

Ontario Municipal Board
Commission des affaires municipales
de l'Ontario



ISSUE DATE: November 10, 2016

CASE NO(S): PL140905
PL160085
MM160039

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:	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:	Swansea Area Ratepayers' Association
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:	Swansea Area Ratepayers' Association
Appellant:	Leaside Property Owners Association Incorporated

Appellant: Rizwan Jiwan
 Appellant: Hullmark (313 Eglinton) Ltd.
 Appellant: Armel Corporation
 Appellant: Skypod View Inc.
 Appellant: Gabriel Properties (2006) Inc.
 Appellant: Avenue Road Eglinton Community Association
 Appellant: Confederation of Resident & Ratepayer Associations
 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)
 Appellant: Swansea Area Ratepayers' Group
 Subject: By-law No. 1031-2014
 Municipality: City of Toronto
 OMB Case No.: PL140905
 OMB File No.: PL141113

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. 103-2016
 Municipality: City of Toronto
 OMB Case No.: PL140905
 OMB File No.: PL160215

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)

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.: MM160039
 OMB File No.: PL160568

Board Rule 107 states:

107. Effective Date of Board Decision A Board decision is effective on the date that the decision or order is issued in hard copy, unless it states otherwise.

Pursuant to Board Rule 107, this decision takes effect on the date that it is e-mailed by Board administrative staff to the clerk of the municipality where the property is located.

Heard: October 12, 2016, in Toronto, Ontario

APPEARANCES:

<u>Parties</u>	<u>Counsel*/Representative</u>
City of Toronto ("City")	S. Bradley*
90 Eglinton West Limited and Solray Investments Ltd.	J. Smuskowitz*
346-350 Eglinton Avenue West Holdings Ltd. and 352-356 Eglinton Avenue West Holdings Ltd. ("Terranata")	C. Tanzola*
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*
Hullmark (313 Eglinton) Ltd.	I. Tang*
RioCan Holdings (Sunnybrook) Inc.	A. Benedetti*
Avenue Road Eglinton Community Association Incorporated ("ARECA") and Confederation of Resident & Ratepayer Associations ("CORRA")	E. Denny
Leaside Property Owners Association Incorporated	R. Holland

MEMORANDUM OF ORAL DECISION DELIVERED BY BLAIR S. TAYLOR ON OCTOBER 12, 2016 AND INTERIM ORDER AND ORDER OF THE BOARD

INTRODUCTION

[1] This was another Prehearing Conference (“PHC”) concerning the City’s Official Plan Amendment No. 253 (“OPA 253”) and Zoning By-law No. 1030-2014 (“ZBA 1030”) and a number of related matters.

[2] As requested by the Board, the City had prepared a draft agenda which was of assistance in organizing the PHC.

PROPOSED SETTLEMENTS

[3] The City had duly served and filed a motion seeking Board approval of some modifications to OPA 253, which modifications would settle the appeals by Solray Investments Ltd., Armel Corporation, Skypod View Inc. and Gabriel Properties (2006) Inc., White Bell Investments Ltd. and Duffmits Holdings Inc., and Hullmark (313 Eglinton) Ltd.

[4] Exhibit 1 contains the Motion Record by the City and the affidavit by Brian Gallagher (a land use planner responsible for the drafting of OPA 253 and ZBA 1030) outlining the proposed modifications to OPA 253, and his land use planning opinion in support of the modifications.

[5] Exhibit 4 is the Responding Motion Record of Solray Investments Ltd. which contains the affidavit of Peter Smith (land use planner) in support of the proposed modifications. Exhibit 6 is the Responding Motion Record of Hullmark (313 Eglinton) Ltd. also in support of the City’s Motion.

[6] The Board also heard submissions from the parties listed above in support of the City’s motion, and all advising that upon approval by the Board of the proposed modifications, they would withdraw their appeals against ZBA 1030.

[7] The Board having reviewed the affidavit evidence and having heard the submissions of the parties granted the motion and approved the modifications as set out in Exhibit 1.

[8] The City provided a draft Order for consideration by the Board (Exhibit 3). The Board directed the City to provide a clean copy of Exhibit 3 to the Case Coordinator to be attached to the Final Order and issued by the Board.

STATUS REQUEST

[9] In its decision of August 9, 2016 the Board noted that participant status had been granted to Lindsay Lorimer on behalf of a number of residents. The Board decision also noted that if the group were to incorporate and wanted to seek party status, it could do so via a *viva voce* motion at this hearing. No such motion was brought, nor did Ms. Lorimer appear.

FURTHER PREHEARING

[10] The Board at the request of the parties has set a further PHC for **Monday, November 14, 2016 at 10 a.m. at:**

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

[11] The Board would request that the City again prepare and circulate a draft agenda to the parties and participants in advance of the PHC, with a copy to the Case Coordinator.

[12] The Board will use the PHC to receive an update on all matters including some of the site specific matters referenced below.

[13] There will be no further notice.

[14] I am not seized.

[15] Scheduling permitting, I may be available for case management purposes.

346-350 AND 352-356 EGLINTON AVENUE WEST (Terranata) (MM160039)

[16] This was the first PHC concerning this matter.

[17] The Board on consent granted participant status to the following: A. Winter, S. Dash and V. Lemos, S. Vetter, R. Martin, J. Kabrajee and K. Fitzwilliam, Avenue Road Eglinton Community Association (“ARECA”), B. Howard, and J. Krane.

[18] The Board was advised by the City that Terranata had filed a “with prejudice” revised application on October 7, 2016. The Board was further advised that the City will be seeking City Council instructions with regard to the revised proposal at the City Council meeting scheduled for November 8-10, 2016.

[19] From this resubmission, it is possible that there may be a settlement, or alternatively there may be a hearing on the revised application.

[20] In view of these circumstances, the City’s current Draft Procedural Order and Draft Issues List deals with the original application (and not the recently received revised application) and the City reserved the right to provide a further issues list in light of the revised application by end of day on November 14, 2016, exchange witness statements and visual evidence by November 15, 2016 and written replies by November 17, 2016. Participant statements would be required by November 17, 2016.

[21] The Board understands the circumstances facing the parties and finds that the requested time frames are appropriate in the circumstances.

[22] Additionally, as the Board has already set a further PHC for November 14, 2016, the parties may update the Board on this matter at that time.

[23] The Board would further request that the parties keep the participants apprised of the status of the revised application, and decision of City Council.

RIOCAN - PL160085

[24] Attending before the Board was Dr. Daniel Buckley seeking participant status. On consent of the parties, Dr. Buckley was granted participant status.

[25] This matter was consolidated to OPA 253 at the July 26, 2016 PHC.

[26] Since that time, the parties have received October 20, 2016 as a mediation date for Board led mediation.

[27] In that regard Jamie Walker appeared on behalf of the Toronto Standard Condominium Corporation No. 1542 ("CC 1542") seeking party status in order to attend the scheduled mediation session.

[28] The City recommended that the Board grant CC 1542 "temporary party status" for the purpose of allowing its participation in the mediation session, with a final decision to be made on their status at a later date (presumably the November 14, 2016 PHC).

[29] Counsel for Rio Can consented to CC 1542 attending the mediation session but submitted that it would be premature to grant any status as its issues were unknown.

[30] The Board on the consent of the parties finds that CC 1542 is an appropriate attendee at the mediation session, but will not at this time make any finding with regard to party or participant status in this matter.

[31] Such determination, if necessary can be dealt with at the November 14, 2016 PHC.

ARECA

[32] At the July 26, 2016 PHC, counsel for the City raised the question of the status of the ARECA in light of the previous Board rulings concerning CORRA. The Board advised in its August 9, 2016 decision that nothing in the previous rulings appeared to specifically relate to ARECA and that if the City wished to proceed on that matter it could consider a motion in accordance with the Board's *Rules of Practice and Procedure*.

[33] Accordingly the City served and filed a Motion to Dismiss the ARECA appeals with regard of OPA 253 and ZBA 1030, which Motion included an affidavit by Brian Gallagher, a land use planner who had been responsible for the drafting of OPA 253 and ZBA 1030, and provided that the reasons for the ARECA appeal were the same as CORRA focusing on assertions of inadequacy of notice and public consultation.

[34] Notwithstanding the clear indication of intent by the City at the July 26, 2016 PHC, Ms. Denny on behalf of ARECA requested an adjournment of this Motion, which adjournment was opposed by the City.

[35] The grounds for the adjournment were that Mr. Smyth was out of the country, that this matter should not be dealt with in a piece meal fashion and for reasons of procedural fairness.

[36] The Board dismissed the motion to adjourn as there was a clear indication of the City's intent on this matter dating from July 26, 2016, that Ms. Denny has been identified as a representative of ARECA, that the Motion to Dismiss had been properly served and filed, that there is no issue of procedural fairness, and that with the proximity of the hearing on the merits set for November 21, 2016, it was timely to deal with the Motion.

[37] With regard to the merits of the Motion to Dismiss, counsel for the City submitted that "he was calling ARECA out" for the hearing. He posed the questions: "what are your (land use planning) issues", "who are your witnesses", "what outcomes do you

seek to achieve”, all in order that the City can properly know and prepare for the hearing on the merits on November 21, 2016. Counsel submitted that the affidavit of Mr. Gallagher identified that to date all that was on record were reiterations of the concerns about the inadequacy of notice and public consultation.

[38] In response Ms. Denny submitted that “it was very difficult to divorce ARECA from CORRA” and that “ARECA had supported every step by CORRA” and that “CORRA’s issues were ARECA’s issues”.

[39] The City in reply submitted that now the Board had confirmation that ARECA was “hand in glove” with CORRA and that there was no distinction between the two. Both were saying that the City had not properly consulted with regard to OPA 253 and ZBA 1030. City counsel submitted that as the Board has already dealt with the CORRA appeals (including a s. 43 Ontario Municipal Board review request), that the Board should in these circumstances treat ARECA the same as CORRA.

[40] The Board allowed the Motion to Dismiss.

[41] The Board has the uncontested land use planning affidavit of Mr. Gallagher with regard to the ARECA issues, essentially being issues of lack of public consultation and inadequate notice.

[42] No substantive land use planning affidavit was filed by ARECA in response to the Motion to Dismiss. Such an affidavit the Board would have expected to deal with detailed land use planning issues, and the witnesses to provide evidence on those issues, all of which would in turn inform the City of the case to be met and also be incorporated into the Procedural Order to ensure that the hearing on the merits set for November 16, 2016 proceeded in a fair and transparent manner.

[43] The *Planning Act* in s. 17(45)(a)(i) and s. 34(25)(a)(i) sets out the requirements for official plan and zoning by-law appeals, which require the disclosure of land use planning grounds upon which the Board could allow the appeal or the appeal in part.

[44] The Board agrees with Ms. Denny that it is not bound by precedent and it need not follow the previous Board decision and Order with regard to CORRA.

[45] However in these circumstances it is clear that what has been mandated by the *Planning Act* in terms of disclosure of land use planning grounds has not occurred.

[46] Thus as the required disclosure has not occurred, the Board therefore allows the Motion to Dismiss the ARECA appeals.

Zoning By-law No. 103-2016 - PL160215

[47] As noted in the Board's August 9, 2016 decision, the City has passed Zoning By-law No. 103-2016 and it was appealed by CORRA.

[48] The City had for the July 26, 2016 PHC served and filed a Motion to Dismiss the CORRA appeal against Zoning By-law No. 103-2016, but that motion was adjourned on consent to this PHC.

[49] The City's Motion to Dismiss is found at Exhibit 12 and it seeks an Order of the Board to dismiss the CORRA appeal pursuant to s. 34(25)(a)(i) and 34(25.2) of the *Planning Act* on the basis that the essence of the CORRA appeal is an assertion that the City has not adequately consulted with residents prior to City Council's consideration of Zoning By-law No. 103-2016 as required by policy 1.c) of s. 5.5 of the Official Plan.

[50] The Motion to Dismiss contains the affidavit of Natasha Laing, a land use planner with the City whose areas of responsibility include development applications pertaining to Light Rapid Transit ("LRT") projects.

[51] Her unchallenged and uncontroverted affidavit provides that she was responsible for the drafting and processing of Zoning By-law No. 103-2016 including the associated public consultation and notification process. Attached to her affidavit is a copy of the

notice of community consultation meeting that was published in the Toronto edition of the Metro News on December 10, 2015. Also attached is a copy of the email message that was sent on December 4, 2015 to all persons registered on the City's Eglinton Crosstown LRT email list giving notice of the community consultation meeting. The community consultation meeting (as advertised) took place on December 14, 2015, at which Ms. Denny appeared and did not raise any issue with regard to Zoning By-law No. 103-2016.

[52] The affidavit goes on to provide that the statutory public meeting for Zoning By-law No. 103-2016 was held on January 20, 2016 at which time Ms. Denny appeared. The affidavit states as follows:

Ms. Eileen Denny spoke at the City's Planning and Growth Management Committee [January 20, 2016] and in response to questioning by the Committee Chair advised that her concerns related solely to the process by which public notification was given. The Chair then asked her if she had any issues with the content or purpose of the proposed by-law and she confirmed that she did not. This point was again pressed by the Chair and again confirmed.

[53] The affidavit then states that as the responsible planner for the public notification and public consultation process pursuant to the Official Plan that in Ms. Laing's opinion the City had satisfied the public notification and public consultation requirements of the Official Plan.

[54] Having outlined the contents of the affidavit of Ms. Laing, counsel for the City again submitted that the City was "calling Ms. Denny out on this". The essence of the CORRA appeal, counsel submits, relates only to process: i.e. to public notice and consultation (which the City says has been fully met) but the appeal raises no substantive issues with regard to the by-law itself. The Response filed by CORRA he says contains no land use planning affidavit and no substantive land use planning issues, whereas the *Planning Act* requires an appellant to provide land use planning grounds upon which the Board could allow all or part of the appeal.

[55] The City submits there is no substance and the Board should dismiss the appeal.

[56] In response CORRA, notwithstanding that this Motion to Dismiss had been commenced in July of 2016, did not provide any land use planning affidavit evidence, and did not reference any substantive issue with regard to Zoning By-law No. 103-2016.

[57] The Board allowed the Motion to Dismiss and stated that the *Planning Act* does place an onus on an appellant to provide land use planning grounds for the appeal, and in this instance the Board found that such substantive land use planning grounds had not been so identified. The Board would have expected to receive an affidavit from a qualified land use planner identifying specific areas of concern with regard to Zoning By-law No. 103-2016, but such was not done.

[58] The Board also noted that CORRA has had ample time to address this Motion as it originated in July 2016 and was adjourned on consent to this PHC.

DRAFT PROCEDURAL ORDER AND ISSUES LIST

[59] With regard to the site specific matters for Terranata and RioCan, the Board is unable at this time to finalize the draft Procedural Order and Issues List as Terranata has recently filed a revised application, and RioCan will be in mediation commencing on October 20, 2016. The parties are in general agreement with regard to appropriate dates for revised issues lists, exchange of witness statements and visual evidence etc.

[60] At this time it is suggested that the three week hearing set down for November 21, 2016 proceed in three phases: Phase 1 being with regard to Terranata's site specific appeals; Phase 2 being with regard to the RioCan site specific appeals; and Phase 3 being any remaining appeals.

[61] The Board has set a new PHC for November 14, 2016 and if there are any issues or developments arising from the forthcoming events, they may be addressed at that time.

[62] Turning to the Leaside list of proposed issues, the Board heard concerns with regard to a number of the draft issues. As a result, counsel for Leaside withdrew proposed Issues 6, 8, 10, 11 and 12.

[63] Concern was also raised with regard to Issue 20, and the Board directed that Issue 20 should be revised in conjunction with Issue 4 which deals with proposed building heights, massing, and setbacks.

[64] Of particular concern to the City and RioCan was Issue 16: "Unique Geohydrological and Geotechnical Context". The Board determined that it would not make a determination on this issue at this time but would (if necessary) hear submissions with regard to this proposed issue at the November 14, 2016 PHC.

SWANSEA

[65] The Board was advised by City counsel that he had received an email message to the effect that Swansea Area Ratepayers Group was asking that its appeals be withdrawn. The Board has now received the email communication that the appeals be withdrawn. Thus at the request of the Swansea Area Ratepayers Group, the Board authorizes the withdrawals.

[66] This is the Interim Order and Order of the Board.

[67] No further notice is required.

[68] I am not seized.

[69] Scheduling permitting, I may be available for case management purposes.

“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