant parcel is developed for residential purposes. As a result, conversion will not displace a single business or job. The market has clearly spoken that the lands are not required for the employment purpose designated, nor would such employment use development constitute good planning.

SUFFICIENT OTHER LANDS MAINTAINED FOR EMPLOYMENT - The new Durham Official Plan before the Minister for approval includes the addition of almost 3,000 acres of new employment lands. These are generally large sites, located adjacent to 400 series highways. As such, they represent far superior locations for employment uses from a locational perspective than is the case with the Rossland Road site. In addition, considerable amounts of designated employment lands remain undeveloped, or underutilized and available, especially along 400 series highways in the Region. Thus, there is more than enough land available to meet employment needs to the Growth Plan 2051 horizon and beyond. The loss of this small undeveloped parcel will not affect the sufficiency of supply of employment lands in the Region.

NO IMPACT ON VIABILITY OF OTHER EMPLOYMENT AREA - The Rossland Road East site is materially and physically separated from the area of employment uses in Ajax. The parcel, at the south east corner of Rossland Road and Harwood Avenue, is isolated from any employment uses by natural features and the natural heritage system abutting the site to its east and south. The site generally reads as part of the residential neighbourhood to the west - the neighbourhood that this shopping centre primarily serves. In addition, the lands to the north across Rossland Road are being converted from employment as part of the new official plan. As such, there will be no impact on any of the existing employment area if the subject site is converted from employment. Any existing employment uses are at a considerable distance, and are already significantly buffered by the natural areas beside the site ensuring that no compatibility issues will arise. There is no prospect of a "domino" effect from the conversion. The lands have never been developed for manufacturing or warehousing.

SUFFICIENT INFRASTRUCTURE AND PUBLIC SERVICES - The neighbourhood is very well-served by the necessary infrastructure and public services, as it is a well-established community. The area has available water and sewer servicing. There is an abundance of available schools. Notre Dame Catholic Separate School, J. Clark Richardson Collegiate, Pickering Christian School, St. Teresa of Calcutta Catholic School, Terry Fox Public School, and St. Catherine of Siena Catholic School are all a short walking distance from the site. Other nearby schools include Nottingham PS, St. Andre Bessette Catholic School, Vimy Ridge PS, Da Vinci PS and Michaelle Jean PS. Numerous community parks serve the area including Fishlock Park, Millers Creek Trail, Nottingham Central Park, Betty Bujold Park and Spraggins Park. Residents are served by the cluster of community and recreation uses to the east composed of the Ajax Sportsplex, and the Audley Recreation Centre. Together they have six ball diamonds, basketball, playground, a skatepark, playing courts, six-lane swimming pool, leisure pool, splash pad, community room for meetings, gymnasium, and more. There is an abundant availability of retail and service uses - with some literally on the site including supermarket, and restaurant uses. Other community retail uses, including a pharmacy, can be found on the other side of Harwood Avenue, and an abundance of retail options exist within the community.

The site is well-served by Durham Transit routes on the two abutting roads. The 916 transit route along Rossland Road connects with the Pickering GO Station. The 216 transit route along Harwood Avenue connects with the Ajax GO Station. Overall, the site is well-served by infrastructure, and by public services required by residents.

In conclusion, it is clear that the proposed conversion satisfies the tests under policy 2.2.5.9 of the Growth Plan for the Greater Golden Horseshoe to allow conversion from employment land to other uses including residential.

Growth Plan Permits Conversions Only Through a Municipal Comprehensive Review

Under policy 2.2.5.9 of the Growth Plan for the Greater Golden Horseshoe, employment conversions “may be permitted only through a municipal comprehensive review”. (There are certain limited exceptions to this, but all depend upon the Region taking the initiative due to the Planning Act provisions on conversion, which appears unlikely to occur here).

Thus, if the conversion is not approved now, it will likely be a decade or more before it will be considered again.

Conversion Would Reflect Realities on Site, and Planning Context

Belmont Equity is the owner of the retail centre at the south-west corner of Rossland and Harwood (Longo's plaza). They are seeking approval for conversion so that they can build a residential development on the remaining undeveloped 0.6 HA parcel on the site. The broader site is already de facto converted (a community shopping centre is not an employment use).

Regional Planning staff, on their own initiative, recommended the conversion of all the lands north of the site on the east side of Harwood ("Additional Area 2").

But Council rejected the conversion of 1, 3, 5, and 7 Rossland Road East and 901 Harwood Avenue. This will leave the undeveloped 0.6 HA Belmont parcel as an isolated island of employment designation that will never develop for warehousing or manufacturing (the intended and now clearly defined uses for an employment designation).

Region of Durham – Employment Strategy Technical Report Appendix D: Additional Area 2 – North Harwood Avenue Cluster (Ajax) Additional Lands Suggested for Conversion



Note: Boundary and location are approximate

The Site is De Facto Already Converted

The purpose of the conversion requirements in the Planning Act and the Growth Plan is to protect land for space extensive manufacturing and warehousing uses from the compatibility limitations that would arise from the introduction of sensitive uses like residential. Only “associated retail” (i.e. serving the principal manufacturing and warehousing uses) is contemplated in an employment area by the Growth Plan.

When Ajax permitted the development of this retail plaza under an expanded “prestige employment” designation, the site was effectively converted.

The top photo below shows the vacant parcel proposed for residential intensification.

Photos of the Belmont Lands



View southeast from Rossland Road East



View southeast from Harwood Avenue

There is No Reasonable Prospect that this Site Will Ever Develop for Manufacturing or Warehousing - The Purpose of the Employment Area Protection

There is absolutely no reasonable prospect for this site ever being developed for manufacturing or warehousing. The vacant portion, at only 0.6 hectares, it is too small. The surrounding retail and community context makes it an inappropriate location for the heavy truck traffic, and the associated effects that would result from such an employment use.

If this 0.6 HA vacant portion of a retail plaza was being approached as a blank canvas today, there is no planner that would recommend an initial designation to provide for manufacturing or warehousing. For the same reason, it is not appropriate to maintain the employment designation on this small vacant parcel.

The Lands Directly to the North on Harwood were ALL Recommended and approved for Conversion

Although there had been no specific request for their conversion, the Region's consultant and Regional Planning staff recommended the conversion of "Additional Area 2". This large 40 hectare (100 acre) area of land is directly north of the subject site, extending north for about 2 kilometres on the east side of Harwood.

Regional Planning staff concluded that the Additional Area 2 lands have "very limited potential for future employment area uses". Thus, the conversion of the area was recommended.

The contextual and planning reasons for this recommendation apply even more strongly to the Belmont site.

Regional Planning Staff Agree that the Contextual Considerations Applied in Recommending Additional Area 2 Conversion Apply Equally to 1 Rossland Road

To the extent that planning criteria support the conversion of Additional Area 2, they even more strongly support the conversion of 1 Rossland Road.

The planning report articulated the following conclusion; "Planning staff agree similar contextual considerations exist on the Belmont lands as with the lands north of Rossland Road East in Additional Area 2".

Regional Planning Staff Agreed that Belmont Site Meets Planning Criteria for Conversion

The proposed conversion satisfies the Durham Region planning criteria for a conversion:

- Parcel is too small (0.6 HA) for space extensive employment use
- Parcel is too small to have any meaningful impact on employment area supply
- The site is not close to rail or highway infrastructure
- Conversion will not adversely affect the viability of other employment area lands
- Proposal will increase the number of jobs on the site
- There will be no land use compatibility issues from conversion
- The proposal would provide needed housing intensification at an appropriate location

Preliminary Site Plan Overlay



Source: Zelinka Priamo Ltd. based on • Rossland Landing – Concept Design, dated September 18, 2020 prepared by Kirkor

However, Regional Planning staff concluded that, “In summary, although the site meets several of the evaluation criteria, the Town of Ajax does not support the conversion request”.

The Only Reason that Staff Did Not Support Conversion (Ajax Position) was Established BEFORE Adjacent Additional Area 2 Conversion was Recommended - and Before Bill 97 Clarified the Planning Act Definition of Area of Employment

The only reason Regional Planning staff did not recommend conversion was that the Town of Ajax position is against conversion. However, that Ajax position was established BEFORE there was any consideration, or recommendation in support, of the conversion of the large adjacent lands that constitute Additional Area 2.

In a context where all the remaining employment area lands to the north are converting, there is now no longer any justification for maintaining the Belmont lands as a small parcel of employment land that will never develop for that purpose.

Thus, the decision of Ajax to not support the conversion should be revisited based upon the new context of the conversion of all the remaining employment area lands in the vicinity of the Rossland and Harwood intersection.

All the other lands in this vicinity are already identified as community area - including an apartment building mirroring the Belmont proposal on the west side of Harwood.

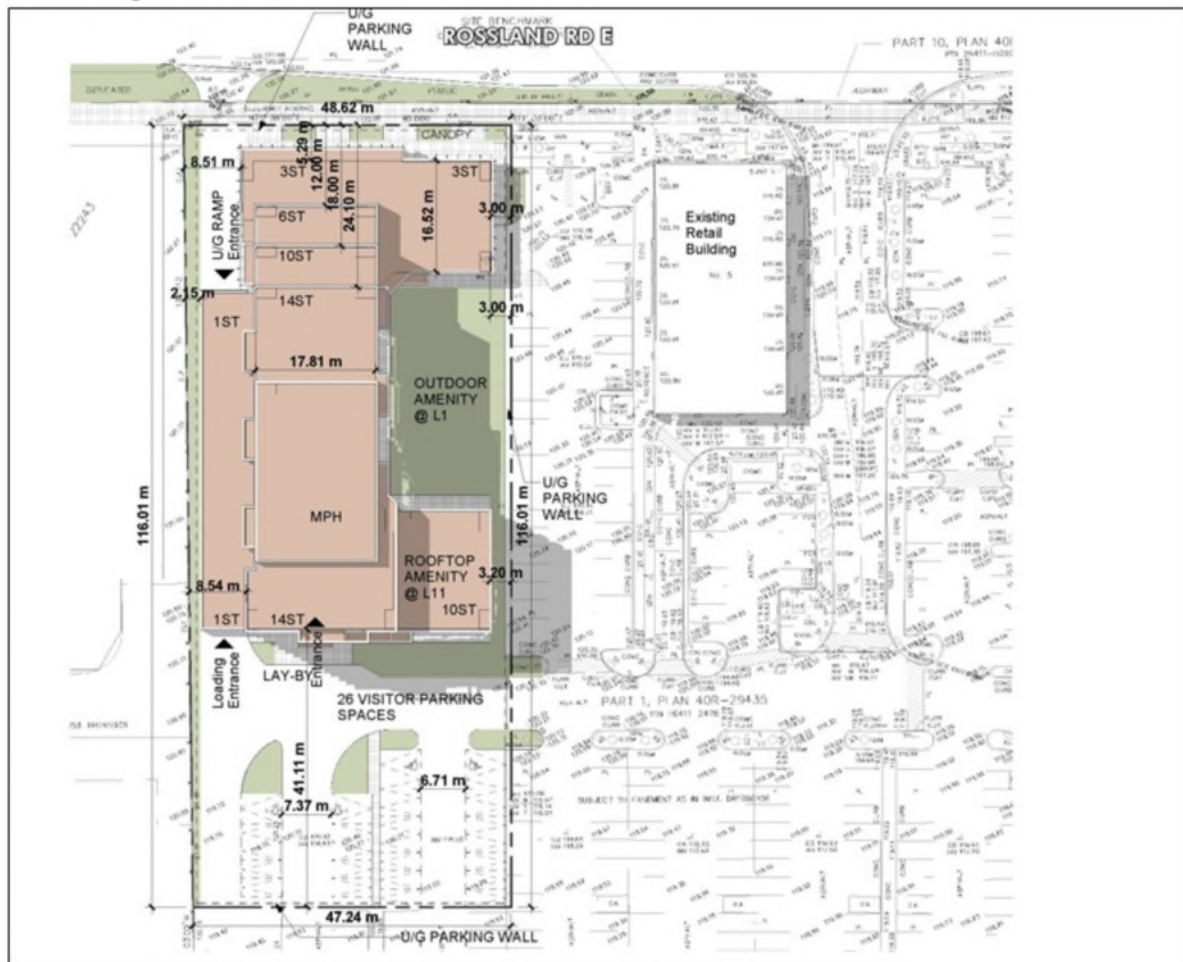
Proposal for Residential Development Will Deliver 300 Units of Much Needed Housing at an Ideal Location for Residential Intensification

The owners propose to develop a vacant 0.6 hectare portion of the lands for a 300 unit residential building. This will add much needed housing in a location that is ideal for residential intensification.

The proposal actually virtually mirrors a residential building that has recently been constructed opposite the Rossland Road site just to the west of Harwood Avenue. The location is ideal for residential intensification, located at the intersection of two Durham Transit routes that connect to the GO Train. The abundance of community infrastructure and facilities in the existing neighbourhood make it an ideal place for intensification.

The new building will be located such that there is no shadow or similar impact on the residential neighbourhood to the west, and no issue of land use compatibility with existing employment uses, all of which are located some distance away.

Preliminary Site Plan



Source: Zelinka Priamo Ltd. based on • Rossland Landing – Concept Design, dated September 21, 2020 prepared by Kirkor

The Rossland Road site can help Durham Region and Ajax to make progress towards meeting their housing and intensification targets through the addition of 300 new homes.

Planning Act Change to Definition of “Area of Employment” Clarifies that Rossland Site Should No Longer Be Designated for Employment

It was always the case that employment area designations were intended to protect lands for space extensive warehousing and manufacturing uses that require accessibility to high capacity transportation corridors, and produce significant externalities that make it inappropriate to locate these uses in proximity to residential or other sensitive land uses. However, due to ambiguities in the definitions, some lands remained designated as “employment” when they clearly did not match those uses. This is the case with the Rossland Road site, which is a retail shopping centre.

The new change to the definition of “area of employment” in the Planning Act has removed these ambiguities, and clarified that “areas of employment” are focused on manufacturing and warehousing. Now, only retail and office uses “associated with” the principal manufacturing or warehousing use are permitted in an employment area.

As such, not only does the new definition strengthen the arguments for conversion of the Rossland site - in fact, it requires the conversion of the entire Rossland site, as none of the retail or office uses located there are “associated with” a principal manufacturing or warehousing use.

If there was any question of whether the subject lands should be converted, the new Planning Act definition of area of employment removes any basis for the continued designation of the site as employment - it must be converted in order to ensure that the land use designation is in compliance with the requirements of the Planning Act.

The Minister Should Recognize the Planning Context, and Consider Regional Planning Staff Evaluation of the Conversion Criteria, the New Planning Act Area of Employment Definition, and Approve the Conversion of Rossland Road

The 1, 3, 5 and 7 Rossland Road and 901 Harwood Avenue site should be converted from employment to Community Area to reflect the reality that the site is already de facto converted, and the new Planning Act definition of “area of employment” cannot be satisfied by this site.

The requested conversion satisfies the tests in section 2.2.5.9 of the Growth Plan.

The site will offer the opportunity to deliver 300 units of much needed housing, at a location that is well-suited for residential intensification.

The lands now represent an isolated parcel, with an employment designation that does not reflect the existing uses on site, or the requirements of the new Planning Act definition.

Under the Minister's approval powers, the Minister should modify the mapping of the land at 1,3,5 & 7 Rossland Road so that it is designated as Community Area, and no longer designated as employment. This request is also supported by the enclosed planning opinion from Zelinka Priamo.

In addition, site specific Policy 10.3.9 (which applies only to this Rossland Road site) should be renumbered to 10.3.4 and modified to read as follows:

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The Minister should modify the Region of Durham Official Plan to ensure the lands at 1 Rossland Road are designated as Community Area, approving the conversion of the Belmont land as good planning. In the alternative, the Minister should refer the question of the appropriate designation of the land at 1 Rossland Road to the Ontario Land Tribunal, while approving the balance of the Regional Official Plan.

We would be pleased to discuss this submission with you further.

Yours sincerely,



AIRD & BERLIS LLP

Hon. Peter Van Loan
Partner

HV

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