

ISSUE DATE:

Jan. 10, 2007

DECISION/ORDER NO:

0053



Ontario

Ontario Municipal Board

Commission des affaires municipales de l'Ontario

PL051203

PL060087

PL060443

2059946 Ontario Limited has appealed to the Ontario Municipal Board under subsection 22(7) of the *Planning Act*, R.S.O. 1990, c. P. 13, as amended, from Council's refusal or neglect to enact a proposed amendment to the Official Plan for the former City of Toronto for the purpose of introducing site-specific policies to the current "Low Density Mixed Commercial Residential Area" designation on the northern portion of the site fronting onto Queen Street West, as well as to the current "Mixed Industrial-Residential Area" designation on the southern portion of the site, to permit the development of a 10-storey residential building, with retail at grade, on the northern portion of the site fronting onto Queen Street West as well as a 26-storey residential building on the southern portion of the site on lands located at 1171 and 1171R Queen Street West

Approval Authority File No. 05 133454 STE 18 OZ

O.M.B. Case No. PL051230

O.M.B. File No. O050191

2059946 Ontario Inc. has appealed to the Ontario Municipal Board under subsection 34(11) of the *Planning Act*, R.S.O. 1990, c. P. 13, as amended, from Council's refusal or neglect to enact a proposed amendment to Zoning By-law 438-86, as amended, of the former City of Toronto for the purpose of amending the current MCR T3.0 C1.0 R2.5 zone on the northern portion of the site fronting onto Queen Street West, as well as to amend the current I1 D3 zone on the southern portion of the site, to permit the development of a 10-storey residential building, with retail at grade, on the northern portion of the site fronting onto Queen Street West as well as a 26-storey residential building on the southern portion of the site on lands located at 1171 and 1171R Queen Street West

O.M.B. Case No. PL051203

O.M.B. File No. Z050191

Verdiroc Development Corporation has appealed to the Ontario Municipal Board under subsection 22(7) of the *Planning Act*, R.S.O. 1990, c. P. 13, as amended, from Council's refusal or neglect to enact a proposed amendment to the Official Plan for the former City of Toronto by introducing a site-specific policy to the current "Mixed Industrial-Residential Area B" designation in the Garrison Common North Part 2 Plan for the purpose of permitting the proposed development of a 3-storey building containing 5 live-work units, a 19-storey residential building on the southern portion of the subject lands and a 25-storey residential building containing live-work units at grade on the eastern portion of the subject lands on property municipally known as 48 Abell Street

Approval Authority File No. 99 036168 SHY 18 OZ

O.M.B. Case No. PL060087

O.M.B. File No. O060039

Verdiroc Development Corporation has appealed to the Ontario Municipal Board under subsection 34(11) of the *Planning Act*, R.S.O. 1990, c. P. 13, as amended, from Council's refusal or neglect to enact a proposed amendment to Zoning By-law 438-86, as amended, of the former City of Toronto to permit, as an exception to the current "I1 D3" zone, a proposed

development on lands municipally known as 48 Abell Street to consist of a 3-storey building containing 5 live-work units, a 19-storey residential building on the southern portion of the subject lands, and a 25-storey residential building containing live-work units at grade on the eastern portion of the subject lands

O.M.B. Case No. PL060087

O.M.B. File No. Z060009

Landmark Developments Inc. has appealed to the Ontario Municipal Board under subsection 22(7) of the *Planning Act*, R.S.O. 1990, c. P. 13, as amended, from Council's refusal or neglect to enact a proposed amendment to the Official Plan for the former City of Toronto by introducing a site-specific policy to the current "Mixed Industrial-Residential Area B" designation in the Garrison Common North Part 2 Plan for the purpose of permitting the proposed development of a 16-storey residential building and 3 rows of 5 ½-storey residential buildings in stacked townhouse form, which now has been revised to a proposal to consist of 2 residential buildings, ranging in height from 6 to 13 storeys, to frame a central landscaped open space with the west building at 6 storeys at the street edge (18 metres), stepping back an additional 2 storeys for a total height of 24 metres and the east building at 6 storeys at the street edge, stepping back to 8 storeys and again to 10 storeys for a total height at the south end of the building of 36 metres on lands municipally known as 150 Sudbury Street

Approval Authority File No. 05 199171 STE 18 OZ

O.M.B. Case No. PL060443

O.M.B. File No. O060093

Landmark Developments Inc. has appealed to the Ontario Municipal Board under subsection 34(11) of the *Planning Act*, R.S.O. 1990, c. P. 13, as amended, from Council's refusal or neglect to enact a proposed amendment to Zoning By-law 438-86, as amended, of the former City of Toronto to permit, as an exception to the current "I1 D3" zone, a proposed development on lands municipally known as 150 Sudbury Street to consist of a 16-storey residential building and 3 rows of 5 ½-storey residential buildings in stacked townhouse form, which now has been revised to a proposal to consist of 2 residential buildings, ranging in height from 6 to 13 storeys, to frame a central landscaped open space with the west building at 6 storeys at the street edge (18 metres), stepping back an additional 2 storeys for a total height of 24 metres and the east building at 6 storeys at the street edge, stepping back to 8 storeys and again to 10 storeys for a total height at the south end of the building of 36 metres

O.M.B. Case No. PL060443

O.M.B. File No. Z060066

Westside Lofts and Towns Inc. has referred to the Ontario Municipal Board under subsection 41(12) of the *Planning Act*, R.S.O. 1990, c. P. 13, as amended, determination and settlement of details of a site plan for lands composed of Part 1, Plan 66R-17443, Part of Ordnance Reserve and Part of Abell Street, municipally known as 150 Sudbury Street

O.M.B. Case No. PL060443

O.M.B. File No. M060056

APPEARANCES:

<u>Parties</u>	<u>Counsel*/Agent</u>
Verdiroc Development Corporation and Abell Investments Limited	D. Bronskill*
City of Toronto	D. Jubb* and student at law T. Stroedel
Active 18 Community Association	C. Campbell*
2059946 Ontario Limited and Bohemian Embassy Residences Inc.	R. Kanter*
Landmark Developments Inc.	A. Paton*
Canadian National Railway Company and Greater Toronto Transit Authority	M. Hackl*

DECISION DELIVERED BY D. R. GRANGER - (48 ABELL)

These are appeals by 2059946 Ontario Limited (1171 Queen), Verdiroc Development Corporation and Abell Investments Limited (48 Abell) and Landmark Developments Inc. (150 Sudbury) from the Council of the City of Toronto's (City) refusal to enact proposed amendments to the applicable Official Plan for the former City of Toronto (OP) and to By-law 438-86, as amended, (By-law) to permit development in the area known as the West Queen Street West Triangle (Triangle).

On consent of the parties, the Board has heard the appeals regarding the three separate proposals, one following the other, before this panel of the Board with macro evidence regarding the overall "Triangle" area given at the commencement and applicable to all appeals.

Overall, the combined evidence and argument resulted in 35 full days of hearing with 160 Exhibits presented.

This decision addresses the appeal by Abell Investments Limited/Verdiroc Development Corporation (48 Abell).

Triangle Area

The Board will first address the evidence and findings common to each of the three applications following from the overall Triangle area macro evidence presented. This portion of the decision is common to each of the three decisions for each of the applications.

On behalf of the City, S. P. Bain provided expert policy planning evidence; K. Benham provided expert planning evidence with a specialty in economic development; M. S. Gertler provided expert planning evidence with a specialty in urban economic development; M. Williams provided expert policy planning evidence related to Section 37; L. Martin provided expert planning evidence with a specialty in cultural uses; P. Prieditis provided expert community service planning evidence; D. J. Douglas provided expert planning evidence with a specialty in parks; E. Hug provided expert area land use planning evidence; and M. Van Elsberg provided expert urban design evidence.

On behalf of the three applicants, P. Smith provided expert land use planning evidence; G. Patterson provided expert civil and municipal engineering evidence and J. Gillezeau provided expert economic evidence with a specialty in housing.

T. Jones, Chief Executive Officer of Artscape provided evidence in support of artist, gallery and studio space being located along a proposed new “Mews” incorporating unconventional retail uses.

On behalf of Active 18 Community Association (Active 18), J. Gladki provided expert land use planning evidence; J. Farrow, Chair of Active 18, set out the core values for Active 18; and M. Zeidler recounted experience in the operation of older heritage buildings.

Area residents P. Little and V. Frankel provided evidence related to the provision of park and the retention of live/work opportunities for existing artists and entrepreneurs.

A. Snow, on behalf of Canadian National Railway Company and Go Transit provided expert transportation planning evidence in support of the proposed crash barrier integration with the Sudbury Street extension as agreed between the parties. He also confirmed satisfaction with requirements for fencing and noise and vibration studies. Mr. Snow's evidence was not contradicted.

The Triangle represents one of the remaining opportunities for new development along Queen Street West within the applicable Garrison Common North Part II Official Plan area. The area is designated Low Density Mixed Commercial-Residential Areas along Queen Street West and Mixed Residential-Industrial Areas southerly to the lands of Canadian National Railway Company (CNR).

Non Residential Land Use

One of the fundamental issues for this hearing is the appropriate amount of non-residential land use that should result from the redevelopment and intensification of the Triangle.

The City Planners set out the difficulties being faced in meeting employment targets within the City. They contend it necessary to set minimum targets for the retention of non residential land uses to provide future employment opportunities especially in areas designated as Mixed Residential-Industrial Areas.

It was acknowledged that all residential uses proposed would permit work at home opportunities but as live/work units, unless secured by a not for profit ownership/lease, were considered as residential.

It was also acknowledged that areas designated as exclusive Employment Districts within the City offered the best long-term protection of employment lands for employment uses.

The urban economic development planner for the City confirmed that creative industries were holding their own quite well but warned of the need to protect affordable and stable space recommending government intervention and innovative partnerships with organizations like Artscape. He considered the general Triangle area as one of Canada's and the City's most important concentrations of creative industries.

The economic development planner and land use planner for the City set out a minimum amount of non residential land use on a development by development basis that equated to a 0.7 times the area of the lot requirement. This was determined by adding up existing non-residential space within the Triangle and re distributing it across the Triangle on a site-by-site basis. This was referred to as a "no net loss policy."

The area land use planner for the City set out that redevelopment could occur with up to two times the area of the lot as residential only in accordance with the policies of the OP. She also confirmed it to be acceptable for 48 Abell to be limited to a non residential amount at 0.5 times the area of the lot instead of 0.7 times the area of the lot due to special provisions including secured and affordable live/work units and studios and workshop space being proposed. Based on this evidence, the Board finds this to be an inconsistent approach that could not satisfy, with any degree of certainty, any employment deficiency alleged to be growing within the City.

The City planners have relied on OP policy that permits up to three times the area of the lot as gross floor area as industrial or mixed use with a cap of two times the area of the lot for residential only. They are of the opinion that this equates to a one third industrial/two third residential ratio that could be extended to apply to any higher densities proposed.

The planners for the applicants do not agree with the interpretation of the City planners finding no other examples of such an application in the past. It is their opinion that each site must be measured on its own merits and that it is not appropriate to endeavour to protect employment uses without some policy derived objective criteria relating to a quantifiable need.

While appreciating the importance of maintaining some non residential mix within an area designated for mixed use development, especially recognizing the creative enterprises that have located in the general area, the Board finds no basis for quantifying a specific amount for each site based on a general poorly defined no net loss policy basis.

If the City is intending to rely on the securing of a specific amount of employment land use on individual sites based on a quantifiable goal for each planning area, district or neighbourhood, it must be able to rely on objective criteria and data achieved through some comprehensive analysis of the planning area and City wide employment objectives to be achieved. In this case, the City's designation of exclusive employment districts offers a more objective approach in that regard.

The Board notes that the City's reliance on a mix of residential and employment uses under policies of the old OP. No similar policies were presented suggesting some minimum amount of non-residential land use being applied in the new OP. While the concern of City staff may be well founded in their experience, more work must be done to establish defensible policy if it is the City's intent to achieve certain employment targets through mixed-use developments and regeneration areas in the future.

It was clear in the evidence of the economic development planner for the City that the Triangle employment base was relatively stable over fifteen years and that within one kilometre there had been a 13 percent growth in employment. This stability has occurred in spite of the subject sites being predominantly vacant or illegal in use.

Having found no basis for the application of any across the board amount of non residential land use per site, in the circumstances of this case, and balancing the interests of the parties as presented, the Board does find it appropriate to require all ground floor spaces related to Queen Street, the proposed parallel running "Mews" and frontage along Abell Street opposite existing non residential land uses to be secured for non residential uses including affordable live/work artist studios where subsidy is available. This will insure an appropriate amount of non-residential land use in excess of what exists today on the three subject sites.

By-law Holding Provisions to Secure Sudbury Street and Future Public Parkland

Another important issue at this hearing is the use of holding provisions proposed to secure the financing and timing for the extension of Sudbury Street from east of Abell Street westerly and northerly to Queen Street intersecting with Gladstone Avenue. The extension incorporates a required crash barrier to protect from the CN/GO right of way abutting to the south.

There was no dispute of the importance of securing the future Sudbury Street extension prior to any of the three applications proceeding. While the end seems to be agreed in principle, the means of securing Sudbury was not.

The City Council wants the protection within a By-law holding provision whereas the three applicants are satisfied to have the extension secured through the use of a Section 37 agreement and/or condition of this Board prior to issuing a final Board Order.

Having considered the evidence of all of the experts at this hearing regarding the securing of the Sudbury Street extension, the Board is satisfied that the matter can be resolved as a condition prior to the Board issuing its final Order and will require the same.

The City Council has similarly required that a holding provision insure that no implementing by-law apply until such time that future public parkland serving the Triangle be secured by the City in the order of 0.4 hectares.

This request is even more problematic than a holding provision related to the Sudbury Street extension. In this case, the applicants have no control over how and when the city will proceed in the acquisition of parkland. The applicants are obligated to provide parkland dedication in accordance with the *Planning Act* but otherwise have little control over the acquisition of lands not associated with lands forming part of the applications.

It was confirmed by city experts, and not disputed, that City Council has authorized the acquisition or expropriation of appropriate lands in the Triangle and that City staff are actively pursuing that end.

Having considered all of the relevant evidence related to the park issue, the Board is satisfied that bona fide efforts by the City are underway and is satisfied that a reasonable time frame, in the order of up to six months, to withhold the Board's final Order will allow the City to conclude its efforts in that regard. If the city is unable to conclude the duly authorized acquisition of parkland, not disputed to be deficient in the Triangle, the Board will be able to be spoken to.

General

The Board did express some disappointment in the inability of the parties to settle their disputes for this large vacant area of the Triangle acknowledged by all to be an ideal opportunity for the intensification and remediation of an older abandoned industrial area. The unanimous expression of the unique and creative nature of the general area only compounded that disappointment in no mutually creative solution being able to be found.

The Board does acknowledge the extraordinary efforts of the parties over the past year in accomplishing some consensus with respect to some general design principles to be applied. The parties have accomplished some unanimity in the establishment of a considerable amount of additional private but publicly accessible open space including the creation of a new "Mews" running parallel to Queen Street West with the hope of showcasing arts and other creative employment spaces. The future extensions of Sudbury Street and Abell Street are other acknowledged public benefits that will result from the redevelopment of the area.

The Board is hopeful a creative spirit will continue to flourish and take advantage of the as of right live/work nature of all residential units and addition of at-grade uses focussing on the creative and artistic trends in the area.

While the Board itself was encouraged to consider creative solutions in its deliberations, it must point out its obligation to carefully consider the evidence in the context of the existing statutory and policy framework. The Board encourages the ongoing objective formulation of new policies that will lead to more innovative and

creative solutions to protecting and enhancing the growing importance of creative employment opportunities for future applications.

All parties acknowledged the expectation that the Board would come to a decision that would set out the general nature and form of development for each of the three applications based on its best analysis of the evidence presented in the context of the existing policy regime. All expressed optimism that with that in place, the final form and content of appropriate official plan and by-law amendments, Section 37 agreements and site plans could be settled between the parties within a reasonable period of time. The Board will hold the parties to that test.

In setting what the Board has found to be reasonable development parameters in consideration of the extensive detailed architectural, urban design and land use planning evidence presented, the Board has not found any need to set a maximum density for each application at this time. As confirmed by most of the experts presenting, the density number should follow from the appropriate form, massing and heights established. The final density figures should be set out in the final By-law amendments resulting from this decision.

Reasonable by-law standards related to the addressing of difficulties with the co-location of bar/nightclub and residential uses, appropriate non residential land uses to be permitted and appropriate parking requirements to be applied for an area well served by public transit should be resolved. The Board also strongly encourages the parties, where possible, to establish shared or common utility use locations including those necessary for garage access, garbage collection and loading in an effort to reduce the amount of such space in favour of additional open space.

48 Abell Applications

On behalf of 48 Abell, D. Ekler provided expert architectural and urban design evidence and P. Smith provided expert land use planning evidence in support of the applications.

On behalf of the City, M. Van Elsberg provided expert urban design evidence and E. Hug provided expert land use planning evidence in opposition to the applications.

J. Harstone, General Manager of St. Clair Multi Faith Housing Society provided evidence related to its involvement as a provider of affordable housing units in partnership with 48 Abell in support of the applications.

M. York, on behalf of the Carpenters and Allied Workers Union and A Manahan, on behalf of the Universal Workers Union (Local 183) expressed its support for the applications.

Area residents J. Rose, M. Van Eyk and M. Wyatt expressed concerns with the proposal including the needs of existing tenants and desire of seeing the existing building remain.

There was no dispute to the fact that the existing building is not designated under the *Ontario Heritage Act* and that the owner has the right to apply to remove the existing building.

The applicant's proposal includes many public benefits being supported by the City. They include the provision of affordable housing subject to approval; the provision of secured and affordable live/work artist units; and, the provision of secured artist gallery and workshop space focused along a proposed new east-west "Mews" also supported by the City. In addition, lands are being proposed to be dedicated for the eventual opening of Abell Street as a public street as well as a small portion for the Sudbury Street extension. The Board finds the achievement of all of these initiatives to be in the overall public interest of the community.

The fundamental issues in dispute are the form massing and height of two proposed towers of approximately 18 and 17 storeys to a maximum height of 55.371 metres (from Sudbury Street grade) and 55.653 metres (from Queen Street grade) connected by an up to 9 storey stepped back building with a distinctive 4 storey façade. An east-west pedestrian "Mews" is proposed and efforts have been taken to secure approvals for 180 affordable housing units in the 18 storey southwest tower. This is set out in Exhibit No. 128.

The City is proposing one approximately 14 storey southwest tower with a maximum height of 45 metres with a lower building along the remaining north-south publicly accessible open space, the proposed east-west “Mews” and proposed Abell Street extension, being a 4 storey façade stepping back to an approximate 6 storey height to a maximum of 18 metres.

The urban designer for the City set out the intent for the lower building height to reflect the zoning and character of the existing industrial building on the site. He did concede a reasonable alternative for the building along Abell Street would be a height similar to that proposed along Queen Street. He confirmed the City’s vision as having all higher elements along the rail corridor to the south.

The architect and planner for the applicant were of the opinion that the applicant’s proposal met the intent of the City’s vision to step the tallest buildings down from west to east along the rail corridor and provide for a four-storey façade with step backs to nine storeys for the base building. It was their opinion that the higher building facing Abell Street similarly met the step down principle noting the existing 9-storey building to the further east at 45 Lisgar Street located at a similar distance from Queen Street.

Having carefully considered all of the urban design evidence related to overall building heights and locations, the Board finds that a southwest tower of approximately 18 storeys to a maximum height of 50.5 metres above the proposed Sudbury Street extension grade, inclusive of mechanical wrapped or otherwise, is a reasonable height perceptibly lower than the 19-storey height to be permitted to the west and 20-storey height approved opposite on the south side of the rail corridor.

With respect to the proposed Abell Street taller building element, the Board finds that a building of approximately 14 Storeys to a maximum height of 42 metres above the Queen Street grade, inclusive of mechanical wrapped or otherwise, provides for a reasonable transition from the 19-storey height to be permitted to the west to the existing 9-storey building at 45 Lisgar to the east, confirmed by the urban designer for the City to represent a reasonable height in the context of the overall Triangle. In addition, the length of the proposed Abell Street extension, representing the longest

distance between the rail corridor and Queen Street, affords an opportunity for building height transition down from the corridor to Queen Street. This height will fall well within the MCR zone angular plane from Queen Street.

With respect to the remaining connecting base buildings between the two taller elements, the Board finds that a well articulated 4-storey façade stepped back to a height not to exceed that to be permitted along Queen Street is reasonable. Stepbacks should be a minimum of 1.5 metres at the top or the fourth and sixth storeys along the publicly accessible open space to the west, the “Mews,” along Abell Street and the south wall of the Abell Street building. One-metre stepbacks are appropriate otherwise. No balconies will extend beyond the face of the 4-storey façade.

With respect to the provision of non residential land uses, the Board finds it to be appropriate to insure that all ground related and/or accessible building spaces along the proposed “Mews” and Abell Street should be restricted in that regard. This appropriate area will constitute the minimum non-residential land use to be set out in any proposed by-law.

Incorporating the above noted findings including height reductions and stepbacks, the Board otherwise finds the details of the plans proposed by the applicant as set out in Exhibit No. 128 to be appropriate, represent good planning and be in the overall public interest of the community.

In conclusion, the appeal by Abell Investment Limited/Verdiroc Development Corporation is allowed and the OP and By-law are to be amended in a manner that incorporates the findings of this decision otherwise substantially in the form of Exhibit No. 128.

The Board will withhold its Order pending successful completion of the following:

1. The finalization of an Official Plan Amendment incorporating the above findings of the Board in a form satisfactory to the City.
2. The finalization of a By-law Amendment incorporating the above findings of the Board in a form satisfactory to the City. The By-law

amendment will include a schedule confirming the proposed zoning restrictions related to heights and setbacks for 1171 Queen Street West, 48 Abell Street and 150 Sudbury Street. The By-law amendment will incorporate the setbacks from property lines to the building at grade as proposed by the City and set out on Exhibit No. 158.

3. The finalization of a site plan and agreement.
4. The finalization of a Section 37 agreement.
5. Adequate opportunity for the owners of 1171 Queen Street West, 48 Abell Street and 150 Sudbury Street together with the City to resolve an agreement regarding the securing, financing and timing of the extension of Sudbury Street.
6. Adequate opportunity for the owners of 1171 Queen Street West, 48 Abell Street and 150 Sudbury Street together with Canadian National Railway Company and Go Transit to resolve agreements regarding issues related to the rail corridor including crash protection and noise and vibration studies.
7. Adequate opportunity for the City of Toronto to secure land for a public park within the area of the Triangle as authorized by City Council.

The Board will require resolution of the above before September 1, 2007 or six months following from the submission by the applicant to the City of revised plans incorporating the findings of this decision, whichever greater. If no actions are taken to implement this decision of the Board within this prescribed timeline, the appeals will be dismissed.

The Board may be spoken to should difficulties arise in the completion of the above. This Board Member is seized in that regard.

The parties should to be diligent in bringing this matter to a final conclusion on the basis of mutual consent.

D. R. GRANGER
VICE-CHAIR