

Ontario Municipal Board
Commission des affaires municipales
de l'Ontario



ISSUE DATE: March 09, 2016

CASE NO(S): PL140905

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

Appellant:	2401 Eglinton Avenue West Ltd.
Appellant:	346-350 Eglinton Avenue West Holdings Ltd.
Appellant:	352-356 Eglinton Avenue West Holdings Ltd.
Appellant:	90 Eglinton West Limited
Appellant:	Armel Corporation
Appellant:	Skypod View Inc.
Appellant:	Leaside Property Owners Association Incorporated
Appellant:	Upper Village Investments Ltd.
Appellant:	Solray Investments Limited
Appellant:	Hullmark (313 Eglinton) Ltd.
Appellant:	RioCan Holdings (Sunnybrook) Inc.
Appellant:	Confederation of Resident & Ratepayer Associations (CORRA)
Appellant:	White Bell Investments Limited
Appellant:	Duffmits Holdings Inc.
Appellant:	Gabriel Properties (2006) Inc.
Appellant:	Avenue Road Eglinton Community Association (ARECA)
Subject:	Proposed Official Plan Amendment No. OPA 253
Municipality:	City of Toronto
OMB Case No.:	PL140905
OMB File No.:	PL140905
OMB Case Name:	Armel Corporation v. Toronto (City)

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

Appellant:	2401 Eglinton Avenue West Ltd.
Appellant:	346-350 Eglinton Avenue West Holdings Ltd.
Appellant:	352-356 Eglinton Avenue West Holdings Ltd.
Appellant:	Solray Investments Limited
Appellant:	Leaside Property Owners Association

Appellant: Incorporated
 Appellant: Hullmark (313 Eglinton) Ltd.
 Appellant: Armel Corporation
 Appellant: Skypod View Inc.
 Appellant: Gabriel Properties (2006) Inc.
 Appellant: Avenue Road Eglinton Community Association
 (ARECA)
 Appellant: Confederation of Resident & Ratepayer
 Associations (CORRA)
 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 34(19) of the *Planning Act*, R.S.O. 1990, c. P.13, as amended

Appellant: Confederation of Resident and Ratepayer
 Associations in Toronto (CORRA)
 Subject: By-law No. 1031-2014
 Municipality: City of Toronto
 OMB Case No.: PL140905
 OMB File No.: PL141113

Heard: January 22, 2016 in Toronto, Ontario

APPEARANCES:

Parties

Counsel*/Representative

2401 Eglinton Avenue West Ltd.	N. Smiley* (absent)
90 Eglinton West Limited and Solray Investments Ltd.	J. Smuskowitz* for A. Brown*
346-350 Eglinton Avenue West Holdings Ltd. and 352-356 Eglinton Avenue West Holdings Ltd.	D. Artenosi*
Armel Corporation	S. Zakem*
Skypod View Inc. and Gabriel Properties (2006) Inc.	B. Ketcheson*

White Bell Investments Limited and Duffmits Holdings Inc.	J. Dawson*
Bateg Investments Ltd. and Upper Village Investments Ltd.	A. Frank* for P. Devine*
Hullmark (313 Eglinton) Ltd.	C. Higgs*
RioCan Holdings (Sunnybrook) Inc.	A. Benedetti*
Confederation of Resident & Ratepayer Associations (CORRA) and Avenue Road Eglinton Community Association (ARECA)	E. Denny
Leaside Property Owners Association Incorporated	G. Kettel
City of Toronto	S. Bradley*

APPEARANCES FOR PL141112:

Parties

Counsel*/Representative

346-350 Eglinton Avenue West Holdings Ltd. and 352-356 Eglinton Avenue West Holdings Ltd.	D. Artenosi*
Armel Corporation	S. Zakem*
Skypod View Inc. and Gabriel Properties (2006) Inc.	B. Ketcheson*
Bateg and Upper Village Investments Ltd.	A. Frank* for P. Devine*
Solray Investments Ltd.	J. Smuskowitz* for A. Brown*
Hullmark (313 Eglinton) Ltd.	C. Higgs*
Confederation of Resident & Ratepayer Associations (CORRA) and Avenue Road Eglinton Community Association (ARECA)	E. Denny
Leaside Property Owners Association Incorporated	G. Kettel

City of Toronto

S. Bradley*

APPEARANCES FOR PL141113:

Parties

Counsel*/Representative

Confederation of Resident &
Ratepayer Associations (CORRA)

E. Denny

City of Toronto

S. Bradley*

DECISION DELIVERED BY R. ROSSI AND ORDER OF THE BOARD

[1] The above-listed parties have filed appeals with the Ontario Municipal Board (“Board”) against Official Plan Amendment No. 253 (“OPA”), a planning instrument initiated by the City of Toronto (“City”) that implements the Eglinton Connects Planning Study Area (“Study Area”) and related Zoning By-laws: Zoning By-law No. 1030-2014, which amends the zoning regulations for much of the Study Area to allow for the development of mid-rise buildings on certain properties and reduces parking requirements, and Zoning By-law No. 1031-2014, which facilitates the use of lands to be used for transit purposes only by exempting these from minimum height requirements, setback and landscaped open space requirements that would apply if they were used for non-transit purposes. This latter By-law applies primarily to any transit supplier (like Metrolinx) seeking to erect subway station-type buildings at various points within the Study Area.

[2] These pre-hearing conferences (“PHC”) before the Board have been ongoing since last year. Those appellant parties who own lands affected by the proposed planning instruments are represented by counsels as listed. Appellant resident and ratepayer group parties are represented at these PHCs by their respective non-counsel resident representatives.

[3] The purpose of this Order is to place in writing before all parties the Decision and Order of the Board arising from the Board’s calling of its own motion in its Decision and Order issued January 28, 2016, based upon its general jurisdictional powers provided to

it under s. 41 of the *Ontario Municipal Board Act* (“Act”) to bring its own motion to dismiss the appeals of the Confederation of Resident & Ratepayer Associations (“CORRA”) by virtue of its failure to disclose or provide any apparent land use planning ground upon which to adjudicate its appeals. In accordance with s. 37.1(2) of this Act, the Board provided CORRA with 10 days from the date of issue of the Board’s Decision and Order to make submissions in writing as to why the Board should not dismiss CORRA’s appeals without holding a hearing. The Board also directed CORRA that, should it be permitted to remain as a party, to provide its list of issues for the May 2016 hearing into CORRA’s appeal of Zoning By-law No. 1031-2014 of which CORRA is the sole appellant.

[4] On February 2, 2016, CORRA’s representative directed her initial response to the Board’s Executive Chair, the former Executive Chair and the Board Secretary, acknowledging receipt of the Board’s Decision and Order instead of to the presiding Member. CORRA’s representative called the written response timelines “too narrow to meaningfully respond.” The Board Secretary turned over CORRA’s written request to the presiding Member for his consideration and decision. The presiding Member granted an extension to February 16, 2016, for CORRA to provide its submissions based on the CORRA representative’s request for time to observe Chinese New Year celebrations on and around February 8, 2016.

[5] On February 16, 2016, CORRA’s representative e-mailed CORRA’s submissions on the Board’s motion once again addressed to the Board Secretary and to the Case Coordinator. CORRA also sent a second letter addressed to both the Board Secretary and the City’s counsel asking questions of the City related to CORRA’s appeal of Zoning By-law No. 1031-2014.

[6] After the Board’s careful review of the entire contents of CORRA submissions, the Board determines that CORRA has failed to disclose any apparent land use planning issues. CORRA has succinctly outlined its specific issues in one sentence: “The live issues for CORRA involved the City’s evidence on Notice and its adequacy.” However, when CORRA raised this matter of Notice at the Board’s November 2015

PHC, the Board directed the City to re-send its Notice and it gave the City and CORRA time at that PHC to agree on the content of the Notice. The City complied with the direction and in response to the re-sent Notice, several dozen residents attended the January 22, 2016 PHC. The Board reviewed the copy of the City's re-sent Notice that was presented at that PHC and it issued its decision both orally and subsequently in writing with full reasons on January 28, 2016 that the matter of Notice was settled. These facts stand in contrast to the statement in CORRA's letter of February 16, 2016 that at the previous PHC, "some form of re-Notice would be required but without a definitive resolution at the time." The Board assigns no weight to this submission as it is not reflective of the Board's direction. Assessed in tandem with CORRA's submission above, the Board determines that CORRA has raised no apparent or genuine land use planning grounds.

[7] In the Board's January 28, 2016 Decision and Order, it further ordered that it would not permit CORRA or its representative to raise this settled matter of Notice and its adequacy in any subsequent Board proceedings should CORRA be permitted to pursue its appeals following the Board's ruling on this motion. Despite the Board's clear oral and written directions on this subject to all parties, CORRA's February 16, 2016 submissions once more raised and relied upon the matter of Notice and its adequacy as the basis for its appeals. Further, CORRA's second letter of February 16, 2016 continued this dogged theme by raising questions with the City related to Notice.

[8] The Board considers carefully the issues and concerns of all parties and participants and it ensures that these are assessed on their planning merits at the pre-hearing stage and if permitted to stand, are subsequently adjudicated at the full hearing. However, once the Board determines that a matter is settled and it is not or is no longer an issue, the Board expects the parties to comply with its determination, whether issued as an interlocutory or final, oral or written decision. Based upon the Board's review of CORRA's submissions in these matters, the Board determines that CORRA's submissions fail to raise valid land use planning grounds.

[9] As CORRA's appeals are declared to be abandoned, this Decision and Order of the Board hereby removes the sole appellant party against Zoning By-law No. 1031-2014. Accordingly, the City may request of the Board in writing an Order bringing into force and effect Zoning By-law No. 1031-2014 from the date of issue of this Decision and Order. The Board's dismissal of the CORRA appeals does not prejudice the appeals of the remaining parties against OPA 253 and Zoning By-law No. 1030-2014.

ORDER

[10] The appeals of CORRA are dismissed for the reasons given.

"R. Rossi"

R. ROSSI
MEMBER

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please visit www.elfto.gov.on.ca to view the attachment in PDF format.

Ontario Municipal Board

A constituent tribunal of Environment and Land Tribunals Ontario
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