

ISSUE DATE:

Jul. 20, 2005

DECISION/ORDER NO:

1903



Ontario

Ontario Municipal Board

Commission des affaires municipales de l'Ontario

PL030412

The Ontario Municipal Board has received appeals under subsection 17(36) of the *Planning Act*, R.S.O. 1990, c. P. 13, as amended, from a decision of the Minister of Municipal Affairs and Housing to approve in part, the new Official Plan for the City of Toronto, as adopted by By-law 1082-2002, to provide policy direction in the six municipalities of the former Metropolitan Toronto

MMAH File No. 20-OP-2002

OMB File Nos. See Attachment "1"

APPEARANCES:

<u>Parties</u>	<u>Counsel*/Agent</u>
City of Toronto	Bruce Ketcheson* Robert Balfour* R. Andrew Biggart*
Aga Khan Foundation Canada	Brad Teichman*
Cadillac Fairview Corporation Limited Canadian Tire Corporation Limited Canadian Tire Real Estate Limited (Lakeshore) Eminent Construction Limited Monarch Construction Limited Monarch Construction Limited and Water View Corporation Options for Homes Silvercore Inc. Greater Toronto Home Builders' Association and Urban Development Institute 1430649 Ontario Ltd. 2BRNOT2B Holdings 603613 N.B. Inc. (Malibu Investments Inc.) 640 Fleet Street Developments Limited, 650 Fleet Street Developments Limited, Fleet Boulevard Limited Bedford and Bloor Realty and Lantower Yonge Bloor Capital Inc Daniels Midtown Corporation	John Dawson* Cynthia MacDougall* Steven Diamond* Calvin Lantz*

<p>Mattamy Bayview Limited Mount Sinai Hospital Plazacorp Properties Limited Riva Glade Holdings Inc. Wellesley Residences Corp. Yonge Crescent Development Limited Yorkville (2001) Limited Hanfrow Holdings G.P. Inc. Talon International Developers Inc. Meridian Residences Inc. Centre for Addiction and Mental Health 534078 Ontario Limited, Weintraub Holdings Limited, Samper Developments Limited, Jassder Developments Limited, Judidon Holdings Inc., Cardon Holdings Inc., Dadadon Holdings Inc., Ruthdon Holdings Inc. Piagga Limited 1356071 Ontario Inc. Artlea Holding Limited, Siper Investments Limited, H & R Properties Limited, 1012502 Ontario Limited Rosalind Bradford (David Sadja) 1160963 Ontario (Spadina) 887343 Ontario Inc. and 567485 Ontario Inc. 1160963 Ontario (Rosehill) Herron Gardens Inc. Wellington Park Residences Corp. Marca Development Corporation Wittington Properties Limited First Ontario Realty Corporation York University 1098748 Ontario Limited National Ballet School Bellwoods Centres for Community Living Inc. Wittington Properties Inc. Hyde Park Partnership Centre for Addiction and Mental Health</p>	
Aga Khan Foundation Canada	Brad Teichman*
CN Railway	Michael Hackl*
Toronto Anglican Diocese	Pitman Patterson*

Toronto Rehabilitation Institute	
Owens Corning Canada Inc. Tom Katirai	Harold Elston*
Kraft Canada Inc.	Dennis Trinaistich*
The National Club Gerrard Clonmore Developments Limited Tap-Steeles Investments Ltd. Steeles Markham Developments Limited The Conservatory Group of Companies Ringley Construction Ltd. (formerly Workplace Safety and Insurance Board)	Susan Rosenthal* Mark Flowers*
685 Keele Street Limited Home Depot of Canada Inc. Lissard Holdings Morningard Developments Limited Thoroughbred Developments Limited	Cathy Biesma
Edithvale Yonge Residents' Association, Lansing Community Association Inc., Silverview Homeowners' Association, South of Sheppard Preservation Group Inc., Willowdale Central Ratepayers' Association	George Belza
Ripley Area Residents Group Ltd. And Swansea Area Ratepayers Group Confederation of Resident and Ratepayer Associations (CORRA)	William Roberts*
Harbour Remediation and Transfer Inc. Lafarge Canada Inc. Ontario Realty Corporation and Hydro One Ontario Realty Corporation (90 Harbour Street & West Donlands) Ontario Restaurant Hotel and Motel Association, et. al The Roehampton Corporation Yonge-St. Clair Inc.	Signe Leisk*
5795 Yonge Street (1984) Limited Ivaco Inc.	Craig Parkinson*

Ministry of Municipal Affairs and Housing	Brenda Linington* Jess Fortner
Apco Industries Co. Limited Crompton Co./Cie Dow Chemical Canada Inc. Halltech Inc. Rohm and Haas Canada Inc. Valspar Canada Inc. Kolter Property Company	Andrew Jeanrie*
Urquhart Consortium Inc.	Art Millwain
1255870 Ontario Limited	John Inglis*
1213763 Ontario Limited 18 Brownlow Holdings Ltd. 2BRNOT2B Holdings 940412 Ontario Limited, Adam Steiner et. al. Advent Health Care Corp. Avro Quay Limited Diamante Urban Corporation Duration Investments Ltd. MintoUrban Communities Inc. One City Hall Place Limited Pleasant View Holdings Ltd. Sun Life Assurance (Morningside Mall) Sun Life Assurance (Yonge) Sun Life Assurance Company of Canada(Lawrence and Morningside) Burnac Holdings Limited	Michael Kovacevic*

**MEMORANDUM OF ORAL DECISION FROM A PREHEARING CONFERENCE
HELD ON JUNE 13TH, 2005, DELIVERED BY S.W. LEE AND M. HUBBARD
AND ORDER OF THE BOARD**

Hearing Held on June 13th and 14th, 2005

The hearing of evidence on the new Official Plan for the City of Toronto commenced on June 13th and 14th, 2005 with an overview presentation by Barbara Leonhardt, a City planner, that provided factual information concerning the preparation

of the Plan and the format of the document. This presentation was followed by the filing by the City of a series of planning affidavits supporting approval of various modifications to the new Plan that were presented to the Board on consent. This evidence in support of the modifications was accepted by this panel and the Board agreed to issue a contingent order approving the various modifications in conjunction with the final approval of the Plan, or the relevant portions thereof, in accordance with the Board's powers. The panel directs the City Solicitor to prepare, and submit for the Board's review, a draft of the contingent order approving the modifications, for issuance in due course.

The affidavits as exhibited with the Board are listed below together with particulars of the various files to which they relate:

- Ex. 58 Affidavit of Paul Bain, Planner with the City of Toronto, in support of the partial settlement of appeal #56E – Edithvale Yonge Residents' Association et al – OMB File No. O030132 – with respect to the Central Finch Secondary Plan
- Ex. 59 Affidavit of Paul Bain, Planner with the City of Toronto, in support of the partial settlement of appeal #56E - Edithvale Yonge Residents' Association et al – OMB File No. O030132, and appeal #47E – Confederation of Resident and Ratepayer Associations (CORRA) – OMB File No. O030124, with respect to policies in the Toronto Official Plan relating to the Natural Environment
- Ex. 60 Affidavit of Paul Bain, Planner with the City of Toronto, in support of the settlement of appeal #56E – Edithvale Yonge Residents' Association et al – OMB File No. O030132 – with respect to the North York Centre Secondary Plan
- Ex. 61 Affidavit of Paul Bain, Planner with the City of Toronto, in support of the settlement of appeal #135D - Toronto Anglican Diocese – OMB File No. O030274
- Ex. 62 Affidavit of Paul Bain, Planner with the City of Toronto, in support of the settlement of appeal #51D – Donald Kerr - OMB File No. O030126
- Ex. 63 Affidavit of Paul Bain, Planner with the City of Toronto, in support of the settlement of appeal #111D – Ripley Area Residents Group Ltd. and Swansea Area Ratepayers Group – OMB File No. O030125
- Ex. 64 Affidavit of Paul Bain, Planner with the City of Toronto, in support of the settlement of appeal #49D – David Redwolf et al (on behalf of Iaionteh Shonte'n) – OMB File No. O030166

- Ex. 65 Affidavit of Paul Bain, Planner with the City of Toronto, in support of the settlement of appeal #95D – National Ballet School - OMB File No. O030194
- Ex. 66 Affidavit of Paul Bain, Planner with the City of Toronto, in support of the partial settlement of appeal #47E – Confederation of Resident and Ratepayer Associations (CORRA) – OMB File No. O030124 – with respect to the Yonge-Eglinton Secondary Plan, the Yonge- St. Clair Secondary Plan and the Yonge-Summerhill Secondary Plan
- Ex. 67 Affidavit of Anna Czajkowski, Planner with the City of Toronto, in support of the settlement of appeal #74D – John Weldon/Crown Regal Developments - OMB File No. O030282
- Ex. 68 Affidavit of Anna Czajkowski, Planner with the City of Toronto, in support of the settlement of appeal #73D - Jayeff Investments Limited - OMB File No. O030168
- Ex. 69 Affidavit of Anna Czajkowski, Planner with the City of Toronto, in support of the settlement of appeal #92D - Morningard Developments Ltd. – OMB File No. O030225
- Ex. 70 Affidavit of Anna Czajkowski, Planner with the City of Toronto, in support of the settlement of appeal #113D – Rohm and Haas Canada Inc. – OMB File No. O030269
- Ex. 71 Affidavit of Anna Czajkowski, Planner with the City of Toronto, in support of the settlement of appeal #141D - Valspar Canada Inc. – OMB File No. O030264
- Ex. 72 Affidavit of Anna Czajkowski, Planner with the City of Toronto, in support of the settlement of appeal #52D - Doreen Mount – OMB File No. O030136
- Ex. 73 Affidavit of Anna Czajkowski, Planner with the City of Toronto, in support of the settlement of appeal #6D - Apco Industries - OMB File No. O030267
- Ex. 74 Affidavit of Anna Czajkowski, Planner with the City of Toronto, in support of the settlement of appeal #48D – Crompton Co./Cie - OMB File No. O030265
- Ex. 75 Affidavit of Anna Czajkowski, Planner with the City of Toronto, in support of the settlement of appeal #65D - Halltech Inc. - OMB File No. O030266
- Ex. 76 Affidavit of Anna Czajkowski, Planner with the City of Toronto, in support of the settlement of appeal #159D - Owens Corning Canada Inc. - OMB File No. O040061

- Ex. 77 Affidavit of Anna Czajkowski, Planner with the City of Toronto, in support of the settlement of appeal #12F – 1098748 Ontario Limited (Agincourt Mall) - OMB File No. O030193
- Ex. 78 Affidavit of Anna Czajkowski, Planner with the City of Toronto, in support of the settlement of appeal #129D – Tap-Steeles Investments Ltd. – OMB File No. O030134
- Ex. 79 Affidavit of Gerry Rogalski, Planner with the City of Toronto, in support of the settlement of appeal #158D - Meridian Residences Inc. - OMB File No. O040059
- Ex. 80 Affidavit of Gerry Rogalski, Planner with the City of Toronto, in support of a technical modification to the New Official Plan reflecting previous OMB approval of a development at 801 Sheppard Avenue West
- Ex. 81 Affidavit of Gerry Rogalski, Planner with the City of Toronto, in support of the settlement of appeal #147D - Ringley Construction Ltd. (formerly Workplace Safety & Insurance Board) - OMB File No. O030165
- Ex. 82 Affidavit of Gerry Rogalski, Planner with the City of Toronto, in support of the partial settlement of appeal #131E – The Conservatory Group (re property at Yonge St/Hollywood Ave/Spring Garden Ave, in the former City of North York) - OMB File No. O030257
- Ex. 83 Affidavit of Victor Gottwald, Planner with the City of Toronto, in support of the settlement of appeal #134D - Thoroughbred Developments Ltd. - OMB File No. O030227
- Ex. 84 Affidavit of Victor Gottwald, Planner with the City of Toronto, in support of the settlement of appeal #161D - Red Carpets Inn Limited - OMB File No. O040050
- Ex. 85 Affidavit of Victor Gottwald, Planner with the City of Toronto, in support of the settlement of appeal #151D - 1463290 Ontario Limited (1100 Islington Avenue) – OMB File No. O030249
- Ex. 86 Affidavit of Terry Wertepny, Planner with the City of Toronto, in support of the settlement of appeal #79D - Lissard Holdings Limited – OMB File No. O030223, and appeal #9D – 3685 Keele Street Limited – OMB File No. O030224
- Ex. 87 Affidavit of Terry Wertepny, Planner with the City of Toronto, in support of the settlement of appeal #24D - Aga Khan Foundation Canada - OMB File No. O030169

In support of the modifications proposed in furtherance of the settlement between the City and the Toronto Anglican Diocese (OMB File O030274), the Board also heard oral testimony from Mr. Paul Bain, a qualified land use planner employed by the City. In response to questions from Mr. Dawson, on behalf of the Greater Toronto Home Builders' Association ("GTHBA") and the Urban Development Institute ("UDI"), Mr. Bain testified that the proposed modifications contained within Exhibit 61 were intended to recognize the role played by certain local institutions, such as places of worship, within the policies of the Plan that address the provision of social infrastructure. Mr. Bain explained that the modifications were not intended to address school boards, whose role in the City's planning processes were addressed through other policies of the Plan. The panel so finds.

Following the filing of the evidence dealing with the consent modifications, the Board heard submissions from a number of counsel and an agent regarding concerns raised by GTHBA and UDI involving additional modifications proposed by the City and supported by various residents' associations represented by Mr. Roberts and Mr. Belza. The concerns of GTHBA and UDI were set out in a letter addressed to the Board from Mr. Dawson, dated May 26th, 2005, and marked at the hearing as Exhibit 88. A letter responding to this correspondence, dated June 8th, 2005, was also forwarded to the Board by Mr. Belza and it was marked at the hearing as Exhibit 90. A number of additional documents were also filed with the Board and marked as exhibits during the course of the argument on this issue.

Based on the submissions, the panel understands that there is a dispute between the parties as to the process to be applied to the consideration of certain modifications to the new Plan as proposed by the City with the support of the residents. These modifications are contained within a larger package of modifications contained within Exhibits 2 and 2A previously filed with the Board.

While many of the modifications contained within these exhibits are not contested by GTHBA and UDI, Mr. Dawson explained that a number of the modifications affect issues previously identified by these parties with the Plan or are otherwise objectionable to them. The modifications that are disputed include changes to policies dealing with Avenues, Secondary Plans and Interpretation.

The issue to be determined by the Board is essentially a procedural one; namely, in accordance with earlier directions issued by this panel, should these modifications be deemed to be presented to the Board on consent or should they be considered at the time that the issues related to the relevant policies of the Plan are adjudicated.

Following the various submissions on the question, the panel reserved its decision.

Finally, the Board considered a request from Mr. Belza for mediation of certain concerns possessed by his clients related to additional modifications proposed by the City involving policies within the Plan addressing parkland dedication. This request for mediation was not supported by the City and accordingly the proposed modifications will be considered at a subsequent phase of the hearing, as detailed below.

This concluded the opening phase of the hearing.

Prehearing held on June 16th, 2005

On June 16th, 2005, the Board reconvened the proceedings for the purpose of conducting the fifth prehearing conference. At that time a number of changes to the road maps, involving various files, were reviewed and approved by the panel. Updated road maps incorporating these changes have been prepared and are included in Attachment 2 as part of this decision.

A further prehearing conference will be convened on **September 6th, 2005**, at **10:00 am**, at the **Board's chambers**. At that time the Board will consider any additional settlement modifications to be presented on consent and will then canvass with the parties the scheduling of further phases of the hearing to address additional policies of the new Plan that remain under dispute. The Board directs the City to circulate to the parties, in advance of the prehearing, a proposed phasing plan to be considered at the next prehearing.

Upon completion of the prehearing, the hearing will resume at the Board's chambers and will continue thereafter on **September 7th to 9th, 2005**. This phase of the hearing will address all issues related to the general parkland policies in the Plan, including the City's proposed modifications thereto. Any party intending to participate in this phase of

the hearing shall advise the City and the Board on or before July 22nd, 2005. For the purpose of organizing this hearing phase, the Board directs as follows:

- **On or before June 30th, 2005, Mr. Belza's clients will provide the City with a list of the issues that they wish to raise in connection with the City's proposed modifications to the parkland dedication policies;**
- **On or before August 19th, 2005, all parties involved with this phase of the hearing will provide copies of their witness and expert witness statements to the Board and the other parties involved with this phase of the hearing and to the Clerk of the City; and**
- **On or before August 26th, 2005, the parties shall make available copies of their visual evidence to all other parties and shall further provide to all parties and file with the Clerk of the City a written response, if any, to any written evidence of any other parties.**

Following the completion of the phase dealing with the general parkland policies, the Board further directs that the next phase of the hearing will deal with the following policies of the Plan: Urban Design – Built Form, Urban Design – Tall Buildings, and Urban Structure – Broad. The Board has scheduled this phase of the hearing to commence on **October 3rd, 2005, at 10:00 am**, at the Board's chambers. The length of this phase has been scheduled for fifteen (15) hearing days. Any party wishing to participate in this phase of the hearing shall advise the City and the Board on or before **August 26th, 2005**. For the purpose of organizing this phase of the hearing the Board directs as follows:

- **On or before September 12th, 2005, parties and participants shall provide to the Board, the Clerk of the City and the other parties or participants involved with this phase of the hearing copies of their participant, witness and expert witness statements;**
- **On or before September 26th, 2005, the parties may provide to all other parties and the Board, and file with the Clerk of the City, a written response to any written evidence;**
- **On or before September 26th, 2005, the parties shall provide to the other parties and to the Clerk of the City, a list of their witnesses and the order in which these witnesses are proposed to be called; and**

- **On or before September 28th, 2005, the parties shall make available copies of their visual evidence to all other parties.**

The Board further directs the City to prepare and circulate to the parties proposed procedural orders incorporating the directions set forth above. In the event that there is disagreement concerning the contents of the procedural orders the panel may be spoken to.

The Board so Orders.

“S.W. Lee”

S.W. LEE
EXECUTIVE VICE-CHAIR

“M. Hubbard”

M. HUBBARD
CHAIR

Attachment filed with original decision.