

Invar Industrial Ltd. v. Whitby (Town)

At the request of Invar Industrial Limited and Kose Properties Inc., the Regional Municipality of Durham has referred to the Ontario Municipal Board under subsection 17(11) of the Planning Act, R.S.O. 1990, c. P.13, as amended, in respect of referred parts of deferral Nos. 1 and 2 of the Town of Whitby Official Plan, being lands located at the northeast and southeast corners of Thickson Road and Victoria Street to expand the "Special Activity Node B" O.M.B. File No. O 970034 Regional File No. LOPA-

W- 94-001

[1998] O.M.B.D. No. 132
File Nos. PL968505, O 970034 et al.
Ontario Municipal Board
D.L. Santo
February 9, 1998
(31 pp.)

COUNSEL:

Robert E. Jarvis, Q.C. and Adam Brown, for Invar Industrial Limited, Invar Building Corporation and Kose Properties Inc.
Andrew Allison, for Region of Durham.
Richard Arblaster, for Town of Whitby.
Stephen Zakem, for Loblaws Properties Ltd.
Susan Rosenthal, for Reladonora
David Shiller, for Ms. Suse Eggert.
Harvey Gefen, party, in person.

DECISION delivered by D.L. SANTO AND ORDER OF THE BOARD:--

[para1] By exception to their Official Plan policies governing Industrial/Employment areas, the Region of Durham and the Town of Whitby granted approval in 1992 for two specific large retail warehouse facilities, namely, Aikenheads and Price Club, to locate on 22 acres of land located at the southeast corner of Thickson Road and Highway 401 and bounded by Victoria Street, an arterial road. With corporate mergers and the like, Aikenheads is now a Home Depot and Price Club withdrew its offer on this site as a Costco chose to open in Ajax. The necessary permissions were then granted to allow the space originally intended for Price Club to be divided into units of no less than 20,000 square feet. Total permission for the site now developed and known as the Thickson Ridge Power Centre (P.C.) is some 420,000 square feet. It is successful.

[para2] The proponents seek to reduce the minimum unit size requirement for some 43,000 square feet of previously approved and yet unbuilt space to 5,000 square feet. In addition, they seek to expand the Thickson Ridge P.C. south of

Victoria Street covering approximately 20 acres. The expansion proposes a total of 240,000 square feet with proportionate amounts of floor space limited to minimum unit sizes of 5 and 10,000 square feet. To accomplish this a referral to each of the Region's and Town's new Official Plan policies governing retail uses in employment districts is before the Board as well as site specific amendments to the Town's Official Plan and the Town's zoning by-law. In total, 12 matters, referrals and appeals, are before the Board (refer to Schedule I Exhibit 26 attached).

[para3] The Region of Durham and the Town of Whitby strenuously oppose both the reduction in the minimum unit size of 20,000 square feet and the enlargement of the area for retail uses south of Victoria Street. A local businessman, Harvey Gefen, and Ms. Suse Eggert, a historian, also oppose these applications. Some 40 retail units could be possible through these applications.

[para4] The matter was hard fought by all parties. This is not a case of competitors in the market place trying to prevent an entry of a new facility. The matters before me require a relatively straightforward planning decision of which market evidence, transportation evidence and planning evidence form the necessary components of the land-use planning decision. The basis of the decision is compatibility. The test of compatibility here is twofold. The first relates to the issue of whether it is appropriate to allow significant retail commercial uses in the form of a Power Centre within an area presently serving large scale heavy manufacturing and other industrial operations that employ large numbers of workers often on shift hours. The second relates to whether it is appropriate to create such a retail centre given the structure of and emphasis given to the function of main central areas and sub-central areas in the Region and local Official Plans. Ancillary to the second test of compatibility with the policy regime are the issues of planning need and precedence.

[para5] Invar Industrial Limited (Invar) and Kose Properties Inc. (Kose) are separate corporate entities. Each owns approximately 10 acres of land on the south side of Victoria Street. Invar is the developer of the existing Thickson Ridge Power Centre (P.C.) on the north side of Victoria Street. They elected to share legal counsel and professional witnesses for obvious savings but intend a co-ordinated development. There was no issue taken with that fact. I will treat the applications on the south side of Victoria as one planned entity that is put forth as an expansion of the existing Thickson Ridge P.C.

[para6] The history leading to the present development on the site was uncontroverted. The subject sites were and remain so today, designated employment area (industrial) in the Region and Town's Official Plan. The four corners of Thickson Road and Highway 401 are all so designated as well as

an extensive area south to Lake Ontario east and west of Thicksen Road. Upon the request of Invar in 1992, consideration was given by both levels of municipal government to permit two well-known large space users, Price Club and Aikenhead, known as big box retail-warehouse stores, each over 100,000 square feet in size to locate. The consistent evidence of the Regional Planner, Mr. Chornabay and Whitby's Planning Director Mr. R. Short was that careful and considered deliberations occurred before permission was mutually given to locate these uses in the employment (industrial) designation. These primary considerations related to the need to accommodate this emerging trend in retail to serve area residents; the size of the user and that the required amount of land needed for its structure as well as parking was quite similar to large warehouse uses; the amount of land needed could not be accommodated in any of the designated central areas; and there was no measured undue impact on either the employment district uses or the function of the central areas. The same thoughtful consideration was given when the Price Club pulled out and permission given to subdivide its space allocation into units no less than 20,000 square feet in size.

[para7] The evidence of the market consultant called to support the applications was that the present centre is successful and does not require the expansion to remain financially successful. It would in his opinion become more successful.

[para8] As a result of this centre's success, Leons furniture seeks to locate on the west side of Thicksen, south of Highway 401 and north of Victoria Street in the Reladonora development. Its development proposal was subject to the same scrutiny as the subject's. Its permissions are restricted by the same minimum unit size of 20,000 square feet as is the subject's. In addition, in both instances, retail development is allowed by exception to the employment policies with the employment designation retained.

[para9] As a consequence of these developments and the knowledge gained in dealing with these "Big Box" applications, the Region decided to establish a region-wide policy that would be responsive to New Format Retailing. A market consultant, Mr. Climans was retained to advise on the appropriateness of a restriction of minimum unit size and to assist in the development of a minimum unit size requirement. The result is Official Plan Amendment No. 28, partially before the Board in this matter. The appellants seek to remove the restriction of the 20,000 square feet unit size.

[para10] Likewise, Whitby undertook a review of its policies to bring its plan into conformity with OPA 28. It, in recognition of the importance of exposure and highway access for big-box retail uses in a warehouse format, designated the four corners of the intersection of Highway 401 and Thicksen Road "Special Activity Node B". This policy

change became known as Modification 8 to the Town's Official Plan. The southern limit of the Node B is Victoria Street. The appellants seek to extend Node B south of Victoria, east of Thicksen and remove the restriction of 20,000 square feet minimum unit size.

[para11] Prior to the commencement of hearing, a series of pre-hearing conferences and a mediation session resulted in resolving two matters that would have consumed considerable hearing time. The City of Oshawa sought a further concession for a specific employment area to allow some retail on other than a class A or B arterial road while maintaining the minimum unit size restriction in OPA 28. A modification was mutually agreed to and I accepted it. In addition, the food store component was resolved to the credit of counsel for Reladonora and Loblaws. Any food store component in addition to the permission on the site of the existing Thicksen Ridge P.C. (and presently unused) would only occur by amendment. As a consequence at the commencement of hearing, the Board issued an order, on consent of all parties, Exhibit 11, which modified and approved OPA 28 and Modification 8 to the Whitby Plan save and except as these documents affect the subject lands of Invar and Kose. Loblaws, Reladonora and the City of Oshawa then excused themselves from the hearing.

[para12] Exhibit 11, the Board's order, is attached as Schedule II to this decision. I direct the reader to Schedules A and B of Exhibit 11 as the policy sections of OPA 28 and Modification 8 are printed and are the relevant policy considerations referred to the Board for my consideration, approval, deletion or modification in so far as they affect the subject lands.

[para13] The structure of the Region of Durham Official Plan is vividly displayed on Map A4 (Exhibit 18). Centres for retail and service commercial facilities are directed to conceptually designated Main Central Areas and Sub-central Areas. Other central place and community focussed activities are encouraged within these centres. The magnitude of the commercial centre hoped to be achieved is highlighted. Within 1.5 km of the subject site is a sub-central area identified as able to achieve 100,000 square metres located at the four corners of Thicksen and Dundas Street (Highway 2). Less than 5 km to the west is Downtown Whitby, designated Main Central Area to achieve 100,000 square metres of commercial space. Less than 8 km to the east is Downtown Oshawa and less than 10 km to the west is the main central area of Ajax located at Dundas and Harwood Avenue. Downtown Oshawa offers the full range of retail and service shopping as does Ajax which has developed in a Power Centre format with a Costco as an anchor.

[para14] The local plan further refines the Region's structure for central areas and designates the centres as Central Areas and Special Purpose Commercial Areas. The node at Dundas and Thicksen is subject to the two designations each of which offers a different policy regime that has encouraged

the existing pattern of development. In addition to the traditional plazas anchored with a large supermarket and a junior department store, the strip designated special purpose commercial fronting Dundas has developed with larger stores ranging from 10-20,000 square feet catering today mainly to furniture sales and home improvements and renovations. There is no question that the residents of Whitby and the residents of southern Durham are well served and conveniently served with retail and service commercial operations. Most of these centres are relatively successful but as yet have not reached full potential. The policy regimes encourage community focus activities in these centres and the evidence is that these centres need vibrant shopping activity to foster and encourage community focussed activities. Before additional shopping opportunities are permitted in Employment areas, policy 11.3.18(c), now approved in Exhibit 11 for the entire Region except the subject site, requires that a study demonstrate no undue impact on the viability of any Central and Special Purpose Commercial Areas in the municipality.

[para15] No store closures are alleged to result from the proposed developments. Reduced vitality and interference in the achievement of the full planned function of the central places underlies one of the municipalities' objections. In addition, the market and planning witnesses for the two municipalities put forward the opinion that there is no demonstrated planning need to replicate central place commercial functions on the subject lands designated for employment uses.

[para16] The employment districts are displayed and designated on Map 4, Exhibit 18. To the south of the subject site the employment designation is extensive and the area is presently home to extensive, large scale heavy manufacturing

and other industrial operations. These industries are major employers and are therefore of significant importance to the people of Durham. The policy regimes of both municipal Official Plans emphasize the need to preserve and protect these uses from incompatible encroachments. In addition, each official plan requires that a traffic impact study accompany an application for commercial uses in the employment area to ensure that the arterial road network can adequately support the retail generated traffic in addition to the existing industrial generated traffic. I find that a review of the policy documents and consideration of all of the evidence intends that such a study must clearly demonstrate that the retail generated traffic will not conflict with or obstruct industrial generated traffic.

[para17] To understand the magnitude and significance of the employment operations surrounding the subject site, and which share the same road intersections, Mr. Short provided me with the following list:

- Loch Pipe (concrete pipe manufacturer)

- Lasco Steele (manufacture Steele products)
- Co-Steele (recycles metal products)
- Shred Steele (crushes cars)
- Atlantic Packaging and Recycling (recycles paper and manufactures tissues and paper towels)
- Ball Packaging (recycles aluminum into pop cans)
- Co-Generation
- Sony (distribution centre)
- Fischer Scientific
- L.C.B.O. (major distribution centre)
- Sklar Furniture
- Dupont Chemicals
- Peble Stone (recycles garbage)
- Mackie Truck Depot
- G.M. Motors (parts)

[para18] The evidence was that the trucks generally are very heavily loaded and that a number of operations function on 24 hour shift work cycles. A critical movement occurs at the off-ramp of Highway 401 east and right turn (south) on Thickson Road to enter the industrial district. The distance between the edge of the off-ramp and the signalled intersection of Victoria is a mere few hundred feet. Operation of this intersection is also critical as significant amounts of car and truck movements occur right to west on Victoria, south, through the intersection on Thickson and left, east on Victoria. Queuing at the intersection or the inability of the intersection to handle all turning movements causes back up on the off-ramp and queuing on Highway 401. Thickson Ridge P.C. traffic must make a left turn onto Victoria and another left into its site.

[para19] D. Allingham, P.Eng. and qualified transportation engineer, is the transportation consultant for the Region. He is quite familiar with this intersection. His office is nearby which necessitates his use of it three to four times a day on average. In addition, the Region monitors the intersection on a 24 hour basis through installed video cameras as the intersection has been problematic yet vital to the Region. He also shops at Thickson Ridge P.C. He advised me that the intersection has a number of unique features that make traffic flow difficult and inhibits easy solutions. He has observed a number of different extreme peaks caused by shift changes at Dupont and Lasco coupled with plant closing of Sklar. Add to that an extremely large volumes of trucks. The usual p.m. weekday peak hour registers over 260 trucks and Saturday peak about 80 trucks. Traffic counts for Thickson Ridge P.C. indicate approximately 900-1000 cars/hour at various week day peak shopping times and over 2000 vehicles on Saturday peak and the majority must make a left turn at the Thickson/Victoria intersection come to the Power Centre. The situation is further compounded by grade changes, a creek and a railway overpass to the south. The grade is naturally southerly towards the lake. Therefore north bound trucks and east bound left turning trucks from the west on Victoria need extra time to gear up and clear the intersection. The

introduction of the Thickson Ridge P.C. has caused noticeable congestion at the intersection and queuing to the off-ramp. Mr. Allingham has observed first hand that as the congestion increases, the delay increases causing motorists to act radically and undertake aggressive and unsafe manoeuvres. The trendy term is "road rage".

[para20] I was requested to view a complete 1-hour time segment taken from the video cameras mounted at the intersection. No popcorn was served. It certainly was not of Oscar-winning material. However, we did observe 14 illegal "U" turns within that 1 hour period. Motorists to avoid the queue for the left turn, proceeded south, through the intersection to south of the median, turned left to proceed north and then right onto Victoria and left into Thickson Ridge P.C. An accident was also captured. The car movements are recorded on Exhibit 90. In Mr. Allingham's opinion, the operation of the intersection is unacceptable.

[para21] Mr. Allingham reviewed the study and recommended improvements put forward by the consultant for the proponent, Mr. Pritchard. While the trip generation figures were similar and within an acceptable range, Mr. Allingham had considerable difficulty accepting Mr. Pritchard's recommendations. The present Saturday peak is 2 p.m. Today, some 2,500 vehicle trips per hour occur. With full development, Mr. Pritchard estimates a significant increase of vehicles per hour. To accommodate the number of left turns and avoid queuing and back-up on the off-ramp of Highway 401, Mr. Pritchard recommends a dual left turn lane and programming the signals to provide maximum advantage (green time) to the south and left turn movement. To achieve this, the green time and signal cycles for the other directions are severely curtailed. One analysis provided a 6 second green for a west-east cycle movement. Hardly enough time for a truck heavily laden down with steel to rev up. On reconsideration, that was increased to 11 seconds. Mr. Allingham was not satisfied that the dual left lane and turn would solve the problem. The introduction of any truck left turning movements, from any direction, prevented a full volume or full two lane flow of left movements.

[para22] Additional concerns that Mr. Allingham had were with the traffic flow distribution assigned between the two sites north and south of Victoria Street and the ability of the northern site to absorb all of the traffic without causing a back-up on Victoria and into the intersection. Mr. Allingham could not understand how Mr. Pritchard arrived at some of his data. An example is the number of cars going back and forth between the two sites. The evidence of the market consultant was that the two sites would act as one entity with a synergistic relationship, so that from a market impact perspective it would not attract many more customers away from existing centres than the present P.C. Yet, Pritchard indicated that 40 cars would move north and south of Victoria on a Saturday peak hour when well over 2500 cars per hour were

visiting the P.C. Allingham found that incredible as he had allowed for some 800 car movements for that one hour period for his analysis. Mr. Allingham demonstrated that the 800 car movements would reap havoc on the northern site as it is presently configured. Mr. Allingham's opinion with regard to the 800 car movements was not challenged in cross-examination and Mr. Pritchard in reply put forward a scenario of 600 car movements. As part of the northern site is now in the ownership of Home Depot, the recommended changes to entrances and parking arrangements put forward by Mr. Pritchard to accommodate these movements, could not be committed or guaranteed.

[para23] Mr. Allingham convinced me that the nature and pattern of the traffic for industrial uses as compared to retail shopping uses are very different and when mixed in such concentration as here, are not compatible. He also proved that Mr. Pritchard's approach was not reliable. The intersection would have to be extremely fine tuned and the cycle times extensively reduced for east, west and north movements and yet with such fine tuning would only provide for a near capacity level of operation (v/c ratio close to 1.0). Such fine tuning and high level of capacity does not accommodate heavy industrial trucks or shift work changes nor does it leave any room for error. In addition, without a full knowledge of tenant types, a more accurate trip generation analysis is not possible. The movements between sites, north and south of Victoria have not been objectively studied to provide me with any degree of confidence and I accept Mr. Allingham's cautions that congestion on these sites further reduces the capacity at the intersection and interrupts the traffic on an industrial arterial road. I accept Mr. Allingham's conclusions that the traffic volumes anticipated cannot be accommodated today and that Mr. Pritchard's recommended treatment will only exacerbate an existing problem. His opinion is that there is no simple solution to providing improvements to this intersection to increase its capacity. Further detailed analysis is essential. Mr. Allingham's opinions were unshaken in cross-examination and I accept them.

[para24] The traffic generated by the proposal would not be compatible with the existing and valued industrial uses. It would not be prudent or reflect good and sound planning to knowingly introduce a use that would be in conflict with existing uses. The purpose of planning is to avoid land use conflict and Mr. Pritchard's evidence did not satisfy me that conflict could be avoided through road improvements.

[para25] I will now consider the need to retain a restriction of a minimum unit size and specifically the 20,000 square foot minimum. In the preparation of Official Plan Amendment 28 and for this hearing, the Region retained Mr. Climans, a qualified market analyst. After reviewing the

central and sub central areas, Mr. Climans concluded that stores in the range of 5 - 20,000 square feet act as anchors and catalysts to increase the shopping activity and vitality of the central areas. It is essential and critical to retain these unit sizes and the tenants they attract to ensure continued vitality and growth of the designated central areas. He supports the definition in Policy Section 11.3.17 of OPA 28 (found in Schedule A Exhibit 11 attached) which contains the 20,000 square feet minimum for retail warehouse uses locating in Employment Areas. With the order issued as Exhibit 11, that definition and policy was accepted by the Board and is now in effect for the Region except the subject site.

[para26] The question then is should the Invar lands north of Victoria be given a further exception to permit some 43,000 square feet to be broken into units of 5,000 to 10,000 and 10-20,000 square feet and should the Invar and Kose lands be included in Special Activity Node B and granted the same exception to the minimum unit size for a total of 240,000 square feet additional space. Such could produce 40 additional retail units.

[para27] Market evidence in support of the proposal was given by Mr. Jaque, a qualified market analyst. Although he supported the reduced restriction here, it was generally his view that there should be no unit size restrictions whatsoever as this application reflects the natural evolution of Power Centre trends across Ontario. If I accept this view, then it follows that the four corners of Thickson and Highway 401 should all be permitted unrestricted retail commercial development in a warehouse format as that trend is also visible at Highway 400 and Highway 7 (Vaughan) and Weston Road and Highway 401 (north York) and at Molson Park Road and Highway 400 near Barrie. It is this perceived unstoppable precedent that puts fear into the hearts of the planners, Mr. Chornobay and Mr. Short. With Leon's following Home Depot across Thickson, a direct result of the first exception for the subject site, I conclude that it would be virtually impossible to deny the Reladonora site (Leon's) the same exception as well as the two northern corners. The impact of such a powerful 4-nodal power centre on the central place structure of the Region has not been considered.

[para28] In addition, Mr. Jaque was of the view that a needs study was not necessary. He found through his analysis that a market opportunity existed and that should be sufficient. I do not agree. In this instance, an exception to an exception to permit retail uses in a functional and viable industrial area that supports a high level of employment for the area, is requested. In such circumstances there should be a demonstrated planning need that the people of the region are deprived of fulfilling their shopping needs by a lack of facilities. This is definitely not the case here. Ajax has a Costco and a Power Centre. Downtown Oshawa which offers a full range of Regional and local shopping

activities is nearby. A major shopping node at Dundas is a mere stones throw away. As found earlier, I support Mr. Short's evidence that there is no demonstrated planning need for a further exception to the Region and Whitby Official Plans.

[para29] In doing his analysis, Mr. Jaque conducted a license plate survey in the parking lot of the Home Depot. He concluded that 23% of the shoppers were residents of Whitby. He made an assumption that the expanded centre with smaller more numerous stores would command the same draw because he considered it both Regional in nature and destination in type of shopping trips. He rounded the number to 25% and concluded that a 25% draw would come from Whitby residents. The numerous computer generated tables that make up a market analysis to determine impact were premised and tested on the assumption that 25% sales would be from Whitby residents and therefore there would be no negative impact on any of Whitby's central or sub-central areas.

[para30] Mr. Climans for the Region and Mr. Zavislake for the Town gave qualified opinion evidence in opposition to Mr. Jaque's report, his methodology and his conclusions. In fact, they were brutally critical.

[para31] Mr. Zavislake, in response to questions by Harvey Gefen indicated that uncategorically, "you cannot and should not use a scattering of license plates to determine spending habits." In his opinion there is no rationale to the methodology and a separate analysis is necessary to determining the dollars spent by Whitby residents. I accept Mr. Zavislake's opinion and I find that Mr. Jaque's analysis is flawed and cannot be supported.

[para32] The Board is thankful for the contribution that Mr. Harvey Gefen made to these proceedings. He is a business man, owner and developer of land on Dundas, east of Thickson. He is a landlord. He was the owner/operator of a furniture store on Dundas for many years. He is successful, prosperous and not afraid of competition. In addition to providing his own evidence, I allowed him to question and cross-examine other witnesses. He came each day well prepared, read all of the reports and asked realistic and perceptive questions.

[para33] I found Harvey Gefen's evidence on how the market place really works refreshing. The Board had before it actual sales numbers from someone operating in the immediate area and not published industry norms. His evidence was bolstered by three other business persons who came forward by chance on hearing about the hearing and not through any enticement by Harvey Gefen. Anthony Lang owns the plaza at the corner of Dundas and Thickson and Mr. Dyck and Mr. Springle own and operate a business on the Dundas Strip. All came forward in a forthright and businesslike manner and shared their actual sales records and their knowledge of the Whitby market.

[para34] The conclusion of their evidence is that it is essential to maintain stores under 20,000 square feet and particularly in the 5-15,000 square feet range in designated commercial centres. In addition, there are only so many retailers who require such space. It was all 4 businessmen's position that the insertion of 40 such units in the subject proposal would by necessity duplicate the stores that now exists 1 km away at Dundas and Thickson and a few kilometres away in Downtown Whitby. A centre such as this would draw these tenants away from the Central areas. I accept their opinions, which support the opinions of Climans and Zavislake. I accept the position that the addition of 40 units on the subject site would have a deleterious impact on the planned functions of the designated and existing central and sub-central areas. With no demonstrated need and a flawed analysis, I have no proof that the contrary position may be valid.

[para35] In reviewing Mr. Jaque's inventories of other Power Centres, found on pages 85-90 of his report Exhibit 47B, I offer the following observations. There appears to be a standard tenant mix of retailers who locate both in Power Centres and in traditional malls or free standing in a downtown area. The smaller units of 5-10,000 square feet do not require a regional draw to the same extent as a Costco or Walmart as evidenced by the same retailers in Ajax, Whitby and Oshawa e.g. Marks Work Warehouse. There appear to be far fewer than 40 that would fit the size constraint of 5-20,000 square feet. The proponent elected to come forward without a proposed tenant list but Exhibit 90 of Mr. Jaque indicates the availability of such tenants is slim pickings. This leads me to suspect that it would just be a matter of time that this proponent would seek a further exception to remove any unit size restriction. In that regard, I agree with Mr. Jaque with regard to the trend of a P.C. in Ontario to incorporate smaller unit sized stores after the big-boxes start drawing the shoppers. Therefore a decision to allow a P.C. of big-box retailers, if the municipality is in a position to control such a decision, should consider the full ramifications of the likelihood of a multi unit multi-sized collection of retail stores. A further observation from Mr. Jaque's inventory, is that industrially designated land abutting a 400 series Provincial Highway is not essential for a successful retail warehouse facility in a Power Centre format. The Heartland in Mississauga developed in a traditional Community Commercial Official Plan designation and is on Mavis Road at Britannia with no direct access to Highway 401. Likewise, the Ajax centre is located on Dundas (Highway 2) in Ajax's Central Area designation. The site plan for the proposed commercial centre at Taunton and Brock Exhibit 40 also demonstrates this principle. The retail warehouse format is fashionable marketing for many retailers and such format can be accommodated through proper urban design and planning layouts within the existing commercial structure of the Official Plan. In this instance it is not necessary to encroach on industrial lands.

[para36] I therefore find that the proposed Official Plan amendments of Invar and Invar-Kose are not compatible with the structure of the policy regimes in Durham and Whitby and their proposed developments are not compatible with the neighbouring employment area and could result in undermining the planned function of Whitby's Central and Sub-Central areas.

[para37] I support the Region's policy framework of OPA 28. I find it necessary to have a numerical limitation of minimum unit size expressed in the Official Plan in order to exercise the necessary and cautious control desired. I approve OPA 28 as it applies to the subject lands as found in Exhibit 11 attached.

[para38] I find that Modification 8 to Whitby's Official Plan represents good and sound planning. Mr. Short's evidence was unshaken. It applies the necessary tests to protect the public interest and as proposed in Exhibit 11 conforms to the Regional Official Plan, now approved as OPA 28.

[para39] I dismiss all of the site specific appeals and applications.

[para40] The Board so orders.

D.L. SANTO, Vice-Chair