



# Corporate Report

Clerk's Files

Originator's  
Files 'A' 083/07 W9

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**DATE:** April 24, 2007

**TO:** Planning and Development Committee  
Meeting Date: May 14, 2007

**FROM:** Edward R. Sajecki  
Commissioner of Planning and Building

**SUBJECT:** **Appeal to the Ontario Municipal Board  
Committee of Adjustment Decision  
C of A 'A' 083/07 W9  
The Erin Mills Development Corporation  
2915 Argentia Road  
South of Highway 401,  
east of Winston Churchill Boulevard** **Ward 9**

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**RECOMMENDATION:** That the appeal filed by Legal Services by letter be continued and that Legal Services, together with other appropriate City staff attend the Ontario Municipal Board hearing in support of the appeal of the decision of the Committee of Adjustment under file 'A' 083/07 W9, The Erin Mills Development Corporation, granted on March 8 2007, regarding the property at 2915 Argentia Road.

**BACKGROUND:** On March 8, 2007, the Committee of Adjustment considered minor variance application, 'A' 083/07 W9 to permit the retail sales of vehicles; whereas By-law 5500, as amended, makes no provisions for the retail sales of vehicles in an "M1-1775" (Industrial) zone in this instance.

Background information is provided in Appendix 1.

In accordance with the City's Corporate Policy and Procedures for Appeals of Committee of Adjustment Decisions, the Planning and Building Department will recommend to the Planning and

Development Committee that the City appeal a Decision to the Ontario Municipal Board in circumstances where:

- 1) There is a difference in planning opinion between the Committee of Adjustment and the Department with respect to whether a Decision maintains the general intent and purpose of the Official Plan; or
- 2) A Decision could have significant impacts, broader implications, and/or set an undesirable precedent with respect to the interpretation of the Official Plan or Zoning By-law in the context of other development applications/matters being considered by the City or in the context of where it is believed that there is an error of law in the Decision.

**COMMENTS:**

The authorized agent indicated that he is proposing an automobile leasing and wholesale business with ancillary retail sales from Unit 1 of the existing industrial building. He advised that he is currently operating an identical business at 3995 Sladeview Crescent, Unit 1 for which he had previously received a minor variance to permit the use under file 'A' 196/01 W8. It was explained that he has outgrown that facility and is looking to relocate to a larger location including increasing the number of staff from 7 to 10. The agent further noted that it is his intent to house approximately 30-50 cars entirely within the unit of which approximately 10-20 per month would be sold at retail. No automobile repairs would be conducted on site.

The current operation at 3995 Sladeview Crescent is located on lands designated "Business Employment" and zoned "M1-1349" and "M2-1335" (Industrial), which do not permit the retail sales of vehicles. In commenting on the original variance request under file 'A' 196/01 W8, staff failed to note that the proposal was in contravention of the Official Plan at that time. While the general "Business Employment" policies in City Plan, at the time allowed Arterial Commercial Uses, which in turn permitted vehicular sales, rentals and repairs, the Business Employment policies in the Western Business Park District specifically excluded arterial commercial uses. The variance application for the use was

granted by the Committee in May 2001 for a temporary period of two (2) years and again in January 2004 for a further three (3) years under file 'A' 19/04.

With respect to the subject variance application under file 'A' 083/07 W9, the Planning and Building Department recommended that the variance application be refused on the basis that it does not maintain the general intent and purpose of the Official Plan or the Zoning By-law, is not minor in nature nor is it desirable for the appropriate use of the land.

### **Official Plan**

The subject property is designated "Business Employment" which permits an integrated mix of business activities, including manufacturing, assembling, processing, fabricating, research and development, sales and services, warehousing, distributing and wholesaling. The current policies do not allow for the retail sales or leasing of vehicles. The general intent of the Business Employment policies is to ensure that certain lands, specifically those within proximity to highways and major access routes, and in which the area is characterized by a prestigious employment image, are dedicated and preserved for higher order industry and employment. The proposed retail operation does not maintain the general intent and purpose of the Official Plan.

### **Zoning By-law**

The subject property is zoned "M1-1775" (Industrial) which permits the use of the lands, building or structure for the purpose of manufacturing, or industrial undertakings that are conducted within enclosed buildings or structures including storage warehouses, research establishments, and automobile repair garages in which no automobile body repairs are performed. The zone provisions do not allow for the retail sales or leasing of vehicles. Any building or unit greater than 170 m<sup>2</sup> (1,830 sq. ft.) containing a permitted use may use a maximum of 15% of the gross floor area for accessory retail sales and accessory retail display of products provided that such sales and display are accessory to the principal manufacturing or industrial undertaking

and that products be contained wholly within the enclosed building or structure. Notwithstanding the above, the Zoning By-law provisions specifically stipulate that the allowance for 15% of the gross floor area to be used for accessory retail and display of products does not apply to motor vehicles, manufactured, repaired or distributed at wholesale from the premises. The general intent of the Zoning By-law is to ensure that lands are maintained for higher order industry and employment. The proposed retail operation does not maintain the general intent and purpose of the Zoning By-law.

#### **Four Tests for Minor Variances**

An application for a minor variance from a zoning by-law must meet all four tests established under the *Planning Act*, namely: the application must meet the general intent and purpose of the official plan; the application must meet the general intent and purpose of the zoning by-law; the application must be desirable for the appropriate development or use of the land; and, the application must be minor. The failure to satisfy just one of these tests is fatal to the application.

The Committee of Adjustment considered the submissions put forward and was satisfied that the request was desirable for the appropriate temporary use of the property, maintained the general intent of the current Official Plan and Zoning By-law and is minor in nature. The application was approved for a temporary period of five (5) years subject to the condition that the decision be made personal to "Yorkville Auto Leasing and Sales"; that there shall be no outdoor storage or display of vehicles being offered for lease, wholesale or retail sale; and that there shall be no retail sales signage permitted on site for the subject business operation. It is noted, however, that the Committee's decision does not restrict the retail sales of vehicles to being accessory to the wholesale and leasing business.

#### **OMB Appeal**

The Committee of Adjustment's decision to approve the variance was to be final and binding on April 5, 2007. It was the opinion of

this Department that the Committee's decision should be appealed by City Council to the Ontario Municipal Board (OMB).

Accordingly, the Planning and Building Department requested that Legal Services prepare the appropriate Notice of Appeal to the OMB and file a "place holder" appeal prior to the appeal period expiring pending further instruction from Council.

**CONCLUSION:**

The minor variance approved by the Committee of Adjustment under file 'A' 083/07 W9, does not meet the general intent of the Official Plan or the Zoning By-law, is not minor in nature and is not desirable for the appropriate use of the land. Given that the intent of the Business Employment policies is to dedicate and preserve land for higher order industry and employment, we have concerns that this approval by the Committee of Adjustment will have broader implications and could set an undesirable precedent. Although the authorized agent testified before the Committee of Adjustment that the majority of transactions for the business are for leasing and wholesaling, the act of leasing a vehicle is indecipherable from retailing as they functionally operate in the same manner. While it is recognized that a limited amount of accessory retail sales is permitted in an "M1-1775" (Industrial) zone, the provisions of the Zoning By-law specifically exclude any accessory retail sales related to motor vehicles manufactured, repaired or distributed at wholesale from the premises.

**ATTACHMENTS:**

Appendix 1 – Committee of Adjustment Decision 'A' 083/07  
Appendix 2 – Land Use Map  
Appendix 3 – Zoning Map  
Appendix 4 – Aerial Photograph  
Appendix 5 – Unit Location Map  
Appendix 6 – General Context Map

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Edward R. Sajecki  
Commissioner of Planning and Building

*Prepared By: David Breveglieri, Committee of Adjustment Planner*



## COMMITTEE OF ADJUSTMENT DECISION

City of Mississauga

'A' - 83 / 07

APPEALED  
MARCH 30TH, 2007

A83/07  
WARD 9

### COMMITTEE OF ADJUSTMENT

IN THE MATTER OF SECTION 45(1) OR (2)  
of The Planning Act R.S.O. 1990, c.P.13, as amended  
- and -  
IN THE MATTER OF ZONING BY-LAW 5500  
as amended  
- and -  
IN THE MATTER OF AN APPLICATION BY

The Erin Mills Development Corporation

on Thursday March 8, 2007

The Erin Mills Development Corporation is the owner of Part of Lots 12 and 13, Concession 6, W.H.S., located and known as 2875 To 2915 Argentia Road, zoned M1-Section 1775, Industrial. The applicant requests the Committee to authorize a minor variance to permit the retail sales of vehicles from 2915 Argentia Road, Unit 1 on the subject property; whereas By-law 5500, as amended makes no provisions for such a use in this instance

Mr. W. McGrath, authorized agent, attended and presented the application explaining the proposal to permit the establishment of an automobile leasing and wholesale business with ancillary retail sales from Unit #1 of the subject development. Mr. McGrath advised that he currently operates an identical business at 3995 Sladeview Crescent, Unit #1 and has outgrown that facility and wishes to relocate to this location. He advised that the Committee had previously approved the use at that location and no changes are being proposed, other than an increase in the number of vehicles being leased and/or sold from the subject property. Mr. McGrath advised that all vehicles will be stored/displayed within the unit and no outdoor display or sales are proposed. He advised that it is their intent to house approximately 30-50 cars within the unit of which approximately 10-20 per month would be sold at retail. The majority of transactions for the business are leasing and wholesale. He noted that they currently have 7 staff and will be increasing to 10 at this new location. He further advised that there are no repairs conducted on site as this is contracted off site.

The Committee reviewed the information submitted with the application.

The City of Mississauga Planning and Building Department commented as follows (March 5, 2007):

#### "1.0 RECOMMENDATION

The Planning and Building Department recommends that the application be refused.

#### 2.0 BACKGROUND

Mississauga Plan

Planning District: Meadowvale Business Park

Designation: Business Employment

Discussion:

The Business Employment Policies of the Mississauga Plan allow for an integrated mix of business activities

including manufacturing, assembling, processing, fabricating, research and development, sales and services, warehousing, distributing and wholesaling. The current policies do not allow for the retail sales of vehicles. The general intent of the Business Employment policies is to dedicate and preserve land for higher order industry and employment. The proposed retail operation does not maintain the general intent and purpose of the Official Plan.

Zoning By-law 5500  
Zoning: "M1-1775", Industrial

#### Discussion:

The applicable zone provisions allow for manufacturing or industrial undertakings that are conducted within enclosed buildings, including storage warehouses, research establishments, and automotive repair garages. The zone provisions do not allow for the retail sale of vehicles. Any retail use permitted in this zone would have to be accessory to a permitted primary use and would be limited to a maximum of 15% of the total unit gross floor area. The general intent of the Zoning By-law is to ensure that lands are maintained for higher order industry and employment. The proposed retail operation does not maintain the general intent and purpose of the Zoning By-law.

### 3.0 OTHER APPLICATIONS

0 Zoning Certificate File: Required - No application received

### 4.0 COMMENTS

In the absence of a Building Permit application, we are unable to confirm the accuracy of the requested variance or whether additional variances will be required. We advise however, that parking for this use would be required at the rate of 5.4 parking spaces per 100.00 m<sup>2</sup> (1,076.43 sq. ft.) gross floor area, non-residential.

We note that the applicant is proposing the retail sales of used vehicles from within a unit in a 9-unit building. The subject building would not be suitable for any outdoor display.

Based on the existing policy framework and zoning upon which the application is evaluated, the proposal does not maintain the general intent and purpose of either the Official Plan or Zoning By-law. The requested variance is not minor in nature and is not desirable for the appropriate development of the subject property.

#### Please Be Advised:

The City is proposing to adopt a new City-wide Zoning By-law in the spring of 2007. We advise that the zoning for the subject property as contained within the new City-wide Zoning By-law is proposed to be "E2-24", Employment, which will not permit the requested use.

Should the variance be granted and pass its appeal period and the Building Permit is issuable other than outstanding minor variance, on or before the date Council passes the new City-wide Zoning By-law, the approved minor variance will be valid for purposes of obtaining the Building Permit.

However, should the variance be granted and pass its appeal period and the Building Permit NOT be issuable other than outstanding minor variance on or before the date Council passes the new City-wide Zoning By-law, a variance to the new City-wide Zoning By-law may be required prior to the issuance of the Building Permit.

The City advises that all applicants should review the proposed new City-wide Zoning By-law carefully and consult with your professional advisors with regards to the proposed changes and how they may impact on your

development application and minor variance."

The Ministry of Transportation commented as follows (February 15, 2007):

"The ministry has no objection to the minor variance. However, the subject site is located within the ministry's permit control area and therefore proposed development/location signs will require an MTO Sign Permit prior to installation."

No other persons expressed any interest in the application.

The Committee, after considering the submissions put forward by Mr. McGrath and noting the nature of the requested business operation, is satisfied that the request is desirable for the appropriate temporary use of the subject property. The Committee is satisfied that the proposed leasing and wholesaling of vehicles is within the intent of the City's Official Plan Business Employment uses in this instance. They further advised that the proposal to retail approximately 10-20 vehicles per month is ancillary to the wholesale and leasing function in this instance. The Committee advised that appropriate conditions could be imposed to restrict the potential retail appearance of the unit in this instance.

The Committee is satisfied that the general intent and purpose of the current Zoning By-law and the Official Plan will be maintained in this instance.

The Committee is of the opinion that the request is minor in nature in this instance.

Accordingly, the Committee resolves to authorize and grant the request for a temporary period of five (5) years to expire and terminate on or before April 30, 2012, subject to the following conditions:

- 1) This decision is personal to "Yorkville Auto Leasing and Sales" and shall be in effect so long as the subject premises are leased and/or occupied by same.
- 2) There shall be no outdoor storage or display of vehicles being offered for lease, wholesale or retail sale.
- 3) There shall be no retail sale signage permitted on site for the subject business operation.

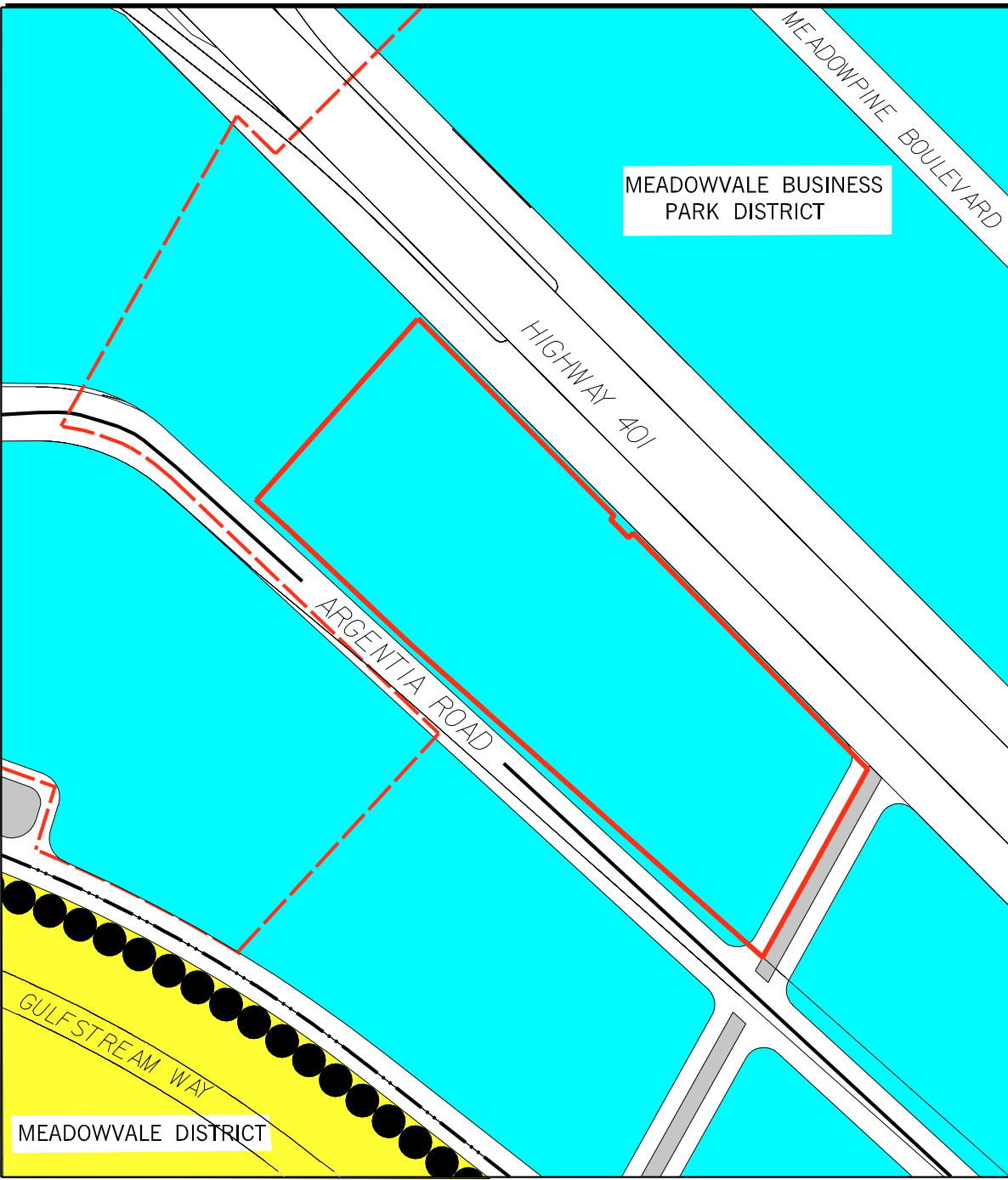
Application Approved, temporarily, on conditions as stated.

Dated at the City of Mississauga on March 15, 2007.

THIS DECISION IS SUBJECT TO APPEAL TO THE ONTARIO MUNICIPAL BOARD BY FILING WITH THE SECRETARY-TREASURER OF THE COMMITTEE OF ADJUSTMENT A WRITTEN NOTIFICATION, GIVING REASONS FOR THE APPEAL, ACCOMPANIED WITH THE PRESCRIBED FEE ON OR BEFORE APRIL 4, 2007.

Date of mailing is March 19, 2007.





**PART OF MEADOWVALE BUSINESS PARK DISTRICT LAND USE MAP  
MEADOWVALE BUSINESS PARK DISTRICT POLICIES OF MISSISSAUGA PLAN**

**LAND USE DESIGNATIONS**

- Residential - Low Density II
- General Commercial
- Motor Vehicle Commercial
- Business Employment
- Industrial
- Open Space
- Greenbelt
- Parkway Belt West
- Utility
- Node Boundary

**TRANSPORTATION LEGEND**

- Provincial Highway and Interchange
- Arterial
- Major Collector
- Minor Collector
- Local Road
- Existing Commuter Rail
- GO Transit Station

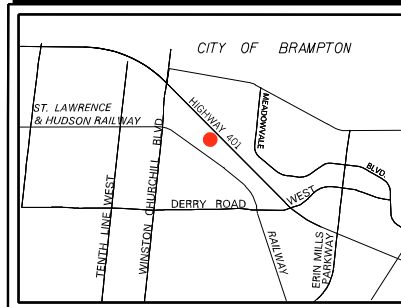
**LAND USE LEGEND**

- CP - City Park
- C - Community Park
- \* - Existing Stormwater Management Facility
- \* - Proposed Stormwater Management Facility
- 1996 NEP/2000 NEF Composite Noise Contours
- Planning District

**SUBJECT LANDS**



**SUBJECT: THE ERIN MILLS DEVELOPMENT CORPORATION**



**FILE NO:**  
**'A' 08307**  
**DWG. NO:**  
**A08307L**  
**SCALE:**  
**1:5000**  
**PDC DATE:**  
**2007 05 16**  
**DRAWN BY:**  
**R.DICOSOLA**

**APPENDIX 2**

**MISSISSAUGA**  
Planning and Building

Produced by  
**T&W, Geomatics**

**RCL2-2338**

COMMERCIAL

**M1-1775**  
INDUSTRIAL

VACANT

**M1-1642**  
INDUSTRIAL

HIGHWAY 401

MEADOWPINE BLVD

**M1-1564**

INDUSTRIAL

**M1-1775**  
INDUSTRIAL

ARGENTIA ROAD

**DC-2430**  
COMMERCIAL

**G**

GREENSPACE

**M1-1775**  
INDUSTRIAL

**M1-1775**  
INDUSTRIAL

**R5-1669**  
DETACHED DWELLINGS

**R5-1669**  
DETACHED DWELLINGS

**R3-1667**  
DETACHED DWELLINGS

CROSSCURRENT DRIVE

**LEGEND:**



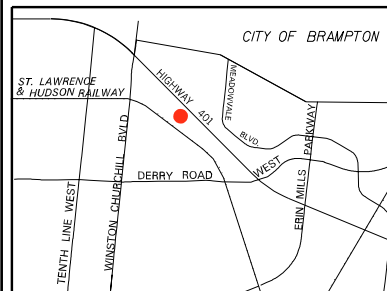
SUBJECT UNIT SIZE (4720.38 sq.m)

NOTE: EXISTING ZONING DELINEATED ON THE PLAN  
PROPOSED ZONING INDICATED BY SHADING WITHIN  
THE APPLICATION AREA.



**SUBJECT:**

**THE ERIN MILLS  
DEVELOPMENT CORPORATION**



FILE NO:

'A' 08307

DWG. NO:

A08307

SCALE:

1:3000

PDC DATE:

2007 05 16

DRAWN BY:

R.DICOSOLA

APPENDIX 3

**MISSISSAUGA**  
Planning and Building

Produced by  
**T&W, Geomatics**



**LEGEND:**

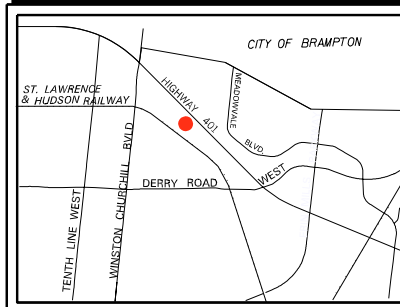


**SUBJECT LANDS**

**DATE OF AERIAL PHOTO: 2006**



**SUBJECT: THE ERIN MILLS DEVELOPMENT CORPORATION**



<b>FILE NO:</b>
<b>'A' 08307</b>
<b>DWG. NO:</b>
<b>A08307A</b>
<b>SCALE:</b>
<b>NTS</b>
<b>PDC DATE:</b>
<b>2007 05 16</b>
<b>DRAWN BY:</b>
<b>R.DICOSOLA</b>

**APPENDIX 4**





