



Report to: General Committee

Date Report Authored: January 16, 2015

SUBJECT: Amendments to Business Improvement Area (BIA) By-laws
PREPARED BY: M. A. Pettit, Deputy Clerk, ext. 8220
C. Turpin, Public Services & Records Co-ordinator, ext. 2082
L. Riegel, Assistant City Solicitor, ext. 3582

RECOMMENDATION:

- 1) That the report titled “Amendments to Business Improvement Area By-laws” be received; and,
- 2) That By-law 279-86 establishing the “Markham Village Business Improvement Area” commonly referred to as the "Markham Village BIA (MBIA)" By-law be repealed in its entirety and the attached by-law, noted as Appendix “A” to this report, be enacted; and,
- 3) That By-law 169-83 known as the “Unionville Business Improvement Area (UBIA)” By-law be repealed in its entirety and the attached by-law, noted as Appendix “B” to this report, be enacted; and,
- 4) That Staff be directed to undertake a comprehensive review, including consultation with the Boards of Management of both the MBIA and UBIA to determine further governance improvements and report back prior to the end of the 2018 term; and further,
- 5) That Staff be authorized and directed to do all things necessary to give effect to this resolution.

PURPOSE:

To repeal and replace the Markham Village Business Improvement Area (MBIA) and the Unionville Business Improvement Area (UBIA) by-laws to ensure they are consistent with and accurately reflect the business improvement area (“BIA”) provisions of Municipal Act, 2001 (the “Act”), and to provide clarity regarding the membership eligibility criteria, and the election of Directors to the Board of Management.

BACKGROUND:

The MBIA by-law was last updated in 1987 and does not align with the BIA provisions of the Act passed in 2001 or the current standard practices of the MBIA. The UBIA by-law was last updated in 2012 to adjust the composition of the Board, but does not accurately reflect the provisions of the Act. These amendments to the by-laws provide consistency with the Act, and provide clarity regarding the membership eligibility criteria and the election of Directors to the Board of Management.

OPTIONS/ DISCUSSION:**Amendments**

According to the Act “*members of an improvement area consist of persons who are assessed, on the last returned assessment roll, with respect to rateable property in the area that is in a prescribed business property class and tenants of such property.*” The current BIA by-laws do not recognize that tenants of rateable property are eligible members and as such are entitled to voting rights. The Act also notes that tenancy shall be determined by the Clerk in accordance with Section 204(5) and that the determination of the Clerk is final. The proposed by-laws have been updated to include these components, which brings them into compliance with the Act.

The Act provides for the election of a Board of Management, consisting of one or more Directors appointed directly by the City. The remaining Directors are selected by the membership of the BIA and their selection is subject to ratification by Council. Each member of the improvement area is entitled to one vote regardless of the number of properties that the member may own or lease.

The Act also provides that members which are Corporations (“Corporate Members”) can appoint a nominee to vote on their behalf (often referred to as proxy voting), since the Corporation itself cannot physically cast a ballot. The appointment of a nominee by Corporate Members is the only circumstance where proxy voting is permitted by the BIA provisions of the Act. Therefore, the use of proxy voting is not available to non-Corporate Members. In the past there has been general confusion among the MBIA and UBIA members regarding the eligibility and process for appointing nominees for the purpose of voting.. The proposed by-laws provide delegated authority to the City Clerk to approve voting procedures to be followed by the MBIA and UBIA members, which will ensure fair and consistent voting and election processes.

The proposed by-laws also provide clarity on the eligibility requirements for Directors to be appointed to the Board of Management. The proposed by-laws provide that to be eligible to serve as a Director of the Board of Management, an individual must be a member, or an individual appointed as a nominee by a Corporate Member (which individual is a shareholder, director, officer or employee of the Corporate Member). Consistent with the ability of Corporate Members to appoint a nominee to vote on their behalf, Corporate Members may appoint a nominee to run for (and if selected by the members and appointed by Council) serve as a Director of the Board of Management.

Governance Review

The term of the Directors on the Board of Management is the same as the term of Council that appointed them. Staff recommend that prior to the conclusion of the term of Council in 2018, a full governance review be undertaken that includes the consultation with the Boards of Management of both the MBIA and UBIA. Such a review would require time to complete, and if undertaken at this time, would delay the appointment of the Directors to the MBIA and UBIA Boards of Management, to the detriment of the BIAs. The future

review may include, among other things, an assessment of the effectiveness of current governance procedures and standard practices.

FINANCIAL CONSIDERATIONS AND TEMPLATE

Not applicable

HUMAN RESOURCES CONSIDERATIONS

Not applicable

ALIGNMENT WITH STRATEGIC PRIORITIES:

This report aligns with the Municipal Services Strategic Priority by ensuring good governance and effective operation of Markham’s Business Improvement Areas and compliance with the provisions of the Municipal Act.

BUSINESS UNITS CONSULTED AND AFFECTED:

Legal Services

RECOMMENDED BY:

23/01/2015

X



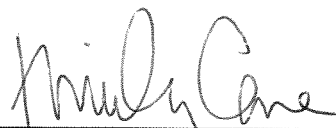
Kimberley Kitteringham
City Clerk

X



Catherine Conrad
City Solicitor

X



Trinela Cane
Commissioner, Corporate Services

ATTACHMENTS:

Appendix “A”: Proposed Markham Village Business Improvement Area (MBIA) By-law”

Appendix “B”: Proposed Unionville Business Improvement Area (UBIA) By-law



By-law 2015-

A By-law to Designate an
Area in the Markham Main Street Business District
as an Improvement Area and to Establish a
Board of Management for the
Business Improvement Area

Whereas Section 204, *Municipal Act, 2001*, (the "Municipal Act") provides that the Council of a local municipality may pass by-laws designating an area as a business improvement area and establishing a board of management; and,

Whereas Council of the City of Markham (the "Council") established the Business Improvement Area for Main Street Markham by By-law No. 279-86, as amended from time to time; and,

Whereas it is appropriate to update the by-law to be in compliance with the Municipal Act;

Now therefore be it enacted by the Council of The Corporation of the City of Markham as follows:

1. The area hereinafter described in Schedule 'A' to this by-law is hereby designated an "improvement area" within the meaning of the *Municipal Act* (the "Improvement Area"), to be referred to as the "Main Street Markham Business District Improvement Area".
2. A "board of management" to be known as the "Board of Management for the Main Street Markham Business District Improvement Area" ("the Board") is hereby established for the area designated in Paragraph 1.
3. There is entrusted to the Board, subject to the limitations hereinafter set out, the improvement, beautification and maintenance of municipally owned lands, buildings and structures in the area, beyond such improvement, beautification and maintenance as is provided at the expense of the municipality generally, and the promotion of the area as a business or shopping area.
4. The Board shall consist of between seven (7) and eleven (11) directors, two (2) of whom shall be members of the Council and appointed directly by the Council, and the remaining directors shall be selected by a vote of the Members of the Improvement Area and appointed by Council. The vote of the Members shall be conducted in accordance with the voting procedures established by the City Clerk from time to time.
5. "Members" of the Improvement Area consist of: persons who are assessed, on the last returned assessment roll, with respect to rateable property in the area that is in a prescribed business property class and tenants of such property; and, subject to approval by the City Clerk, recent purchasers of property in the area that is in a business property class, but not assessed on the last returned assessment roll, and tenants of such property. Tenancy shall be determined in accordance with Section 204(5) of the *Municipal Act*.

6. To be eligible to serve as a director of the Board, a person must be:
 - (a) a Member, or a person appointed as a nominee by a corporate Member (which person is a shareholder, director, officer or employee of the corporate Member and has the written approval of the corporate Member to run for, and if selected by the Members and appointed by Council, to serve as a director of the Board); and
 - (b) at least eighteen (18) years of age.
7. The term of the directors of the Board is the same as the term of the Council that appointed them but continues until their successors are appointed (provided they continue to be qualified as provided in Paragraph 6). Directors are eligible for reappointment.
8. The Council may refuse to appoint a person selected by the Members, in which case the Council may leave the position vacant or direct that a meeting of the Members be held to select another candidate for the Council's consideration. Where a vacancy occurs for any cause, the Council may appoint a person to fill the vacancy for the unexpired portion of the term and the appointed person is not required to be a Member of the Improvement Area.
9. The Board shall, as soon as possible after the directors of the Board are appointed by Council, elect a Chair and Vice-Chair (to serve for the duration of the Council term, or until they resign from the position or are removed from the position by a majority vote of the Board), and appoint a secretary and a treasurer (to be appointed annually), and such other officers as it deems necessary to properly conduct the business of the Board.
10. The Board shall keep proper minutes and records of every meeting of the Board and shall forward true copies of such minutes and records to all directors of the Board and the City Clerk as soon as possible after the meeting covered thereby.
11. The Board shall adopt and maintain banking arrangements and good accounting practices that are acceptable to the City's auditor and agrees to keep such books of account and to submit such statements from time to time as the City's auditor may require.
12. The City's auditor shall be the auditor of the Board and all books, documents, transactions, minutes and accounts of the Board shall at all times, be open to such auditor's inspection.
13. The fiscal year of the Board shall be the calendar year.
14. On or before the 1st day of March in each year, the Board shall submit its annual report for the preceding year to the Council, including a complete audited and certified financial statement of its affairs with a balance sheet and revenue and expenditure statement.
15. The Board shall prepare a proposed budget for each fiscal year, and submit the budget to the Council by the date and in the form required by the Council, and the Council may approve it in whole or in part but may not add expenditures to it.

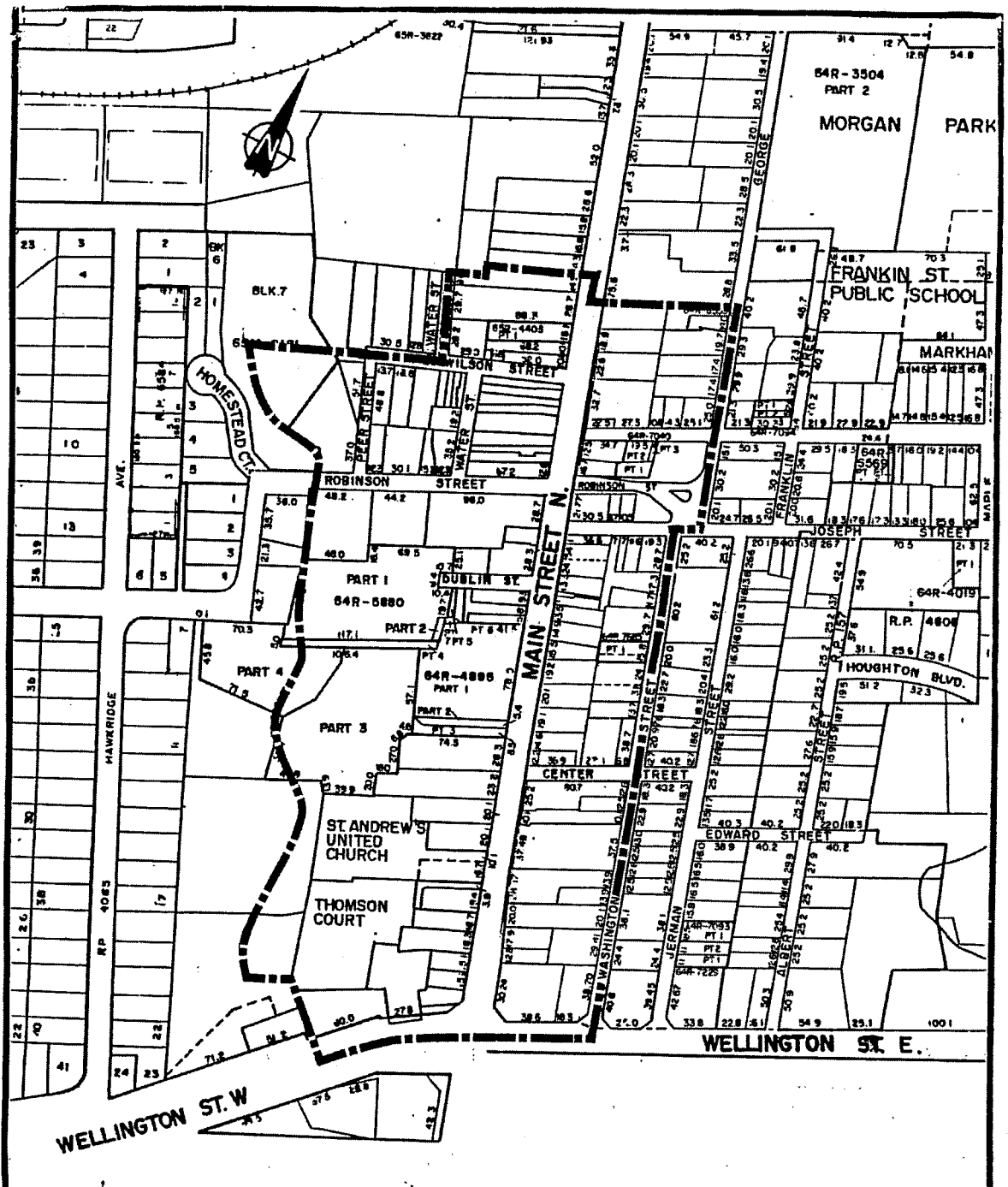
16. The Board shall not:
 - (a) spend any money unless it is included in the budget approved by the Council or available in a reserve fund established under Section 417 of the *Municipal Act*;
 - (b) incur any indebtedness extending beyond the current year without the prior approval of the Council; or
 - (c) borrow money.
17. The Board shall deposit and keep on deposit with the City Clerk, insurance policies satisfactory in all respects to the City Clerk, indemnifying The Corporation of the City of Markham against public liability and property damage in respect of the activities of the Board.
18. The Board shall adopt policies governing the following:
 - (a) the sale and disposition of land;
 - (b) the hiring of employees;
 - (c) the procurement of goods and services;
 - (d) the *Occupational Health and Safety Act*; and
 - (e) any other policy of the City which the Board may, from time to time, be required to follow pursuant to law.
19. By-law 279-86 as amended be repealed, save and except Schedule "A" attached to By-law 279-96 becomes Schedule "A" to this by-law.

Read a first, second, and third time and passed on

Kimberley Kitteringham
City Clerk

Frank Scarpitti
Mayor

Schedule A to By-law 2015----



TOWN OF MARKHAM

A BY-LAW TO DESIGNATE BUSINESS IMPROVEMENT AREA

----- BOUNDARY OF AREA COVERED BY THIS BY-LAW

THIS IS SCHEDULE 'A' TO BY LAW 279-86
PASSED THE 18th DAY OF Aug 1986

L. Carol Bell MAYOR
Ray F. ... CLERK

NOTE: 1) DIMENSIONS IN METRES
2) FOR ACCURACY,
REFERENCE SHOULD BE MADE
TO THE ORIGINAL BY-LAW LOGGED
IN THE OFFICE OF THE CLERK

NOT TO SCALE



By-law 2015-

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Area in the Unionville Business District
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Business Improvement Area

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Whereas Council of the City of Markham (the "Council") established the Business Improvement Area for for Main Street Unionville by By-law 169-83, as amended from time to time; and,

Whereas it is appropriate to update the by-law to be in compliance with the Municipal Act;

Now therefore be it enacted by the Council of the Corporation of the City of Markham as follows:

1. The area hereinafter described in Schedules "A", "B", "C" and "D" to this by-law is hereby designated an "improvement area" within the meaning of the *Municipal Act* (the "Improvement Area"), to be referred to as the "Main Street Unionville Business District Improvement Area".
2. A "board of management" to be known as the "Board of Management for the Main Street, Unionville Business District Improvement Area" ("the Board") is hereby established for the area designated in Paragraph 1.
3. There is entrusted to the Board, subject to the limitations hereinafter set out, the improvement, beautification and maintenance of municipally owned lands, buildings and structures in the area, beyond such improvement, beautification and maintenance as is provided at the expense of the municipality generally, and the promotion of the area as a business or shopping area.
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 - (d) the *Occupational Health and Safety Act*; and
 - (e) any other policy of the City which the Board may, from time to time, be required to follow pursuant to law.

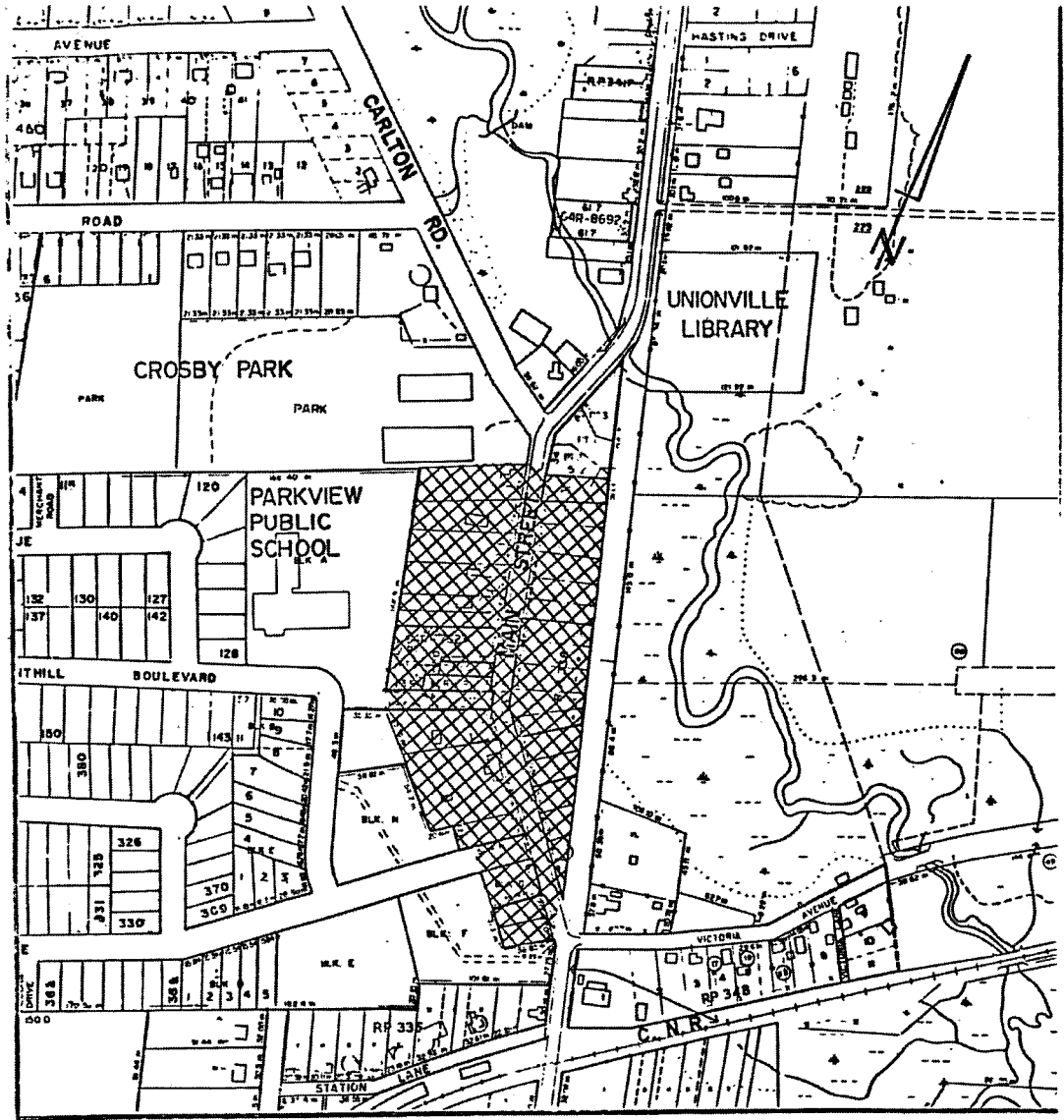
19. By-law 169-83 as amended be repealed, save and except Schedules "A" & "B" Attached By-law 169-83, Schedule "A" attached to By-law 17-84 and Scheduled "A" attached to By-law 277-89 become Schedules "A", "B", "C" and "D" to this by-law.

Read a first, second, and third time and passed on

Kimberley Kitteringham
City Clerk

Frank Scarpitti
Mayor

Appendix "A" to By-law 2015-----



THIS IS SCHEDULE "A" TO
BY-LAW 169-83 PASSED THE
29th DAY OF JUNE, 1983.

Anthony Roman
MAYOR

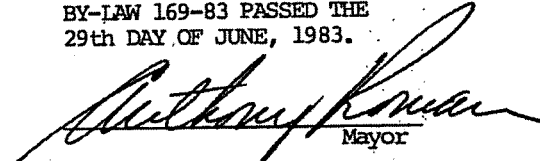
Greg F. Smith
CLERK

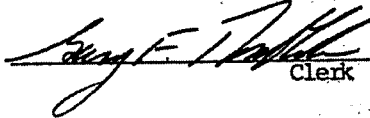
Appendix "B" to By-law 2015-----

The Main Street Unionville Business Improvement Area

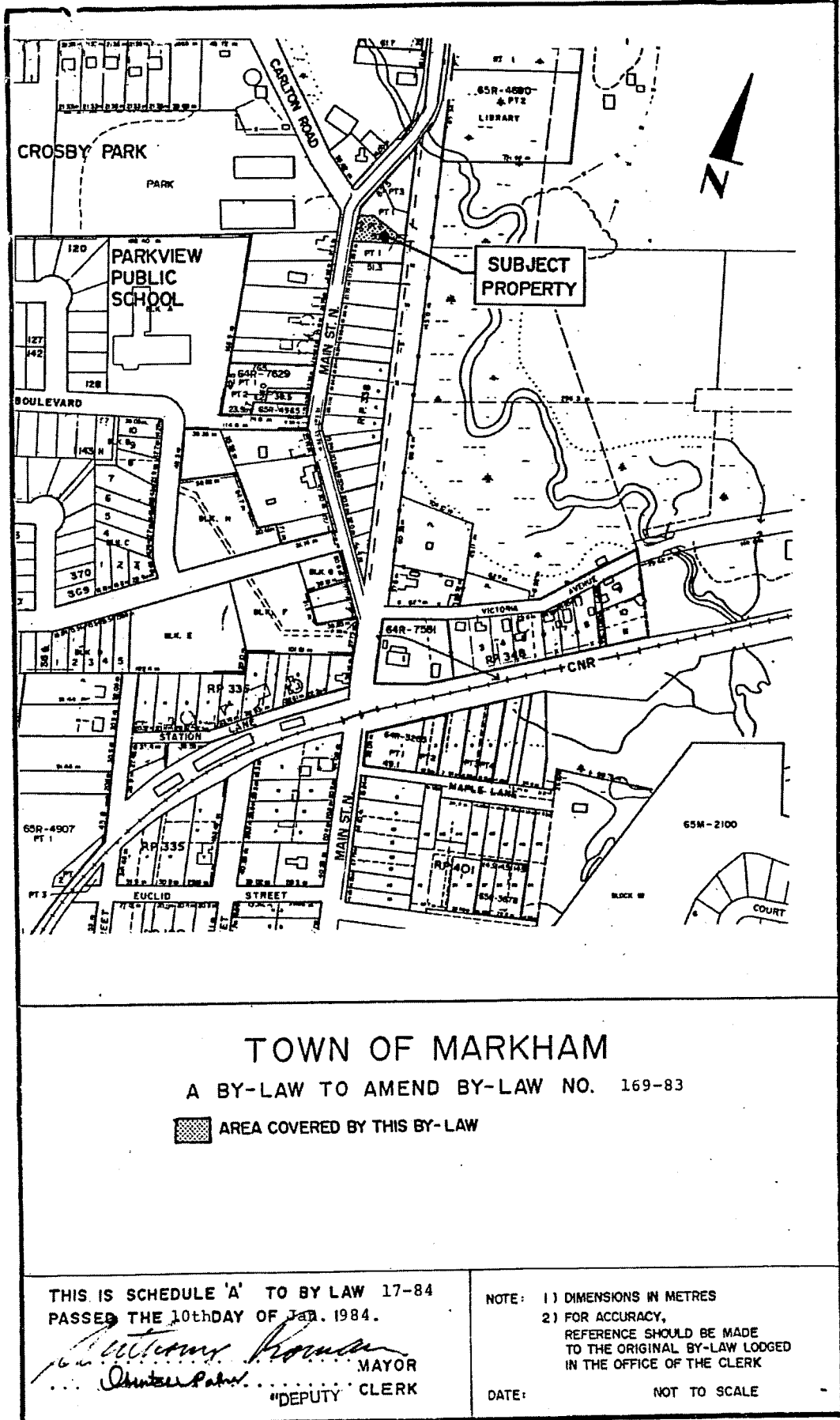
- On the north The northern boundary of lots municipally known as 206 and 205 Main Street, Unionville.
- On the west The westerly boundary of those lots abutting the property of Parkview School and the westerly boundary of lots municipally known as 166, 158, 154, 150, Main Street and the westerly boundaries of Block 'G', Registered Plan 7566 and 144 and 142 Main Street.
- On the south The southerly boundary of the lot municipally known as 142 Main Street.
- On the east The easterly boundaries of those lots abutting the westerly side of the unopened road allowance of Main Street to include those properties between properties municipally known as 147 Main Street and 205 Main Street.

THIS IS SCHEDULE "B" TO
BY-LAW 169-83 PASSED THE
29th DAY OF JUNE, 1983.

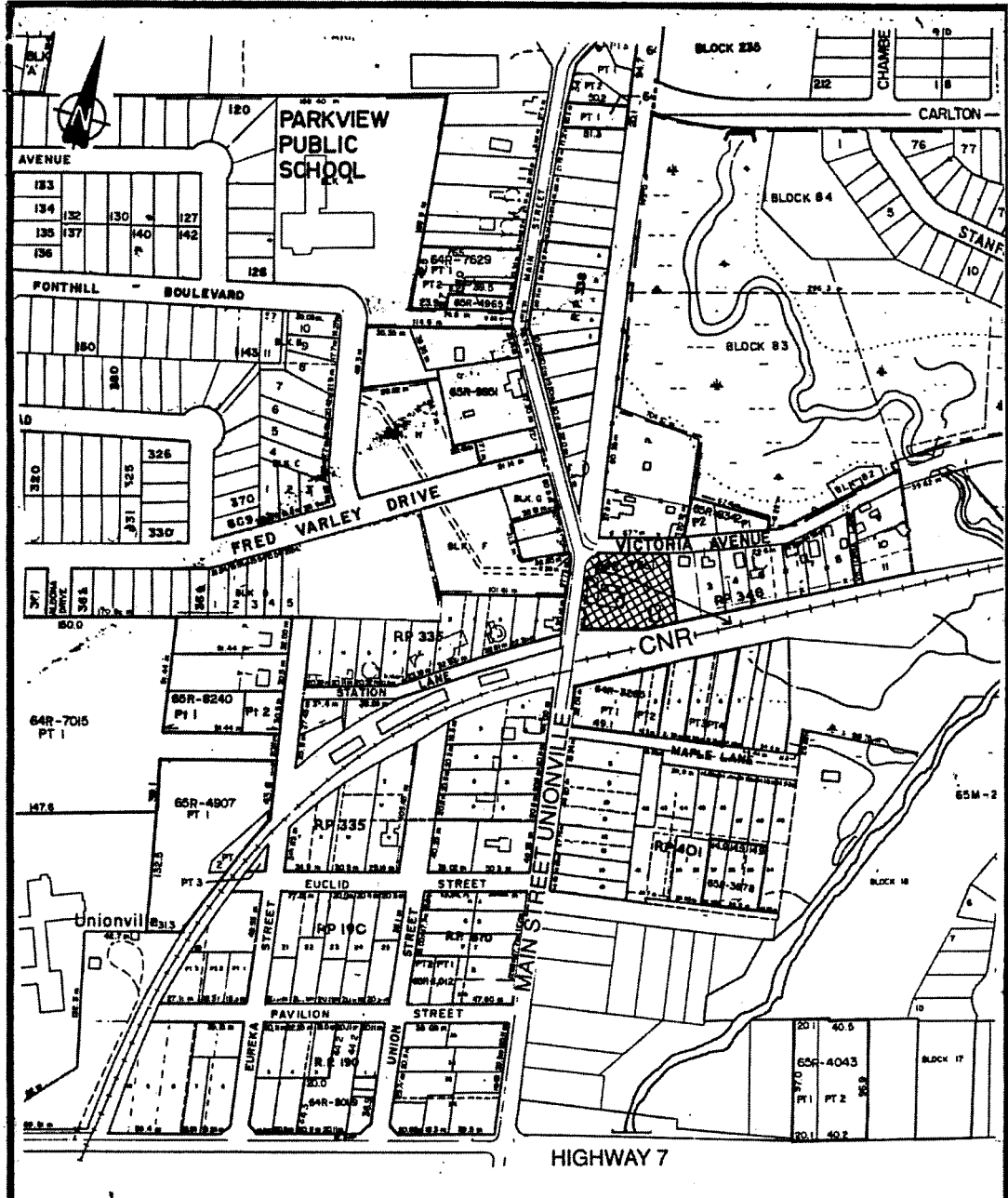

Mayor


Clerk

Appendix "C" to By-law 2015-----



Appendix "D" to By-law 2015-----



TOWN OF MARKHAM

A BY-LAW TO AMEND BY-LAW NO. 169-83

 AREA COVERED BY THIS BY-LAW

THIS IS SCHEDULE 'A' TO BY LAW 277-89
PASSED THE 28 DAY OF Nov. 1989.

William Roman MAYOR
[Signature] CLERK

NOTE: 1) DIMENSIONS IN METRES
2) FOR ACCURACY,
REFERENCE SHOULD BE MADE
TO THE ORIGINAL BY-LAW LODGED
IN THE OFFICE OF THE CLERK

NOT TO SCALE