

ISSUE DATE:

Jan. 23, 2004

DECISION/ORDER NO:

0147



PL020446
PL030108

Ontario Municipal Board
Commission des affaires municipales de l'Ontario

Lionheart Enterprises Ltd., 583753 Ontario Limited, 625734 Ontario Inc. and others (collectively called Bayview East Landowners Group) have 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 Town of Richmond Hill to redesignate lands composed of Lots 26 to 30, Concession 2 and 3, E.Y.S., to establish the North Leslie Planning District and to implement a Secondary Plan for the North Leslie Area in order to facilitate the expansion of the Town's urban boundary

Town's File No. D01-00011

OMB File No. O020073

Case No. PL020446

Lionheart Enterprises Ltd., 583753 Ontario Limited, 625734 Ontario Inc. and others (collectively called Bayview East Landowners Group) have 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 Regional Municipality of York to redesignate lands composed of Lots 26 to 30, Concession 2 and 3, E.Y.S., from "Agricultural Policy Area" to "Urban Area" and to add the lands to the "Urban Transit Area"

Region's File No. D05 102.41

OMB File No. O020096

Case No. PL020446

E. Manson Investments 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 Regional Municipality of York to redesignate lands composed of Lots 26 to 30, Concession 2 and Part of Lots 26 to 30, Concession 3 E.Y.S. in the Town of Richmond Hill from "Agricultural Policy Area" to "Urban Area" and to add the lands to the "Urban Transit Area"

OMB File No. O030043

Case No. PL020446

E. Manson Investments 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 Town of Richmond Hill to redesignate lands composed of Lots 26 to 30, Concession 2 and Part of Lots 26 to 30, Concession 3 E.Y.S. from "Agricultural Policy Area" to "Urban Area"

OMB File No. O030046

Case No. PL020446

Trinity Property Holdings Inc., now Riotrin Properties (Richmond Hill) 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 2325-68 of the Town of Richmond Hill to rezone lands respecting Part Lot 26, Concession 3 from Agricultural 1 to Special Commercial to permit a commercial development

OMB File No. Z030011

Case No. PL030108

Trinity Property Holdings Inc., now Riotrin Properties (Richmond Hill) 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 Town of Richmond Hill to redesignate land at the northeast corner of Elgin Mills Road East and Leslie Street from Rural to Richmond Green Special Commercial to permit commercial uses

OMB File No. O030109
Case No. PL030108

Riotrin Properties (Richmond Hill) Inc. has appealed to the Ontario Municipal Board under subsection 51(39) of the *Planning Act*, R.S.O. 1990, c. P.13, as amended, from the failure of the Town of Richmond Hill to make a decision respecting a proposed plan of subdivision on lands composed of Part Lot 26, Concession 3 in the Town of Richmond Hill

Town of Richmond Hill File No. 19T(R)-02003
OMB File No. S030015
Case No. PL030108

APPEARANCES:

Parties

Counsel

First Professional Shopping Centres (“First Pro”, representing a group of shopping centres)

D.H. Wood and S. Mahadevan

Riotrin Properties (Richmond Hill) Inc.

J.B. Goldenberg and J.D. Farber

Bayview East Landowners Group (“BEL Group”)

J.L. Davies

Town of Richmond Hill

R.T. Beaman and A. Burton

Shirley Endean

J.P. Patterson

REASONS FOR A RULING REGARDING PARTY STATUS DELIVERED BY B.W. KRUSHELNICKI AND D. TILSON AND ORDER OF THE BOARD

By way of a motion dated August 22, 2003, Mr. Wood seeks to have his client – a group of companies listed in the file of Proceedings and which we will refer to as “First Professional Shopping Centres (“First Pro”) – made a party to a part of the North Leslie hearing that will be dealing with the applications by Riotrin Properties (Richmond Hill)

Inc. ("Riotrin"). Following argument which took place over several months, the Board was requested to give its ruling on January 8, 2004 while the Board dealt with other issues in the hearing. The Board granted the motion allowing First Pro to be a party, and promised to provide its reasons in writing. Following this ruling, several of the parties raised the issue of the "terms" under which First Pro would be allowed status; that is, what limitations would be placed on its participation. The Board directed First Pro and Riotrin to review the Issues List for the hearing and confirm that their dispute is limited to issues numbered 40, 42, and 46.

The North Leslie hearing is primarily about the inclusion of rural and agricultural lands north of Elgin Mills Road west of Highway 404 into the urban area of the Town of Richmond Hill. That hearing is scheduled to commence in the winter of 2004. In the course of filing the applications and the appeal in the hearing in the North Leslie matter, the applications and eventual appeals by Riotrin Properties to develop their lands for big box commercial uses were consolidated with the North Leslie matters. Although they have been consolidated with the North Leslie planning area, the Riotrin lands are already included in the Town's urban boundary and have been designated in a previous planning exercise for urban uses.

First Pro is also a commercial developer, a competitor and sometimes business partner to Riotrin. When they learned of the Riotrin plans, they sought to be included as a party to the North Leslie hearing to challenge the Riotrin applications. They say that they own lands in nearby Aurora that are in an advanced stage of approval for similar uses and that the Board's consideration of the Riotrin Proposals will have a direct potential impact on their interests.

The ground for First Pro's proposed involvement in the North Leslie matter is that they are the prime movers of a plan to develop the "Aurora Gateway Centre" as it is known. This is a large regional commercial proposal which includes commercial, hotel, entertainment and other uses. They have applied to the Town of Aurora specifically to develop a 475,000 square foot commercial "power" centre.

Because of this, First Pro says that it has a direct interest in the applications by Riotrin and seeks the opportunity to have that interest represented in the hearing of the Riotrin matters. They argue that their interests in Aurora may be prejudicially affected by

a decision of the Board and that therefore it ought to have an opportunity to be a part of the consideration of the merits of the Riotrin applications and appeals, in order to protect its interests and to protect the planned function of its site and to protect what it considers to be the planning interest of the municipalities and the Region. First Pro says that the Region's Official Plan requires that the Riotrin Proposal must be assessed from the standpoint of the impact on the regional economic structure and that they have an interest in such an assessment.

The normal tests for party status are whether there is a relevant practical interest that warrants the full participation of the party as a party, and whether the party seeking standing can fulfill its obligations as a party.

On this latter point the Board has no concern that First Pro will be a full contributing party. On the contrary, the Board's concern in granting party status is that the involvement of First Pro will have the effect of unnecessarily lengthening the proceedings by inserting a complicated "store wars" dispute in the midst of an already significant Official Plan/urban boundary hearing. The Board is assured by First Pro that it only wishes to pursue its interests in the planned commercial and retail approvals in the hearing. Mr. Macaulay, First Pro's proposed planning witness, asserts in his affidavit that they will only be involved in Issue Nos. 40, 42, and 46 as identified in the issues list which has been approved for this hearing. This offers some assurance that First Pro will not seek to be involved in other issues in the North Leslie hearing and that the implications for other parties who have little interest in the commercial/retail issues can be minimized.

Riotrin objects to the inclusion of First Pro on several grounds. They first of all question First Pro's interest. They say that First Pro's applications for commercial uses are twelve kilometers away from the Riotrin site. The applications have not received final approval and do not constitute existing or planned facilities that might be affected by the Riotrin proposals. First Pro, they say is simply trying to limit any potential competitors from entering the area, and are not pursuing a planning interest, but a private commercial interest and a competitive advantage.

Riotrin also says that the application by First Pro comes too late in the game and should have been made in a more timely way. They also say that First Pro's claims are

not genuine. In fact First Pro had attempted to purchase the Riotrin property and develop it for commercial uses. How can they now object to someone else doing precisely the same thing they had previously proposed? Finally they say that First Pro is being selective in its objections to commercial uses, failing to appeal other retail proposals that are even closer to their proposed site.

The Town of Richmond Hill supports the inclusion of First Pro in the hearing as a party, arguing that First Pro has raised planning and retail concerns with the Riotrin applications that are shared by the Town. These include the impact that the commercial aspects of the proposal will have on the planned commercial retail structure of the Town and the Region. The Town notes that the growing practice of the Board, like other administrative tribunals whose duty is to consider the public interest of policy changes, is to be inclusive of parties seeking to bring a perspective and evidence to the Board. While acknowledging the risk of increasing the scope of the hearing to consider commercial/retail questions, the Town expects First Pro to bring relevant evidence that will be appropriate subject matter in dealing with a major Official Plan amendment.

The Board considered the arguments for inclusion of First Pro in the consideration of the Riotrin applications and appeals and concludes that First Pro has established that it has a relevant practical interest that warrants their involvement. Their interest is in seeing that the Riotrin proposal does not have an adverse impact on the viability of their proposal and of the planned function that it may be approved to perform in Aurora. The fact that the First Pro proposal is not finally approved does not settle the matter. The public interest lies in dealing with the implications of proposed and planned retail facilities, as well as approved ones. The consideration of the status of the applications is something that can be properly considered in evidence.

The timing of the application for party status does not disqualify it. The Board is satisfied that in the circumstances of the overall case, First Pro has learned of the applications and appeals and has acted promptly on the information it received. This was done during the pre-hearing process when it is still advantageous and not prejudicial to consider the inclusion of others as parties. First Pro has conducted itself with reasonable dispatch and once it became satisfied of its interest, it approached the Board with an orderly proposal for inclusion that would not disrupt the main hearing.

The question raised by First Pro's attempt to acquire and develop the site is of interest to the Board. However, their explanation that this was simply part of the general considerations of the company in addressing commercial opportunities in the area is adequate to show that there is nothing insincere or inappropriate in their interests. In addition, if there is anything further to this, it can be considered by the Board as it hears the evidence.

Finally the Board agrees with the Town's view that important questions of this kind warrant an inclusive approach. The Town will be addressing its interests in the commercial planning (along with other uses and functions) for the North Leslie area as best it can. It considers the First Pro's involvement to be legitimate and supportive of its interests and will add to its own studies. They expect that their ability to assess the plans for this area will benefit from and will rely upon the work proposed by First Pro. Like the Board, they are concerned with the additional length of the hearing, but with constraints placed on First Pro to limit their involvement, the Town supports their inclusion as a party.

For these reasons, the Board therefore grants First Pro party status. The Procedural Order is amended accordingly to permit the proper exchange of evidence and to allow First Pro a place in the order of evidence, following the Riotrin case.

The Board so orders.

"D. Tilson"

D. TILSON
VICE-CHAIR

B.W. KRUSHELNICKI
MEMBER