

Ontario Municipal Board
Commission des affaires municipales
de l'Ontario



ISSUE DATE: March 01, 2017

CASE NO(S): PL151158

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

Applicant and Appellant:	Terracap Management Inc.
Subject:	Application to amend Zoning By-law No. 438-86 - Neglect of the City of Toronto to make a decision
Existing Zoning:	Reinvestment Area (RA)
Proposed Zoning:	Site Specific (To be determined)
Purpose:	To permit a 55-storey mixed use building
Property Address/Description:	401-415 King Street West
Municipality:	City of Toronto
Municipality File No.:	10 197695 STE 20 OZ
OMB Case No.:	PL151158
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OMB Case Name:	Terracap Management Inc. v. Toronto (City)

Heard: February 21, 2017 in Toronto, Ontario

APPEARANCES:

Parties

Terracap Management Inc.

City of Toronto

Counsel

C. Lantz, J. Cheng

G. Whicher

**MEMORANDUM OF ORAL DECISION DELIVERED BY STEFAN
KRZECZUNOWICZ ON FEBRUARY 21, 2017**

INTRODUCTION

[1] This is an appeal by Terracap Management Inc. (the “Applicant”) of the failure of the City of Toronto (the “City”) to make a decision on an application to amend Zoning By-Law No. 438-86. The zoning by-law amendment would permit the redevelopment of property known municipally as 401-415 King Street West (the “subject property”).

[2] A Pre-Hearing Conference (“PHC”) in this appeal was held on August 17, 2016 and the parties recently participated in Board-assisted mediation. The redevelopment proposal now before the Board reflects a settlement between the parties and is a substantial revision to the proposal that initially formed part of this appeal. The revised proposal is to construct a podium and tower on the subject property with a mix of commercial retail and residential uses that would include, among other elements:

- a. a maximum height of 145 metres (“m”);
- b. a maximum of 41,300 square metres (“sq m”) of gross floor area on the lot, of which a minimum of 1,460.70 sq m would be non-residential uses;
- c. a minimum of 10% of the dwelling units on the lot having three or more bedrooms; a minimum of 1.5 sq m of indoor residential amenity space per dwelling unit and a minimum of 0.9 sq m of outdoor residential amenity space per dwelling unit on the lot.

[3] Key features of the proposed design include a ground floor that is inset around the corner of King Street West and Spadina Avenue, the partial retention and alteration of heritage structures along King Street West, and a complex series of setbacks and stepbacks on all sides of the building.

[4] None of the participants who attended the PHC in opposition to the proposal attended the hearing.

LEGISLATIVE TESTS

[5] In this appeal the Board must consider the merits of the proposed amendment with reference to the “provincial interests” set out in s. 2 of the Planning Act (“Act”). The adjudicative tests to be applied include whether the amendment conforms to applicable provincial and official plans and whether it is consistent with the Provincial Policy Statement, 2014 (“PPS”).

[6] The Board must also have regard to the decisions of City Council on the amendment and the information Council had when making its decisions. In this respect, planning reports prepared by City staff, as well as City Council’s decision to support the revised proposal, were entered into evidence as Exhibit 3, Tabs 2, 4, 6, and 8.

EXPERT TESTIMONY

[7] The Board heard evidence from Peter Smith, whom the Board qualified to provide expert opinion evidence in matters of land use planning. Construction drawings showing the revised proposal and a Draft Zoning By-Law Amendment reflecting the settlement between the parties were entered into evidence to support Mr. Smith’s expert opinion (see Exhibits 4 and 6).

[8] Mr. Smith testified that the proposal was consistent with the PPS, in that it represents transit-supportive intensification and an efficient use of underutilized land, and that it conforms to the Provincial Growth Plan for the Greater Golden Horseshoe for similar reasons.

[9] Mr. Smith also testified that the proposal conforms to the City’s Official Plan (“OP”) policy framework. In his view, the redevelopment contributes to intensification in the Downtown and Central Waterfront area of the City and revitalization of a “Regeneration Area” as designated in the OP’s land use map (Exhibit 5, pp.3-4). Moreover, the proposed design satisfies OP policies relating to built form, tall buildings,

and heritage conservation, and similar policies in the King Spadina Secondary Plan. Mr. Smith noted that a Heritage Impact Assessment of the proposal has been undertaken.

[10] With respect to urban design, Mr. Smith's opinion was that, notwithstanding that the proposed building exceeds the floorplate size allowance and does not meet the tower separation guidelines for tall buildings, the design is in keeping with the existing and planned built form context along King Street West east of Spadina Avenue, and provides an appropriate transition in height, scale, and massing to the lower density neighbourhoods to the east and south. As such, his view was that the proposal meets the general intent of the King Spadina Urban Design Guidelines and City-Wide Tall Building Guidelines.

DISPOSITION

[11] Drawing on Mr. Smith's testimony, the Board finds that the revised proposal meets the legislative tests of good planning and should be approved. The proposal is a desirable form of intensification in an area that is well served by transit. It will contribute to population and, to a lesser extent, employment growth in the Downtown and Central Waterfront. The proposed design responds appropriately to the City's policies and guidelines for the built environment in the area surrounding the King-Spadina intersection through close attention to the pedestrian realm, the cultural heritage along King Street West, and the transition between the tall buildings to the west and the lower density areas to the east and south.

[12] On consent of the parties, the Board allows the appeal in part, and generally on the basis of the Draft Zoning By-Law Amendment entered into evidence as Exhibit 6.

[13] The Board withholds its Order approving the Zoning By-Law Amendment until the pre-conditions set out in Attachment 1 are satisfied.

“Stefan Krzeczunowicz”

STEFAN KRZECZUNOWICZ
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

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ATTACHMENT 1

The Board withholds its Order approving the Zoning By-Law Amendment (“ZBA”) until the following pre-conditions are satisfied:

- the Board receives the final form of the ZBA, in a form acceptable to both parties;
- the Board receives confirmation from the City of the execution and registration of the Section 37 Agreement on title to the subject property;
- the Board receives confirmation from the City of the designation of the heritage resources on the site, approval to alter same, and execution and registration of the Heritage Easement Agreement on title to the subject property; and
- the Board receives confirmation that the Applicant has withdrawn its appeals to Official Plan Amendment 199, Official Plan Amendment 231, and Official Plan Amendment 352, only with respect to the subject property.