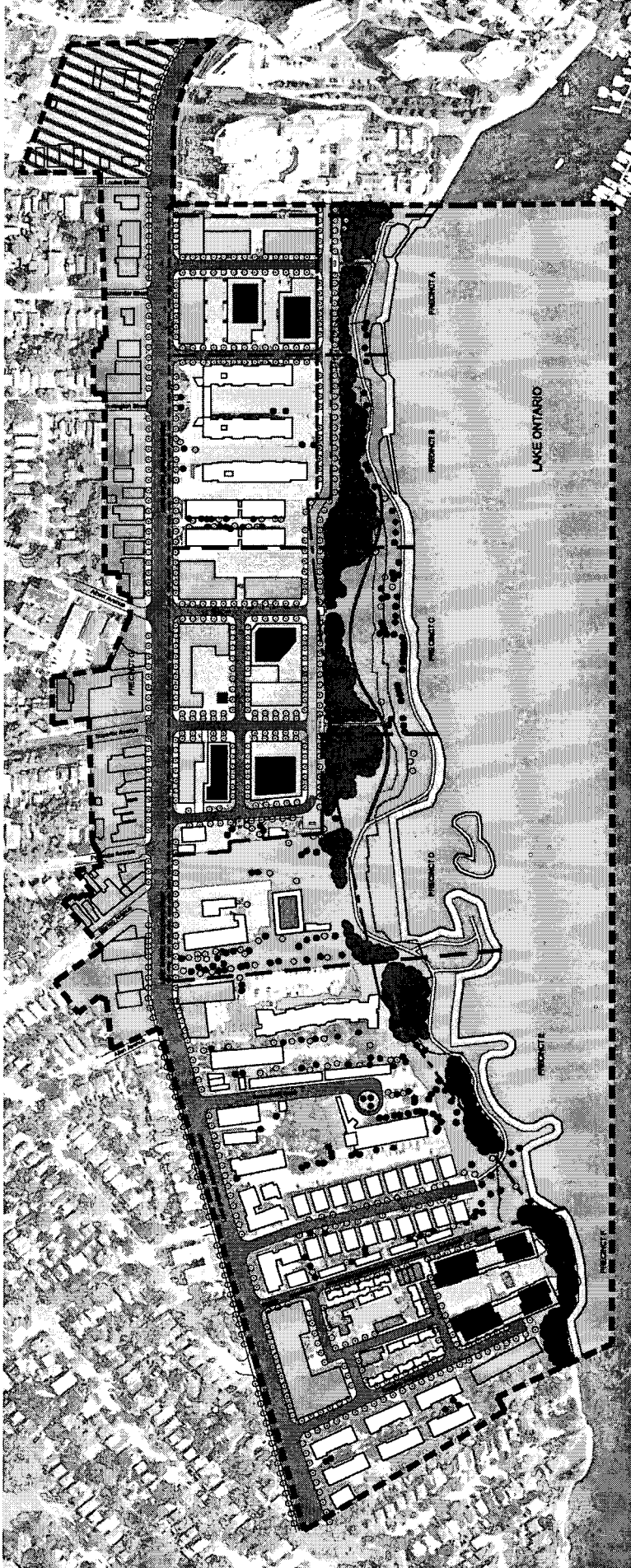


From Peggy Moulder



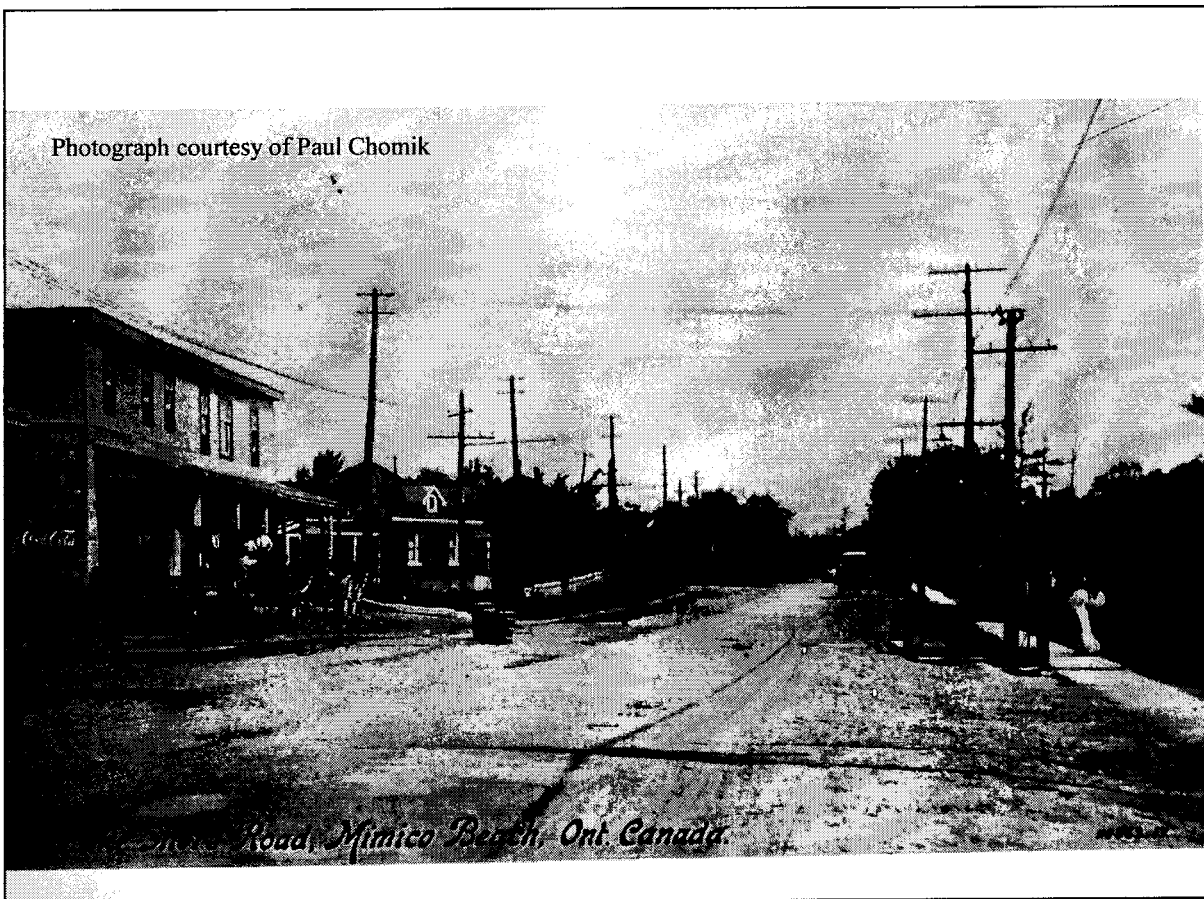
- LEGEND**
- Existing Surface Parking
 - Existing Buildings
 - Avenue Mid-Rise (5-9 storeys)
 - Mid-Rise Building Podiums (4 storeys)
 - Mid-Rise Buildings (6-10 storeys)
 - Neighbourhood Mid-Rise (4-6 storeys)
 - Future Potential Mix of Mid-Rise and Tall Buildings
 - Heritage Buildings
 - City of Toronto Pumping Station
 - Public Parks
 - Private Open Space
 - Mimico Beach Promenade
 - Beach
 - Existing Trail
 - Proposed Trail
 - 10m Setback from Erosion Hazard Limit
 - Erosion Hazard Limit with Shore Protection
 - Precinct Boundary
 - Proposed Bike Path

MIMICO BEACH - SECONDARY PLAN ALTERNATIVE
 April 15, 2013 / NTS

25.15.53
 sjn
 +Associates
 Landscape Architects

MIMICO BEACH SECONDARY PLAN ALTERNATIVE

Report on the
Mimico Beach Secondary Plan Alternative
to the proposed
Toronto Planning Department DRAFT Secondary Plan
July 9, 2013



MIMICO BEACH SECONDARY PLAN ALTERNATIVE

INTRODUCTION

On March 21, 2013, the Toronto Planning Department posted the DRAFT Mimico Secondary Plan online for public review, prior to the scheduled City Council meeting on April 9, 2013.

There are many problems with the DRAFT Plan which are contrary to the City of Toronto Official Plan and contrary to the original Community vision, which ranked "Parks, Recreation and Waterfront" as their first priority. The DRAFT Plan includes the selling of public parkland on the waterfront for high-rise condominiums; and while speaking about expanded parks, specifically avoids providing information on the amount of acreage of expanded parkland included in the DRAFT Plan, if any. The maps they provide are not-to-scale and are, therefore, an unreliable visual.

Another problem with the DRAFT Plan is that it is asking for 3.87 acres of "Open Space" be re-zoned to "Mixed-Use", again to accommodate high-rise condominiums. It is the view of many in the Community that this "Open Space" needs to be dedicated as Public Parkland due to the long-term deficiency of Local Parkland for Mimico residents, as also shown in the current Toronto Official Plan.

There is a unique opportunity for the Crown to "claim" or "purchase" approximately 3.87 acres of land currently protected as "Open Space". It needs only the will of the three levels of government to act on behalf of the best interests of the residents of Mimico and Toronto.

Residents of Toronto are united against the dominance of high-rises on Toronto's waterfront. In many countries, private interests are not permitted to occupy this valuable space and are relegated to locating their buildings 'across the street', so that the waterfront is left for the public to enjoy. The Toronto Official Plan specifically states where higher densities are to be located, and older, established, stable neighbourhoods are excluded. Furthermore, shadow studies indicate the high-rises will cast long shadows on parkland and adjacent properties in the early-to-mid afternoon, which is not acceptable.

The DRAFT Plan calls for high-rises up to 25 storeys. Anyone hearing this will know that high-rise developers will not be satisfied with 25 storeys. Buildings in excess of 65 storeys are being built at Humber Bay Shores. This, therefore, is a disingenuous DRAFT Plan which operates to serve the interests of those other than the residents of Mimico.

The DRAFT Plan can and should be modified to save the "Open Space" and reduce the building heights to mid-rises up to a maximum of 14 storeys. Mid-rises are economically viable for the Mimico apartment strip, and there are discerning builders who would be attracted to building high-quality, mid-rise buildings and low-rise townhouses facing onto several acres of Public Parkland overlooking the Mimico waterfront.

At the recent Chief Planner Urban Fabric Round Table held on February 26, 2013, Ms. Janet Rosenberg and Mr. Harold Madi pointed out the economic value of investing in the public realm, especially investing in great parks, and the resulting economic benefits for surrounding property and business owners, and city taxes.

MIMICO BEACH SECONDARY PLAN ALTERNATIVE

INTRODUCTION—Continued...

The CABE Study "Paved With Gold: The real value of good street design" was cited, along with references to High Line Park, Central Park and Times Square in NYC; as well as the Bloor Street Transformation and John Street Cultural Corridor.

Questions were raised as to "what are our values" as public servants, professionals and residents of Toronto, and how are our personal values reflected in how we regard our public spaces? And finally, Ms. Jeanhy Shim informed that our values and treatment of our public spaces affect the "quality of life" for our residents. Promising residents and purchasers of condo units that well-designed and sufficient public spaces will be provided, for example, parkland, then requires follow-through on a timely basis by developers, professionals, public officials and city staff.

The Planning Department DRAFT Plan is a product from the 1980's created by many City Staff members who planned the Humber Bay Shores. Mimico is not comparable to Humber Bay Shores, and the DRAFT Plan for Mimico needs to reflect 21st Century planning as discussed at the Urban Fabric Round Table.

The public is often told there is no money to address their concerns. The 2013 City of Toronto budget is \$9.4 billion. The population of Mimico is 26,000, about 1% of the population of Toronto. That would indicate approximately \$94 million can be apportioned to Mimico per capita. We believe that \$4 million to purchase and dedicate the 3.87 acres of waterfront "Open Space" as Public Parkland is a "good investment" for taxpayer money for Mimico and for Toronto .

The Planning Department has resisted changing their DRAFT Plan, as requested by the Mimico Community.

Therefore, we have created the **Mimico Beach Secondary Plan Alternative**.

Information on the **Mimico Beach Secondary Plan Alternative** is provided on the following pages.

MIMICO BEACH SECONDARY PLAN ALTERNATIVE

SUMMARY

The following summarizes concerns outlined in this document:

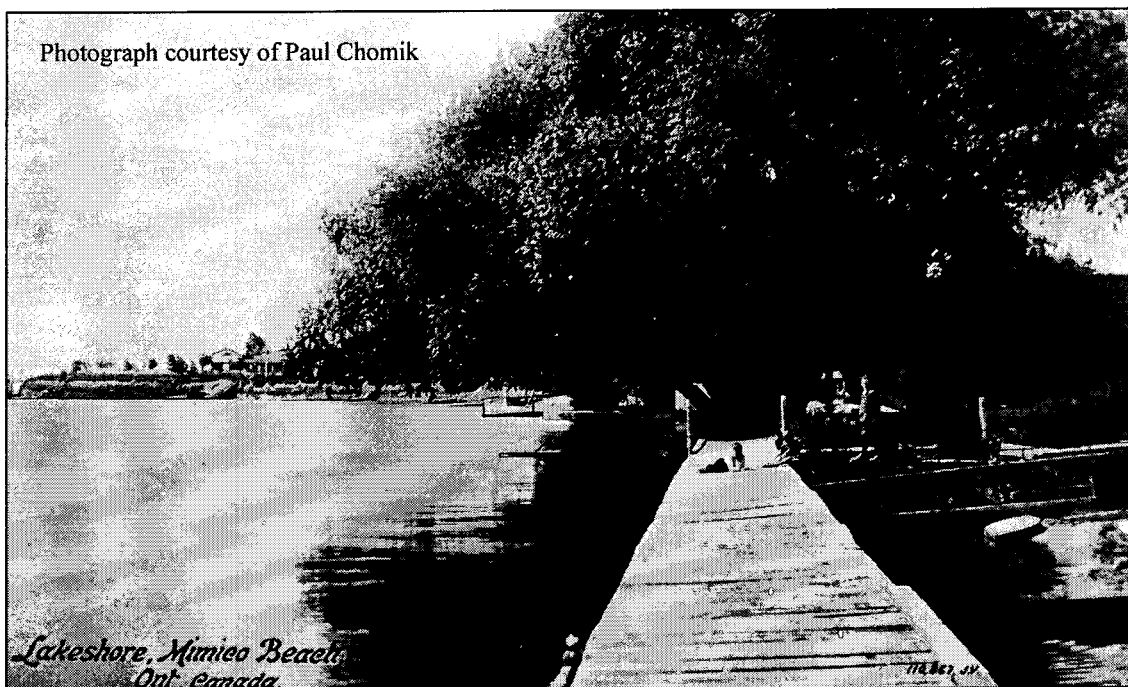
- We kindly request that City Councillors review this document and see fit to REFER the DRAFT Secondary Plan and the Mimico Beach Secondary Plan Alternative to a relevantly qualified Expert Design Panel to obtain advice and recommendations for a revised and vastly improved Secondary Plan for Mimico;
- That the City work with the Province and the Federal government to secure the land currently zoned as "Open Space" as Public Parkland;
- That City Council state its intention to designate the following properties under Part IV, Section 29 of the Ontario Heritage Act:
 - a. 2523 Lake Shore Boulevard West ("Ormscliffe")
 - b. 2527 Lake Shore Boulevard West ("Ormscliffe")
 - c. 2533-2535 Lake Shore Boulevard West (Semi-Detached Houses)
 - d. 2539A&B Lake Shore Boulevard West (Garage)
 - e. 2541-2541A Lake Shore Boulevard West (Leonard Franceschini House)
 - f. 5, 7 and 9 Douglas Boulevard (Power Plant and Row Houses)
- That a Mimico Stakeholder Advisory Committee be created and the Planning Department and other City Staff be assigned to work with the SAC on an ongoing basis;
- that a City of Toronto Policy be formulated for conducting Public Consultation with respect to Planning, setting standards and terms of reference similar to those WATERFRONToronto has created for their public consultation process.

Thank you for your consideration.

MIMICO BEACH SECONDARY PLAN ALTERNATIVE

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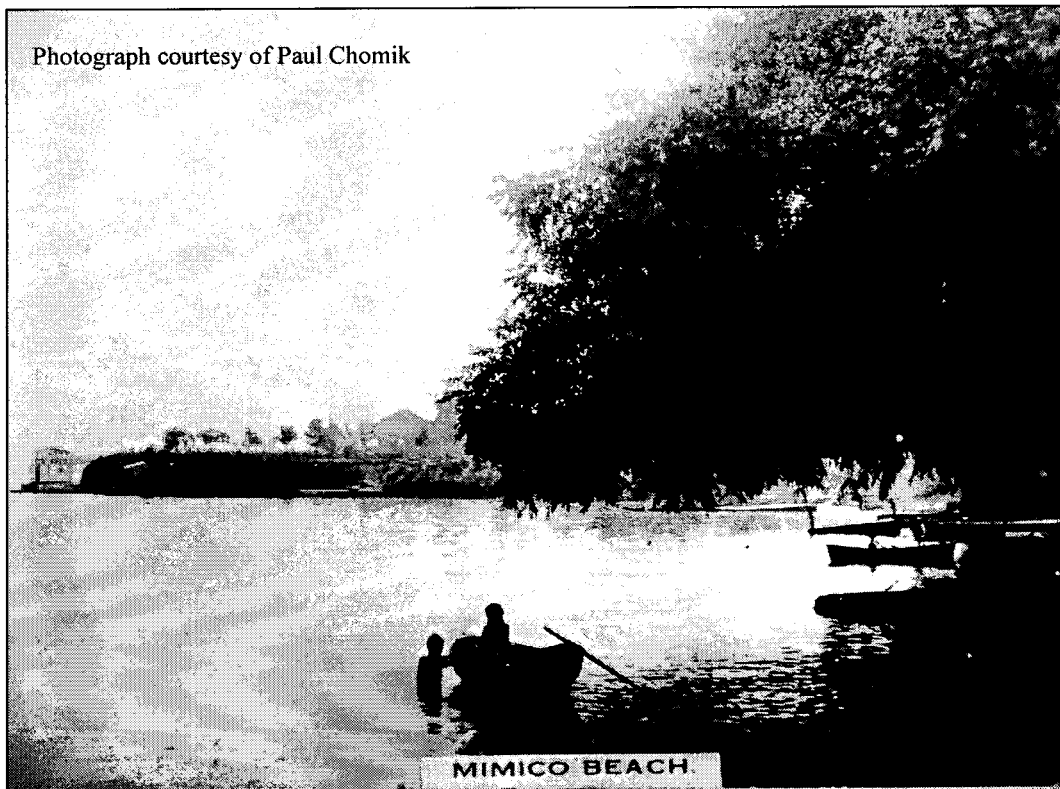
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MIMICO BEACH SECONDARY PLAN ALTERNATIVE

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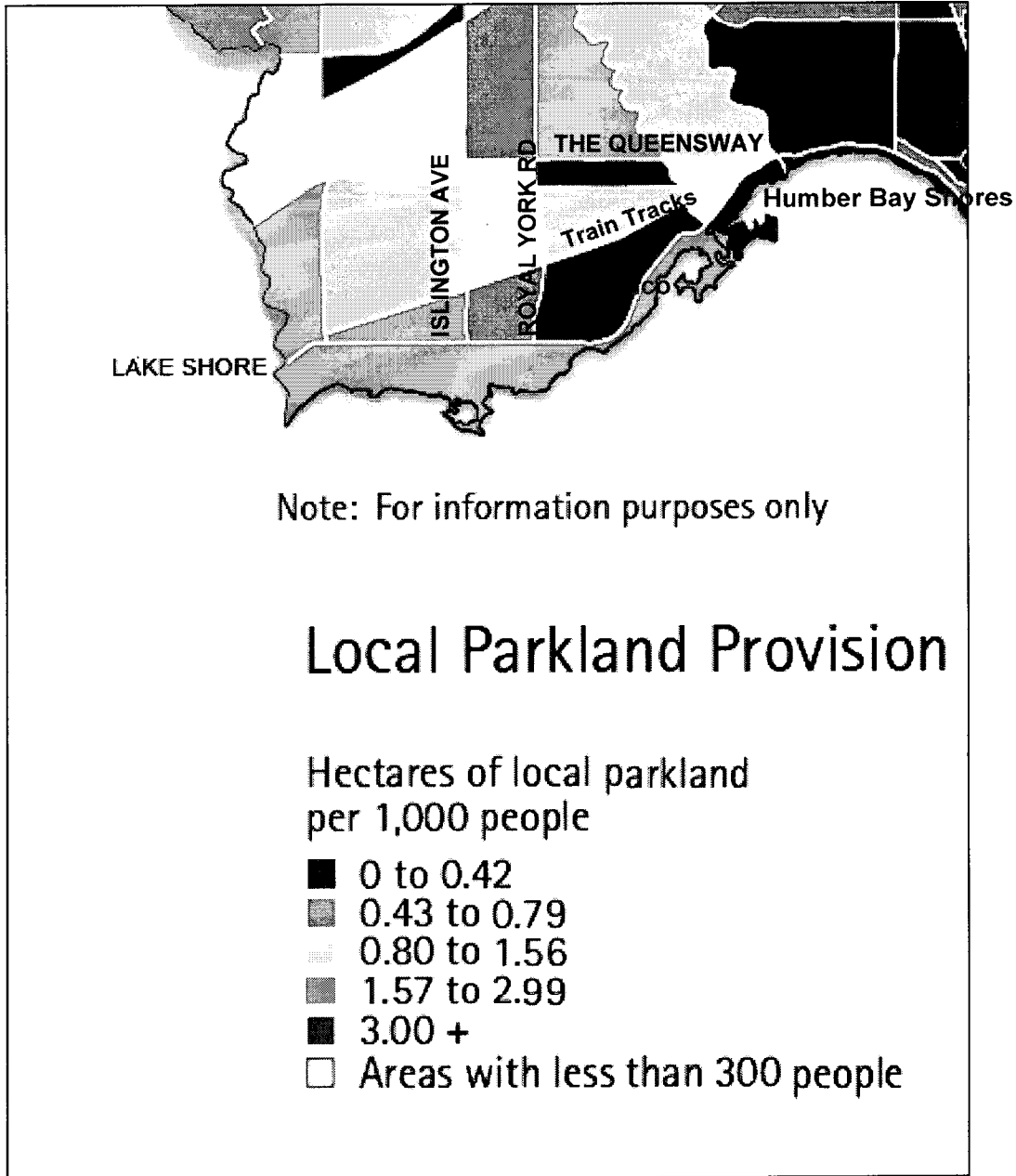
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MIMICO BEACH SECONDARY PLAN ALTERNATIVE

1. Parkland

(a) The shortage of Local Parkland for residents of Mimico has been well-documented for decades. Below is an excerpt from Map 8B from the Toronto Official Plan indicating in dark red that Mimico residents east of the train tracks and west of Lakeshore Blvd West have the least amount of parkland on the scale of 0 to 0.42 hectares of local parkland per 1,000 people.



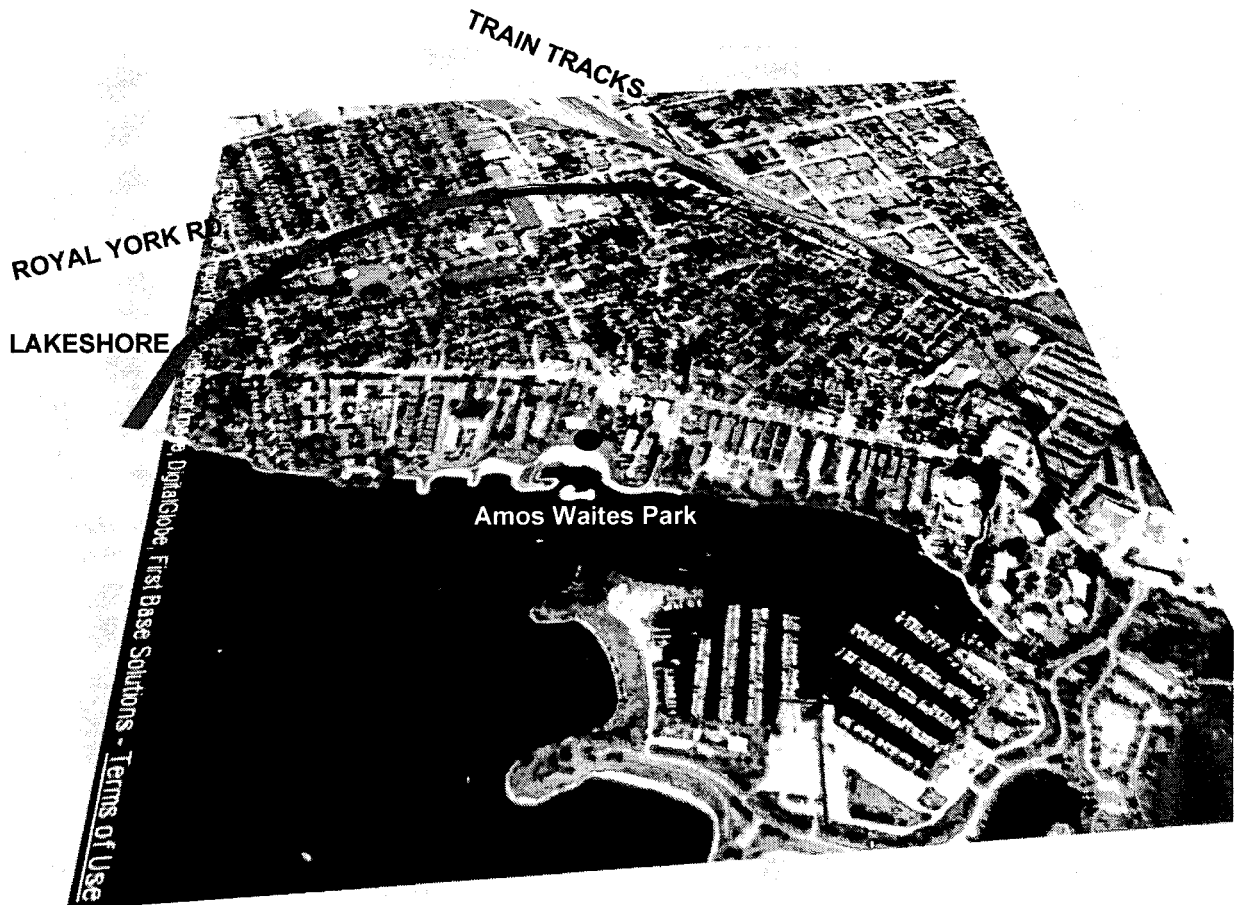
MIMICO BEACH SECONDARY PLAN ALTERNATIVE

1. Parkland

(b) Standard criteria for Local Parkland is that it is located within a 10 minute—1/2 mile walking distance for residents. The graphic below shows the 1/2 mile radius from Amos Waites Park extends from Royal York Road on the south, along the train tracks to the west, to Fleeceline Rd to the north. Humber Bay Park West is too distant to serve as Local Parkland.

(c) The 2011 Census shows the population in this specific area (Census Tracts 200, 201, 202) at 12,922 residents. The new Mimico Linear Trail adds approximately 0.76 hectares of Local Parkland, or 0.06 hectares per 1,000 residents. This addition has minimal positive impact on the existing deficiency of Local Parkland. Furthermore, the City Secondary Plan includes the selling approximately 0.16 hectares of Superior Park, leaving a net of 0.60 hectares, or net of 0.05 hectares per 1,000 residents.

(d) The ideal of 2.5 acres per 1,000 people would amount to 13.1 hectares of Local Parkland. From the Toronto Official Plan Map 8B, it would appear that less than 3 hectares of Local Parkland per 1,000 residents currently exists on the Mimico waterfront.

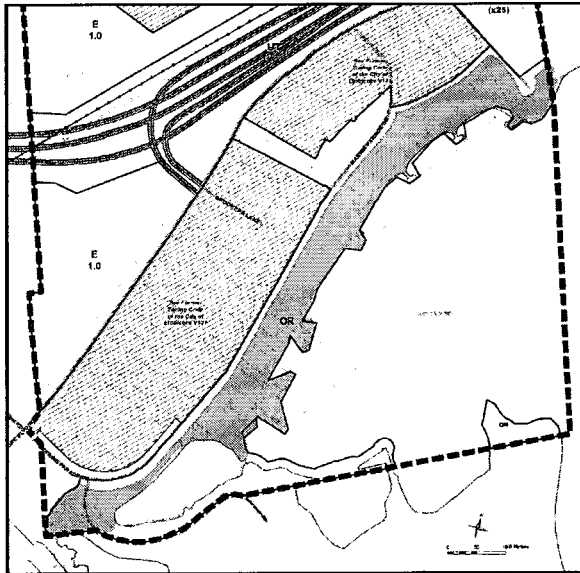


MIMICO BEACH SECONDARY PLAN ALTERNATIVE

1. Parkland

(e) In the Spring of 2013, the Humber Bay Shores Condominium Association (HBSCA) Board advised elected representatives that it opposes any further development of condominiums in the Humber Bay Shores area, which borders Mimico at the Humber River, until such time when commensurate planning improvements are made in infrastructure and services to support the expansive development, including diminished condominium site green space.

(f) The Humber Bay Shores community now has more than 14,000 residents, and it is anticipated that when all the new condo construction is completed in the next few years, there will be approximately 30,000 residents.

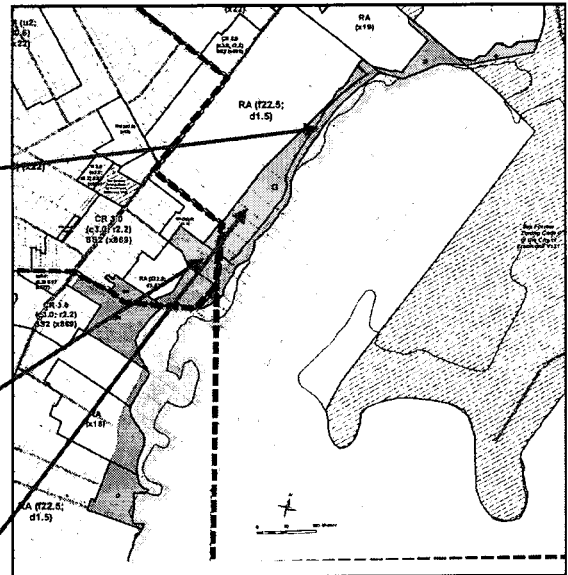


HUMBER BAY SHORES waterfront parkland amenity is more than 50 meters wide to serve the 14,000 people currently living there, with a near-term projected increase in population to 30,000 as new condos are occupied.

(City of Toronto Zoning Maps—to scale)

MIMICO LINEAR PARK is less than 20 meters wide. Within weeks of opening in October 2012, there were reports of near accidents as cyclists, pedestrians and dogs on leashes all try to make room for each other along a trail far too narrow for use by the current area population.

The existing parkland serves more than 12,000 people. The proposed Secondary Plan provides for mid-rises and high-rises that will increase the number of units by at least 6,000 along this strip of Lake Shore Blvd West. Additional park land will be required at the rate of 1 acre for every 300 units—a minimum of 20 acres. There is available **OPEN SPACE** of 3+ acres. Instead, the proposed Secondary Plan shows the **sale** of **SUPERIOR PARK** to developers and re-zoning of the Open Space for condo development.



MIMICO BEACH SECONDARY PLAN ALTERNATIVE

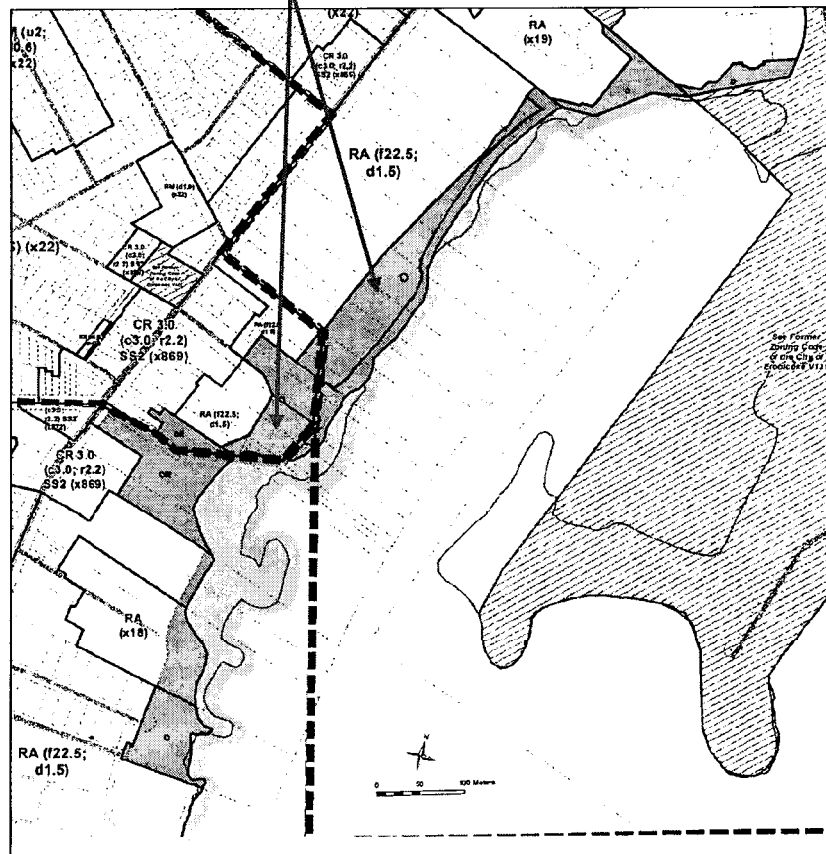
2. Patented Waterlots (filled) - Currently Zoned as "Open Space"

(FOR A MORE DETAILED ANALYSIS OF THE WATERLOTS, SEE APPENDIX A)

(a) To provide background information, the land currently zoned as "Open Space" consists of illegal lake-fill deposited in Crown Patented Waterlots in the 1950's and 1960's. The illegal dumping of lake-fill by property owners continued in open defiance of injunctions and fines imposed by Councillors of the former Town of Mimico. The objective of the Town was to protect the Mimico waterfront from over-building after the unpopular construction in the 1950's and 1960's of numerous rental apartment buildings along Lake Shore Blvd West backing onto Lake Ontario. Eventually, in 1962 a Zoning By-Law was created which prohibited filling in the Waterlots without special permits. The By-Law also re-zoned the lake-filled area as "Open Space" and prohibited construction of any buildings on the lake-filled land, other than for recreational purposes. These efforts collectively stopped the illegal dumping of lake-fill.

(b) The "Open Space" on the lake-filled Waterlots fronting the lake is owned by the various owners of the rental apartment buildings located on Lake Shore Blvd West. The "Open Space" totals approximately 3 to 4 acres. Little or no effort to beautify the "Open Space" has occurred to date, and a portion is being used as car parks, which is not a 'recreational' use.

"Open Space" for Recreational Uses Only



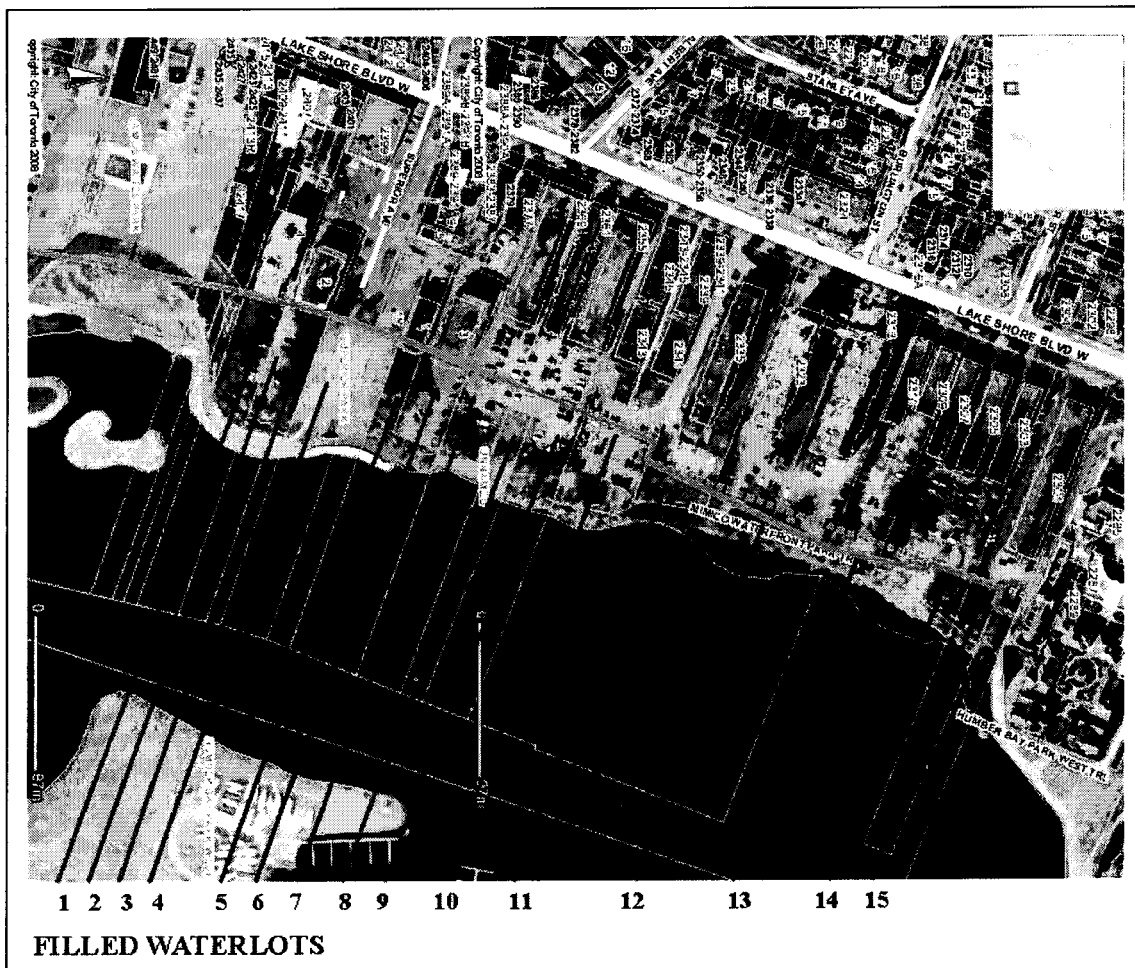
MIMICO BEACH SECONDARY PLAN ALTERNATIVE

2. Patented Waterlots (filled) - Currently Zoned as "Open Space"

(c) Original Crown Patents

A review of copies of the original Crown Patents ("grants") for the waterlots obtained from the Crown Land Registrar reveal the following clause for Crown Patent 48907 issued to Thomas John Jermyn:

Queen Victoria: "This Grant is made and accepted by the Grantee upon the condition and understanding that should any claim be made or preferred to or in respect of the above premises or any part thereof by or on behalf of the Government of Canada, its grantee or lessee, his or her successors in title involving the validity of this Grant or the title to said premises or otherwise the Grantee hereof his or their successors in title or his or their assigns shall not be entitled to claim compensation or indemnity from Her Majesty as representing the Province, or from the Government of this Province by reason thereof or of this grant."



MIMICO BEACH SECONDARY PLAN ALTERNATIVE

2. Patented Waterlots (filled) - Currently Zoned as "Open Space"

All the original grants for the waterlots contain the following condition, where the Crown (and by extension, "persons" [the public]) reserves the right of free use, passage and enjoyment of the waterlots:

King George the Fifth: "Saving, excepting and reserving nevertheless, unto Us, Our Heirs and Successors, all ores, mines or minerals which are or shall hereafter be found on or under said land, and the free use, passage and enjoyment of, in, over and upon all navigable waters which shall or may hereafter be found on or under, or be flowing through or upon any part of the said Parcel or Tract and land covered with water, hereby granted as aforesaid, and reserving also the right of access to the shores of all rivers streams and lakes for all vessels, boats and persons."

(d) Crown Lands Act

It is clear from the above that the Crown grants for the waterlots neither explicitly state, nor in any way imply, that the waterlots are to be filled to create new land. The purpose for granting the Patents is to allow owners/grantees to erect docks to facilitate boating, swimming and other lake front activities for the grantee, reserving access through the waterlots and to the shore by the Crown and other "persons", the public.

A provision of the Crown Lands Act permits the Minister of Natural Resources to declare a grant null and void if the land is being used in violation of a condition of the grant.

Powers of Minister respecting conditional conveyances

21 (1) Where a grant, deed or other conveyance affecting Crown lands issued pursuant to this Act or any previous Act contains a condition that the land is to be used in a particular manner, the Minister may

(a) declare the grant, deed or other conveyance null and void if the land is being used in violation of the condition;

(2) Where the Minister makes a declaration pursuant to clause (a) of subsection (1), the land reverts to the Crown.

(e) Beds of the Navigable Waters Act

The terms of the waterlot Crown grants also do not convey the lake bed. Therefore, it can also be determined that the waterlots which are situated on the lake bed should revert to the Crown based on policy documents issued by the Ministry of Natural Resources including the following:

OWNERSHIP DETERMINATION - BEDS OF NAVIGABLE WATERS

Section 1 of the Beds of Navigable Waters Act states:

Where land that borders on a navigable body of water or stream, or on which the whole or apart of a navigable body of water or stream flows, has been heretofore or is hereafter granted by the Crown, it shall be deemed, in the absence of an express grant of it, that the bed of such body of water was not intended to pass and did not pass to the grantee.

MIMICO BEACH SECONDARY PLAN ALTERNATIVE

2. Patented Waterlots (filled) - Currently Zoned as "Open Space"

The term "express grant" mentioned in the Beds of Navigable Waters Act refers to Crown land grants and includes statements such as "*Lot 16, Concession X, together with the bed of Jones River*".

General terminology, including the phrase pre-printed on many old patents such as "*...together with the woods and waters therein...*" does not constitute an express grant.

(vii) where a proprietary interest asserted depends on a Crown grant, navigability is initially to be determined as at the date of the Crown grants.

Therefore, the Crown retains ownership of the lake bed under the waterlots, now covered with land fill, since navigability existed at the date of the Crown grants for the waterlots.

(f) Toronto and Region Conservation Authority (TRCA)

As agent for the three levels of government, the TRCA over the past several years has elected to purchase portions of the filled waterlots along the shoreline to create the Mimico Linear Park. The mandate of TRCA is the waterfront in particular, and not public parks in general. No information has been collected for this report to determine how much money has been spent to date to purchase portions of the waterlots.

The purchase of the shoreline alone is too limited in size and width to function appropriately for visitors from the GTA and the directly affected population in Mimico, currently at 13,000 plus another 5,000 or more living at Humber Bay Shores and in the new condominiums on Park Lawn Road. The total population for Mimico according to the 2011 census is at 26,000 and growing. Shortly after the unofficial opening of the Mimico Linear Park in October 2012, there were near accidents and collisions between pedestrians, cyclists and dog walkers reported, due to the restricted width of the shoreline. The congestion will be greatly increased during the summer months and due to future population increases for the area.

The objective of this report is to request the City to claim for its residents, or to purchase, the remaining portions of the waterlots to provide a sufficiently sized waterfront park, which we have named "Mimico Beach Park" based on the historical geographical name, and long-term popular name used by residents, of "Mimico Beach" for the Mimico waterfront.

(g) Acreage and Market Value of Waterlots Identified as Future Parkland

It may be deemed practical to purchase the remaining waterlots currently zoned as "Open Space". MPAC provides property value assessments for municipalities. We have been advised by MPAC that the current market value for properties zoned "Open Space", and specifically the waterlots located on the Mimico waterfront, is \$850,000 to \$1 million per acre.

A schedule follows providing an estimate of the acreage and cost to purchase the remaining portions of the waterlots zoned as "Open Space" - between \$3.3 to \$3.9 million for approximately 3.87 acres of waterfront parkland. This is a very small price to pay for an irreplaceable public asset.

MIMICO BEACH SECONDARY PLAN ALTERNATIVE

2. Patented Waterlots (filled) - Currently Zoned as "Open Space"

MAP	Crown Patent	Owner Address	Survey	Part	Sq. M	Acres	Market Value/Acre - MPAC	
							\$850,000 to	\$1 Million
1	{ Crown { Thomas Nodwell McGill	4 Superior Ave	TRCA 2006 - 66R- 22820	Part 1 - Fill	765	0.19	\$160,679	\$189,034
		4 Superior Ave	TRCA 2006 - 66R- 22793	Part 9 - Fill	936	0.23	\$196,595	\$231,288
2	{ Edward George Kinzinger { Edward George Kinzinger	2 Superior Ave	TRCA 2006 - 66R- 22793	Part 10 - Fill	643	0.16	\$135,054	\$158,887
		2 Superior Ave	TRCA 2006 - 66R- 22793	Part 7 - Fill	671	0.17	\$140,935	\$165,806
3	Borough of Etobicoke	2 Superior Ave	TRCA 2006 - 66R- 22793	Part 1 - Fill	700	0.17	\$147,026	\$172,972
					3,715	0.92	\$780,289	\$917,987
4	Borough of Etobicoke	SUPERIOR PARK			-	-	-	-
5	(7A) Charley Jones	1 Superior Ave	TRCA 2005 - 66R- 21596	Lot 7 - Fill	856	0.21	\$179,809	\$211,540
6	{ William Dreisinger { Rev. Alfred William Roffe	3 Superior Ave	TRCA 2005 - 66R- 21596	Part 3 } - Fill	1706	0.42	\$358,324	\$421,557
		3 Superior Ave	TRCA 2005 - 66R- 21596	Part 3 } - Fill	-	-	-	-
					2,562	0.63	\$538,132	\$633,097
7	William J. Bowman	2369 LSBW	TRCA 2010 - 66R- 24700	Part 12 - Fill	1717	0.42	\$360,634	\$424,275
8	Thomas Norman Sampson	2361 LSBW	TRCA 2010 - 66R- 24700	Part 10 - Fill	869	0.21	\$182,522	\$214,732
9	John Charles Hor- wood	2355 LSBW	TRCA 2010 - 66R- 24700	Part 8 - Fill	1760	0.43	\$369,666	\$434,901
					4,346	1.07	\$912,822	\$1,073,908
10	Henry McGee	2339-2343 LSBW	TRCA 2000 - 66R- 18686	Part 2 - Fill	2449	0.61	\$514,297	\$605,056
11	Thomas John Jer- myn	2335 LSBW	TRCA 2010 - 66R- 24685	Fill	493	0.12	\$103,548	\$121,822
12	Thomas John Jer- myn	2313-2323 LSBW	TRCA 2005 - 66R- 22062	Fill	380	0.09	\$79,875	\$93,971
13	No Waterlots	2309-11LSBW	TRCA 2010 - 66R- 24704		-	-	-	-
14	Isaac Newton Devins	2303-05-07 LSBW	TRCA 2010 - 66R- 24701	Fill	964	0.24	\$202,375	\$238,088
15	Isaac Newton Devins	2301 LSBW	TRCA 2005 - 66R- 22030	Fill	751	0.19	\$157,736	\$185,572
TOTAL					15,659	3.87	\$3,289,075	\$3,869,500

MIMICO BEACH SECONDARY PLAN ALTERNATIVE

3. The “Revitalization” of Mimico - The Economic Value of Investing in Parks

- (a) At the recent **Toronto Chief Planner Urban Fabric Round Table** held on February 26, 2013, Ms. Janet Rosenberg and Mr. Harold Madi pointed out the economic value of investing in the public realm, especially investing in great parks, and the resulting economic benefits for surrounding property and business owners, and city taxes. The CABA Study "Paved With Gold: The real value of good street design" was cited, along with references to High Line Park, Central Park and Times Square in NYC; as well as the Bloor Street Transformation and John Street Cultural Corridor.
- (b) In planning the East and Central Toronto waterfronts, **WATERFRONToronto** has placed the emphasis on “Revitalization rather than Redevelopment”:
- Start with the public space — get the public space right. That then attracts new development.
 - Invest a significant portion of our government funding to build parks and public spaces in the first phase of the redevelopment process.
 - Since 2004, Waterfront Toronto has opened 17 new or improved parks or public spaces. EXAMPLES: The West Don Lands will include 10 hectares of parks and public spaces and the new Don River Park consists of 16 acres.
 - Parks and public spaces invite and draw people into new areas, plus they demonstrate that change and development is happening.
 - A major goal for waterfront revitalization is to give the waterfront back to the people by increasing access to the lakefront and ensuring that people can enjoy their waterfront.
 - Lead revitalization efforts with the development of great parks and public spaces.
 - Parks and public spaces are critical to the development of new neighbourhoods: (a) They help create a sense of identity and place within neighbourhoods; (b) Dynamic public spaces are the measure of great cities.
 - These efforts are paying off. WATERFRONToronto projects have already won numerous awards.



MIMICO BEACH SECONDARY PLAN ALTERNATIVE

4. City of Toronto Official Plan

Mimico is the oldest of the former Lakeshore Municipalities, consisting of low-rise Neighbourhoods and low-mid-rise Apartment Neighbourhoods, and has been identified as a Character Area in Section 2.3—Heritage and Retail Analysis, *Avenues & Mid-Rise Buildings Study* (May 2010, for the City of Toronto). The character of Mimico is unique, with its legacy of intact neighbourhoods where many of the original owners still reside. The May 2012 Cultural Heritage Resource Assessment identified 45 properties as Built Heritage Resources (BHRs), Cultural Heritage Landscapes (CHLs) and potential Heritage Conservation Districts (PHCDs) within the Secondary Plan area identified for revitalization, and in neighbourhoods adjacent to it that should be considered for listing on the City's Heritage Inventory.

Under Section 2.2—Structuring Growth in the City—Policy 2: "Growth will be directed to the *Centres, Avenues, Employment Districts* and the *Downtown* as shown on Map 2 in order to: i) protect neighbourhoods, green spaces and natural heritage features and functions from the effects of nearby development.

The Secondary Plan created by City Planning Department does not comply with the Toronto Official Plan:

- (a) since it drastically eliminates "Open Space" and re-zones it for high-rise development, when the Official Plan specifically notes a shortage of Parkland for the area; and
- (b) the growth and intensification areas are clearly identified in the Official Plan, and do not include stable neighbourhoods such as Mimico or its lakefront. Growth and intensification can occur on the *Avenues* only, which in the case of Mimico applies to Lakeshore Blvd West only, which is designated in the Official Plan as an *Avenue*. No other residential streets in Mimico or the lakefront are included as places for growth, major change and intensification.

Redevelop the Mimico waterfront (not revitalize)

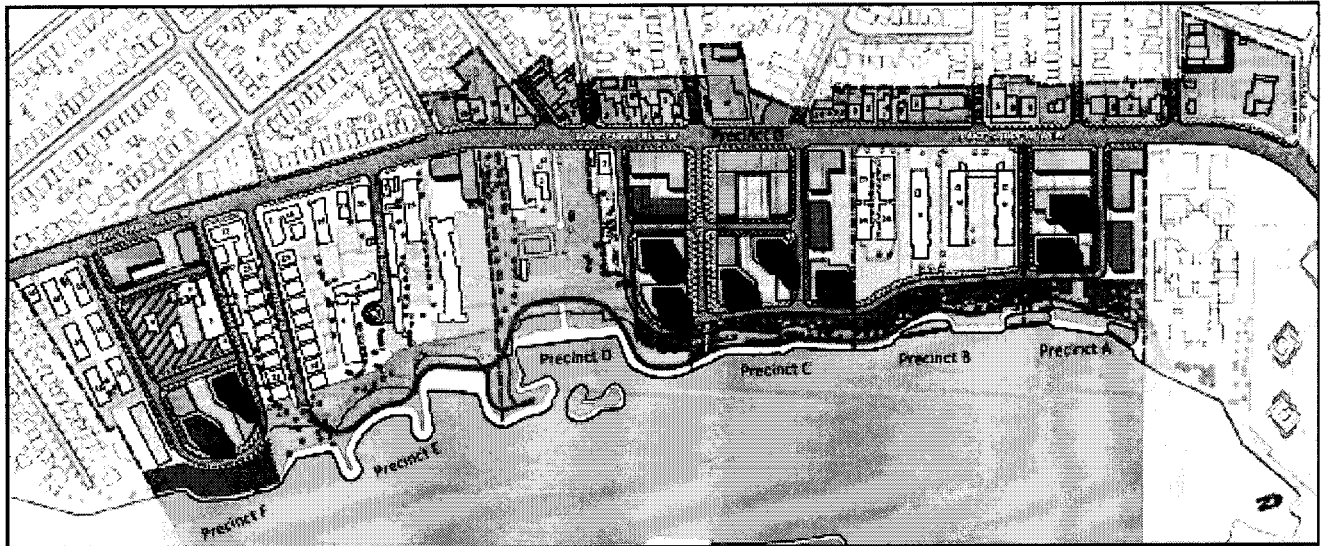
Into this? No, thank you!



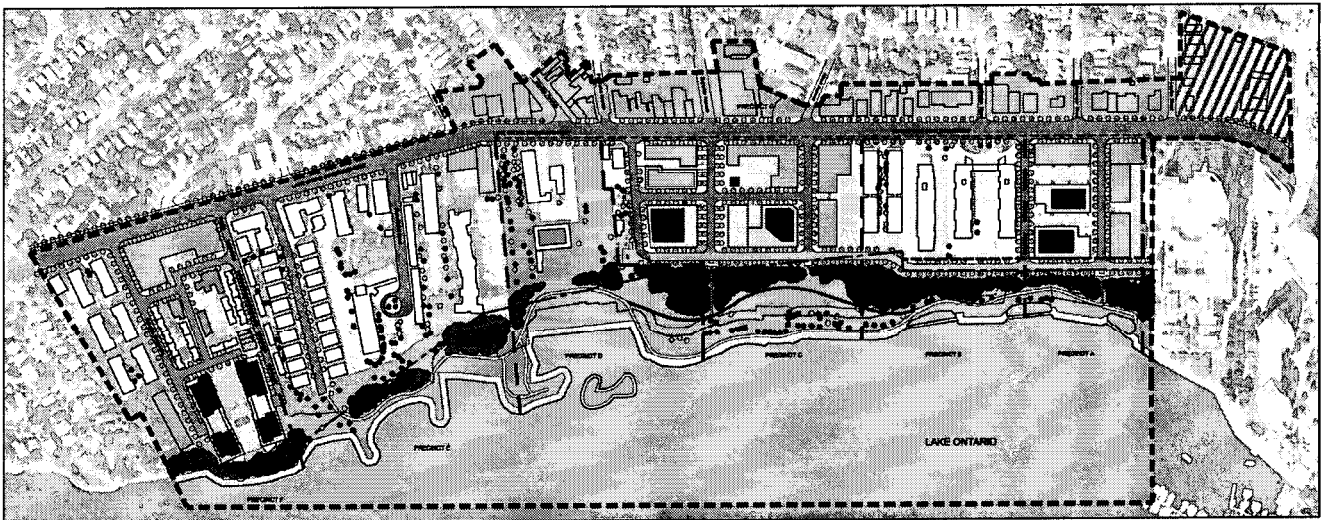
MIMICO BEACH SECONDARY PLAN ALTERNATIVE

5. Mimico Beach Secondary Plan Alternative

Planning Department Draft Secondary Plan—Calls for re-zoning the “Open Space” to mixed-use to permit high rises up to 25 storeys. Both of these proposals are contrary to the Toronto Official Plan and are not in the public interest. The highest and best use for the “Open Space” is as Public Parkland.

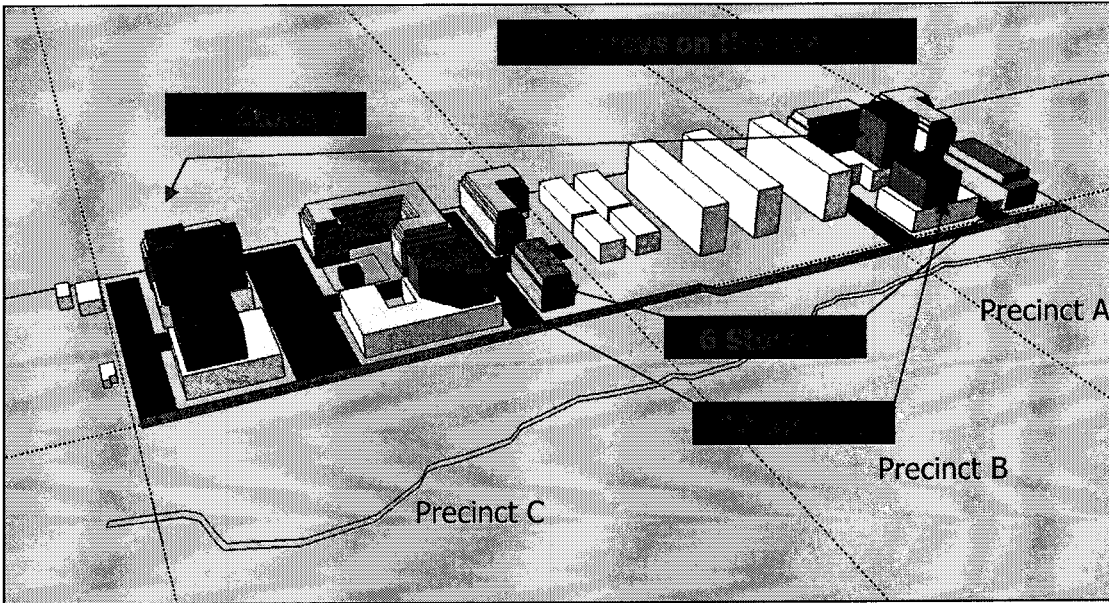
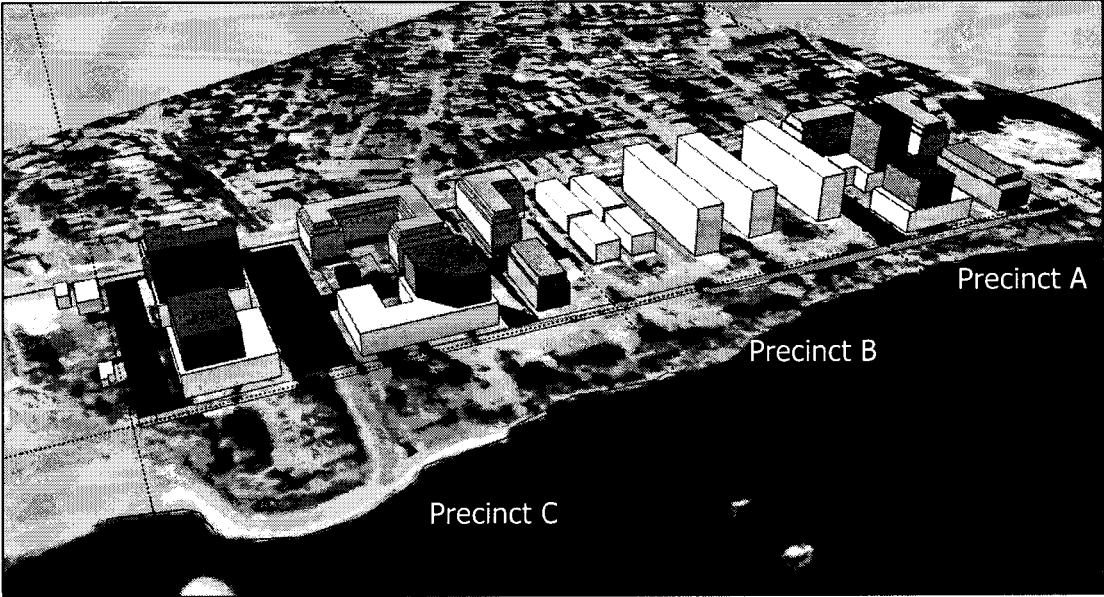


The Mimico Beach Secondary Plan Alternative—The Mimico Beach Secondary Plan is similar to the City's draft plan. The principal differences are: (a) the "Open Space" is preserved providing an additional 3.87 acres of Public Parkland, and (b) the buildings are all mid-rise, up to 14 storeys and a maximum height of 43.5 meters.



MIMICO BEACH SECONDARY PLAN ALTERNATIVE

6. Precincts A and C (B existing buildings)



Precincts A and C of the Mimico Beach Secondary Plan include 8 storey buildings on the avenue; two 14 storey buildings, two 10 storey buildings, and two six storey buildings behind the avenue

"Absent evidence of public interest and pressure, little is likely to change." (Myer Siemiatycki, Toronto-December 2012)

MIMICO BEACH SECONDARY PLAN ALTERNATIVE

6. Precincts A and C (B existing buildings)

Statistics of interest for the Mimico Beach Secondary Plan are:

The tallest existing apartment building on the Mimico apartment strip, located at 1 Summerhill Road, is a mid-rise building at 14 storeys and height of 44.46 meters.

The current FSI density for the apartment strip is 1.5.

The maximum height for mid-rise buildings in the Mimico Beach Secondary Plan is 43.5 meters, with maximum FSI of 3.0. So, the plan contemplates a building density of double the current density for the apartment strip.

Precinct A—includes

Replacement of 266 existing rental apartment sized @ 650 sf

Construction of 317 new condo units with average size:

2-Bedroom units @ 850 sf and selling price of \$486,200

1-Bedroom units @ 650 sf and selling price of \$371,800

Plus 467 underground parking spaces (ratio 0.8/unit) @ \$35,000 per parking space

Plus 28,181 sf of ground floor retail space on the avenue selling at \$250 psf

Precinct C—includes

Replacement of 432 existing rental apartment sized @ 650 sf

Construction of 571 new condo units with average size:

2-Bedroom units @ 850 sf and selling price of \$486,200

1-Bedroom units @ 650 sf and selling price of \$371,800

Plus 802 underground parking spaces (ratio 0.8/unit) @ \$35,000 per parking space

Plus 53,068 sf of ground floor retail space on the avenue selling at \$250 psf

Estimated construction costs and revenues are shown on the following page. These have been prepared based on the sample Mid-Rise Economics, Proforma Analysis prepared by N. Barry Lyon Consultants Limited for the City of Toronto "Avenues and Mid-Rise Buildings Study". Construction costs and selling prices have been updated to reflect current market conditions as far as possible, and include the current MVA for the various properties and 15% profit for developers.

NOTE:

low-rise = up to 4 storey

mid-rise = up to 14 storeys

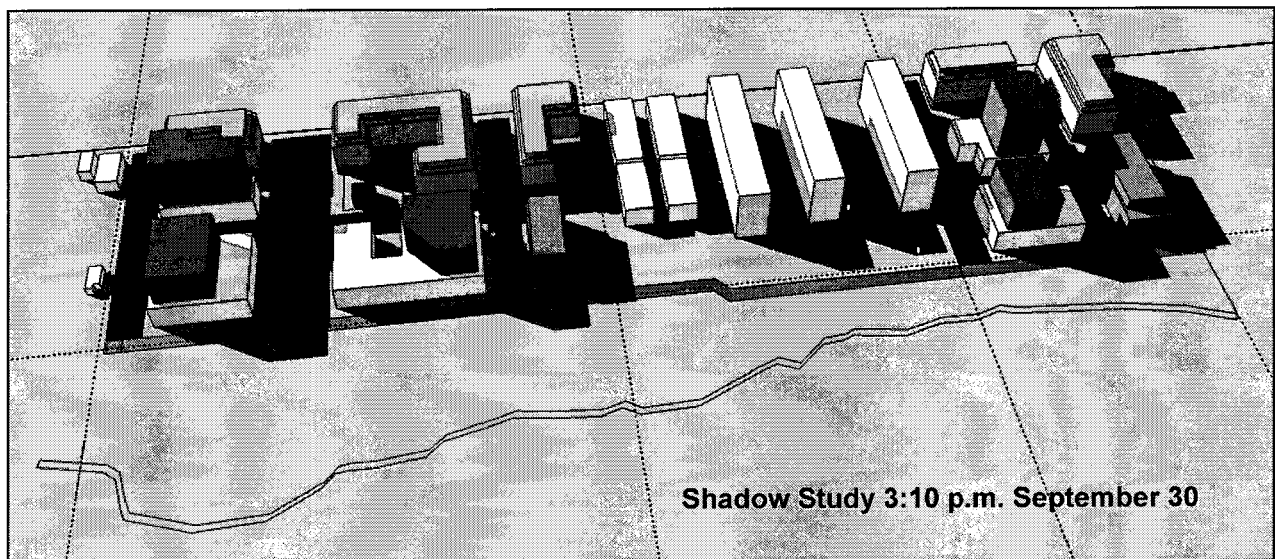
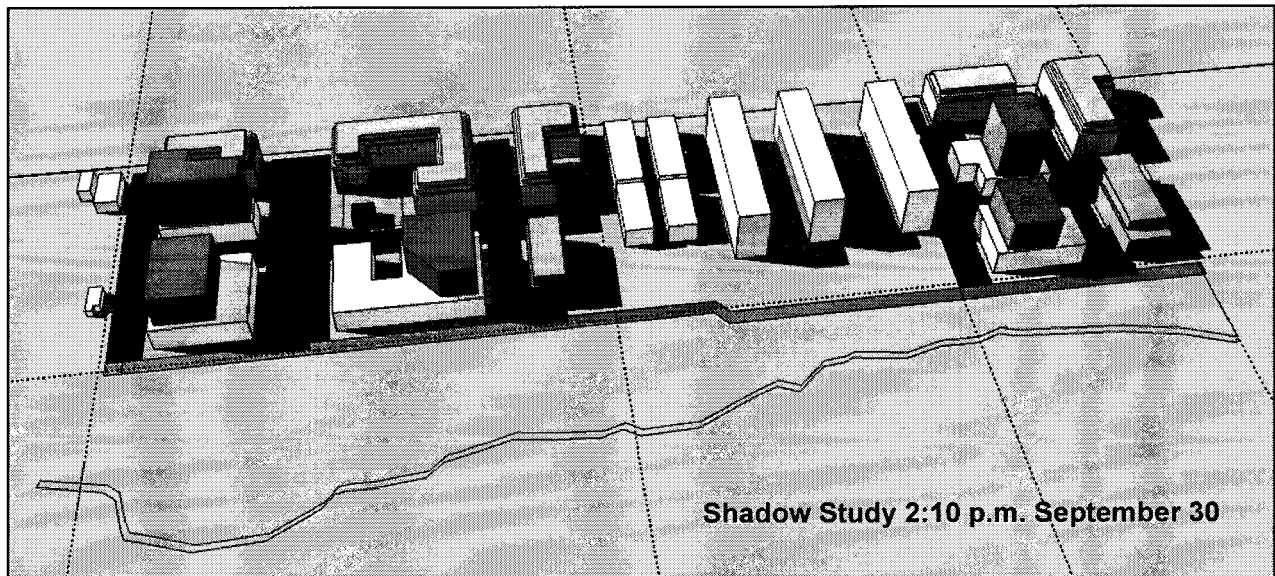
high-rise = 15+ storeys

MIMICO BEACH SECONDARY PLAN ALTERNATIVE

	PRECINCT A	PRECINCT C
DEVELOPMENT COSTS AND PROFITS	TOTAL	TOTAL
1 SM = 10,764,262,65 SF	49,339 SM	85,803 SM
Residential Unit & Area Statistics		
Number of Rental Units	266	432
Average Net Unit Size (SF)	650	650
Gross to Net Efficiency (GNE, %)	0.88	0.88
Average Gross Unit Size (SF)	739	739
Total Residential Saleable Area (SF)	196,477	319,091
Number of Condo Units	317	571
Average Net Unit Size (SF)	850	850
Gross to Net Efficiency (GNE, %)	0.88	0.88
Average Gross Unit Size (SF)	966	966
Total Residential Saleable Area (SF)	306,440	551,447
Gross Residential Area (GRA, SF)	502,917	870,538
Retail Area (SF)	28,181	53,068
Resident Parking Stalls Constructed (0.8 per unit)	467	802
Estimated Area per Stall (SF)	400	400
Required Total Parking Area - Below Grade (SF)	186,642	320,931
Revenues		
Residential Index Price (PSF)	\$ 572	\$ 572
End Price (per residential unit)	\$ 486,200	\$ 486,200
Revenues from Sale of Retail Area (PSF)	\$ 250	\$ 250
Parking Revenue (per stall)	\$ 35,000	\$ 35,000
Costs		
Hard (Construction) Costs		
Above Grade GRA Construction Cost (PSF)	\$ 143	\$ 143
Above Grade Retail Area Construction Cost (PSF)	\$ 150	\$ 150
Below Grade Parking Cost (PSF)	\$ 85	\$ 85
Soft (Development) Costs		
Contingencies, % of total development costs	30%	30%
Developer/Builder Profit		
Profit Margin (% of total revenues)	15%	15%
PROJECTED REVENUES		
Revenues from Sale of Units	\$ 154,249,559	\$ 277,576,515
Revenues from Sale of Retail Area	\$ 7,045,210	\$ 13,266,954
Revenues from Sale of Parking	\$ 8,883,150	\$ 15,985,484
Total Revenues	\$ 170,177,919	\$ 306,828,953
PROJECTED COSTS		
Above & Below Grade Hard Construction	\$ 92,008,819	\$ 159,726,293
Soft (Development) Costs	\$ 27,602,646	\$ 47,917,888
Total Costs	\$ 119,611,465	\$ 207,644,181
Total Profit	\$ 50,566,454	\$ 99,184,772
Less Developer Profit (15% of total revenues)	\$ 25,526,688	\$ 46,024,343
NET PROFIT	\$ 25,039,766	\$ 53,160,429
Current MVA for existing properties	\$ 24,628,750	\$ 51,043,250
NET	\$ 411,016	\$ 2,117,179

MIMICO BEACH SECONDARY PLAN ALTERNATIVE

7. Shadow Studies—Mimico Beach Secondary Plan Alternative

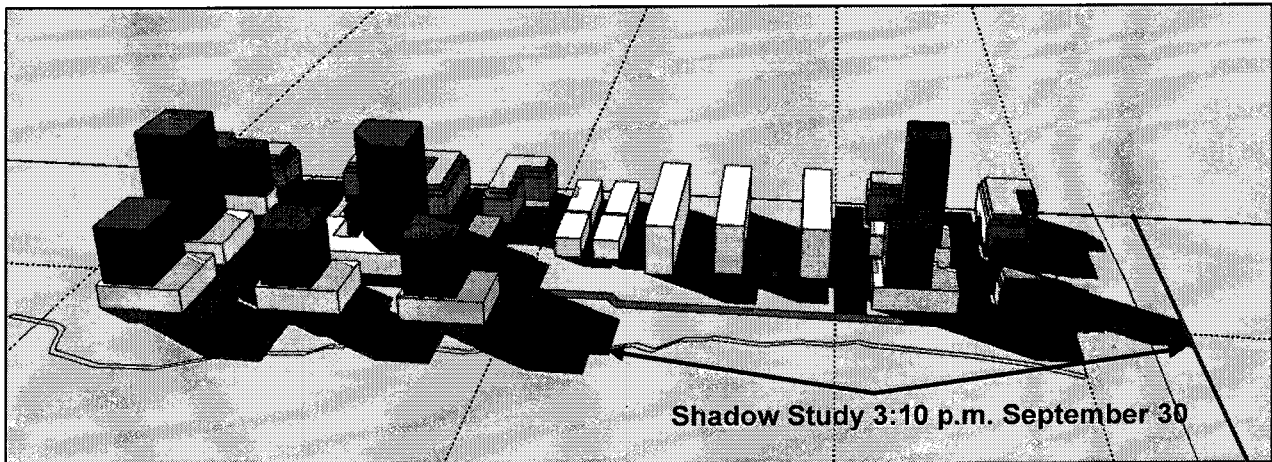
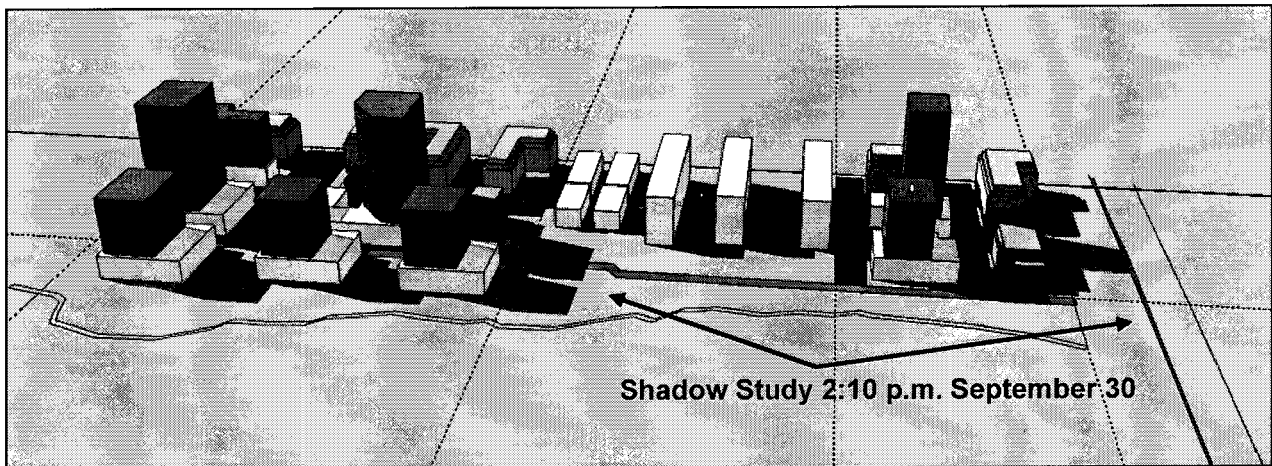


Shadow studies above for the **Mimico Beach Secondary Plan Alternative**, show shadows from the 10 storey buildings closest to the "Open Space" have limited impact on the Parkland at **2:10 p.m. on September 30**, with some increased shadowing at **3:10 p.m.**

This would infer that locating 25 storeys and 15 storeys closer to the Mimico Linear Park on the waterfront, as recommended by **Planning Department Draft Secondary Plan**, will result in significant undesirable shadowing, both on the waterfront Parkland and on the townhouses at Grand Harbour—the shadowing results for **2:10 and 3:10 p.m. on September 30** are shown on the following page.

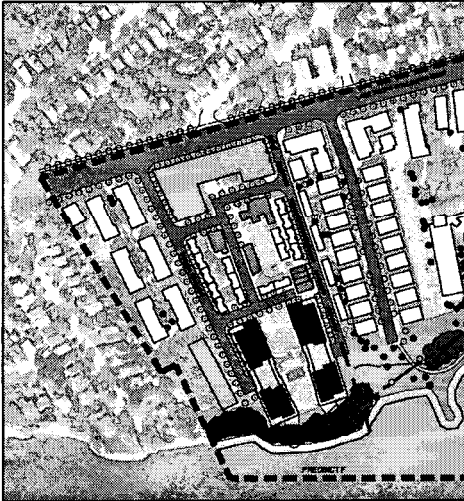
MIMICO BEACH SECONDARY PLAN ALTERNATIVE

7. Shadow Studies—Planning Department Draft Secondary Plan

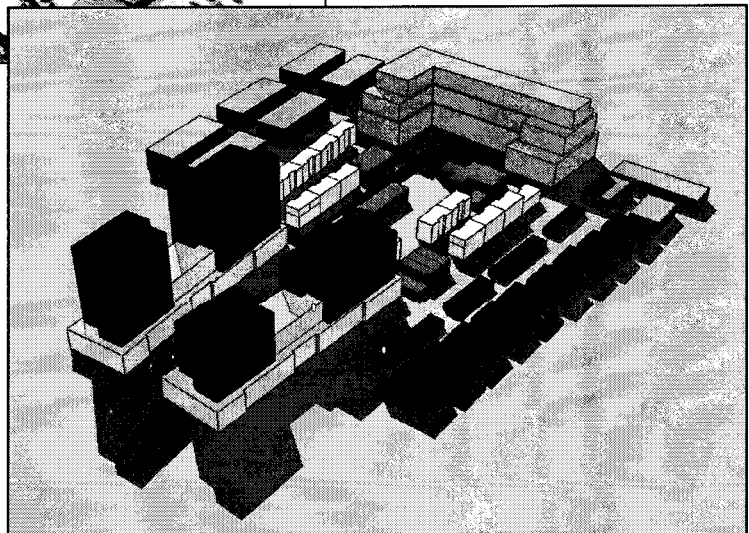
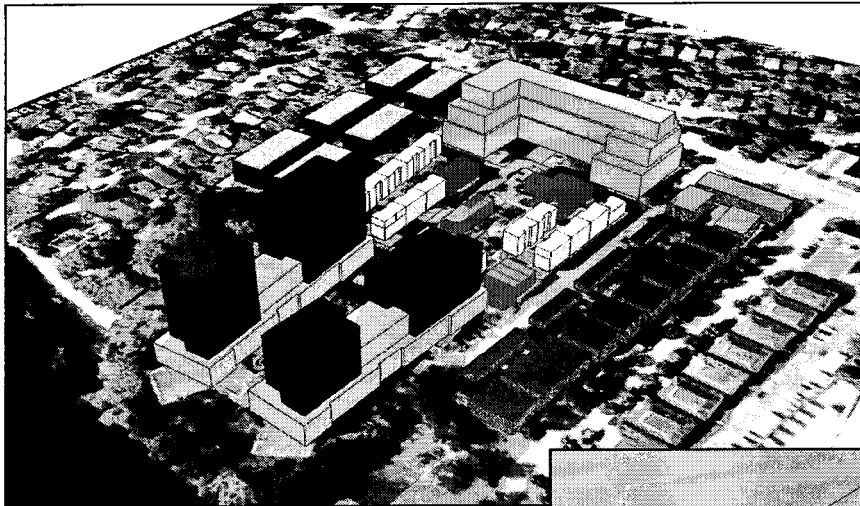


MIMICO BEACH SECONDARY PLAN ALTERNATIVE

8. Precinct F—Amedeo Garden Court



With respect to the Amedeo Garden Court property identified as Precinct F, by simply raising the selling price per square foot from \$500 to \$550 for waterfront condominiums, it is possible to create an entirely mid-rise condominium complex of 407 units at 850 square feet and yield an estimated return on investment of more than 15% for the property owners, plus cover the costs of building an entirely new rental building for 363 currently existing rental units. Therefore, the Precinct is included as mid-rise only, with no high-rise buildings included for the apartment strip in the Mimico Beach Secondary Plan. There is also the opportunity to create 48,000+ square feet of stacked townhouses @ 1,000 square feet among the heritage buildings up to 3 or 4 storeys.



Shadow Study 3:10 p.m. on
September 30

MIMICO BEACH SECONDARY PLAN ALTERNATIVE

9. Precinct G—the west side of Lakeshore Blvd West

Precinct G

Polish Alliance Hall



The average depth of the commercial strip properties on the east side of Lake Shore Blvd West is 34.5 meters, and the average building height is 2-3 stories. If the commercial strip is fully developed to mixed-use, mid-rise buildings over time, an additional two acres of parkland will be required.

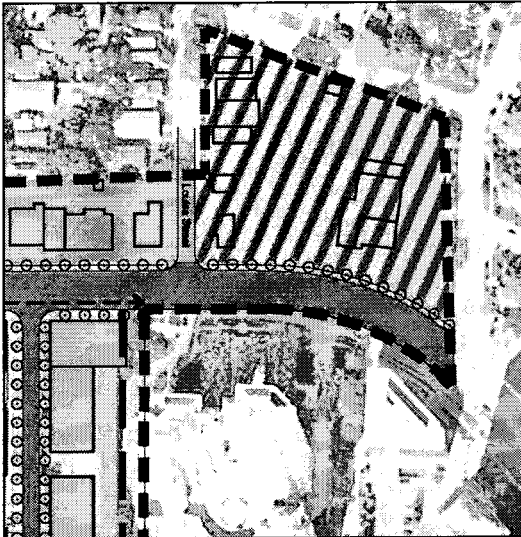
Calculation

Using the Prototypical Site #1 data from the "Avenues and Mid-Rise Buildings Study" for lot depth 32.6 meters and lot frontage 30 meters:

total frontage on LSBW = 633m / 30m = 21 buildings

Prototype: height = 6 stories, residential units = minimum 30

21 buildings x 30 units = 633 units / 300 units / acre = 2 acres of additional parkland



The Polish Alliance Hall - in Precinct G

The Polish Alliance located at 2282 Lake Shore Blvd West is a unique property. At around 7,500 square meters, it is a very large property similar in size to that of the Delta Chelsea and the Sheraton Hotels.

It is situated across the street from the Grand Harbour condominiums and a commercial property housing a bank, Rabba and other businesses.

The property is zoned as "Commercial" property, and directly behind it are properties zoned as "Commercial Industrial." Two blocks away in the Humber Bay Shores high-rise complex, buildings are under construction; at least one is more than 60 storeys in height.

MIMICO BEACH SECONDARY PLAN ALTERNATIVE

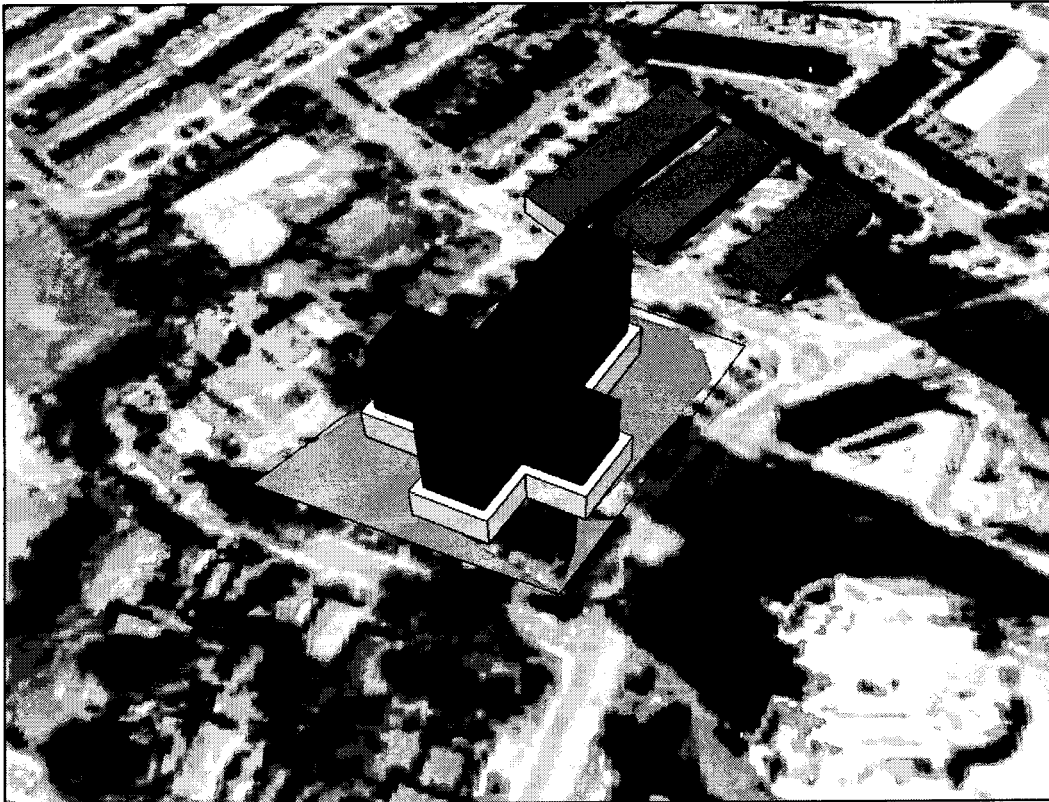
9. Precinct G—the west side of Lakeshore Blvd West

A proposed use would be as a hotel/conference centre. This type of business has been popular for Mimico in the past, and would be a good fit with a beautified waterfront, an expanded park and the heritage aspects of Mimico, New Toronto and Long Branch - i.e., tourism. An interesting comparison is with the Kingsbridge Conference Center in King City, Toronto.

The Mimico Beach Secondary Plan below shows a building with a center tower at 18 storeys, a north tower at 14 storeys and south tower at 11 storeys. Housed in the towers are 708 standard sized hotel rooms at 37 square meters each, plus a podium of 4 floors where conference rooms, offices, restaurants and other uses can be accommodated.

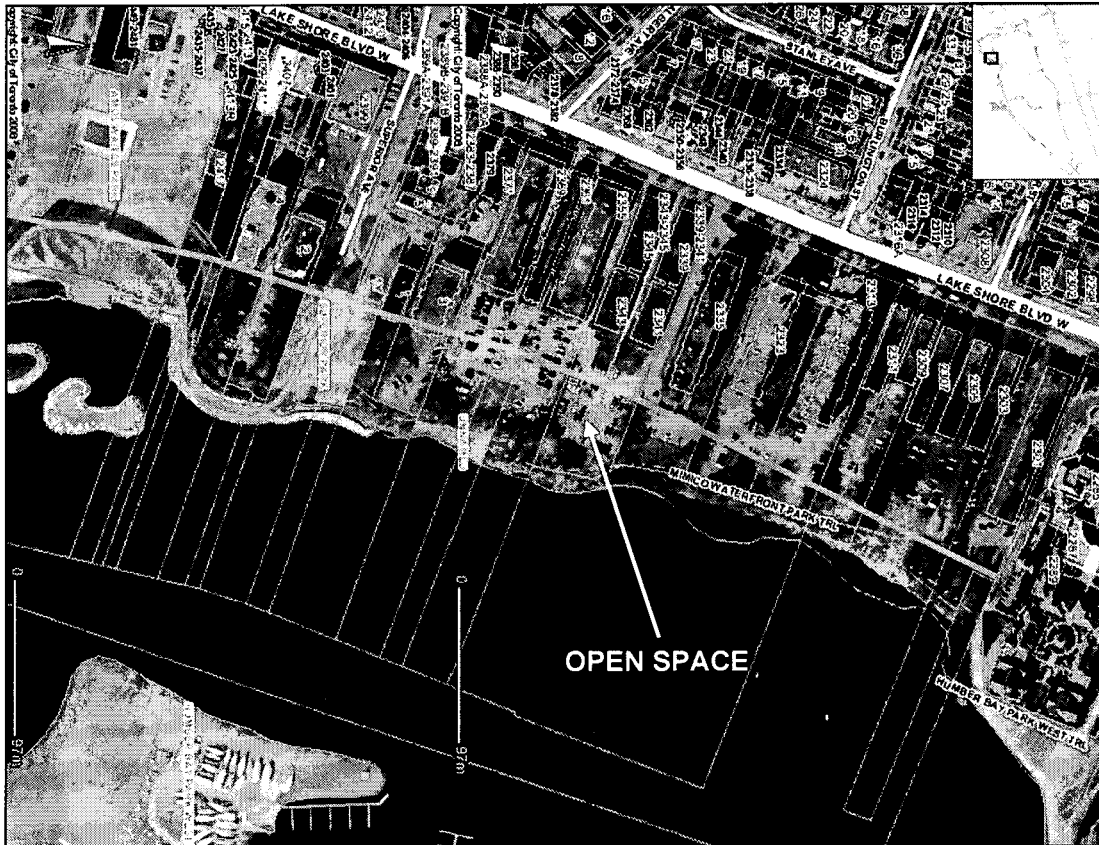
The Pan Am Games Cycling event will be taking place at Centennial Park, and one wonders whether the athletes will be housed downtown or the Airport Hotels, or some other location. A hotel/conference center at a location such as that owned by the Polish Alliance would have been convenient for them and a great benefit for Mimico.

Therefore, the Mimico Beach Secondary Plan recommends that this unique property be treated differently from other properties within the boundaries of the Plan.



MIMICO BEACH SECONDARY PLAN ALTERNATIVE

10. "Curb Appeal" and "Green Parking Lots"



The properties in the apartment strip (Precincts A,B,C) are all active businesses, and it is not known whether some, all or none are interested in selling their properties in the immediate future.

If the "Open Space" on the Mimico waterfront is dedicated as Public Parkland, then residents will be looking forward to enjoying a beautiful park, with the lake on one side, but with parking lots on the other.

To assist the apartment building owners upgrade, landscape and create "Green Parking Lots" at the rear of their buildings, we are suggesting a property tax rebate scheme.

MIMICO BEACH SECONDARY PLAN ALTERNATIVE

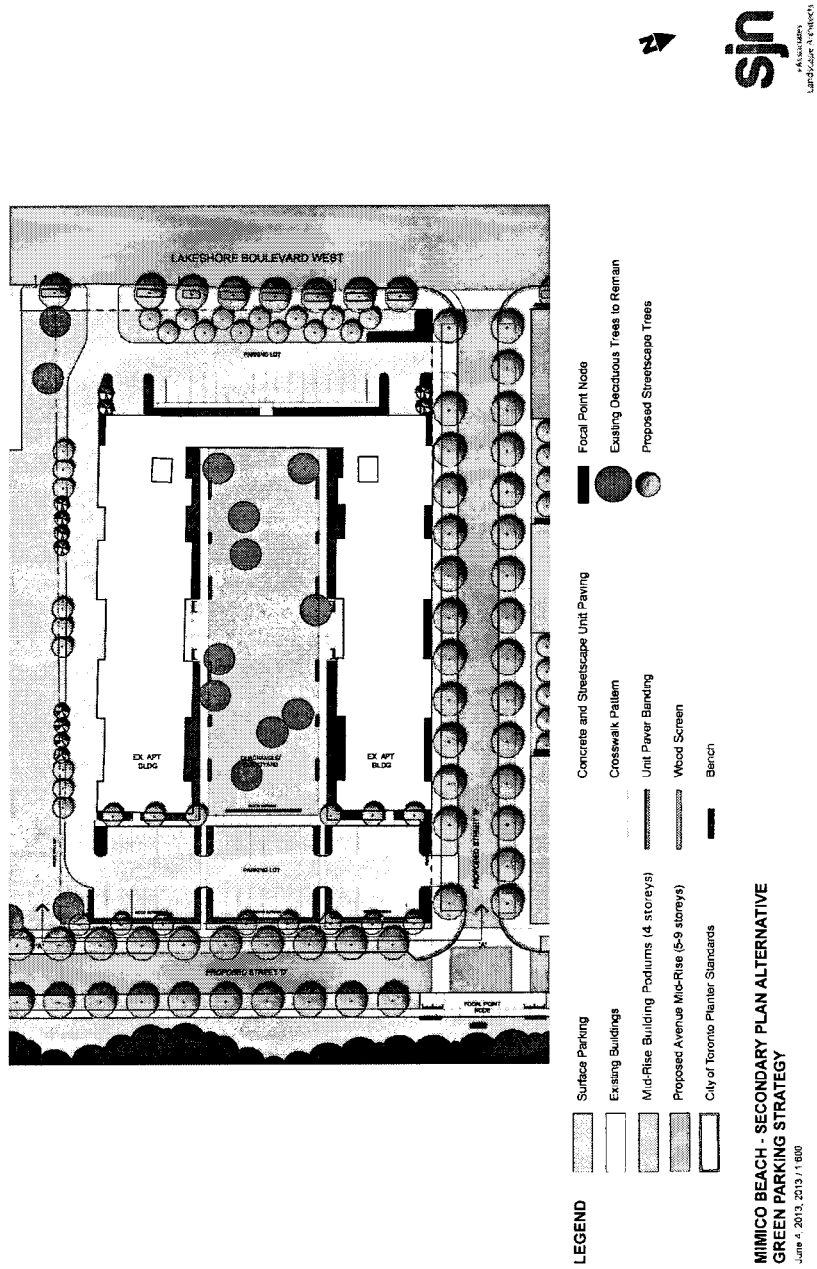
10. "Curb Appeal" and "Green Parking Lots"

- City of Toronto has introduced reduced Property Tax rates to encourage construction of new multi-residential apartment buildings (effectively, a reduction from the "commercial" rate to the "residential" rate)
- the difference represents a savings of approx. 62% in annual property taxes
- apartment owners in Precincts A, B and C currently pay an estimated \$1,520,536 in annual property taxes at the "commercial" rate
- an agreement between the City to provide a property tax rebate, and the owners to upgrade and landscape their properties (power-washing brick buildings) and create "Green" parking lots, could save existing apartment owners an estimated \$903,641 annually and \$3,614,564 savings in property taxes over a 4-year agreement period
- the savings would be spent to: (a) upgrade the landscaping and exterior of buildings, and create "Green" parking (b) the remaining savings 'not spent' would be returned to the owners to use as they see fit
- the incentive is to also encourage cooperation with the transfer of the "Open Space" currently owned by the apartment owners for the creation of new public park land - apartment owners will also benefit from the new park and resulting revitalization of the community economically, socially and physically
- estimated annual property taxes savings for Amedeo Garden Court would be around \$450,000 and \$1.7 million over four years. This incentive would include agreeing with the mid-rise zoning and upgrading, landscaping and preserving and restoring the heritage site.

MIMICO BEACH SECONDARY PLAN ALTERNATIVE

10. "Curb Appeal" and "Green Parking Lots"

The following is a professional landscape design for the property at 2313 and 2323 Lake Shore Blvd West including Green Parking Lots. The property tax rebate agreement would require professional landscape design assistance for property owners to ensure high-quality results and "curb appeal" for their properties.



"Absent evidence of public interest and pressure, little is likely to change." (Myer Siemiatycki, Toronto-December 2012)

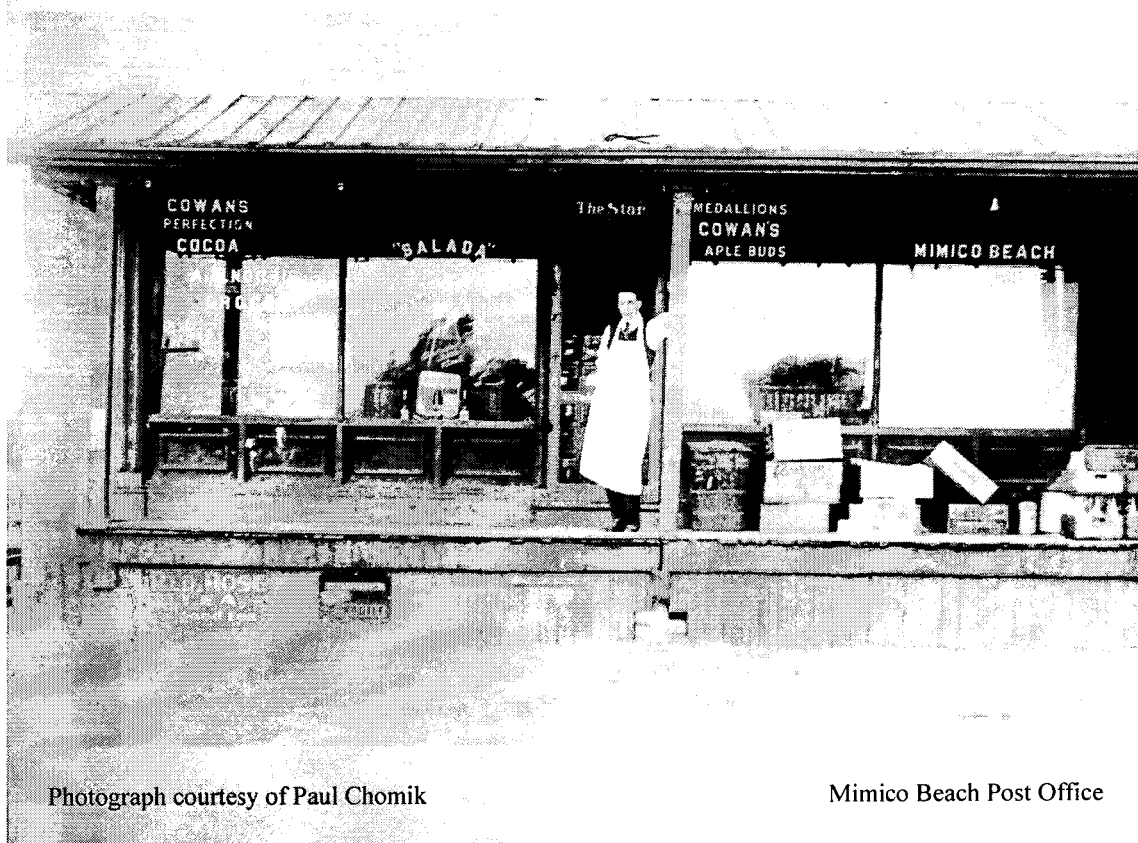
MIMICO BEACH SECONDARY PLAN ALTERNATIVE

11. Cultural Heritage of Mimico

The historic Town of **MIMICO** is the oldest of the former Lakeshore Municipalities. It was subdivided from the former Township of Etobicoke in 1911, and remained an independent municipality from 1911 to 1967. In 1967 it was amalgamated into the new Borough of Etobicoke (later, City of, in 1984), which was itself amalgamated in 1998 into the current city of Toronto.

The Mimico area south of the train tracks was generally known as "Mimico Beach". Indeed, there were sandy beaches located along the lakeshore, and families from downtown Toronto retreated to their cottages at "Mimico Beach" in the summer months.

The Mimico Beach Post Office located on Lake Shore Road was opened on August 14, 1911, to serve the southern half of Mimico. The first Postmaster was Jowett Coulton.



Photograph courtesy of Paul Chomik

Mimico Beach Post Office

MIMICO BEACH SECONDARY PLAN ALTERNATIVE

11. Cultural Heritage of Mimico

In June 2012, Heritage (Bicycling) Rides were introduced by members of the community in Mimico, New Toronto and Long Branch. This idea has now been adopted by Heritage Toronto, and heritage cycling tours are now being organized throughout Toronto.

Mimico and adjacent neighbourhoods of New Toronto, Long Branch and Alderwood are potential tourist destinations in Toronto. Opportunities exist to benefit socially and economically from the history of these neighbourhoods, and through its older buildings.

Mimico's cultural heritage and the buildings from the past need to be preserved and celebrated.

Heritage Designation for the Ormsby-Franceschini Estate

With respect to the Heritage Designation for the Ormsby-Franceschini Estate (Mimico Estates), once the heritage buildings are designated, the corporate owners will be able to plan accordingly, and there is no doubt whatsoever that they will make a highly satisfactory profit from both the heritage designation, rental units and any potential future re-development of the property to mid-rise buildings. Furthermore, the **Mimico Beach Secondary Plan Alternative** has proposed a substantial property tax rebate to assist the corporate owners to upgrade the exterior of their property and restore the heritage site.



MIMICO BEACH SECONDARY PLAN ALTERNATIVE

12. Mimico Permanent Stakeholder Advisory Committee (SAC)

The City of Toronto has no written policy providing standards for Public Consultation. Individual City staff and Councillors are left to handle matters as "they see fit". The City of Montreal has a written Public Consultation Policy. WATERFRONToronto also has an extensive written policy for conducting Public Consultation.

There have been many requests from the community for a Mimico Task Force or Stakeholder Advisory Committee be formed to work with City Staff on the "Revitalization" of Mimico. This request has been consistently resisted by the City to date.

We again request that a Mimico SAC be created by City Planning and organized according to the standards set by WATERFRONToronto.

Some terms included in the WATERFRONToronto SAC Terms of Reference document are:

SAC members will:

- Advise the Project Team of their organization's/community's/constituency's perspectives relating to the project
- Provide advice, feedback and perspectives on proposals/reports tabled by the Project Team, SAC members, or others
- Help the SAC operate effectively by offering suggestions and alternatives to issues, concerns and problems
- Attempt to anticipate potential problems and offer options for resolving them
- Communicate SAC discussions back to members' organizations and constituencies
- Review all relevant project materials and provide feedback, advice and perspectives
- Attend the SAC meetings whenever possible
- Review the results of SAC discussions to ensure the meetings are accurately recorded in the meeting records, or in additional reports that members may determine are needed.

SAC members would participate in meetings concerning:

- Planning applications
- the Secondary Plan
- public realm, streetscape, parks, cycling routes and other public matters
- meet regularly with City staff concerning employment and industrial lands
- ongoing public items of concern for "revitalizing" Mimico

MIMICO BEACH SECONDARY PLAN ALTERNATIVE

12. Mimico Permanent Stakeholder Advisory Committee (SAC)

The standard for public consultation for Mimico 2020 from 2009 forward consisted of Planning Department presenting their Plan, and then the public was invited to submit written comments. There were no comprehensive group discussions, no exchange of ideas and opinions with, between or among residents and City Planning. Different stakeholders groups were dealt with separately, so that no one knew what was being said. The WATERFRONToronto SAC permits at least one member from the residents groups to attend any meetings held with land owners.

It is clear that staff at the City Planning Department either have had no training in highly competent and effective public consultation, or they have limited interest, given it is outside of their urban planning training.

In any event, the suggestion that only Planning staff have any ideas or ability to create vibrant and successful communities, and no public discussions or exchanges of information are to occur at public meetings is unacceptable. The following is from the City of Toronto Official Plan describing a Design Charrette: "The charrette permits a number of design alternatives to be explored very quickly and to receive instant feedback. The charrette culminates in a final presentation during which the alternatives are presented and discussed, and the consensus plan is selected."

Design Charrette

One of the best ways to work through all of the issues associated with a tall building development proposal is to conduct a comprehensive design charrette. A charrette is a multi-day design workshop held on or near the development site during which all of the project stakeholders are assembled to work through a number of design issues. Typically, the developer is responsible for assembling a team consisting of urban designers, architects, landscape architects, urban transportation experts, residents, local business leaders and city staff. The charrette permits a number of design alternatives to be explored very quickly and to receive instant feedback. The charrette culminates in a final presentation during which the alternatives are presented and discussed, and the consensus plan is selected.

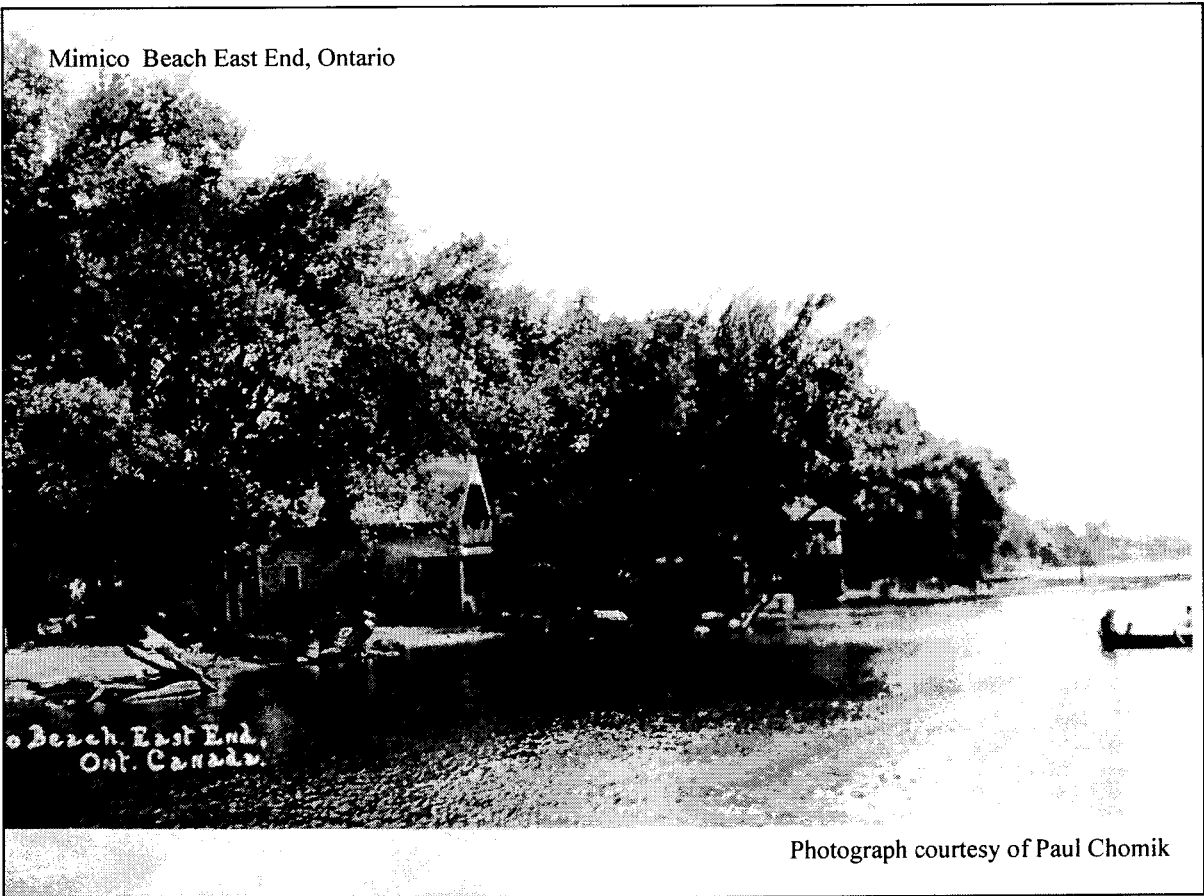
MIMICO BEACH SECONDARY PLAN ALTERNATIVE

12. Mimico Permanent Stakeholder Advisory Committee (SAC)

Needless to say, the decisions and direction taken by the City Planning Department for Mimico 2020 from 2009 onwards did not include any of the above.

We request that a comprehensive and effective Public Consultation policy be created for the City of Toronto without delay and that a Mimico SAC be created.

Along with the waterfront and heritage sites, we need to consider employment and transit. If the future for Toronto is for residents to live, work and play in our communities, then we need to start collaborating, and City Staff need to adjust to the idea of working together with residents to achieve success for all Toronto communities.



MIMICO BEACH SECONDARY PLAN ALTERNATIVE

13. Cars, Traffic Congestion

With respect to transit, it is noted that the Mimico 2020 Transportation Report indicated that the intersection at Lakeshore Blvd West and Parklawn Road fails with too many vehicles beyond capacity at rush hour. The report suggests traffic congestion at that intersection will be somewhat improved by 2032; i.e., there is no solution. Drivers re-route their vehicles through our local streets and neighbourhoods now, trying to access Royal York Road and the Queensway to get around the hold-up in traffic on Lakeshore Blvd West.

There are many high-rises currently under construction at Humber Bay Shores, and at least one is more than 60 storeys. The total population after complete build out of Humber Bay Shores is estimated to increase from 14,000 at the present time to 30,000. No doubt, there will be parking spaces in those new buildings for cars.

The **Mimico Beach Secondary Plan Alternative** expects to minimally increase the number of vehicles within its boundaries by more than 1,500 cars for new residents with mid-rise buildings between 8 to 14 stories. Any suggestion from Planning Department that these buildings should be high-rises between 15 to 25 storeys instead, with additional residents and accompanying vehicles, is unreasonable.

This report has tried to identify areas of concern and interest to residents in the community and the Toronto public at large as succinctly as possible.

There is a well-known view held by highly successful business personalities:

"First, you take care of your clients (in this case, the residents of Mimico), next you take care of your employees (City staff), then you take care of the community (again, residents of Mimico), and the corporate 'profits' will take care of themselves."

Insisting on building high-rises on the waterfront in Mimico will not "revitalize" the community, and, will have many negative impacts instead. City Councillors and Planning Department should first and foremost put the best interests of residents and communities well-ahead of any concerns whether developers will "make enough money". Councillors and staff also need to listen more closely and more often to residents on important issues like revitalizing Mimico, and a Secondary Plan that is supposed to assist with this objective.

MIMICO BEACH SECONDARY PLAN ALTERNATIVE

14. Expert Design Panel

The **Planning Department Draft Secondary Plan** has been rejected by most stakeholders. An on-line Petition organized by CodeBlueWestTo.com has obtained more than 1,000 signatures. Their voices are in agreement: no more high-rises dominating our waterfront, and the need for more waterfront Public Parkland for the people of Toronto.

Any suggestion that a Secondary Plan that has been rejected by the majority may be a 'good' plan makes for a 'good sound-bite'; but rejection indicates that the **Planning Department Draft Secondary Plan** may contain serious flaws and weaknesses. The Plan can be revised and improved.

The CodeBlueWestTo petition calls for a review by an Expert Design Panel qualified to conduct the review, and advise residents, City Councillors and City Staff what changes can and should be made.

We kindly request of the following highly-regarded, highly-qualified persons if they would form this Panel and assist the residents of Mimico in obtaining the best possible 20 year Secondary Plan for their neighbourhood:

1. Robert Allsopp, ARIBA, MRTPI, MCIP, RPP, FCSLA, OALA, MALA (Hon)
2. Paul Bedford, RPP, MCIP, OALA
3. Ken Greenberg, RAIC,
4. Charles Hazell, OAA, RAIC
5. James Melvin, OALA, CSLA
6. Harold Madi, MArch, MRAIC, , MCIP, RPP
7. Janet Rosenberg, OALA, FCSLA, FASLA, IFLA, RAC, AALA, AAPQ
8. Gordon Stratford, OAA, MRAIC, LEED

The format would consist of:

- The Expert Panel to review the Planning Department Draft Secondary Plan and the materials provided with the Mimico Beach Secondary Plan Alternative
- The Expert Panel to provide any written questions on both plans to both proponents
- The Expert Panel to receive written responses, and hold a public meeting where both proponents make a short presentation
- The Expert Panel to then provide written recommendations for residents, City Councillors and City Staff on how to revise the Secondary Plan to obtain the best possible 20 year Secondary Plan possible for Mimico

We appreciate we are asking a great deal of these respected and very busy individuals within the Toronto community. However, we would be very grateful if they would provide their expert assistance in this very important matter.

We would also greatly appreciate the consideration and understanding of Toronto City Councillors that a 20 Secondary Plan is not a trivial matter, and needs to arrive at the best result for the community of Mimico and Toronto as a whole.

MIMICO BEACH SECONDARY PLAN ALTERNATIVE

15. Acknowledgements

A Sincere Thank You To

Members of CodeBlueWestTO for the tireless effort of their members, juggling families, jobs, concerns and working to gather support for a better planned future for Mimico

Sandra J. Neal, OALA, CSLA, of SJN + Associates Landscape Architects for acknowledging and creating a greener vision for Mimico in the form of the Mimico Beach Secondary Plan Alternative for more Public Parkland and Mid-Rise Buildings for Mimico

Paul Chomik, P.Eng., for his generous contributions in the form of photographs, extensive research, personal knowledge, interest and long-term support of the South Etobicoke communities

the many people who have contributed to the Mimico Beach Secondary Plan Alternative by relaying their ideas, learning and direct experiences from living for many years in the South Etobicoke communities

the many members in the Mimico and South Etobicoke communities who have held on to the vision of a better 20 year Secondary Plan for Mimico and their support of our efforts

Contact person for Etobicoke-Lakeshore Community Planning Group
Peggy Moulder
elcommunityplanning@gmail.com

July 9, 2013

An Analysis of the Town of Mimico's Waterlots

March 2013 (Revised June 2013)

By: Paul Chomik, P.Eng.

Along the former Town of Mimico's ("Mimico") waterfront, the question of land ownership has been often misinterpreted due to the granting of Crown Patents for water lots in the past, and subsequent filling of the bed of Lake Ontario by adjacent property owners.

1) **Background**

"The Crown, at the time of issuance of the grant/patent can place conditions on a new grant/patent, under the Public Lands Act, but once the grant/patent has been issued it is beyond the Crown to add more conditions. It is the legislation at the time of issuance that prevails."

Ziff, Principles of Property Law, 3rd ed., Scarborough: Caswell 2000

Public Lands Act R.S.O. 1990, Chapter P.43

"Minister to decide as to right to patent

22. The Minister has authority to determine all questions that arise as to the rights of persons claiming to be entitled to letters patent of land located or sold under this Act and the Minister's decision is final and conclusive. R.S.O. 1990, c.P.43, s22."

Reference to cancellation of patents;

"23. Cancellation of sale, etc. of land in case of fraud, or error, etc.

32.1 Cancellation of erroneous letters patent,"

A provision of the Public Lands Act permits the Minister of Natural Resources to declare a grant null and void if the land is being used in violation of a condition of the grant.

Powers of Minister respecting conditional conveyances

21 (1) Where a grant, deed or other conveyance affecting Crown lands issued pursuant to this Act or any previous Act contains a condition that the land is to be used in a particular manner, the Minister may

(a) declare the grant, deed or other conveyance null and void if the land is being used in violation of the condition;

(2) Where the Minister makes a declaration pursuant to clause (a) of subsection (1), the land reverts to the Crown.

Constitution Act, 1930

"Transfer of Public Lands Generally

2. The Province will carry out in accordance with the terms thereof every contract to purchase or lease any Crown lands, mines or minerals and every other arrangement whereby any person has become entitled to any interest therein as against the Crown, and further agrees not to affect or alter any term of any such contract to purchase, lease or other arrangement by legislation or otherwise. except either with the consent of all the parties thereto other than Canada or in so far as any legislation may apply generally to all similar agreements relating to lands, mines or minerals in the Province or to interest therein, irrespective of who may be the parties thereto."

<http://ontariolandowners.ca/news/response-to-back-off-government-what-municipal-lawyers-need-to-know-about-crown-patents/>

Originally Published in the May 1992 issue of The Outfitter Magazine.

Minister Wildman Responds to NOTO's Waterlot Concerns

Dear Mr. Wisneski:

This is in response to a letter dated October 8, 1991, that I received from your predecessor, Mr. Bill Chambers, advising me of your Association's concerns about the Ministry's waterlot policy.

QUESTION ## 6: Would the Minister be prepared to make the waterlot policy an equitable one by extending it to all docking facilities, private and commercial ...

MINISTER'S RESPONSE:

"The Public Lands Act provides that it is unlawful to occupy Crown land without authority.

Some limited uses, such as private docks, are authorized in accordance with the Ministry's free use policy."

Navigable Waters Protection Act (1882)

Questions about the *Navigable Waters Protection Act* or NWPA

What is the Public Right of Navigation?

The Canadian public right of navigation is not written anywhere – it is a right that has developed over time through Common Law. If the waters are navigable, then the public has the right to navigate. **Gaining approval to restrict the public's right to navigate can only be done a few ways, including an Act of Parliament.**

What is the purpose of the *Navigable Waters Protection Act* (NWPA)?

The NWPA minimizes the interference of navigation on navigable waters throughout Canada.

It ensures a balance between the public right to navigate and the need to build works such as bridges, dams or docks in navigable waters.

With this goal in mind, the NWPA:

- **prohibits construction in navigable waters**
- regulates the removal of wreck and other obstacles to navigation and
- **prohibits the throwing or depositing of any material into navigable waters.**

Unless you have gone through the Approval process and the Minister of Transport has approved the work, site and plans, ...

The Act applies to any interference of navigation – **in, on, over, under, through or across** – Canadian navigable waterways.

Will the NWPA affect me?

Yes, the NWPA applies to all governments – federal, provincial, or municipal – and to all persons, companies, organizations and Crown Corporations that are planning to construct or modify a work in, on, over, under, through or across any navigable waterway.

Such works include but are not limited to: wharfs, docks, piers, dams, booms, bridges, overhead cables or pipelines.

I own waterfront property that I plan to sell – does Transport Canada determine the navigability of my waterway? Can I build in the water included in my lot?

Transport Canada's determination of the navigability for waterways is solely related to the approval of works on those waterways. For the purposes of land severance owners should use the services of a land surveyor or a lawyer to research historical data and provide an opinion.

A water lot is a piece of land lying under a body of water. Water lots can be commercially or privately owned. Owning a water lot gives the owner property rights on that piece of land. *The owner of the water lot does not own the water column above the water lot and owners cannot take away the public right to navigate on that waterway. Only approval from the federal government can give this authority.*

Beds of Navigable Waters Act (1911)

OWNERSHIP DETERMINATION - BEDS OF NAVIGABLE WATERS

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“Where it has been established that no express grant has occurred, it is necessary to determine if the watercourse is navigable. If the watercourse is navigable, the bed of the watercourse is Crown land by virtue of the Beds of Navigable Waters Act.”

Section 1 of the Beds of Navigable Waters Act states:

Where land that borders on a navigable body of water or stream, or on which the whole or apart of a navigable body of water or stream flows, has been heretofore or is hereafter granted by the Crown, it shall be deemed, in the absence of an express grant of it, that the bed of such body of water was not intended to pass and did not pass to the grantee.

The term "express grant" mentioned in the Beds of Navigable Waters Act refers to Crown land grants and includes statements such as "*Lot 16, Concession X, together with the bed of Jones River*".

General terminology, including the phrase pre-printed on many old patents such as "*...together with the woods and waters therein...*" does not constitute an express grant.

(vii) where a proprietary interest asserted depends on a Crown grant, navigability is initially to be determined as at the date of the Crown grants.

Waterfront Property: Do You Own it?

By Brian Madigan LL.B.

If you are looking at waterfront property, you really want to know where your property ends and the lake begins. You definitely don't want a "gap".

So, where's the line?

First of all, you have to begin with the water. Let's assume that the body of water is sufficiently large that it is considered to be a navigable water. That basically means that it can accommodate boats, even very small boats. Obviously, this will include lakes, and numerous rivers, but certainly not all of the tributaries.

Second, you will have to figure out where the body of water ends. A larger lake or bay or navigable river will have fluctuations in terms of the level of water within it. However, the boundary is clearly defined. It doesn't move or go up and down with the water level or in and out as the waves roll in. It is a permanent, fixed location.

Third, you will have to locate the first sign of permanent vegetation. That is the line is the sand. That's the spot where the body of water ends and the land begins. Annual vegetation, being grass, weeds, and recurring growth is not a sufficient indicator. You need to find a tree, or a big bush that has been there for some reasonable period of time.

Fourth, once you have located this line of permanent vegetation, you need to mark out a continuous strip along the shoreline. This will represent the division between the body of water and the land. Basically, if you were on a beach in the Caribbean you would take a piece of tape and wrap it around all the palm trees closest to the water. This would provide you with the high water mark, and define the boundary.

Fifth, you need to measure a distance of one chain, or sixty six feet (66') from the boundary. This new strip of property will form a "road allowance" around the perimeter of the lake, river or other navigable body of water.

Sixth, you need to mark out the lots. Let's assume that they are two hundred feet (200') in depth, and one hundred feet (100') wide. Since the water body is irregular in shape, the frontages will never work out to exactly one hundred feet.

The same thing will be true for the rear lot line. You may have some pie shaped lots and some reverse pies, but you will really never be able to lay out a plan of subdivision completely with the same sized lots.

Again, we need to be reminded of the basic principle: the lake doesn't move.

So, even after years of significant changes one still has to look back to the original survey prepared by the Province to get an idea of where to begin.

Properties along the Humber Bay shoreline were extended to approximately twice their original depth, and in Mimico, lakefilling had become such a common and uncontrolled practice by the 1950s that the Mimico Town Council passed by-laws to prevent further filling.

Those areas represented filled-in waterlots. Even though adjacent property owners (often, owners of the waterlots) had done all the filling – they were not permitted to build on the new land they created. As a result, the areas along Mimico’s waterfront were zoned as “open space” and parkland.

However, the filling of the waterlots resulted in profound consequences in terms of the Crown’s rights.

Firstly, filling in the waterlots unilaterally removed the right of the Crown (and Public) to exercise its inherent right to the use of the column of water above the lakebed.

In addition, the lakefilling unilaterally altered the physical dimensions of both the land area and the waterlots. Such an act most likely constituted a breach of contract and thus nullified the contracts for the waterlot patents.

The only legal way for the waterlots to be filled would have required express written authorization by the Crown. Such authorization, which is rarely granted, would need to be on title of each of the waterfront properties as new surveys would also be required due to the alteration of land dimensions.

There is little doubt that, in the absence of written authorization from the Crown, any lakebed areas covered with unauthorized fill automatically became Crown (public) land.

Therefore, the Crown retains all ownership of the lake bed under any waterlots covered by land fill (i.e. the new land created), since navigability of Lake Ontario clearly existed on the date when the Crown grants for the waterlots were patented.

The foregoing establishment of Crown ownership of filled-in lakebed automatically applies where no patents for waterlots were issued, since the Crown always retained ownership of the lakebed.

That is the reason why the original (first) survey for a waterfront property must always be referenced, as it determines the true boundaries of the actual land parcel purchased.

Any new and adjacent land created by filling in the water body without authorization from the Crown also follows the principle that “All residual lands revert to the Crown”.

c) Summary

There is no question that any illegally filled bed of Lake Ontario along the Etobicoke shoreline became property of the Crown. In Mimico, that is the reason why the zoned “open space” existed. It was never “private property”, and as such, should be retained exclusively for public use.
