

## DECISION AND ORDER

**Decision Issue Date**      Tuesday, February 13, 2018

PROCEEDING COMMENCED UNDER subsection 45(1) of the Planning Act, R.S.O. 1990, c. P.13, as amended (the "Act")

Appellant(s): CITY OF TORONTO

Applicant: ANTHONY CESARIO

Property Address/Description: 172 MILVAN DR

Committee of Adjustment Case File Number: 17 123581 WET 07 MV

TLAB Case File Number: 17 157577 S45 07 TLAB

**Hearing days:** Thursday, August 31, 2017; Monday, October 2, 2017; Friday, December 8, 2017; Friday, January 19, 2018

### **DECISION DELIVERED BY T. Yao**

This is an application by the Canadian Islamic Centre to use 172 Milvan Drive (currently an industrial building) for a "culture centre", a non-defined use. The zoning is Employment Light Industrial (EL) zone under the City-wide Zoning By-law No. 569-2013.

On April 20, 2017, the Committee of Adjustment granted Canadian Islamic Centre's its application for a minor variance. The City of Toronto appealed and so this matter comes before the TLAB.

### **EVIDENCE**

I heard from two witnesses over a period of three days: Franco Romano testified for the Canadian Islamic Centre, and Olivia Antonel for the City of Toronto. I qualified both as able to give opinion evidence with respect to land use planning. Both parties were represented; Canadian Islamic by Amber Stewart and the City by Jessica Braun.

## **BACKGROUND**

Prior to its purchase by the Canadian Islamic Centre in April 2015, 172 Milvan was a catering facility, which is a permitted use in the EL zone. The owner sold 172 Milvan Drive to the Canadian Islamic Centre, which has applied for a variance from By-law 569-2013.

In support of this variance, Canadian Islamic wrote the following letter:

Oct 27, 2016

The Canadian Islamic Centre is a non-profit organization that has been operating in the City of Toronto for the last number of years.

As a frontline outreach and a community drop-in centre, we deliver leadership development & life skills counselling and recreation programming as well as other supportive services. The Canadian Islamic Centre also provides nutritious meals, support and guidance to countless individuals daily. We also impart a caring atmosphere for those suffering from mental illness, isolation and economic marginalization

Presently, we are partnering with the Salvation Army (2125 Kipling Avenue), Youth Without Shelter (6 Warrendale Court) and Woodbridge Vista Care (5400 Steeles Avenue West) where we provide food and counselling services. In the near future, we hope to be partnering with the City of Toronto's Hostel Services to provide similar services. The Canadian Islamic Centre also provides many youth (High School Aged) related programs such as:

- After school drop in programming
- Resume building / Job search
- Free access to computer and internet
- Safe and free recreational activities
  - Basketball
  - Darts
  - Dominos
  - Table Tennis

As some of our volunteers are devout Muslims, we have allotted appropriate prayer space to practice their religion.

Milvan Drive is in the extreme west part of the Highway 400 Corridor Employment District, between Steeles Ave. and Hwy 401. The northern portion of the Employment District is shown in shading in the diagram below; number 172 Milvan is indicated by the arrow (northwest of the Weston Road/Finch Ave).



Properties on the west and south side of Milvan Drive back on Navenby Crescent (not shown in the above map), a residential area. To the west is number 174 Milvan Dr, Right Choice Linen and Decor; to east is 154-160 Milvan Dr, Engineered Plastics and Design Inc.

No. 172 Milvan Dr is occupied by one one-story building, 624 m<sup>2</sup> in area, (6700 sq. ft.), laid out in four portions.

#### Portion 4B

This portion is marked by Canadian Islamic's architect as "An existing meeting/conference area, maximum occupancy 75 people" in figure 2 below (this text is impossible to read in this reproduction). Mr. Romano said:

From the front we enter into this area that has these tables, a conference area, it is an area where one can sit, talk, or access the internet, have counselling services. meetings, office space.

#### Area Between 4A and 4B

This area consists of a foyer, washrooms, utility rooms and a small cubby-like area for an office. These uses do not figure into the minor variance analysis in this decision.

#### Portion 4A

Area 4A is the kitchen where the former catering business was carried on. Mr. Romano said it is inspected by the Department of Public Health, like any other food preparation facility where food is sold to the public. It is in receipt of a green card.

#### Portions 4C and 4D

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The architect has marked this:

“Maximum occupancy 500 people (standing);

Permitted uses – with conditions:

1. Eating establishment
2. Education use
3. Recreation use
4. Take out eating establishment”.

This is the area where the former owner’s catering trucks would enter the building; it still has two large roll-up garage doors. Mr. Romano said:

It is a multipurpose area. . . so it would be where, if somebody wanted to come in here and play ping pong, they could pull up a table and play ping pong, so there is no formal organization to this space; this is an open area, a multipurpose area, so if you are looking at the classifications under the zoning by-law, this is a recreational area, and I must also say that during Ramadan, a one month period per year, this is this is where this facility could very well provide place of worship activities, this recreational space here.



Figure 2. Interior layout

An “office” is permitted in the EL zone; this does not figure into the analysis. However, “*eating establishment*” and “*take-out eating establishment*” are only permitted subject to conditions. The all-encompassing term “culture centre” use, that is, *education* and *recreational* uses as marked on the plans, and a *worship* use, comprise the uses relevant to assess this minor variance application.

## **MATTERS IN ISSUE**

In considering the applications for variances from the zoning by-laws, the TLAB Panel must be satisfied that the applications conform to the Growth Plan and are consistent with the Provincial Policy Statements as well as that they meet all the four tests under s. 45(1) of the Act. The tests are whether the variances:

- maintain the general intent and purpose of the Official Plan;
- maintain the general intent and purpose of the Zoning By-laws;
- are desirable for the appropriate development or use of the land; and
- are minor.

Canadian Islamic argues that it is an “ancillary” facility and therefore meets the four tests. In 2006, the Province introduced a new definition in the *Planning Act*, namely an “area of employment”, which included:

- (a) manufacturing uses;
- (b) warehousing uses;
- (c) office uses;
- (d) retail uses that are associated with uses mentioned in clauses (a) to (c); and
- (e) facilities that are ancillary to uses mentioned in clauses (a) to (d). 2006, c. 23, s. 1 (6).

The issue in this hearing is the meaning of 1 (5)(e): “facilities that are ancillary to uses mentioned in clauses (a) to (d)”.

## **ANALYSIS, FINDINGS, REASONS**

### **Whether partial OMB approval can be considered**

I will first consider a preliminary matter, whether the pre-2013 version of the Official Plan governs, or whether amendments adopted in 2013 can be considered. I decide the 2013 amendments can be considered although if I am incorrect, I still find that the minor variance is contrary to the intent of the pre-2013 plan.

Toronto’s current Official Plan was adopted in 2006. In 2007, the Province required that official plans be updated every five years. The 2005 Provincial Policy Statement (PPS) and the 2006 Provincial Growth Plan had policies to allow employment lands to be converted to non-employment uses only after a comprehensive review. Toronto’s comprehensive review was completed in 2012 (the Malone report)<sup>1</sup>. Planning

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<sup>1</sup> October 2012

Malone Givens Parsons Ltd Report: Sustainable Competitive Advantage and Prosperity – Planning for Employment Uses in the City of Toronto

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staff prepared amendments to the Official Plan based on recommendations in the Malone report and criteria directed by the Provincial Policy Statement and the Provincial Growth Plan, circulated them to the Minister for comment and a final report (the OPA 231 report<sup>2</sup>) was presented to Council on November 5, 2013. Council adopted the amendments (OPA 231) on December 18, 2014 and the Minister approved OPA 231 on July 9, 2014. OPA 231's relevant employment lands policies mimicked the same number system as the 2006 Official Plan: 4.6.1 and 4.6.2. (OPA 231 was appealed to the Ontario Municipal Board ('OMB'.)) The next two events were:

Dec 20, 2016                      Ontario Municipal Board approves OPA 231 and specifically 4.6.1, 4.6.2, and 4.6.3, except for highlighted words.

Feb 27, 2017                      Canadian Islamic's minor variance application

The Canadian Islamic Centre applied for a minor variance in February 2017, after OPA 231 received partial approval from the OMB in December 2016, a difference of two months.

Ms. Stewart asked me to consider that Canadian Islamic's first interaction with Mr. Sherazy, the zoning plan examiner, occurred in 2015. This, she alleges, would have allowed me to examine the intent of the prior official plan, when the policies were somewhat more lenient. Ms. Braun, lawyer for the City, stated that the application is clearly after the partial approval and so the "*Clergy*" principle does not apply<sup>3</sup>. (*Clergy* states that planning applications are to be adjudged on the date of their application and later Official Plan amendments are not determinative). She went on to say that OPA 231 was in force for the purposes of this application. I agree with her, however, in the section "OP Policies" (page 16,) I conclude that both versions, on a full contextual analysis, would lead to a finding detrimental to Canadian Islamic's application, it does not matter.

Ms. Stewart also made a slightly different submission; that in view of the on-going appeals of OPA 231, the wording of the Official Plan, post OMB order of Dec 2016, was "fragmented", and incapable of interpretation. The present Official Plan, as amended by OPA 231, is reproduced below. Mr. Romano's said it took "some digging". (It appears to be the Clerk's copy of By-law 1714-2013). The highlighted text indicates the words are under appeal to the OMB and are not in full force and effect, while the non-highlighted is in full force and effect.

CHAPTER 4: EMPLOYMENT POLICIES

13. **Delete Section 4.6 and replace with the following:**

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<sup>2</sup> OPA 213 Report (Official Plan and Municipal Comprehensive Reviews: Amendments to the Official Plan for Economic Health and Employment Lands Policies and Designations and Recommendations on Conversion Requests)

<sup>3</sup> *Clergy Properties v Mississauga*, (1996), 34 O.M.B.R. 277. Since this report is not available on-line, there is a good précis of the case in *SOS – Save our St Clair Inc. v. Toronto (City)*, 2006 CanLII 4945 (ON SCDC).

...  
POLICIES

Core Employment Areas

1. Core Employment Areas are places for business and economic activities. Uses permitted in Core Employment Areas are all types of manufacturing, processing, warehousing, wholesaling, distribution, storage, transportation facilities, vehicle repair and services, offices, research and development facilities, utilities, waste management systems, industrial trade schools, media, information and technology facilities, and vertical agriculture.

2. The following additional uses are permitted provided they are ancillary to and intended to serve the Core Employment Area in which they are located: hotels, parks, small-scale restaurants, catering facilities, and small-scale service uses such as courier services, banks and copy shops. Small scale retail uses that are ancillary to and on the same lot as the principal use are also permitted. The Zoning By-law will establish development standards for all these uses.

The highlighting is done by the OMB and was contained in its Order issued December 20, 2016; this was not the Clerk attempting to interpret the OMB Order with a yellow highlighter. The OMB Order issued from a hearing June 2016, which was an unopposed motion by the City. Paragraph 4 of the City's prayer for relief was for:

4. A contingent Order approving policies 4.6.1, 4.6.2 and 4.6.3, as attached in Exhibit "E" to the Affidavit of Christian Giles affirmed on June 14, 2016, and which will be subject to a final order at the conclusion of Phase 1B of these proceedings.

Ms. Braun argued in this hearing that the "contingency" was the content of the words to replace the old 4.6.1, 4.6.2 and 4.6.3. (For brevity I have not reproduced the 4.6.3 words.) This is the only reason why "Delete Section 4.6 and replace with the following" is in highlighted. Ms. Stewart's submission is that the replacement words were so unknowable that OPA 231 is not operative.

I disagree. In my view, any replacement wording was highly constrained; the OMB intended the non-highlighted words to be in force. The non-highlighted text with or without the highlighted is understandable and capable of being applied. This is reinforced by other paragraphs in the Board's reasons:

[32] In December 2013, City Council adopted By-law No, 1714-2013 for the purpose and effect of adopting OPA 231 to the City's Official Plan with respect to the Economic Health policies and the policies, designations and mapping for Employment Areas. OPA 231 was subsequently approved with limited exceptions by the Minister of Municipal Affairs and Housing in a decision on July 9, 2014.

[33] A total of 178 appeals were filed against the Minister's decision. Some Appellants appealed the entirety of OPA 231 on a City-wide basis. This lead [sic] the City, at the first Pre-Hearing Conference ("PHC") regarding OPA 231, to advise the Board and all present of the City's desire for partial approval of OPA 231 which would require Appellants of City-wide appeals to scope and limit their appeals to the extent possible. Consequently, the Board ordered Appellants who had filed entire OPA 231 City-wide appeals to scope their appeals by April 13, 2015 and identify which parts of OPA 231 are under appeal.



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About 14 months elapsed between Council's endorsement of key policy directions based on the Malone report and adoption of OPA 231 at Council. During this time, the City also carried out public consultations to consider about 100 site specific conversion requests<sup>4</sup>. Once OPA 231 was adopted, it took a further 22 months for the 178 appeals of OPA 231 to come to the first Pre-Hearing Conference, and the OMB notes the City's desire for "partial approval". The City and the OMB made common cause to limit the extent of appeals. For the City, this would permit some portions of OPA 231 to come into force so that affected landowners could have certainty about their rights. For the OMB, this would avoid having to "reinvent the wheel", i.e., consider the entire range of OPA 231 issues, for each appellant.

[34] On October 22, 2015, the Board ordered [sequential phasing of the appeals] ...

[35] At the fourth PHC on February 9, 2016, the Board established that Phase 1A would address "existing non-sensitive" uses, while Phase 1B would address "sensitive uses". The policies and maps subject to adjudication during Phase 1A and as set out in Attachment 2 to the Board's Procedural Order, were Policies 4.6.1, 4.6.2, 4.6.3. . .

. . .

[41] The approval of the above settlement resolves the appeals of parties to OPA 231 as they relate to Phase 1A issues and partially resolves the appeals to OPA 231.

[42] The Board finds that it is in the best interest of all parties to OPA 231 to have the settlement of Phase 1A issues approved.

ORDER

[43] Accordingly, the Board will modify OPA 231 in accordance with Attachment 4 hereto.

The phrase "subject to adjudication in paragraph 1A" in paragraph [35] would be whether:

industrial trade schools, media, information and technology facilities, and

hotels, parks

would be "in" or "out" (at least this is how I would view it). I find then that the OMB modified (i.e., approved with a modified wording) OPA 231 pursuant to s. 14(50) of the

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<sup>4</sup> In view of *Clergy*, I presume the City did not want any landowner with a pending application to feel as if the rules were being changed after an application had been submitted.



Planning Act<sup>5</sup>. Once modified, the modified sections became final and binding and the Clerk's text with the non-highlighted portions are in force and applicable to this case.

Accordingly, I find that the Official Plan as modified by OPA 231 is intelligible.

## **Zoning intent**

I now turn to the application of the four tests, starting with zoning intent.

This application is complicated by the fact that there are many "moving parts". There are two zoning by-laws; the 2013 City-wide harmonized By-law (569-2013), which replaced North York Zoning By-law 7625 (1952). Because the later by-law is still under appeal some five years after its adoption, the Buildings Department considers it must consider the most restrictive provision of the two by-laws.

The other "moving part" is Canadian Islamic's own "purpose of application". This is a statement of what it wants. The zoning plan examiner "translates" this into a list (in this case a single variance under a single by-law) for the applicant to apply to the Committee of Adjustment.

Canadian Islamic's first submission to Mr. Sherazy, the zoning examiner, was in 2015. He wanted further information and thus Canadian Islamic sent the letter of October 27, 2016 (page 2) which resulted in a zoning notice of November 8, 2016. Mr. Sherazy indicated:

The proposal is to convert an industrial building into a cultural community resource centre/ place of assembly with children (sic) after school drop in programs.

On learning that it would have to get a provincial licence to care for children, Canadian Islamic revised its application. In its February 2017 application to the Committee of Adjustment, it stated its purpose was:

Existing building to remain unchanged. Change of use to permit cultural/community resource centre / place of assembly.

In the Notice of Hearing, the Committee of Adjustment described the purpose of the application as:

To convert the existing building into a cultural community centre and a place of worship with after school drop off programs.

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<sup>5</sup> Powers of O.M.B.

14(50) On an appeal or a transfer, the Municipal Board may approve all or part of the plan as all or part of an official plan, make modifications to all or part of the plan and approve all or part of the plan as modified as an official plan or refuse to approve all or part of the plan.

All along, the needed variance has not changed:

Section 60.10.20.10.(1), By-law 569-2013  
A culture centre is not a permitted use in an EL Zone.

No 172 Milvan is zoned Employment Light Industrial Zone (EL) in By-law 569-2013 and Industrial Zone One (M1) in the former North York Zoning by-law. Unlike the plan examiner, whose job requires him to put both by-laws on an equal footing, I can assume the later by-law has superseded the prior by-law and is closer to the present intent of Council.

Contemporaneously with the adoption of the harmonized zoning by-law in 2013, Council was finalizing changes to OPA 231, an amendment to respond to changes in the *Planning Act* and Provincial Policy on employment lands. The report commented on how North York permitted places of worship, but the former City of Toronto did not. Ms. Antonel relied on this report to conclude that sensitive non-residential uses in Employment Areas posed a threat to their function as employment generators.

I will take a more detailed look at the M1 and EL zones. M1 permits 31 uses, including “manufacturing” and “warehouse”. The EL zone has two types of permitted uses; those permitted without condition and those that are subject to conditions. Permitted uses without conditions include: financial institution, warehouse, service shop and 17 other uses. Those permitted only with conditions include food manufacturing, metal and plastics manufacturing and 21 other uses. Complete lists for both are footnoted<sup>6</sup>. A culture centre is not a listed use in either by-law.

Mr. Sherazy did not specify any variance was necessary from 7625, so, notwithstanding that “culture centre” was not a listed use, it was permitted. I infer the

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<sup>6</sup> 60.10.20.10 Permitted Use

(1) Use - EL Zone In the EL zone, the following uses are permitted:  
Ambulance Depot Artist Studio Automated Banking Machine Bindery Carpenter's Shop Cold Storage Custom Workshop Dry Cleaning or Laundry Plant Financial Institution Fire Hall Industrial Sales and Service Use Laboratory Office Park Performing Arts Studio Police Station Production Studio Self-storage Warehouse Service Shop Warehouse Wholesaling Use

60.10.20.20 Permitted Use - with Conditions

(1) Use with Conditions - EL Zone In the EL zone, the following uses are permitted if they comply with the specific conditions . . .  
Apparel and Textile Manufacturing Use Beverage Manufacturing Use Cogeneration Energy Contractor's Establishment Crematorium Eating Establishment Education Use Food Manufacturing Use Furniture Manufacturing Use Metal Products Manufacturing Use Open Storage Plastic Product Manufacturing Use Printing Establishment Public Utility Recreation Use Renewable Energy Retail Store Software Development and Processing Take-out Eating Establishment Transportation Use (numbers referring to conditions omitted).

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examiner concluded a “culture centre” probably as a combination of a “place of worship” (a permitted use), and a “community centre” (also permitted in the North York by-law).

Both “place of worship” and “community centre” were deleted for the EL zone. A “club”, also a use with an element of social or community affinity, was also deleted. These three uses have some aspects in common with a “culture centre”.

Education uses such as “adult education school”, “college”, “school”, “university use” were replaced by “education use”. In EL zones, educational uses are severely restricted to teaching the operating of manufacturing equipment or driver education but only for driving heavy vehicles. Under M1 in the North York by-law, a “school” or “college” was presumably unrestricted in the subject matter taught.

A “restaurant” was not a listed use in M1. EL permits an “eating establishment” and a “take out eating establishment”, however, they are only permitted if they are “associated with a permitted manufacturing use”, i.e., like a company cafeteria.

The OPA 231 report also expressed concerns with “recreation” and “entertainment” uses<sup>7</sup>, which are a component of a “culture centre”. M1 permitted a “fitness centre”. EL deleted this, and permits a “recreation use”, but only on condition that it fronts on a “major street”, in this area shown as certain streets with a right of way 30 m in width or greater. Steeles, Islington, Finch, Signet, Fenmar and Weston Road are major streets, Milvan Drive and the accessing street from the residential neighbourhood of Humber Summit, Millwick Drive, are not. The OPA report reviewed this issue thoroughly, concluding that fitness centres on major streets in employment areas could lead to a healthier work force. It also observed that fitness centres were usually directed towards adults and were thus supportive of the employment area. But even these supportive uses are subject to the major street condition to limit incursions of traffic from outside the employment area into the interior.

For the “eating establishment” and a “take-out eating establishment”, which are permitted only if they are associated with a permitted manufacturing use, Ms. Stewart submitted that the food preparation for the three charities was “food manufacturing”. I disagree; food is not being transformed on a large scale, nor does the food preparation take place on a full-time basis.

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<sup>7</sup> Staff heard concerns from industries in the most recent consultations that permissions for sensitive non-residential uses in Employment Areas, and their proliferation there in recent years, ran counter to the objective of preserving employment lands for business purposes, and providing stability for business operations. Recreation and entertainment uses have many alternative locations throughout the City in Mixed Use Areas and Regeneration Areas where they would not affect employment lands and would have visibility and access to a broad market. Staff have therefore not included entertainment and recreation uses as permitted uses in General Employment Areas with the exceptions of fitness centres and ice arenas. (OPA 231 report, “Entertainment and Recreation Uses”)

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Although its October 27, 2015 letter stated the Centre provided “nutritious meals, support and guidance to countless individuals daily”. The Woodbridge Vista letter says services are provided weekly and the breakfast club is provided monthly<sup>8</sup>. I appreciate these laudable activities are a pillar of the Centre’s faith, and should the variance be granted, the charitable donation of food could scale up. I would still consider this a take-out eating establishment *not* associated with a permitted manufacturing use. The intent of by-law 569-2013 is to promote a permitted manufacturing use, not to support a charitable use in the community.

So, the four components of a culture centre: worship, educational use, recreation, and eating/take-out eating establishment are either:

not permitted; or

permitted, but subject to conditions that are not met in this case.

### **Place of worship**

The description of this use has evolved since the first application to the zoning examiner. Canadian Islamic’s October 27, 2016 letter stated:

As some of our volunteers are devout Muslims, we have allotted appropriate prayer space to practice their religion.

On Mr. Romano’s advice, Canadian Islamic Centre has modified this position so that the prayer room is open to all.

M1 permits a place of worship; EL does not, not even with conditions. Ms. Stewart conceded that for the month of Ramadan, with nightly worship services and partaking of food to break the fast, it was a place of worship. But, she said this was for just one month of the year.

The multipurpose room is the largest interior space, with capacity for 500 people, standing. (However, a realistic limit on capacity would likely be imposed by the 33 parking spaces.) Neither the 569-2013<sup>9</sup> definition of “place of worship” nor the 7625

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<sup>8</sup> Woodbridge Vista’s letter says the breakfast club is provided on a weekly basis:” . . .the Canadian Islamic Centre has been providing a breakfast club to the residents of Woodbridge Vista Long Term Care since 2015. They have demonstrated strong commitment to the residents and their well-being, by regularly visiting the third Friday of each month, as well as created a sense of community by bringing them together and offering support.” Letter, from Danielle Burkhart, Director of Resident Programs to Canadian Islamic Centre, April 14, 2017.

<sup>9</sup> (580) Place of Worship means premises used by a religious organization for religious worship, services, ceremonies or rites, which may also be used for the advancement of its charitable purposes. (569-2013)

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equivalent<sup>10</sup> require a minimum frequency of service. In both written and oral testimony, Mr. Romano denied seeking a place of worship variance:

While the cultural centre is open to any member of the public, persons using the cultural centre typically are community-oriented [i.e., business and resident], providing office space, meeting and conference space, an environment for resumé /tutor/educational training and lectures, food catering facilities, an environment for counselling and an environment for extracurricular activities suitable for an enclosed space [i.e., exercises, meditation, prayers etc.].

3.2.8 The proposal does not include any formal, defined:

- place of worship area
- daycare/nursery school.”

I rely on judicial notice to observe that the activities mentioned are frequently replicated in places of worship of whatever faith; religious services certainly, but also charitable activities, after school programs, education and counselling, social fellowship programs and exercise/recreation (for example day camps). I conclude that while a culture centre is not necessarily a place of worship, in this case it has a component that resembles in many respects a place of worship.

I find the intent of the harmonized zoning by-law, which removed or restricted each of the components of a culture centre: the near “place of worship” activities, “education use”, “recreation use”, and “take-out eating establishment”, also intended to prevent a culture centre. The very things that makes this building attractive to industry: a large high ceiled interior space and good proximity to transit and roads also make it attractive to a culture centre. In my view, such a use would be contrary to the zoning intention: when Council replaced M1 with the EL zone, it intended to deter non-employment uses from locating in employment areas and preserve those areas for employment uses.

Ms. Antonel explained how the former North York M1 zoning has undermined efforts to protect Employment Areas:

[quoting from the OPA 231 report, page 10]

During the early recession and the early 1990's, some of the municipalities in Metro Toronto amended their official plans and zoning by-laws to permit places of worship,

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<sup>10</sup> Place of Worship shall mean lands or buildings used for worship by an association of persons that is:

- (i) charitable under the laws of Ontario; and
- (ii) organized for the advancement of religion and for the conduct of religious worship, service or rites; and
- (iii) permanently established as to the continuity of its existence. (7625)

schools, and recreation uses within their employment districts. In 2002, Council adopted the Official Plan and prohibited schools in Employment Areas and limited places of worship to major roads within Employment Areas, which we have gone through in the review of policies. The zoning by-laws permitting places of worship were still in force until recently and are now replaced by the harmonized zoning by-law. . . The outcome has been the proliferation of places of worship throughout the City's Employment Areas. Between 2002 and 2012; the number of places of worship in Employment Areas almost doubled from 216 to 414. These places of worship are found throughout Employment Areas, not just on major roads or at the periphery. Almost three quarters of places of worship are located on lands proposed to be designated as Core Employment Areas, where most of the City's Industry is located. It talks about where places of worship can be located. It says the Official Plan would permit places of worship' in 'Neighbourhoods<sup>11</sup>, Apartment Neighbourhoods, Mixed Use Areas, Institutional Areas and Recreation Areas', which comprise 80% of the land base outside parks, rail, and Hydro corridors, where little or no development is permitted.

I will now turn to these policies as exemplified in the Toronto's Official Plan and higher documents.

### **Policies to preserve employment lands**

Toronto's employment lands policies include the following concepts:

- Employment lands make a fundamental contribution to Ontario's and Toronto's economic well-being and growth.
- These types of land are a finite resource, to be protected and preserved for the future. <sup>12</sup>

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<sup>11</sup>The Neighbourhoods section of the Official Plan states, " Low scale local institutions play an important role in the rhythm of daily life in Neighbourhoods and include such uses as: schools, places of worship, community centres, libraries, day nurseries and private home daycare, seniors and nursing homes and long-term care facilities, public transit facilities, utility and telecommunications installations, and public services and facilities provided by the local, provincial and federal governments." But permission also requires a rezoning.

<sup>12</sup> 1.3.2.1 Planning authorities shall plan for, protect and preserve employment areas for current and future uses and ensure that the necessary infrastructure is provided to support current and projected needs. (2014 Provincial Policy Statement). In connection with this policy, the Malone report, Appendix 2.2 Case Study: "Managing the Impacts of Land Value Differentials in Land Use Change" states "Leigh and Hoelzel point out, "...losing productive industrial land is similar to losing productive farmland. Once it is converted it is often difficult, if not impossible, to reclaim it." (A2.2-7)

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- Residential and other sensitive uses are separated from industrial uses.<sup>13</sup>
- Within industrial uses, the “heavier” uses are placed at the centre and the “lighter” uses at the periphery, to serve as a buffer for the heavier uses.
- Employment lands should be protected from conversion to permit future users a range of possible sites to choose from.<sup>14</sup>

I did not detect that Canadian Islamic disagreed on these starting principles. Where they disagree is whether the culture centre use falls into an exception: in the phrase “manufacturing and warehousing *and ancillary uses*” in 4.6.1 of the Official Plan.

Mr. Romano put it this way:

Well, there are many employment places and I was pointing out to a colleague at the Ontario Municipal Board they have a prayer room on that floor So there are certain religions where it is an obligation to practice prayer daily and to do so within their work environment. [This] can be accommodated either on site within a quiet room or prayer room, or it can also be, where that facility is not readily available, [it] can be provided offsite, and this could be one of those off-site locations. So, someone who may be working at the plastics place down the street may walk into this building, it is open to the public, anyone can walk in and undertake their prayer activity. And in part, that is serving the economic function of the area.

Mr. Romano’s thesis is that the proposed use is an off- site “prayer room” for the business personnel of the Highway 400 Corridor Employment District. The District employed 32,435 people, predominantly in manufacturing and warehousing in 2011.<sup>15</sup> By supporting those workers, it supports the primary business and economic activities and so itself becomes one of those activities and is thus equally deserving of

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<sup>13</sup> Sensitive land uses: means buildings, amenity areas, or outdoor spaces where routine or normal activities occurring at reasonably expected times would experience one or more adverse effects from contaminant discharges generated by a nearby major facility. Sensitive land uses may be a part of the natural or built environment. Examples may include, but are not limited to: residences, day care centres, and educational and health facilities. (Provincial Policy Statement)

#### 2.2.5 Employment

7. Municipalities will plan for all employment areas within settlement areas, with the exception of any prime employment areas, by: a) prohibiting residential uses and limiting other sensitive land uses that are not ancillary to the primary employment use (Growth Plan for the Greater Golden Horseshoe)

<sup>14</sup> 1.3.1 Planning authorities shall promote economic development and competitiveness by: . . . .b) providing opportunities for a diversified economic base, including maintaining a range and choice of suitable sites for employment uses which support a wide range of economic activities and ancillary uses, and take into account the needs of existing and future businesses. (2014 Provincial Policy Statement)

<sup>15</sup> Malone Givens Parsons Study *Planning for Employment Uses*; August 2017, A D.4-1



preservation and protection<sup>16</sup>. As such, he claims, it meets the tests for a minor variance.

And I believe the proposal does that. It offers some respite from the manufacturing, the assembly line, retail sales that occurs on other sites — somebody wants to go, and they have a faith where they have to pray five times a day but also for things, like — well, I'm getting downsized, I need some help to prepare my resumé, where can I go to do that? Let's go to 172 Milvan — the Canadian Islamic Centre.

## **OP Policies for Employment Area uses**

This section deals with Official Plan *policy*, the most specific directions for development<sup>17</sup>. The Plan directs us to read the *non-policy* language “to make the plan more accessible”.

This is the heart of this decision. The Official Plan created two types of employment area designations: “Core” and “General”. No 172 Milvan is in the Core Employment Area and the policies for this area are 4.6.1 and 4.6.2. The version prior to the December 2016 OMB order and after the Order are reproduced below.

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### Employment Area

Areas designated in an official plan for clusters of business and economic activities including, but not limited to, manufacturing, warehousing, offices, and associated retail and ancillary facilities. (PPS, 2014)

#### <sup>16</sup> 1.3 Employment

1.3.1 Planning authorities shall promote economic development and competitiveness by: . . . .; b) providing opportunities for a diversified economic base, including maintaining a range and choice of suitable sites for employment uses which support a wide range of economic activities and ancillary uses, and take into account the needs of existing and future businesses. (Provincial Policy Statement)

#### <sup>17</sup> 1.4 HOW TO READ THE PLAN

This is not a conventional Official Plan with individual, stand-alone chapters devoted to specific topics. In successful city-building, “everything is connected to everything” and so it is with the Plan. While the Plan is organized into various chapters, it is a comprehensive and cohesive whole. The Plan consists of the policies, maps and schedules as indicated in Chapter Five under Interpretation of the Plan. The Plan also consists of non-policy textual commentary (unshaded text and sidebars) to make the Plan more accessible and to make the context and intent of the policies more readily understandable. The non-policy textual commentary is not to be afforded any independent status in interpreting the Plan and is to take on meaning only as an explanation of the policies, maps and schedules. The Plan is an integrated document. For any individual part to be properly understood, the Plan must be read as a whole.

Policies 4.6.1 and 4.6.2	
Prior to OPA 231	After OPA 231
<p>1. Employment Areas are places of business and economic activity. Uses that support this function consist of: offices, manufacturing, warehousing, distribution, research and development facilities, utilities, media facilities, parks, hotels, retail outlets ancillary to the preceding uses, and restaurants and small scale stores and services that serve area businesses and workers.</p>	<p>1. Employment Areas are places for business and economic activities. Uses permitted in Core Employment Areas are all types of manufacturing, processing, warehousing, wholesaling, distribution, storage, transportation facilities, vehicle repair and services, offices, research and development facilities, utilities, waste management systems, industrial trade schools, media, information and technology facilities, and vertical agriculture.</p>
<p>2. Within Employment Areas, places of worship, recreation and entertainment facilities, business and trade schools and branches of community colleges or universities may locate only on major streets as shown on Map 3. All existing places of worship, recreation and entertainment facilities, business and trade schools and branches of community colleges and universities legally established before the approval date of this Official Plan within Employment Areas are permitted.</p>	<p>2. The following additional uses are permitted provided they are ancillary to and intended to serve the Core Employment Area in which they are located: hotels, parks, small-scale restaurants, catering facilities, and small-scale service uses such as courier services, banks and copy shops. Small scale retail uses that are ancillary to and on the same lot as the principal use are also permitted. The Zoning By-law will establish development standards for all these uses.</p>

Left side box 1 uses a phrase: “uses that support this function” with 10 examples, followed by a second phrase “small scale stores and services that serve area businesses and workers”. Both these phrases require interpretation. Right hand box leaves no room for interpretation; only those listed uses are permitted.

Right hand box 2 contains “additional” permitted uses: “courier services, banks and copy shops” qualified by the proviso “provided they are ancillary to and intended to serve the Core Employment Area in which they are located. This is the only place where ancillary uses could fit.

As I considered Mr. Romano’s argument, I concluded that, if accepted, most if not almost all human activity could be said to serve the employment area in some fashion. The Official Plan prioritizes the *economic and employment needs* and to some extent the need to “eat on the run” when at work. It downplays other equally important ones such as social or spiritual needs.

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The test is not whether these other needs are worthy, but whether they fit into the very restrictive words of the Official Plan; restrictions that have been imposed by Provincial Policy Statements.

Continuing to deal with right box 2, I must ask whether the policy intent is to include a culture centre as a “small-scale service use such as courier services, banks and copy shops”. I feel that to do this strains the ordinary meaning of these words. What courier services, banks and copy shops etc. have in common is that they are profit making and fall into the economic function needed to support business as envisaged in the Provincial Policy Statement. Users in the Core Employment Area go to a bank because it serves their business function. Users go to a culture centre for other purposes.

The proviso phrase “ancillary to and intended to serve the Core Employment Area in which they are located” uses the term “ancillary”, defined in the zoning by-law as:

Ancillary means naturally and normally incidental, subordinate in purpose or floor area, and exclusively devoted to a permitted use, building or structure.

An example of this usage in right hand box 2 is:

“Small scale retail uses that are ancillary to and on the same lot as the principal use are also permitted.”

The intent is that a courier service etc., is “naturally and normally incidental, subordinate in purpose and exclusively devoted to” the Core Employment Area. Ancillary means there is a locational connection between the ancillary use and the Core Employment Area; the use is there to serve nearby businesses. This is not true for the Canadian Islamic Centre’s clients.

A drop-in centre for teenagers, who are independent enough to get to the cultural centre on their own, would serve the teenagers across the City. The charities the Canadian Islamic Centre serves are outside the Core Employment area. Two of them, Youth without Shelter and Woodbridge Vista Care Community, cater to a clientele that would appear to have no relationship with the Core Employment Area. The third, the Elspeth Heyworth Centre for Women thanks the Canadian Islamic Centre for non-perishable food items for “local community members experiencing financial hardship”, which I interpret to mean people who live in the community, not people working in the community.

While leadership or resumé writing services may be of interest to some Core workers, there is no reason for a businesses or workers to seek these services nearby in the same way they would seek a courier service. These three uses of couriers, banks, and copy shops seem to me to be carefully chosen; they offer a specialized but standard product, where geographical proximity to the customer is important. This is not so for the Canadian Islamic’s proposed programs.

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With respect to the prayer room use, the Highway 400 Employment area is the third largest in the City – over 700 hectares. No. 172 is on the extreme western edge. I believe relatively few persons would seek it out for daily prayer service, particularly given the exigencies of traffic, parking and weather. In any event I have not been given evidence on how many employees would attend a prayer room.

I devoted the section “Whether partial approval by the OMB can be considered.”(page 5) to show that the right side boxes were in force and govern . I do not find that in these boxes support for Mr. Romano’s thesis that a culture centre is an ancillary and supportive use of an employment area or that it is like a courier service, a bank or copy shop.

Turning to the left box 1 “Uses that support this function consist of: . . .small scale stores and services that serve area businesses and workers”. This is looser language than right box 2. Workers are human beings and it is certainly easier to fit the Canadian Islamic Centre into a generalized “supportive uses.” However, the Plan directs us to read the plan as a whole, in its complete syntactic and policy context. When this is done, and left box 2 is read together with left box 1, I conclude that even under the looser wording of the pre OPA 231 policy, that a culture centre is not permitted because Milvan Drive is not a major street.

Left box 2 does permit certain non-employment uses in employment areas but directs then to major streets. I would consider a culture centre a combination of uses analogous to those in the list in left box 2: “places of worship, recreation and entertainment facilities, business and trade schools and branches of community colleges or universities”. This is confirmed in the next section left box in in the textual commentary calling it a use “not directly supportive of the primary employment function of these areas”.

In conclusion, reading both the pre and post OPA versions of employment area policy, a culture centre at 172 Milvan Drive is not a permitted use. A variance of the use to permit one would not fall within the intent of the Official Plan.

**OP — The Preamble to 4.6.1**

The following boxes, which use the same convention as in the previous section (pre-OPA 231 on the left) sets out the preamble to policies 4.6.1 and 4.6.2. (By way of background, OPA 231 renamed “Employment Areas” either “Core” or “General” Employment Areas. Most areas, including 172 Milvan Drive, are designated “Core Employment Area”.)

Textual commentary 4.6	
Prior to OPA 231	After OPA 231
<p>Some uses that are extensive land users and are not directly supportive of the primary employment function of these areas, such as places of worship, post-secondary institutions, recreation and entertainment facilities and large scale, stand-alone retail stores, have located in Toronto’s Employment Areas in recent decades. These uses have special locational needs but their presence in the heart of Employment Areas can adversely affect, or be affected by, businesses there. They also draw large numbers of worshippers, students and shoppers from broad catchment areas and can have a serious impact on local traffic movement. Special locational limitations are needed for such uses in Employment Areas.</p>	<p>The majority of Employment Areas are designated as Core Employment Areas where uses identified in Policies 4.6.1 and 4.6.2 are permitted. Core Employment Areas are, for the most part, geographically located within the interior of employment areas. Uses that would attract the general public into the interior of employment lands and possibly disrupt industrial operations are not generally permitted in Core Employment Areas. Industrial trade schools are traditionally permitted in Employment Areas and are provided for in Core Employment Areas.</p>

I don’t see much difference between the left and right boxes. Both deal with the issue of “attracting the general public” into employment areas, where they could interfere with transport of materials and goods. It reinforces the rationale for not permitting a cultural centre from locating in the Core Employment Area. Canadian Islamic’s application for minor variance specified one of the uses it sought was “place of assembly”. This would have the potential, using the language in the left box to “draw large numbers of worshippers, students and shoppers from broad catchment areas and can have a serious impact on local traffic movement.”

There are many other Official Plan statements explaining the need to protect employment areas from non-employment uses:

**3.5.1 SUPPORTING THE FOUNDATIONS OF COMPETITIVENESS**

This Plan’s growth strategy and policies support these economic foundations by: . . . protecting Employment Districts from incursion of *non-economic activity*. (my italics)

There is similar language in the Growth Plan:

**2.2.5.5 under “Employment”**

Upper- and single-tier municipalities, in consultation with lower-tier municipalities, will designate all employment areas, including any prime employment areas, in official plans and protect them for *appropriate employment uses* over the long-term. (my italics)

Even the pre OPA 231 Official Plan explains the need to restrict Employment areas to commercial or industrial uses.

#### 2.2.4 EMPLOYMENT DISTRICTS: SUPPORTING BUSINESS AND EMPLOYMENT GROWTH

As large Employment Districts, they will be protected from the encroachment of non-economic functions;

In the Employment Districts, the needs of business will take priority in city-building decisions.

Once lands are lost to economic activity through, for example, conversion to residential use, it is almost impossible to return them to commercial or industrial uses. The Zoning By-law will help organize the location of specific business activities within these Employment Districts by recognizing the varying impacts that businesses can have on one another and on adjacent nonemployment areas.

The overall conclusion I draw is that in the light of all of these factors, that a cultural centre is *not* a “use [that is] ancillary to and intended to serve the Core Employment Area in which [it is] located:”. The policy reasons for this are:

- that the history; non-employment uses have “proliferated” to the detriment of the main employment function of Employment Districts.
- The culture centre as proposed has a “near”-place of worship component.
- Places of worship were a permitted use and deleted from the zoning by-law.
- The zoning by-law expresses Official plan policy. The permitted uses of the EL zone does not list a culture centre use.

Thus, it ought not be located in an Employment District.

Mr. Romano’s characterization of the culture centre’s activities as intended to serve the business area is expansive and, in my view, would only have a tenuous connection with the employment area in which it wishes to locate. This connection if it existed at all, would not be the directly supportive relationship intended and would have the deleterious long-term effect of removing one piece of employment lands from employment use. The culture centre is recognized by the Official Plan as a desirable use in most Districts, where it is recognized as a component of the “the rhythm of daily life”.

#### **The test of “desirable for the appropriate development of the land”**

The concern that introduction of sensitive land uses, which may add to the cost of doing business for other users of lands in the Employment Area, was expressed in a letter dated April 2017 to the Committee of Adjustment from the EDC-Business Growth Services-Business Retention & Expansion of the City of Toronto. It said:

- A culture centre may be considered a sensitive use. The location of sensitive uses may influence location decisions of otherwise permitted businesses either considering or already operating

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within employment areas to avoid land use conflicts. Approval of sensitive uses may act to destabilize an employment area.

- The proximity of sensitive uses (culture centre, place of worship, school drop-off program etc.) may jeopardize or impact the Environmental Compliance Approvals (ECA) that certain businesses must receive from the Ministry of the Environment and Climate Change (MoECC) with costly mitigation measures.

Mr. Romano's evidence was that since the lands are on the extreme fringe of the Employment district, a new sensitive use on Milvan is not any worse than what exists already with respect other Milvan properties. These back onto the rear yards of homes on Elnathan Crescent and Navenby Crescents and those homes are sensitive "24/7".

I am required to assess whether the variance is desirable for the appropriate use of the land and I find that the appropriate use would be one of the permitted uses in the EL zone, which do not include a "culture centre". The planned function of lands is light industrial and to act as a buffer for medium and heavy industrial uses in the interior. I accept the concerns raised by the EDC letter as valid.

For example, the Certificate of Approval for Excelsior Foods, three properties away at 170-180 Milvan Drive, states the following equipment is located at Excelsior:

- A natural gas fired coffee roaster with maximum capacity of 150 kg per bath
- One afterburner with a maximum heat output of 421,740 kilojoules per hour and a maximum temperature of 800 ° C
- Four a/c units with a total heat input of 522,000 joules per hour
- 11 infrared space heaters
- Three forced air space heaters

One of the conditions of approval is that Excelsior must file a record of all complaints to the Ministry within two business days. The condition also requires it to keep accurate information on a continuous basis, so compliance with the *Environmental Protection Act* can be verified. Excelsior has signed a petition in support of Canadian Islamic Centre, but consent does not relieve it of compliance nor can consent relieve the Ministry of full enforcement of the conditions in the Certificate of Approval.

Mr. Romano filed Certificates of Approval showing the range of activities that currently exist in the neighbourhood:

1231153 Ontario Ltd, 211 Milvan Dr, waste management;

Vaughan Metal Polishing, 206 Milvan Dr;

R.J. West (1966) Ltd, 200-2 Milvan Dr, paint spray booths;

Dufferin Disposal Ltd, 65 Milvan Dr;



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Phoscare Finishing, 69 Milvan Dr, zinc phosphate washing line;

Biochem Environmental Solutions, 91 Milvan Dr, used feminine hygiene products and waste from public washrooms;

Wastech Disposal Ltd, 65 Milvan Dr;

JP Grease Trap Service, 145 Milvan Dr, truck storage yard;

Holly's Anodizing Service, 45 Milvan Dr.

These businesses have to locate somewhere. Even if they operate within the Certificates of Approval, they are liable to the expense and burden of responding to complaints as did the previous owner of 172 Milvan Drive.

This property was previously occupied by a coffee truck company which carried out catering and which prepared foods and coffee, obviously. And loaded up those coffee trucks very early in the morning hours, to drive out and go across the city and I guess, sell their goods. And so, *the nature of that use was problematic because of the location being directly adjacent to residential, and as Mr. Romano testified, there were concerns and complaints with respect to noise from those trucks being loaded up at such an early time in the morning* (my italics). But the function of that business was really a catering business, and distribution of those goods that were catered. And also, parking and storage of those materials, supplies and the trucks themselves. And sir, I have to observe that what the facility is being replaced with is essentially the same use, at least in part. It is a catering facility, one that distributes food; cooks food first, in the same kitchen, where the previous business cooked their food; that has not been changed; it has not been reduced in size; it is the same kitchen facility. So, it cooks foods and distributes it to local organizations, to feed the hungry in the community, people who live and work in the area, and that is a permitted employment use.

As I set out on page 18, the charities that Canadian Islamic services are not people who work in the area, and the Official Plan does not provide the "ancillary" exemption for charitable activities on behalf of people who *live* in the area or in Toronto generally. A take-out eating establishment must be associated with a permitted manufacturing use (page 11), which condition I found was not met. The donation of food is but one aspect of the use as a culture centre and as I stated previously, we are not judging whether this is a worthy activity; it is. We are judging whether it fits with the restrictive words of the Official Plan; which it does not. Furthermore, the other components of that use, the social, educational, recreational and worship uses do not fall within the intent of the zoning and Official Plan.

To return to the issue of complaints imposing a cost on legitimate industrial users, enabling another source of complainants on EL lands is not "desirable for the appropriate use of the land". The appropriate use of 172 Milvan is an EL use.

**Whether the variance is minor**

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If this were a redesignation (i.e., an application to amend the Official Plan designation) of lands from Employment to Institutional, it would be a conversion and subject to a comprehensive review. However, the effect of a successful application for minor variance leads to the same end. Loss of employment land without a justification that the lands are not required for employment purposes is contrary to 1.3.2.1 of the Provincial Policy Statement (this is also in footnote 12):

1.3.2            *Employment Areas*

1.3.2.1        Planning authorities shall plan for, protect and preserve *employment areas* for current and future uses and ensure that the necessary *infrastructure* is provided to support current and projected needs.

1.3.2.2        Planning authorities may permit conversion of lands within *employment areas* to non-employment uses through a *comprehensive review*, only where it has been demonstrated that the land is not required for employment purposes over the long term and that there is a need for the conversion.

Unless Mr. Romano's "ancillary" argument is accepted, which I do not, s. 3(5) of the Planning Act requires that his decision should be consistent with the Provincial Policy Statement. The Provincial Policy Statement established minimum standards; an inconsistency with it would not seem to be minor.

Mr. Romano attempted to address this in various ways, attempting to show, for example, that there were certain anomalous areas where EH (employment heavy Industrial) zones were very close to residential. He also gave evidence that many EL properties back onto the residential areas behind and that the creation of one more non-employment/employment interface had minimal effect. I cannot agree. The essence of the City's position and Provincial Policy are to maintain a long-term supply of employment lands; this minor variance application runs contrary to that goal.

## **Conclusion**

I find that none of the four tests for a minor variance under the *Planning Act* have been demonstrated.

## **DECISION AND ORDER**

Canadian Islamic Centre's application for a variance to permit a culture centre in an EL zone is not authorized.

X

*Ted Yao*

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T. Yao  
Panel Chair, Toronto Local Appeal Body  
Signed by: Ted Yao