


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 612 to the Official Plan of the Vaughan Planning Area, which was approved by the Ontario Municipal Board, as per Order #0972, dated May 28, 2004.



JOHN D. LEACH
City Clerk
City of Vaughan

DATED at the City of Vaughan
this 26th day of July, 2004.

ISSUE DATE:

May 28, 2004

DECISION/ORDER NO:

0972



PL030537

Ontario Municipal Board

Commission des affaires municipales de l'Ontario

Colgera Services Inc. has appealed to the Ontario Municipal Board under section 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 to redesignate lands located at Lots 19 and 20, Concession 4 to permit residential and mixed-use commercial, mixed commercial and residential uses.

OMB File No. O030105

(OP. 03.001)

Colgera Services Inc. has appealed to the Ontario Municipal Board under Section 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 1-88 of the City of Vaughan to rezone lands located at Lots 19 and 20, Concession 4 to permit a mixed use development with 3,876 square metres of ground floor retail and 32 second storey residential units

OMB File No. Z030079

Colgera Services Inc. has appealed to the Ontario Municipal Board under Section 41(12) of the *Planning Act*, R.S.O. 1990, c. P.13, as amended, the determination and settlement of details of a site plan for lands located at Lots 19 and 20, Concession 4 in the City of Vaughan

OMB File No. M030059

APPEARANCES:

Parties

Counsel

City of Vaughan

C. A. Storto

Colgera Services Inc.

B. Horosko

DECISION DELIVERED BY N. M. KATARY AND ORDER OF THE BOARD

The principal issue is whether or not the proposed mixed-use development is compatible with existing development.

The issue was best crystallized by the counsel with the City and the agent for the unincorporated group called Maple Landing Ratepayers Association when they stated that they had no objection to the existing General Commercial zoning that permitted a number of commercial uses, a matter that will be discussed later. They did add that expectations set up by the Official Plan and the Zoning By-law ought not to be tampered with lightly.

The Background

The staff of the City supported the applications (Exhibit 2, Tab 4). The Council of the City turned down the applications. The counsel with the City stated that she was calling only one witness, namely, Mr. Levant Tinaz, the President of Maple Landing Ratepayers Association.

The three matters before the Board are a site specific Official Plan Amendment, a site specific Zoning By-law Amendment, and a Site Plan.

The three applications are to enable a mixed-use commercial/residential development on the subject site shown as part of Attachment 3. The proposal consists of four buildings with commercial use on the first floor and residential use on the second floor consisting of condominium units. The Gross Floor Area of the four buildings is approximately 7,622 sq. m. of which the first floor is 3,881 sq. m. and the second floor is 3,741 sq. m. The maximum number of dwelling units is 32. There are 165 spaces dedicated to commercial parking and 56 spaces dedicated to residential parking.

The site is approximately 13,617 sq. m. (1.36 ha. or 3.5 ac.) in size. It is at the southeast corner of the major north-south road, Jane Street and Avro Road and is south of the major east-west road, Major Mackenzie Drive. The site is designated "General Commercial" in the Official Plan and is zoned C2 "General Commercial" in the Zoning By-law.

The land uses surrounding the site are as follows. Abutting the site to the west is the major north-south road, Jane Street, and on the west side of Jane is Paramount Canada's Wonderland. Abutting the site to the north is Avro Road and on the north side of Avro is vacant land zoned C2 General Commercial. On the east, approximately the northern third of site abuts residential use and the southern two-thirds of the site abuts Bachman Drive and on the east side of Bachman is residential use. The lands to the east of the site are zoned RVM1(B) Residential Urban Village Multiple Dwelling. Abutting the site to the south is land zoned C2 General Commercial on which a shopping plaza locally known as Norwood Plaza is under construction at present. Access from the major north-south road Jane Street, to both the subject site and the site currently under construction, Norwood Plaza, consists of a shared right-in and right-out only roadway, located between the site and the Norwood Plaza.

The City called Mr. Levant Tinaz to give evidence in opposition to the applications. Mr. Tinaz is a resident of the area who has degrees in physics and computer science with specialization in mathematics and statistics

The following people gave evidence in opposition to the applications at the evening hearing: Mr. Peter Hitchins, Mr. Pat Friel, Mr. Viagio Conte, Mr. Frank Leoni, and Mr. Nabel Ahmad – all residents of the area. Mr. R. A. Biggart, a member of the Ontario Bar who appears before the Board regularly, appeared as a resident of the area in opposition to the applications.

The following people gave evidence in support of the applications: Ms Lindsay Dale-Harris, a land use planner; Mr. John U. Buonvivere, a professional engineer who specializes in transportation and parking; Ms Dalila C. Giusti, a professional engineer who specializes in noise; Mr. Heinz O. Schweinbenz, a professional engineer who specializes in traffic impact, internal and external circulation, parking, and safety; and Mr. Angelo Baldassarra, the principal of Colgera Services Inc., the applicant/appellant.

Mr. Mauro Peverini, the Community Planner with the City of Vaughan, was summoned by the applicant/appellant to confirm the authorship of the staff report and the review process that the applications went through with City staff.

Mr. Barry Jones, the General Manager of Paramount Canada's Wonderland, appeared at the hearing to state categorically that he was not there to object to the proposal but was there only to state,

We take umbrage with the statement in the City staff report (Exhibit 2, Tab 4, p. 35) that says 'immediately abutting PCW property' because we are in the business of generating activities at our site and we are concerned about residential uses abutting our property leading to complaints.

He added on his own initiative that the subject property was not abutting the Wonderland site.

At the end of the hearing, with the consent of the parties, the Board issued an interim decision requesting the parties to file with the Board copies of the revised final Amendments to the Official Plan, the Zoning By-law, together with the revised Site Plan and Conditions of Site Plan. The purpose of the request was to enable the Board to

look at the most accurate and up-to-date applications that reflected the evidence that was adduced at the hearing by witnesses who opposed and supported the applications. The parties have complied with the request and provided an adequate number of copies of all documents.

Compatibility

The compatibility of the proposed mixed-use commercial on the first floor and condominiums on the second floor development has several aspects and the relevant ones need to be examined individually.

Parking and Traffic Impact

The City does not have a parking standard that applies to a Mixed-use commercial/residential plaza. The City, therefore, applies the standards drawn from the parent By-law I-88 as they apply to apartment units and commercial plazas. The requirement for the proposal as per the By-law is 56 spaces for 32 condominium units including visitor parking and 233 spaces for the commercial Gross Floor Area of 3,881.66 sq. m. The proposal provides 56 spaces for residential use and meets the requirement but provides 165 spaces for the commercial use and is therefore deficient.

Using both his witness statement and his Document Book (Exhibits 18 and 17), the President of the Ratepayers Association expressed his concerns about the reduced number of parking spaces provided for commercial use. His main point was,

The residents already have had bad experiences with parking on their street in front of their homes by visitors to Wonderland. This deficiency will only worsen their plight.

(Exhibit 18, p. 2).

Using the Parking Study that he had done (Exhibit 10) and submitted to the staff of the City, Mr. Buonvivere, the transportation planner, explained in detail the study methodology, the field data collection process, analysis of data, and the conclusions. He detailed the comparative method of looking at actual plaza examples in the field in arriving at the reduced standard of 5.0 spaces per 100 sq. m. of Commercial Floor Area (3,271.66 sq. m.) instead of 6.0 spaces per 100 sq. m. of Gross Floor Area (3,881.66) as required by the current Zoning By-law.

Using a Traffic Impact Study and a Table of Parking Standards in Selected GTA Municipalities (Exhibits 14 & 15), the transportation planner, Mr. Schweinbenz, explained in substantial detail the existing road characteristics and traffic operations, the potential future background traffic, and the impact of proposed development. He also detailed the findings from parking standards used in five municipalities in the Greater Toronto Area (GTA). He set forth the steps he had taken to address the matters raised in the issues list (Exhibit 17) prepared by the President of the Ratepayers Association and concluded by stating that having revised the computations based upon the points made by Mr. Tinaz and having analyzed them, he had no reason to change his earlier conclusions.

The two main points made by Mr. Schweinbenz were that the impact of the proposal upon the existing and anticipated traffic conditions was insignificant, and that the reduced standard of 5.0 spaces per 100 sq. m. of Commercial Floor Area was appropriate and adequate for the site.

The two professional engineers who specialized in transportation planning were cross-examined rigorously and at length. Their opinions were not shaken. Also, their opinions were not contradicted by anyone who had done an in-depth analysis of parking demand in mixed-use plazas.

An analysis of the pertinent evidence indicates the following.

In the absence of mixed-use neighbourhood shopping plaza specific standards, the City is importing the general standards into the site. The question is how appropriate is such an import to meet the potential parking demand for commercial use.

The two objectors who appeared at the evening hearing, Mr. Biggart and Mr. Friel, stated during friendly cross-examination by the counsel with the City that the parking situation in the nearby Fortinos Plaza was congested. Both stated, however, that Fortinos was a large "complex" with several large stores. It may well be true that the parking situation at the Fortinos Plaza is less than perfect. What is clear, however, is that it is a plaza of a different order of magnitude. The proposal is a neighbourhood commercial plaza.

The Board is persuaded by the evidence of Mr. Schweibenz that the current parking standard for commercial use is inappropriate for the site for two reasons. First, it uses the standard of 6.0 per 100 sq. m. of Gross Floor Area. As the planner and the two engineers pointed out, entryways, stairways, and basements, do not generate parking demand. It is the Commercial Floor Area, that is, the active commercial space that generates demand. The Board is of the view that in order to determine real demand, it is appropriate to exclude those uses that do not make any demand for parking. Second, the current standard does not distinguish between types of shopping areas. What is proposed here is a neighbourhood plaza catering to customers who both drive and/or walk to the stores in the plaza. Recognizing the need to acknowledge these two limitations, the Draft Urban Design Guidelines (Exhibit 6) for the City recommend a parking standard of 5.0 spaces per 100 sq. m.

The applicant/appellant commissioned two transportation studies to examine the actual demand for commercial parking generated by active commercial space and impact of traffic generated by the proposal upon the existing transportation system. The study by one of the transportation planners (Exhibit 10) dealing with parking was submitted to the staff of the City. The transportation engineer who prepared the parking study, Mr. Buonvivere, stated at the hearing,

Prior to commencing my engagement, I conferred with the transportation analyst with the City. My report was sent to the staff. The staff adopted my study format and conclusions.

The City raised no objections to the proposed number of parking spaces for commercial use on site. The Board takes notice that notwithstanding the rigorous cross-examination of the two professional engineers on the quantity of commercial parking spaces provided on site, the City did not call any transportation analyst with the City either to contest the number of spaces provided or to raise concerns about their adequacy.

The uncontradicted evidence by the applicant, Mr. Baldassarra, and confirmed by the counsel with the City during argument is that the City is undertaking a comprehensive study of parking requirements by land use. The City has authorized expenditures for the study. Mr. Baldassarra is on the Council appointed Task Force to study the intensification of uses on major roads. The Board observes that the City is

residents here. I disagree with expert opinion. My opinions on noise are based upon common sense and experience.

Using the Noise Analysis report (Exhibit 12) prepared by her, the acoustician, Ms Giusti, explained in detail, the various sources of noise, the criteria used to assess noise, the impact of noise, and the noise abatement measures necessary to mitigate the impact of noise to bring it within the recommended guidelines. She stated, "an occasional minor exceedance is predicted from activities at the Kingswood Music Theatre and from general activities at Paramount Canada's Wonderland" (Exhibit 12, p. 1). She set forth how the proposal when executed in conjunction with her recommendations for noise abatement met the requirements of the Ministry of Environment Guidelines.

She spent some time on recommended noise abatement measures (Exhibit 12, Table 3, pp. 21-22) and concluded this part of the testimony by stating,

If recommendations are carried out, the impact of noise will not be significantly different from any other residence in the area [pointing to the residences east of the subject site].

The professional engineer specializing in noise was cross-examined at length. The key points made by her are reproduced below for convenience:

The City's Noise By-law applies to all buildings within the City and it states violation occurs when noise is 'clearly audible'. If the By-law requirement is applied thoughtlessly nothing in the city would comply. If you claim it is illegal, then everything in Vaughan is illegal. That is why we rely on MOE Guidelines because they represent objective standards. The City By-law applies but it is not useful.

The opinions of the acoustician with respect to the impact of noise upon the proposed condominiums were not shaken. Also, her opinions were not contradicted by anyone who had done a rigorous analysis of the impact of noise employing the currently available methods of measurement and analysis.

Based upon an analysis of the pertinent evidence, the Board finds that the proposed condominium units will not be subject to unacceptable adverse impact of

noise emanating from various sources in the vicinity of the site when the conditions of the Site Plan identified in Attachment 3 are executed.

Built Form

The President of the Ratepayers Association expressed the opinion that the proposal was not compatible with existing development partly because the mixed-use built form was out of character with the area. He stated, "We've heard planning testimony about the benefits and need for intensification and how this proposal introduces an innovative housing form. I and my neighbours didn't move to Maple to live in an intensive urban environment" (Exhibit 18, p. 1).

Mr. Conte stated,

The policy of mixed-use development is fine but the location here on a major road such as Jane Street is wrong. I do not oppose the house form just the location. It should be on a major road like Major McKenzie between Keele and Jane. I live 1.5 km. away and this impacts me because it impacts my neighbourhood.

Mr. Leoni stated,

I live across the project and if I had known what is being proposed, I would not have bought my home. I did not know I would get a wall. This is not what I was told. Now I feel I have been lied to. The real estate guy lied to all of us. He told us only about one level commercial plaza and not anything about all the permitted uses that I now read here. Our homes have deficiencies that have not been fixed.

Using the Site Plan, the Landscape Plan, a "photo" of the proposed four buildings in context, and building elevations of the four buildings, all of them shown as part of Attachment 3 of this decision, the land use planner explained in considerable detail the elements of each of the documents used. Using a set of photographs of existing and under construction buildings (Exhibit 3), she explained how the proposal adapted and adopted building design features from existing single detached dwellings in the vicinity with a view to integrate them with the existing houses. Her main point was that the proposal was an innovative built form response to the site that enabled the proposal to fit in well with existing development in the vicinity.

An analysis of the pertinent evidence indicates the following.

One of the most puzzling aspects of this hearing was that all the objectors except Mr. Ahmad stated categorically that they did not object to commercial use but were only objecting to the 32 condominium units on the second floor. It is therefore helpful to compare the built form of a commercial use with the proposed mixed-use development. In order to facilitate a clear understanding, the Board has included the proposed Site Plan, the Conditions of Site Plan, the Landscape Plan, the architects "rendering" or "photograph" of the built form complex, and the building elevations of the four buildings as part of Attachment 3 in this decision.

The urban design features of the proposal consist of the following and are best reflected in the documents in Attachment 3.

There are four buildings on the site, two of them along the major north/south four-lane Regional Corridor, Jane Street (Buildings C and D), one along the east/west Avro Street (Building A), and one along the local north/south road, Bachman Drive (Building B). Building B is the only building that faces the existing single detached dwellings across the street in the east. The first floor of each building has commercial uses and the second floor has residential uses. Each building has four pairs of entryways to the eight condominiums on the second floor. In all, there are 32 condominium units in the four buildings.

All buildings have pitched roofs with dormers. The maximum height of the buildings is 11 m. as permitted in the current C2 zone for commercial use and matches the height of the single detached dwellings to the east. The height of Building B facing Bachman Drive is 8.72 m. (28.6 ft.) to the top of roof and the parapet height goes to a maximum of 10.5 m. (34.5 ft.). The length of Building B is approximately 48 m. (157.5 ft.). There is no recreational amenity space at grade and some dwellings have exterior balconies of a size not to be considered outdoor recreation area under the By-law. The condominiums are centrally air-conditioned. The building materials and the glazing used are designed to meet the recommendations for noise abatement for indoor space.

The existing single detached dwellings on Bachman Drive and Emmitt Road to the east of the site are on 9 m. lots and are two-storeys in height with gabled roofs and dormers. The height of the commercial building under construction in the Norwood

Plaza immediately to the south of the subject site is 7.8 m. (25.8 ft.). An examination of the photographs of commercial buildings in the Norwood Plaza (Exhibit 17, pp. 18-19) show that the commercial buildings look like commercial buildings with a predominance of blank walls.

It is not clear to the Board why Mr. Leoni who lives across the street from the site is concerned that he would be looking at a wall. He and others would look at Building B with the kind of façade already described and the one that nearly mirrors their own detached dwellings. If the site were developed for one-storey commercial use as permitted by the By-law, then Mr. Leoni and others are most likely to be looking at a wall similar to the one they are looking at now in the Norwood Plaza. And yet, the objectors expressed a clear preference for commercial use on the site although they have a "different and better building" as pointed out by the planner for the applicant/appellant.

There is a full access to the site from Avro in the north, a shared right-in and right-out only access from Jane in the south. There is no vehicular access from residential Bachman Street in the east. There is one pedestrian walkway access into the site from Bachman that connects Bachman to Jane. The result of this circulation pattern, as pointed out by Mr. Schweinbenz, the transportation planner, is that the detached dwellings in the east on Bachman, Emmitt, and Wilcox will experience no adverse impact of traffic coming to or leaving the subject site.

The Landscape Plan shows the effort that has gone into buffering the proposed four buildings from the adjacent streets and dwellings. The perimeter trees, shrubs, and other vegetation attempt to isolate the site in a self-contained campus like setting.

The Board is persuaded by the evidence of the planner for the applicant that the intent of the proposed Amendments to the Official Plan and the Zoning By-law is "to implement the Site Plan that has consciously incorporated elements drawn from the City' Draft Urban Design Guideline (Exhibit 6) in order to accommodate a more elegant built form". The Board is of the opinion that the two Amendments are, in fact, project specific tailored to the proposal.

Based upon an analysis of the pertinent evidence, the Board finds that the proposal does not cause an unacceptable adverse impact upon the existing built form.

Maintenance

A good deal of opposition to the proposal was rooted in a certain understanding of incompatibility that stemmed from the manner in which some current mixed-use plazas are maintained. Using a set of photographs (Exhibit 17) and a companion slide show, the President of the Maple Landing Ratepayers Association, Mr. Tinaz, recounted several problems associated with mixed-use commercial/residential plazas in the City of Toronto and elsewhere. He was particularly keen on demonstrating through slides and photographs the difference in the quality of maintenance of the premises between the strictly commercial plazas and mixed-use plazas. His main point was that in the examples that he brought forward, wherever there was a mixed-use plaza, the maintenance was inadequate, resulting in adverse impacts upon the residents who live in such mixed-use plazas as well as the neighbours who live in the immediate vicinity of such plazas.

Mr. Leoni, who lives across the street from the site, expressed other concerns. He stated during cross-examination by both counsel,

Residences on top of commercial is the issue for me. What kind of people will live in them? I am not saying they are bad people but they will have kids. Kids will live here in a tight area. They will go down and play in the parking area and garbage will be all over. This could turn into a Jane and Finch or Rexdale. I know it is wrong to bring it up because everybody has to live somewhere. Maybe, Jane and Rutherford and Jane and Longstaff would be a good place for these buildings.

Using a photograph (Exhibit 19) of a mixed use building that is owned by the company with which the applicant is associated with, Mr. Baldassarra explained in detail how the premises are maintained. He also described in detail how the company he is part of, namely, History Hill Group, owns and manages approximately 2.5 million square feet of built space in a professional manner that has not led to any complaints anywhere in the numerous locations where the buildings are located. He pointed to two other mixed-use developments similar to the one proposed for the site in Woodbridge and Kleinberg that are functioning well and contended that his operation would be no less professional.

An analysis of the relevant evidence indicates the following.

All the examples that Mr. Tinaz used to make his point about poor maintenance of mixed-use plazas contain commercial uses on the first floor and rental apartments on the second floor. The Board asked if he had any example of a mixed-use plaza where the residential use on the second floor consisted of condominium ownership by people who operate businesses on the first floor. He was unable to point to an example.

The Board is persuaded by the uncontradicted evidence by the owner of the subject property that his company has and continues to manage a large number of properties in a manner that has not led to complaints or the kind of poor maintenance that Mr. Tinaz was pointing out. The Board is also of the view that condominium ownership is unlikely to lead to the kind of inadequate maintenance and other problems that Messrs Tinaz and Leoni are concerned about.

Based upon an analysis of the pertinent evidence the Board finds that the maintenance of the proposed mixed-use plaza will not cause an unacceptable adverse impact upon either the future residents or the present residents in the vicinity of the subject property.

Collateral Benefit

All the objectors except Mr. Ahmad, as pointed out earlier, explicitly stated that they were not opposed to the existing zone that permitted a number of commercial uses. During cross-examination of the objectors, it became clear, however, that not one of them was fully aware of all the uses permitted under current zoning. The President of the Ratepayers Association crystallized the opinions of the objectors when he stated, "If all the uses that you note in the By-law are permitted there is nothing we can do about it". The only witness who came close to acknowledging the permitted as of right uses was Mr. Biggart who said, "Permitted does not mean that they will all get built but I do agree that the By-law permits the uses listed on this chart here".

It is helpful, therefore, to examine what the objectors consider is acceptable or unacceptable about the permitted uses their neighbours now have.

Mr. Leoni who lives across the street from the site categorically stated, "I do not agree with a lumber yard, a motel and a car wash being permitted here". Mr. Hitchins who lives on Emmitt Road, a street that is within the relevant neighbourhood stated, "If

funeral home permitted by By-law it is O.K. I would not like a building lumber supply or a motel". Mr. Biggart who lives on Elena Crescent, a street that is not part of the relevant neighbourhood, had no difficulty in having a funeral home, Convenience with Drive-Through, motel, and boating showroom. As he stated, "These four uses do not raise alarm bells. I would have concern with lumber or building supply with outdoor storage and a car wash".

What is clear from the evidence of the objectors is that they do not like either the proposed 32 condominiums or several of the uses permitted now.

One of the collateral benefits of the proposal is that it leads to a deletion of several commercial uses currently permitted in the C2 zone, thereby making the entire site more harmonious with existing residential development in the east. The following uses will be deleted: a boating showroom, a car wash, an Eating Establishment, Convenience with Drive-Through, a funeral home, a hotel, a lumber or building supply, a motel, a motor vehicle sales establishment, a place of entertainment and a tavern. The Board notes that all of these uses may or may not materialize on the site but the opportunity to eliminate them altogether with other more built form and land use friendly residential and commercial uses is not an inconsequential consideration to be disregarded.

Finding on Compatibility

The guiding principle of development in an established neighbourhood can be summarized as follows. A developer must take people's preferences, as expressed through the existing experience of place, and must seek to cultivate in the new development the qualities of character necessary to the integration of the new with the established. The land use planning instruments, accordingly, make a genuine effort to accommodate established consumer preference/s as interpreted and articulated by existing residents, because it is these planning instruments that have facilitated the emergence of the existing experience of place in the first instance. In other words, in an existing neighbourhood the focus is upon both the "preservation" of the old and the "creation" of the new experience of place. The developer begins by asking how a proposal can be made capable of integration and seeks the aesthetic principles that promote its meaningful coexistence.

The question, therefore, is whether the developer in this instance has a proposal capable of integration and has indeed sought the aesthetic principles that promote its meaningful coexistence. The evidence by the planner was that the proposal fitted in very well with the existing built form. A close examination of the Site Plan, landscape plan, "photograph" of proposed four buildings in context, and four elevation drawings of the proposed buildings verifies the opinion of the planner in this regard.

The detailed analysis of the proposal carried out earlier indicates that the proposal is capable of integration because it relies upon aesthetic principles that promote meaningful coexistence. In this instance, the proposal, in fact, fulfills a set of criteria so as to constitute urban design that is good.

The two-storey building facades with multiple symmetrical peaked roofs fronting on to the three streets that bracket most of the site with no commercial facades facing the streets represent an effort to achieve architectural distinction on the site.

The perimeter landscaping with trees, shrubs, and other vegetation to buffer the buildings from the three streets surrounding the site create a campus-like design and a sense of place not only for the future residents of the four buildings but also for the existing residents in the vicinity.

The pedestrian walkways into the site from the vicinity of the site culminating in an enclosed quadrangle-like space with commercial frontages, albeit, consisting of parking spaces and related landscaping, are a genuine effort at creating a high quality public realm.

The design principles that are executed in the proposal in response to neighbourly concerns coupled with easy access to the commercial uses on the first floor for the neighbours makes the proposal a neighbourly development.

Finally, the building design details incorporate elements drawn from the built form in the immediate vicinity and make the proposal a creative contextual response to the challenge of integrating with the present.

In the view of the Board, as it has repeatedly stated in the past, compatibility turns upon the impact of the proposal on the character of the environment, both built

and natural, with due regard for how that character is likely to evolve in the foreseeable future. Being compatible with is not the same as being the same as. Being compatible with is not even the same thing as being similar to. Being similar to means having resemblance to another thing; they are like one another, but not identical. Being compatible with means being mutually tolerant and capable of coexisting together in harmony in the same area. In the final analysis, the proposal should not cause an unacceptable adverse impact upon existing built and natural environments.

Based upon an analysis of all the pertinent evidence, the Board finds that the proposal does not cause an unacceptable adverse impact upon the existing built and natural environments.

Expectations and Integrity of the Official Plan and the Zoning By-law

The objectors were of the opinion, in their own differing ways, that the Official Plan and the Zoning By-law set up certain reasonable expectations based upon an agreed upon set of rules and that such rules ought not to be altered. The objectors were also concerned about the loss of integrity of planning instruments that are amended to suit particular circumstances. This stance by those opposed to the Amendments to the Official Plan and the Zoning By-law needs to be closely examined. Although the objectors were opposed to both Amendments, their comments were primarily directed against any change to the Zoning By-law. Hence, the focus of reasoning below will be the By-law.

A zoning by-law details some land use policies and programs in an official plan through a series of regulations including specific qualitative and quantitative standards. In doing so, a zoning by-law attempts to elaborate upon an official plan in a reactive regulatory fashion. At the heart of a zoning by-law is the idea of consistency in applying regulations and standards to any physical development proposal that attempts to conserve, rehabilitate, redevelop, or newly develop a part of the community. A desire for consistency and predictability does not mean a rigid adherence to a zoning by-law however well conceived and executed. Zoning by-laws, by definition, are based upon a set of circumstances at the time of their formulation and as a rule apply to a municipality as a whole unless specified otherwise.

As circumstances change, established regulations and standards need to be reassessed in light of new conditions and be interpreted and implemented in an adaptive manner to suit particular circumstances. In considering amendments to a zoning by-law, lessons from experience, over time, is an important criterion. Equally important, however, is the relevance of a standard that is applicable to an entire municipality to a particular situation notwithstanding the recency of birth of that standard.

It is in recognition of the contingent nature of expectation that the *Planning Act* has provisions for amendments to official plans and zoning by-laws. All the affected parties look upon land use planning instruments as binding contracts but attach differing weight to the finality of the terms of the contract depending upon whether they are proponents or objectors. Usually the proponent for an amendment takes the flexible view while the objector takes the less flexible view. The disputes become complicated because the affected parties focus on the terms of the contract, i.e., a particular wording or a particular standard, while giving little weight to the intent and purpose of the wording or the standard. The question for an adjudicative body is: which is more important, the standard or the intent?

The integrity of a zoning by-law depends upon the foundation upon which it rests and the quality of such a foundation in turn is a function of what is intended by the standard as to practical consequences not only in the immediate future but also in the foreseeable future. Legal realism is not merely a doctrine discussed in graduate schools, but also the very stuff of Canadian jurisprudence.

In dealing with official plan and zoning by-law amendments, therefore, we have to strike a balance between the need to maintain consistency and predictability to meet expectations and the need to be sensitive to emerging conditions. While there is no clear answer in principle, as to where the balance may lie, in practice, however, one can proceed on the basis of some explicitly stated criteria rigorously applied.

In this case, the proposed Amendments to the Official Plan and the Zoning By-law (and the proposal), in fact, fulfill a set of criteria so as to constitute planning that is good. The Amendments do not contravene the intent and purpose of the applicable policies of not only the Official Plan as a whole, but also other relevant planning

instruments. The Amendments are necessitated by a change in conditions since the Official Plan and the By-law were originally adopted and approved because the original policies and permitted uses, upon examination, have turned out to be much more expansive than appropriate for the site. The Amendments provide the collateral benefit of removing several possible uses from the site. The proposal is compatible with existing development – both built and natural. The Amendments do not distort the direction of spatial development for the entire Municipality. The Amendments represent an innovative built form response to an opportunity for intensification that meets several policy objectives. The Amendment is required because of the special circumstances that are unique to the proposal under consideration.

Based upon an analysis of pertinent evidence, the Board finds that amending the Official Plan and the Zoning By-law under the circumstances in this particular instance does not compromise the integrity of the two planning instruments.

Policy Framework

Using a number of documents contained in the Document Book, a set of maps, diagrams, and photographs (Exhibits 2 through 6 & 8), the land use planner for the applicant explained in exhaustive detail how the proposed Amendments of the Official Plan and the Zoning By-law together with the Site Plan represented planning that was good.

The planner was cross-examined rigorously on the compatibility of the proposal with existing development but was only briefly questioned on the policy framework. During argument, the counsel with the City stated that the City had no issue with the proposal conforming to the policy framework. The opinions of the planner with respect to the conformity of the three applications to the applicable planning instruments were not contradicted by anyone who had undertaken a serious analysis of the planning instruments.

Based upon an examination of the evidence in the context of views expressed by the President of the Ratepayers Association in his issues list (Exhibit 17), the Board finds that the proposed Amendments and the Site Plan conform to the applicable policies of the Provincial Policy Statement, the Regional Official Plan, and the Official Plan of the City of Vaughan as a whole.

Disposition

Based upon an analysis of all of the evidence, the Board finds that the proposed mixed-use development is appropriate for the site and that the companion Amendments to the Official Plan and the Zoning By-law in conjunction with the Site Plan represent planning that is good.

Accordingly, the Board allows the appeals:



Amends the Official Plan as shown in Attachment 1;

Amends the Zoning By-law as shown in Attachment 2; and

Approves the Site Plan and associated Conditions as shown in Attachment 3.

The Board so Orders.

"N. M. Katary"

N. M. KATARY
MEMBER

ATTACHMENT 1

AMENDMENT NUMBER 612

TO THE OFFICIAL PLAN

OF THE VAUGHAN PLANNING AREA

The following text to Amendment Number 612 to the Official Plan of the Vaughan Planning area and Schedule "1" constitutes Amendment Number 612.

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

I. PURPOSE

The purpose of this Amendment is to amend Official Plan Amendment No. 350 (Maple Community Plan) of the Vaughan Planning Area, by adding a new site-specific policy to Official Plan Amendment 350 regarding permission for residential uses in Section 2.8 .

II. LOCATION

The lands affected by this Amendment are located at the southeast corner of Avro Road and Jane Street in Lot 19, Concession 4, City of Vaughan. The Subject Lands are delineated on Schedule "1" as "Area Subject to Amendment No. 612".

III. BASIS

The decision to amend Official Plan Amendment 350 is based on the following considerations:

In 1999 when Official Plan Amendment 350 was amended to include the subject lands within the urban area, it was recognized that commercial uses would be appropriate along Jane Street as one way to provide a built form buffer to protect the low density residential community to the east. However, as at that time no specific request been made to include residential uses, or mixed uses along the arterial road, no provision was made to permit higher density residential uses on the subject lands.

Today, given the limited range of housing units in the community of Maple; the direction in OPA 350 to provide a broad range of housing types and to intensify development; the opportunity offered by this application to expand the range of uses on the subject site; and regional policies and initiatives regarding mixed use development along regional urban corridors; it is considered appropriate to provide for limited intensification through the introduction of a modest number of residential units on the subject site. This type of

development, which is not ground oriented, and which will provide a built form presence along Jane Street will create a suitable transition along the Jane Street Corridor as it will continue to provide an effective buffer between the residential uses on the east side of Bachman Drive and Canada's Wonderland, which lies west of Jane Street. It will also assist in buffering the broader residential community to the east.

Functional linkages will continue to exist between the subject lands and the balance of the Maple Community thus ensuring that the new residents will have access to a broad range of community facilities and services.

2. Noise

Any development will require the preparation of a Noise Study and the implementation of appropriate noise attenuation measures as set out in Section 1.5 of OPA 350.

3. Urban Design

The urban design requirements set out in Section 2.8 of OPA 350 will continue to apply.

IV. DETAILS OF THE ACTUAL AMENDMENT AND POLICIES RELATIVE THERETO

Official Plan Amendment 350 of the Vaughan Planning Area, as amended, is hereby further amended by:

- b) Adding the following paragraph (g) to 2.8 General Commercial Policies:

"g) Notwithstanding the uses permitted in paragraph 2.8 a) and 2.8 b) above the lands located on the east side of Jane Street, south of Avro Road and west of Bachman Drive, shown as "Lands Subject To Amendment Number 612" on Schedule "A" may also be used for a maximum of 32 residential dwelling units, provided the units are in a mixed-use development and located on the second storey of a building, above non-residential uses. The

appropriate development standards will be established in the implementing zoning by-law."

V. IMPLEMENTATION

It is intended that the policies of the Official Plan of the Vaughan Planning Area pertaining to the Subject Lands shall be implemented in accordance with the Implementation policies as set out in Section 11 of OPA 350, as amended.

VI INTERPRETATION

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

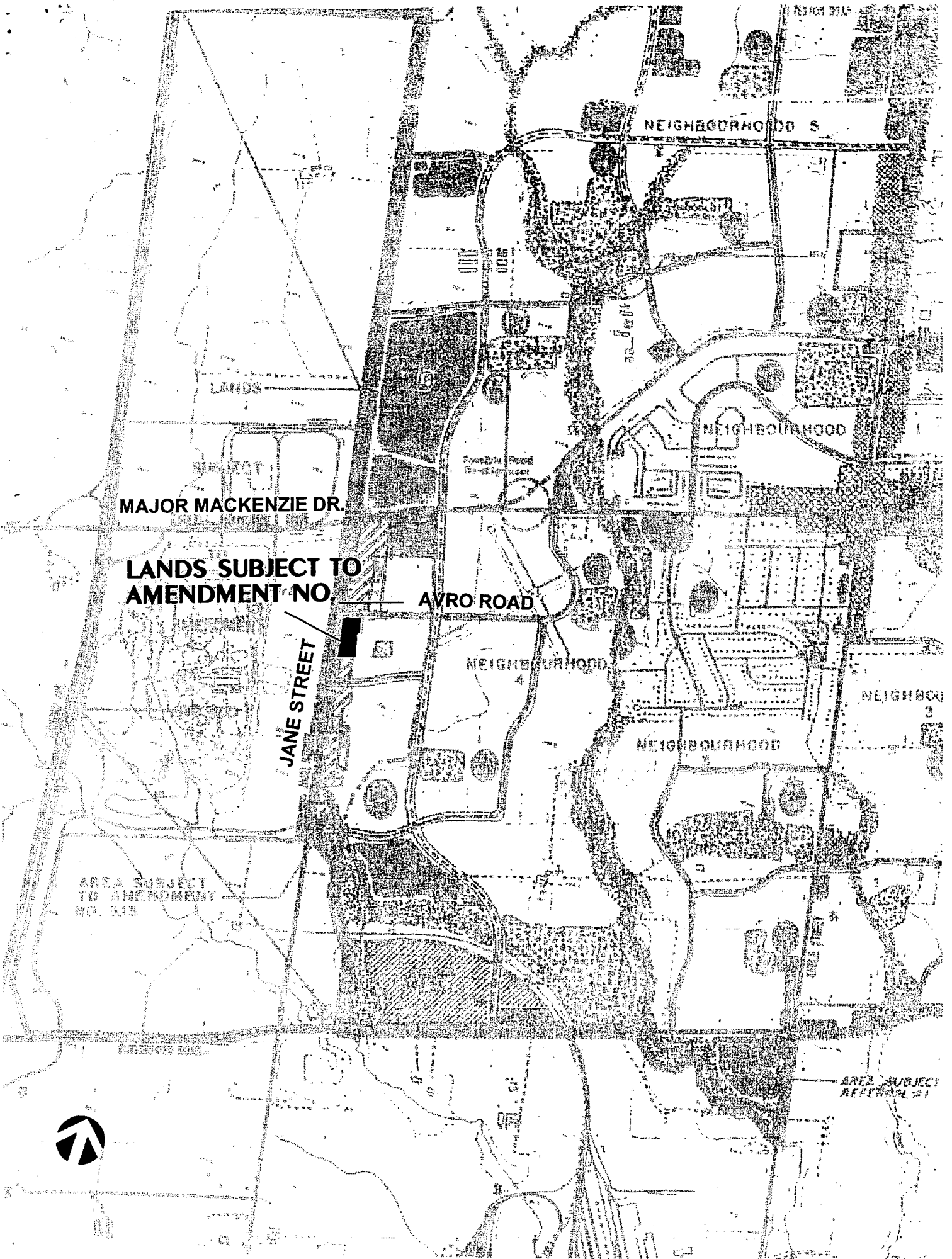
APPENDIX I

The lands affected by this Amendment are located at the southeast corner of Jane Street and Avro Road, being Part of Lot 19, Concession 4, City of Vaughan.

Council on June 9, 2003, Council considered the following recommendation of the Committee of the Whole with respect to an application to amend the Official Plan to permit residential uses on the Subject Lands. At that meeting, Council adopted the following resolution (in part):

"That Official Plan Amendment File OP.03.001 Colgera Services Inc.) and Zoning Amendment File Z.02.085 (Colgera Services Inc.) BE REFUSED."

The applicant, on June 9, 2003, subsequently appealed this matter to the Ontario Municipal Board, which was considered at a hearing that commenced on March 23, 2004. The Ontario Municipal Board subsequently approved the application in Decision Order No. 0972.



THIS IS SCHEDULE '1'
 TO THE OFFICIAL PLAN AMENDMENT No. 612

LOCATION : PART OF LOT 19
 CONCESSION 4

FILE: OP.03.001

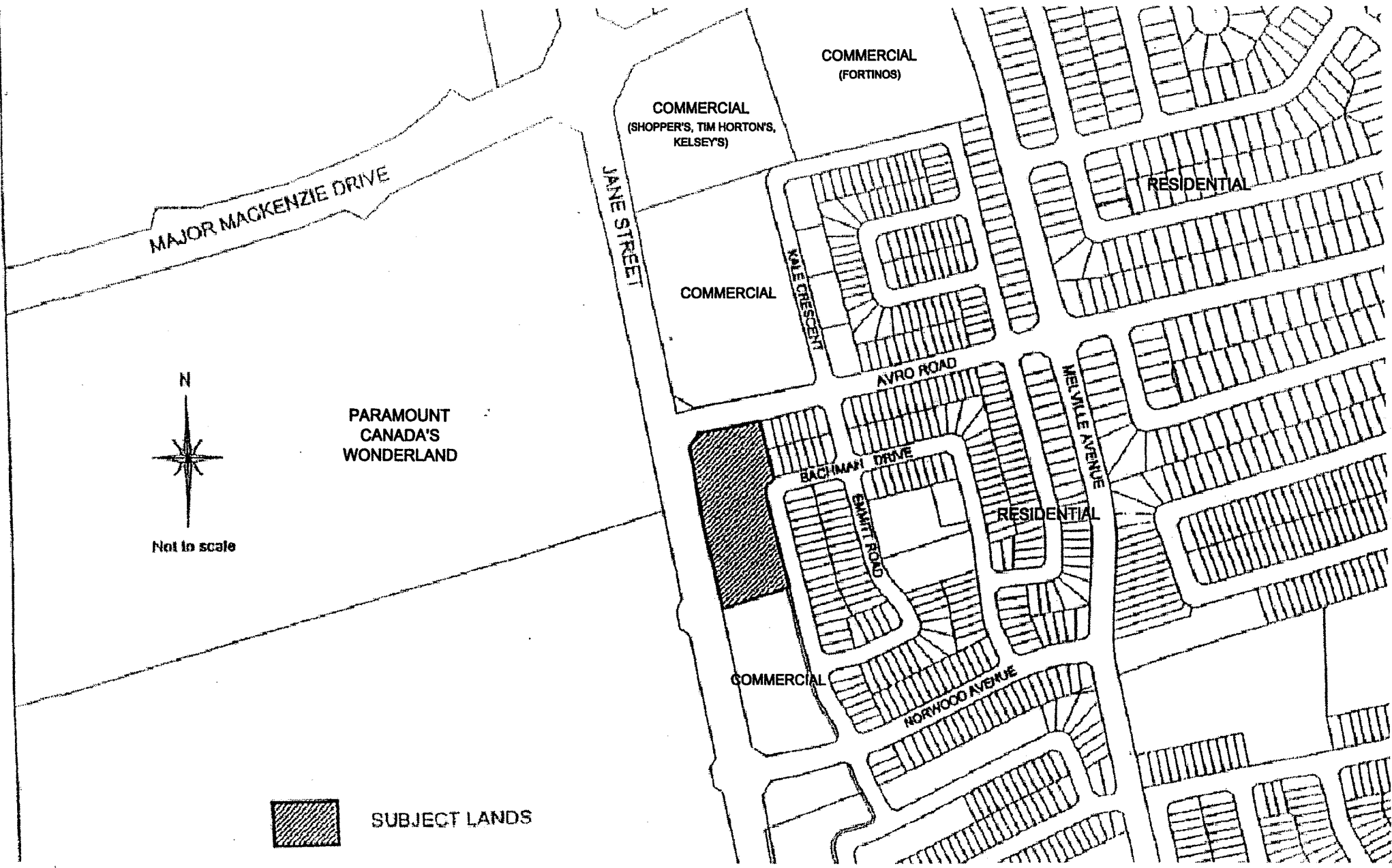
APPLICANT: COLGERA SERVICES INC.

SIGNING OFFICERS

MAYOR

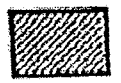
CLERK

*BOARD ORDER #0972
 MAY 28, 2004*



Not to scale

PARAMOUNT
CANADA'S
WONDERLAND



SUBJECT LANDS

LOCATION : PART OF LOT 19
CONCESSION 4

FILE: Z.02.085

APPLICANT: COLGERA SERVICES INC.

APPENDIX II
EXISTING LAND USE
OFFICIAL PLAN AMENDMENT No. 612