

Ontario Municipal Board
Commission des affaires municipales
de l'Ontario



ISSUE DATE: July 27, 2017

CASE NO(S): PL140905
MM160039
PL160085

PROCEEDING COMMENCED UNDER subsection 17(24) of the *Planning Act*, R.S.O. 1990, c. P.13, as amended

Appellant: 90 Eglinton West Limited
Appellant: Upper Village Investments Ltd.
Appellant: RioCan Holdings (Sunnybrook) Inc.
Subject: Proposed Official Plan Amendment No. OPA 253
Municipality: City of Toronto
OMB Case No.: PL140905
OMB File No.: PL140905
OMB Case Name: RioCan Holdings (Sunnybrook) Inc. v. Toronto (City)

PROCEEDING COMMENCED UNDER subsection 34(19) of the *Planning Act*, R.S.O. 1990, c. P.13, as amended

Appellant: 346-350 Eglinton Avenue West Holdings Ltd.
Appellant: 352-356 Eglinton Avenue West Holdings Ltd.
Appellant: Upper Village Investments Ltd.
Subject: By-law No. 1030-2014
Municipality: City of Toronto
OMB Case No.: PL140905
OMB File No.: PL141112

PROCEEDING COMMENCED UNDER subsection 114(15) of the *City of Toronto Act*, 2006, S.O. 2006, c. 11, Sched. A

Subject: Site Plan
Referred by: Terranata Developments Inc.
Property Address/Description: 346, 350, 352 & 356 Eglinton Avenue West
Municipality: City of Toronto
OMB Case No.: MM160039
OMB File No.: MM160039
OMB Case Name: Terranata Developments Inc. v. Toronto (City)

PROCEEDING COMMENCED UNDER subsection 34(11) of the *Planning Act*, R.S.O. 1990, c. P.13, as amended

Applicant and Appellant: Terranata Developments Inc.
Subject: Application to amend Zoning By-law No. 438-86 and City-wide Zoning By-law No. 569-2013 - Neglect of the City of Toronto to make a decision

Existing Zoning: MCR under By-law No. 438-86 and CR under Proposed City wide By-law No. 569-2013

Proposed Zoning: Site Specific (To be determined)

Purpose: To permit a fifteen-storey mixed-use building

Property Address/Description: 346, 350, 352 & 356 Eglinton Avenue West

Municipality: City of Toronto

Municipality File No.: 15 214446 NNY 16 OZ

OMB Case No.: MM16003

OMB File No.: PL160568

PROCEEDING COMMENCED UNDER subsection 34(11) of the *Planning Act*, R.S.O. 1990, c. P.13, as amended

Applicant and Appellant: RioCan Holdings (Sunnybrook) Inc.
Subject: Application to amend the former Town of Leaside Zoning By-law - Neglect of the City of Toronto to make a decision

Existing Zoning: Mixed Use Residential Commercial – site specific MRC-1 in the former Town of Leaside Zoning By-law and CR 1.2 (c0.4; r0.8) SS2 (x1164) under Zoning By-law 569-2013

Proposed Zoning: Site Specific (To be determined)

Purpose: To permit a mixed-use development

Property Address/Description: 660 Eglinton Avenue East

Municipality: City of Toronto

Municipality File No.: 14 267342 NNY 26 OZ

OMB Case No.: PL160085

OMB File No.: PL160085

OMB Case Name: RioCan Holdings (Sunnybrook) Inc. v. Toronto (City)

Heard: July 6, 2017 in Toronto, Ontario

APPEARANCES:**Parties****Counsel**

City of Toronto ("City")

G. Whicher,
L. Bisset346-350 Eglinton Ave. W. Holdings
Ltd., and 352-356 Eglinton Ave. W.
Holdings Ltd. ("Terranata")

D. Bronskill

90 Eglinton West Limited

A. Vandervoort,
A. Mares (student-at-law)

Upper Village Investment Ltd.

M. Cook

MEMORANDUM OF ORAL DECISION DELIVERED BY BLAIR S. TAYLOR ON JULY 6, 2017 AND ORDER OF THE BOARD

INTRODUCTION

[1] The Board held a further Prehearing to be advised of the status of the remaining appeals against the City's Official Plan Amendment Number 253 ("OPA") and Zoning By-law Number 1030-2014 ("ZBA").

TERRANATA UPDATE

[2] Firstly the Board was advised of the change of counsel as reflected in the Appearances above.

[3] Then the Board was provided with a draft Procedural Order and Issues List, which is not yet in final form. It is to be finalized and provided to the Case Coordinator for issuance by the Board.

[4] It is anticipated that an eight day hearing will be required and the parties requested that the Board set the matter down for a hearing.

[5] The Board originally set an eight day hearing on the appeals of the OPA and ZBA to commence in February 2018, but immediately after the Prehearing, the Board was advised of a conflict. Thus the Board has now set the matter down for a hearing commencing **on Monday, March 19, 2018 at 10 a.m. at:**

**Ontario Municipal Board
655 Bay Street
16th Floor
Toronto, Ontario**

[6] The parties have finalized the Procedural Order and it is attached to this decision as Attachment 1.

[7] There will be no further notice.

[8] I am not seized.

PARTICIPANTS

[9] Previously the Board had granted participant status to Shelly Ortved, subject to confirmation of the corporate status of the Oriole Park Association.

[10] Copies of the Letters Patent have been filed with the Board for the Oriole Park Association and accordingly the Board recognized the Oriole Park Association as the participant in lieu of Ms. Ortved.

90 EGLINTON WEST LIMITED

[11] The Board was advised that a site specific development proposal had been approved by the City, and the implementing by-laws were being processed.

[12] Upon enactment of the by-laws the Board was advised that the appeals by 90 Eglinton West Limited would be withdrawn.

[13] Counsel for 90 Eglinton West Limited was directed to forthwith communicate to

the Case Coordinator with regard to any such withdrawal of appeals.

UPPER VILLAGE INVESTMENT LTD. AND BATEG INVESTMENTS LTD.

[14] The Board was advised that a report had been taken to City Council not in support of the development proposal and that City staff had been directed to attend a forthcoming Board Prehearing set for October 25, 2017 (PL170395).

[15] Counsel for Upper Village Investments Ltd. and Bateg Investments Ltd. told the Board that he anticipated that there would be a request to consolidate the appeals against the OPA and the ZBA with the site specific appeal.

[16] Counsel understands that a motion must be brought to formally request the Board to consolidate of these matters.

RIOCAN

[17] The Board sought a status update with regard to this matter which had been the subject of a settlement hearing in 2016.

[18] The City advised that progress is being made with regard to the preparation of the appropriate implementing by-laws.

[19] City counsel was directed to provide a written update with regard to the anticipated timing of the finalization of the by-laws to the Case Coordinator within one week of this hearing date.

MOTION?

[20] At the last Prehearing in February 2017, Eileen Denny had sought to bring a verbal motion before the Board seeking the "reinstatement" of the party status for the Avenue Road Eglinton Community Association.

[21] As no notice of the verbal motion had been provided, the Board had sought

submissions from the parties with regard to the proposed verbal motion.

[22] Counsel for the parties had at that time submitted that, as this was new to them, and as the Board would be setting down a further PHC, that a written motion in compliance with the Board's Rules of Practice and Procedure should be brought, and that the Board could deal with that motion at the further PHC.

[23] Ms. Denny confirmed that she could bring such a motion.

[24] The Board in its written decision indicated that if such a motion were brought, it would be added to the agenda for the next PHC.

[25] For the disposition of this July 6, 2017 Prehearing, the Board was requested by counsel to include in its decision that no such Motion Record had been filed.

[26] The Board also notes that Ms. Denny did not appear at the July 6, 2017 Prehearing.

"Blair S. Taylor"

BLAIR S. TAYLOR
MEMBER

If there is an attachment referred to in this document,
please visit www.elto.gov.on.ca to view the attachment in PDF format.

Ontario Municipal Board

A constituent tribunal of Environment and Land Tribunals Ontario
Website: www.elto.gov.on.ca Telephone: 416-212-6349 Toll Free: 1-866-448-2248

ATTACHMENT 1

PL140905
PL160568
MM160039

ONTARIO MUNICIPAL BOARD Commission des affaires municipales de l'Ontario

PROCEEDING COMMENCED UNDER subsection 34(19) of the *Planning Act*, R.S.O. 1990, c. P.13, as amended

Appellant: 346-350 Eglinton Avenue West Holdings Ltd.
Appellant: 352-256 Eglinton Avenue West Holdings Ltd.
Subject: By-law No. 1030-2014
Municipality: City of Toronto
OMB File No.: PL141112
OMB Case No: PL140905

PROCEEDING COMMENCED UNDER subsection 114(15) of the *City of Toronto Act, 2006*, S.O. 2006, c.11 Sched. A

Subject: Site Plan
Referred by: Terranata Developments Inc.
Property Address/Description: 346, 350, 352 & 356 Eglinton Avenue West
Municipality: City of Toronto
OMB Case No.: MM160039
OMB File No.: MM160039
OMB Case Name: Terranata Developments Inc. v. Toronto (City)

PROCEEDING COMMENCED UNDER subsection 34(11) of the *Planning Act*, R.S.O. 1990, c. P.13, as amended

Applicant and Appellant: Terranata Developments Inc.
Subject: Application to amend Zoning By-law No. 438-86 and City-wide Zoning By-law No. 569-2013 – Neglect of the City of Toronto to make a decision
Existing Zoning: MCR under By-law No. 438-86 and CR under Proposed City wide By-law No. 569-2013
Proposed Zoning: Site Specific (To be determined)
Purpose: To permit a fifteen-storey mixed-use building
Property Address/Description: 346, 350, 352 & 356 Eglinton Avenue West
Municipality: City of Toronto
Municipality File No.: 15 214446 NNY 16 OZ

OMB File No.: PL160568
OMB Case No: MM160039

PROCEDURAL ORDER

The Board orders that:

1. The Board may vary or add to this Order at any time either on request or as it sees fit. It may amend this Order by an oral ruling or by another written Order.

Organization of the Hearing

2. The hearing of Phase 1 of these appeals (Zoning Matters) will begin on March 19, 2018 at 10:00 a.m. at: 655 Bay Street, Toronto Ontario.
3. The hearing of Phase 2 of these appeals (Site Plan Matters) will begin at a date to be determined, after the Board has issued a decision with respect to Phase 1.
4. The length of Phase 1 of the hearing will be **eight (8) day(s)**, to take place on **March 19-23 and 26-28, 2018**. The length of the hearing may be shortened as issues are resolved or settlement is achieved.
5. The parties and participants (see **Attachment 1** for the meaning of these terms) identified at the prehearing conference are listed in **Attachment 2** to this Order.
6. The Issues are set out in the Issues Lists attached as **Attachment 3**. There will be no changes to these lists unless the Board permits it. A party who asks for changes may have costs awarded against it.
7. The order of evidence shall be listed in **Attachment 4** to this Order.

Requirements Before the Hearing

8. All parties and participants (or their representatives) shall provide a mailing address, email address, and telephone number to the Board. Any such person who retains a representative (legal counsel or agent) subsequent to the prehearing conference must advise the other parties and the Board of the representative's name, mailing address, email address and phone number.
9. A party who intends to call witnesses, whether by summons or not, shall provide to the Board and the other parties a list of the witnesses and the order in which they will be called. This list must be delivered **60 days (January 18, 2018)** prior to the commencement of the hearing. For expert witnesses, a party is to include a copy of the curriculum vitae and the area of expertise in which the witness is proposed to be qualified.
10. An expert witness shall prepare an expert witness statement, that shall include: an acknowledgement of expert's duty form, the area(s) of expertise, any reports prepared by the expert, and any other reports or documents to be relied on at the hearing. Copies of this must be provided as in section 12. Instead of a witness statement, the expert may file his or her entire report if it contains the required

information. If this is not done, the Board may refuse to hear the expert's testimony.

11. A participant must provide to the Board and the parties a participant statement by **30 days (February 16, 2018)** prior to the commencement of the hearing or the witness or participant may not give oral evidence at the hearing.
12. Expert witnesses who are under summons but not paid to produce a report do not have to file an expert witness statement; but the party calling them must file a brief outline of the expert's evidence and his or her area of expertise, as in section 12.
13. On or before **30 days (February 16, 2018)** prior to the commencement of the hearing the parties shall provide copies of their expert witness statements to the other parties. The parties shall prepare a Joint Document Book to be filed with the Board on the first day of the hearing. A paper copy of any document proposed to be entered into evidence or relied upon shall be provided at the hearing unless ordered otherwise by the presiding Member.
14. On or before **7 days (March 12, 2018)** prior to the commencement of the hearing, the parties shall provide copies of their visual evidence to all of the other parties. If a model is proposed to be used the Board must be notified before the hearing. All parties must have a reasonable opportunity to view it before the hearing.
15. Parties may provide to all other parties a written response to any written evidence within **10 days (February 26, 2018)** after the evidence is received.
16. A person wishing to change written evidence, including witness statements, must make a written motion to the Board in accordance with the Board's Rules 34 to 38.
17. A party who provides the written evidence of a witness to the other parties must have that witness attend the hearing to give oral evidence, unless the Board and the parties are notified at least **7 days (March 12, 2018)** before the hearing that the written evidence is not part of their record.
18. Documents may be delivered in person, by courier, by facsimile or registered or certified mail, by email or otherwise as the Board may direct. The delivery of documents by fax and email shall be governed by the Board's Rules 26 to 31 on this subject. Material delivered by mail shall be deemed to have been received **5 business days** after the date of registration or certification.
19. No adjournments or delays will be granted before or during the hearing except for serious hardship or illness. The Board's Rules 61 to 65 apply to such requests.

This Member is not seized.

So orders the Board.

Attachment 1

Purpose of the Procedural Order and Meaning of Terms

Prehearing conferences usually take place only where the hearing is expected to be long and complicated. If you are not familiar with the hearing process you should prepare by obtaining the Guide to the Ontario Municipal Board, and the Board's Rules, from the Board Information Office, 15th Floor, 655 Bay Street, Toronto, M5G 1E5, 416-212-6349, or from the Board website at www.omb.gov.on.ca.

The parties should discuss the draft Procedural Order before the prehearing conference and identify the issues and the process they propose the Board order following the prehearing. The Board will hear submissions about the content of the Procedural Order at the prehearing.

Meaning of terms used in the Procedural Order:

***Party** is an individual or corporation permitted by the Board to participate fully in the hearing by receiving copies of written evidence, presenting witnesses, cross-examining the witnesses of the other parties, and making submissions on all of the evidence. If an **unincorporated group** wishes to become a party, it must appoint one person to speak for it, and that person will become the party and assume the responsibilities of a party as set out in the Procedural Order. Parties do not have to be represented by a lawyer, and may have an agent speak for them. The agent must have written authorisation from the party.*

***Participant** is an individual, group or corporation, whether represented by a lawyer or not, who may attend only part of the proceeding but who makes a statement to the Board on all or some of the issues in the hearing. At the hearing, a participant may be asked questions by the parties about their statements. Participants do not normally receive notice of a mediation or conference calls on procedural issues and cannot ask for costs, or review of a decision as parties can.*

***Written and Visual Evidence:** **Written evidence** includes all written material, reports, studies, documents, letters and witness statements which a party or participant intends to present as evidence at the hearing. These must have pages numbered consecutively throughout the entire document, even if there are tabs or dividers in the material. **Visual evidence** includes photographs, maps, videos, models, and overlays which a party or participant intends to present as evidence at the hearing. If a model forms part of the evidence, photographs of the model shall also be filed.*

Witness Statements:

*A **witness statement** or a **participant statement** is a short written outline of the person's or group's background, experience and interest in the matter; a list of the*

issues which he or she will discuss and the witness' or participant's position on those issues; and a list of reports that the witness or participant will rely on at the hearing.

An **expert witness statement** should include his or her (1) name and address, (2) qualifications, acknowledgement of the expert's duty, and specific area(s) of expertise, (3) a list of the issues to be addressed, (4) the witness' opinions on those issues and the complete reasons for the opinions and (5) a list of reports that the witness will rely on at the hearing.

The Procedural Order will set out when and how witness statements are to be exchanged.

Additional Information

Summons: A party may ask the Board to issue a summons. This request must be made before the time that the list of witnesses is provided to the Board and the parties. (See Rules 45 and 46 on the summons procedure.) An affidavit may be requested indicating how the witness' evidence is relevant to the hearing. If the Board is not satisfied from the affidavit, it will require that a motion be heard to decide whether the witness should be summoned.

The order of examination of witnesses: is usually direct examination, cross-examination and re-examination in the following way:

direct examination by the party presenting the witness;

direct examination by any party of similar interest, in the manner determined by the Board;

cross-examination by parties of opposite interest;

re-examination by the party presenting the witness; or

another order of examination mutually agreed among the parties or directed by the Board.

Role of Participants: Participants are identified at the start of a prehearing or at the start of a hearing. Participant statements should be filed with the Board and the parties in accordance with the direction set out in the Board's Procedural Order. If a participant does not attend the hearing and only files a written statement, the Board may not give it the same attention or weight as submissions made orally. The reason is that parties cannot ask further questions of a person if they merely file the material and do not attend.

Attachment 2

LIST OF PARTIES AND PARTICIPANTS

PARTIES:

1. **346-350 Eglinton Avenue West Holdings Ltd.
352-356 Eglinton Avenue West Holdings Ltd.
Terranata Developments Inc.**

David Bronskill
Goodmans LLP
Bay Adelaide Centre
333 Bay Street, Suite 3400
Toronto, ON M5H 2S7

E-mail: dbronskill@goodmans.ca
Tel.: 416.597.4299
Fax: 416.979.1234

2. **City of Toronto**

Gordon Whicher and Laura K. Bisset
Solicitors, Planning & Administrative Tribunal Law
City of Toronto, Legal Services
Metro Hall
26th Floor, 55 John Street
Toronto, Ontario M5V 3C6

Email: gordon.whicher@toronto.ca / laura.bisset@toronto.ca
Tel.: 416.392.1228 / 416.392.8782
Fax: 416.397.4420

PARTICIPANTS:

A. Winter
S. Dash
V. Lemos
S. Vetter
R. Martin
J. Kabrajee
K. Fitzwilliam
B. Howard
J. Krane
J. Fisher
J. O'Sullivan
I. Gregoire

Avenue Road Eglinton Community Association
Oriole Park Residents Association

Attachment 3

ISSUES LIST

Provincial Statutory & Policy Requirements

Planning Act

1. Is the proposed development and Zoning By-law Amendment consistent with the purposes of the *Planning Act* as set out in Section 1.1 of the *Planning Act*, in particular Section 1.1 (f)?
2. Do the proposed development and Zoning By-law Amendment have appropriate regard for the matters of provincial interest as set out in Section 2 of the *Planning Act*, in particular Section 2(p)?
3. Do the proposed development and Zoning By-law Amendment have appropriate regard for the matters of provincial interest as set out in Section 3 of the *Planning Act*, including subsections 3(5)(a) and (b)?

Provincial Policy Statement

4. Is the proposed development and Zoning By-law Amendment consistent with the Provincial Policy Statement (2014) pursuant to Section 3 of the *Planning Act*, in particular Sections 1.1.3.3 and 4.7?

Growth Plan for the Greater Golden Horseshoe

5. Does the proposed development and Zoning By-law Amendment conform with, and not conflict with, the Growth Plan for the Greater Golden Horseshoe (2017), in particular, Sections 2.2.2.4(b) and 2.2.2.4(f)?

City of Toronto Official Plan

6. Are the proposed development and Zoning By-law Amendment appropriate and does the Proposal conform to the policies of the City of Toronto Official Plan with respect to Avenues, Healthy Neighbourhoods, Public Realm, Built Form, Mixed Use Areas, Neighbourhoods and Implementation?
7. Do the proposed development and Zoning By-law Amendment conform to the policies of the Yonge/Eglinton Secondary Plan, particularly Sections 2.4, 2.7 a), b), c), 2.10, 2,16, and 4.1?
8. Do the proposed development and Zoning By-law Amendment respond appropriately to the policies of the City's Official Plan Amendment 253 and Site and Area Specific Policy 476?

9. Does the proposal respond appropriately to the policies of Section 4 of OPA 253 with respect to the conveyance of an interest in land to the City in respect of a rear laneway?

Site Specific Issues

10. Are the built form type, height, density, massing, and scale of the proposed development appropriate, given principles of good planning and urban design; its relationship to the surrounding context; its transition; shadow impacts; the public realm; the relevant policy documents; and the further issues more particularly set out below?
11. Would the approval of the proposed development facilitate further approvals of inappropriate built form for development along Eglinton Avenue West?
12. Does the proposal satisfy the matters raised by City's Engineering and Construction Services Division?
13. Is the proposed built form on the site appropriate on an *Avenue*?
14. Is the built form appropriate for the proposed development site and will it cause unacceptable adverse impact on the abutting residential areas?
15. Does the proposed development meet the intent of Zoning By-law 569-2013, and respond appropriately to the Eglinton Connects Zoning By-law 1030-2014 and to the City's Avenues and Mid-Rise Building Guidelines including maximum allowable height, front and rear angular planes, setbacks, stepbacks, building base height, front and side yard stepbacks and balconies?
16. As a tall building proposal, does the proposed development respond appropriately to the City's Tall Building Guidelines for context analysis, fit and transition in scale, sunlight and sky view and separation distances on small sites?
17. Are the building setbacks from Eglinton Avenue West appropriate? Is the proposed rear laneway access appropriate and are the separation distances to the abutting properties to the rear and the separation distances between adjacent buildings along Eglinton Avenue West appropriate?
18. Does the proposal fit appropriately along the existing and planned built form context along Eglinton Avenue West including setbacks, height, building base height and stepbacks?
19. Does the proposal provide proper transition through setbacks and stepping down in height to the *Neighbourhoods* and not create negative issues of shadow, overlook and privacy?
20. Has the applicant provided adequate on-site parking?

21. Should community benefits under section 37 of the *Planning Act* be required in the event the appeal is allowed by the Ontario Municipal Board in whole or in part? If the Proposal is approved in whole or in part, what conditions would be appropriate and should the Board Order be withheld until the following conditions are satisfied:
 - a. The amending by-law be finalized, in a form and content acceptable to the City of Toronto and the Owner, that implements the proposed development; and
 - b. The Owner enters into an agreement with the City of Toronto and registers such agreement pursuant to Section 37 of the Planning Act to secure the appropriate community benefits for the proposal.

Site Plan Matters

In the event the Board approves the zoning application, what changes should be made to the proposed site plans to address the following City concerns:

22. Are the design details of the servicing and loading areas and the ramp to the underground parking for the development appropriate?
23. Is the proposed location and screening of utilities and services appropriate?
24. Does the proposal provide a 0.4 metre wide land conveyance on Eglinton Avenue West?
25. Does the proposal satisfy the policies of Section 4 of OPA 253 with respect to the conveyance of an interest in land to the City in respect of a rear laneway?
26. Has the applicant resolved all outstanding matters related to the Transportation Impact Study?
27. Is the proposed development configuration and location of indoor and outdoor amenity areas acceptable?
28. Is the proposed location of and design of the bicycle parking appropriate?
29. Is the materiality and design of the building facades appropriate?
30. Do the Landscape Plans illustrate all the required information, such as the location and amount of landscaping and planting materials, and the streetscape details?
31. Is the proposed site grading appropriate?
32. Has a Landscape Cost Estimate been submitted?

33. Does the development comply with Tier 1 of the Toronto Green Standard?
34. Are the proposed exterior site lighting and photometric plan details provided and appropriate?
35. Has the applicant resolved all engineering related matters including the Site Servicing, Grading and Stormwater Management?

Attachment 4

ORDER OF EVIDENCE

1. 346-350 Eglinton Avenue West Holdings Ltd.
352-356 Eglinton Avenue West Holdings Ltd.
Terranata Developments Inc.
2. City of Toronto
3. Participants
4. Reply Evidence of 346-350 Eglinton Avenue West Holdings Ltd., 352-356 Eglinton Avenue West Holdings Ltd., Terranata Developments Inc. (if any)