

ISSUE DATE:

June 29, 2007

DECISION/ORDER NO:

1820



PL061052

Ontario Municipal Board

Commission des affaires municipales de l'Ontario

IN THE MATTER OF subsection 34(19) of the *Planning Act*, R.S.O. 1990, c. P. 13, as amended

Appellant: Marowyne Holdings Inc.
Appellant: North Star Homes
Subject: By-law No. 994-2006
Municipality: City of Toronto
OMB Case No.: PL061052
OMB File No.: R060298

IN THE MATTER OF subsection 34(19) of the *Planning Act*, R.S.O. 1990, c. P. 13, as amended

Appellant: Buttermill Developments Inc.
Subject: By-law No. 996-2006
Municipality: City of Toronto
OMB Case No.: PL061054
OMB File No.: R060299

IN THE MATTER OF subsection 34(19) of the *Planning Act*, R.S.O. 1990, c. P. 13, as amended

Appellant: Mattamy (Rouge) Limited
Appellant: Mattamy (Jefferson Forest) Limited
Subject: By-law No. 1002-2006
Municipality: City of Toronto
OMB Case No.: PL061056
OMB File No.: R060300

IN THE MATTER OF subsection 34(19) of the *Planning Act*, R.S.O. 1990, c. P. 13, as amended

Appellant: Clustergarden Estates Inc.
Subject: By-law No. 1003-2006
Municipality: City of Toronto
OMB Case No.: PL061057
OMB File No.: R060301

IN THE MATTER OF subsection 34(19) of the *Planning Act*, R.S.O. 1990, c. P. 13, as amended

Appellant: Ashcott Mews Development Inc.
Subject: By-law No. 1004-2006
Municipality: City of Toronto
OMB Case No.: PL061060
OMB File No.: R060303

IN THE MATTER OF subsection 34(19) of the *Planning Act*, R.S.O. 1990, c. P. 13, as amended

Appellant: Goldman Centennial Developments
Limited
Appellant: Regal Crest Homes
Appellant: Stafford Homes Limited
Subject: By-law No. 1005-2006
Municipality: City of Toronto
OMB Case No.: PL061061
OMB File No.: R060304

IN THE MATTER OF subsection 34(19) of the *Planning Act*, R.S.O. 1990, c. P. 13, as amended

Appellant: Mattamy (Staines) Limited
Appellant: Mattamy (Neilson East) Limited
Appellant: Mattamy (Neilson) Limited
Subject: By-law No. 1006-2006
Municipality: City of Toronto
OMB Case No.: PL061062
OMB File No.: R060305

IN THE MATTER OF subsection 34(19) of the *Planning Act*, R.S.O. 1990, c. P. 13, as amended

Appellant: Monarch Corporation
Appellant: Chilocco Building Corp.
Subject: By-law No. 1007-2006
Municipality: City of Toronto
OMB Case No.: PL061063
OMB File No.: R060306

IN THE MATTER OF subsection 34(19) of the *Planning Act*, R.S.O. 1990, c. P. 13, as amended

Appellant: Mattamy (Warden) Limited
Appellant: Goldman Centennial Development
Limited
Appellant: Regal Crest Homes
Appellant: Stafford Homes LTD.
Subject: By-law No. 1008-2006

Municipality: City of Toronto
OMB Case No.: PL061064
OMB File No.: R060307

IN THE MATTER OF subsection 34(19) of the *Planning Act*, R.S.O. 1990, c. P. 13, as amended

Appellant: Kemper Investments Corp.
Appellant: Isreal Schwartz
Appellant: Adenat Inc.
Appellant: 2057062 Ontario Ltd.
and others
Subject: By-law No. 971-2006
Municipality: City of Toronto
OMB Case No.: PL061113
OMB File No.: R060316

IN THE MATTER OF subsection 34(19) of the *Planning Act*, R.S.O. 1990, c. P. 13, as amended

Appellant: Berkley Homes (Dalesford) Inc.
Subject: By-law No. 973-2006
Municipality: City of Toronto
OMB Case No.: PL061114
OMB File No.: R060317

IN THE MATTER OF subsection 34(19) of the *Planning Act*, R.S.O. 1990, c. P. 13, as amended

Appellant: Tiffany Park Homes
Subject: By-law No. 985-2006
Municipality: City of Toronto
OMB Case No.: PL061115
OMB File No.: R060318

IN THE MATTER OF subsection 34(19) of the *Planning Act*, R.S.O. 1990, c. P. 13, as amended

Appellant: Eric Gangbar and Lisa Markson
Appellant: Bruce Baker
Richard Wilson
Patterson Photographic Work Inc.
and others
Subject: By-law No. 970-2006
Municipality: City of Toronto
OMB Case No.: PL061121
OMB File No.: R060321

APPEARANCES:

<u>Parties</u>	<u>Counsel*/Agent</u>
Mattamy (Jefferson Forest) Ltd. Mattamy (Neilson) Ltd. Mattamy (Warden) Ltd. Monarch Corporation	J. Dawson* D. Artenosi*
Refer to List of Appellants as set out in Attachment 1 and 2	M. Laing
Goldman Centennial Developments Inc. Regal Crest Homes Stafford Homes Ltd.	J. Park* A. Roy (student-at-law)
Tiffany Park Homes	A. Christou
Aarmat Corporation**	M. Smiley*
City of Toronto	B. O'Callaghan*

** Granted party status at the hearing.

**MEMORANDUM OF ORAL DECISION DELIVERED BY J. CHEE-HING
ON JUNE 25, 2007 AND ORDER OF THE BOARD**

At the commencement of the hearing, Mr. O'Callaghan, counsel for the City of Toronto ("City") advised the Board that a settlement had been reached among the parties and on consent requested that the pre-hearing conference be converted to a hearing on the minutes of settlement. It was his submission that all the outstanding appeals have been settled, resolved or withdrawn and that it was his intention to call the City planner to give *viva voce* evidence with the consent of the appellants.

Mr. Smiley, counsel for Aarmat Corporation ("Aarmat") who was not an appellant to the appeals petitioned the Board for party status due to the circumstances that his client is now facing as a result of these proceedings. Aarmat owns the property located at 617 Wornburn Avenue in the City. Aarmat was recently successful in its minor variance appeal to the Board (OMB Decision No. 1780) under the by-law in force at the time of the application (B/L 7625 of the former City of North York). Unfortunately,

Aarmat's application was not caught by the City in the settlement of the subject appeals as its application was made after the appeals to the above-noted subject by/laws were made by the appellants. Mr. Smiley is seeking party status to these proceedings in order to seek an exemption of his client's site from the new driveway dimensions and front yard landscaping by/law that would apply to the subject site if the settlement is approved. Counsels for the appellants took the position that Aarmat's appeal should not be consolidated with the current appeals. Rather it should be scoped and evidence be heard on an interlocutory basis and only with respect to Aarmat's lands and the specific by/law that would affect its lands (B/L No. 971-2006, City of North York). The Board was cognizant of the appellants' concerns and granted party standing to Aarmat only with respect to its site and B/L 971-2006.

Mr. K. Lehmann, planning manager with the City, proceeded to proffer evidence on the planning merits of the Zoning By/laws 970-2006 – 1008-2006 (39 by/laws in total) which relate to front yard parking, driveway dimensions and front yard landscaping requirements for the City of Toronto (EXs 1, & 3). The purpose and effect of these 39 by/laws is to amend the existing Zoning By/laws (ZBL) of the former municipalities that comprise the new City of Toronto to regulate the widths of residential driveways and require minimum amount of landscaping and soft landscaping in the front yards of residential lots. The appellants appealed the passage of these by/laws to the Board. Their planning applications that were in the planning review process or had received approvals before the by/laws were passed by City Council were afforded no exemptions from the said by/laws. Furthermore it was the appellants' position that all new building lots will be significantly impacted by the new ZBLs.

The governing principles behind these by/laws is to limit the amount of hard surface on residential lots, increase the landscaped open space and improve the streetscape from an urban design perspective. It was his evidence that these changes would have a positive impact on the environment by increasing the absorption of storm-water run-off on more available soft surfaces and increase the tree canopy across the City.

Mr. Lehmann recognized that applications already made by the appellants for various planning approvals, which will be affected by the passage of these by/laws, should be treated as exceptions to these by/laws. These exceptions to the by/laws are

found in Exhibit 1. For these reasons it was his planning opinion that the by/laws and the terms of the settlement represent good planning and are in the broader public interest.

Mr. Lehmann also noted that the property owned by Aarmat and for which variances were recently granted by the Board, should also be exempted from the driveway and front yard landscaping requirements of the applicable by/law. It was his opinion that the circumstances affecting that site are similar to those sites identified in Attachment 1, of Exhibit 3. Mr. O'Callaghan submitted that while he has no instructions from City Council to include Aarmat's property on the list of exemptions contained in the afore-mentioned attachment, he is not opposed to Mr. Smiley's request that his client's property be added to the list of exemptions found in Attachment "1".

Having heard the planning evidence of Mr. Lehmann and the submissions of all counsel, the Board finds the terms of the settlement to be good planning and to be in the broader public interest. The BOARD ORDERS that:

1. The appeals are allowed in part and Orders the approval of Zoning By-laws 970-2006, 971-2006, 973-2006, 985-2006, 994-2006, 996-2006, 1002-2006, 1003-2006, 1004-2006, 1005-2006, 1006-2006 and 1008-2006 as passed, except as they related to:
 - (a) approvals respecting the properties listed in Attachment "1" to this Board Order, to which the applicable Zoning By-laws shall not apply. These properties will be governed by the approvals which are already in force and effect for these properties as identified in the fourth column of Attachment "1" under the heading "Approval Received."; and
 - (b) the properties listed in Attachment "2" to this Board Order, that remain the subject of outstanding applications, or appeals before the Ontario Municipal Board, with the intent being that they be dealt with in their approval process at the City, or at the hearing of the appeals, if any, before the Board.

2. The appeals by Chilocco Building Corporation at 260 Brimley Road and by Monarch Corporation against By/law 1007-2006, Midland/St.Clair of the former City of Scarborough are allowed and the said by/law is hereby repealed.
3. 618 Woburn Avenue, which is the property owned by Aarmat, be added to the list of sites exempted from the driveway dimensions and front yard landscaping by/laws found in Attachment "1".

So Orders the Board.

"J. Chee-Hing"

J. CHEE-HING
MEMBER