

**Local Planning Appeal Tribunal**  
Tribunal d'appel de l'aménagement  
local



**ISSUE DATE:** October 26, 2018

**CASE NO(S):** MM160020

The Ontario Municipal Board (the “OMB”) is continued under the name Local Planning Appeal Tribunal (the “Tribunal”), and any reference to the Ontario Municipal Board or Board in any publication of the Tribunal is deemed to be a reference to the Tribunal.

**PROCEEDING COMMENCED UNDER** subsection 41(4) of the *Ontario Heritage Act*, R.S.O. 1990, c. O. 18, as amended

Appellant:	1623037 Ontario Limited
Appellant:	Allied Properties REIT
Appellant:	Church-Lombard Developments Inc.
Appellant:	Citipark Inc.
Appellant:	Emerald Valley Developments Inc. Et Al
Appellant:	First Gulf King Street Inc.
Appellant:	First Gulf Ontario Street Corporation
Appellant:	Great West Life Realty Advisors Inc.
Appellant:	Larco Investments Ltd.
Appellant:	Market Street Block Inc.
Appellant:	MTCC 1177 (Imperial Lofts)
Appellant:	Northam Realty Advisors Ltd
Appellant:	NorthWest Value Partners Inc.
Appellant:	Premium Properties Limited
Subject:	By-law 1328- 2015 (St. Lawrence Neighbourhood Heritage Conservation District)
Municipality:	City of Toronto
OMB Case No.:	MM160020
OMB File No.:	MM160020
Case Name:	Allied Properties REIT v. Toronto (City)

**Heard:** September 12, 2018 in Toronto, Ontario

**APPEARANCES:**

<b><u>Parties</u></b>	<b><u>Counsel*/Representative</u></b>
City of Toronto	C. Barnett M. Longo
Great West Life Realty Advisors Inc., Larco Investment Ltd., Building Industry and Land Development Association	J. A.R. Dawson
First Gulf Ontario Street Corporation	R. Houser
Tom Jones Steakhouse	F. Goutzioulis*
Church-Lombard Developments Inc.	D. Bronskill
Allied Properties REIT, Canadian Opera Company, Market Street Block Inc., Grey Esplanade Limited, Northwest Value Partners Inc. (now Lamb Bauhaus Inc.)	E. Costello
Premium Properties Limited	B. Engell

**MEMORANDUM OF ORAL DECISION DELIVERED BY K. J. HUSSEY ON  
SEPTEMBER 12, 2018 AND ORDER OF THE TRIBUNAL**

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[1] This is this second pre-hearing conference (“PHC”) for the above noted appeals of the City of Toronto (“City”) By-law No. 1328-2015, which designates the St. Lawrence Neighbourhood Heritage Conservation District. The purpose of this PHC is to present a draft Procedural Order and to establish hearing dates.

[2] The Local Planning Appeal Tribunal (“Tribunal”) was informed that certain matters were resolved and dispensed with as a result of Mediation. The remaining parties and participants are as indicated in Attachment “1” to the Draft Procedural Order that is appended to this decision as Appendix 1.

[3] There was consensus that parties would continue discussions among themselves to further refine the extensive Issues List that is set out in Attachment “3” to the Draft PO.

[4] On consent, the Tribunal has fixed 14 days on its calendar for the hearing of the appeals, which will commence on **Tuesday November 12, 2019 at 10 a.m.** until **Friday November 29, 2019**. This event will be held at:

**Local Planning Appeal Tribunal  
655 Bay Street, 16<sup>th</sup> Floor  
Toronto, Ontario**

[5] There will be no further notice of the hearing.

[6] The Member is not seized.

*“K. J. Hussey”*

K. J. HUSSEY  
VICE-CHAIR

If there is an attachment referred to in this document,  
please visit [www.elto.gov.on.ca](http://www.elto.gov.on.ca) to view the attachment in PDF format.

**Local Planning Appeal Tribunal**  
A constituent tribunal of Environment and Land Tribunals Ontario  
Website: [www.elto.gov.on.ca](http://www.elto.gov.on.ca) Telephone: 416-212-6349 Toll Free: 1-866-448-2248

## LOCAL PLANNING APPEAL TRIBUNAL

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Appellant:	NorthWest Value Partners Inc.
Appellant:	Premium Properties Limited
Subject:	By-law - Heritage Conservation District Area
Municipality:	City of Toronto
LPAT Case No.:	MM160020
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Case Name:	Allied Properties REIT v. Toronto (City)

## PROCEDURAL ORDER

### PROCEDURAL ORDER

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

### Organization of the Hearing

2. The hearing will begin on **November 12, 2019** at the Offices of the Local Planning Appeal Tribunal, 655 Bay Street, Toronto.
3. The length of the hearing will be up to 14 days scheduled from **November 12, 2019 to November 29, 2019**.
4. The parties and participants are listed in **Attachment 1** to this Order.

5. The order of evidence at the Hearing is listed in **Attachment 2**.
6. The issues are set out in the Issues List attached as **Attachment 3**.
7. Any person intending to participate in the hearing should provide a telephone number and address (and facsimile number and email address, if any) to the Board as soon as possible. Any such person who will be retaining a representative should advise the other parties and the Board of the representative's name, address and phone number as soon as possible.

### **Requirements Before the Hearing**

8. The Issues are set out in the Issues List attached as Attachment 3. There will be no changes to this list unless the Board permits and a party who asks for changes may have costs awarded against it.
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, their area of expertise, a Curriculum Vitae no longer than three (3) pages in length, and the order in which they are intended to be called. This list must be delivered on or before **(60 days before the hearing start date)**.
10. A party who intends to call an expert witness shall ensure that the witness prepares an expert witness statement and a summary of their expertise and qualifications. The expert witness statement shall list any reports prepared by the expert, or any other reports or documents to be relied on at the hearing. Copies of the witness statement must be provided as in **section 14**. 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 party who intends to call any other witness, who is not an expert, shall ensure that the witness prepares a witness statement, which shall summarize the evidence that the witness will give. Copies of the witness statement must be provided as in **section 14**. If this is not done, the Board may refuse to hear the witness's testimony.
12. Any participant who wishes to give oral or written evidence at the hearing must provide a participant statement outlining the participant's evidence to the Board and the parties by e-mail with one hard copy to follow if requested by a party on or before **(45 days before the hearing start date)**. If this is not done, the Board may refuse to hear or receive the participant's evidence.
13. 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, as in **section 14**. If this is not done, the Board may refuse to hear the expert's testimony. All experts shall sign and deliver to the

other parties and to the Board an Acknowledgement of Expert's Duty in the form set out as **Attachment 5** to this Order, which Acknowledgement is to be dated on or before the date of their Witness Statement.

14. On or before **(45 days before hearing start date)**, the parties shall provide copies of their witness statements and expert witness statements to the Board and the other parties by e-mail with one hard copy to follow if requested by a party.
15. Parties may provide to the Board and the parties by e-mail with one hard copy to follow if requested by a party, a written response to any written evidence on or before **(14 days before the hearing start date)**.
16. On or before **(7 days before the hearing start date)** the parties shall provide copies of their visual evidence to all of the Board and the other parties by e-mail with one hard copy to follow if requested by a party. If a model will be used, all parties must have a reasonable opportunity to view it at least seven (7) days before the hearing commences.
17. A party who provides a witness' written evidence to the other parties must have the witness attend the hearing to give oral evidence, unless the party notifies the Board at least seven (7) days before the hearing that the written evidence is not part of the record.
18. A person wishing to change written evidence, including witness statements, must make a written motion to the Board.

*(see Rule 10, inclusive, of the Tribunal's Rules, which require that the moving party provide copies of the motion to all other parties **10 days before the Board hears the motion.**)*

19. Documents may be delivered by email, personal delivery, facsimile or registered or certified mail, or otherwise as the Board may direct. The delivery of documents by fax shall be governed by the Board's Rule 7 on this subject. Material delivered by mail shall be deemed to have been received five business days after the date of registration or certification.
20. No adjournments or delays will be granted before or during the hearing except for serious hardship or illness. The Board's Rule 17 apply to such requests.

**This Member is not seized.**

**So orders the Board.**

## **Attachment 1**

### **Parties and Participants**

#### **Parties:**

City of Toronto

Great West Life Realty Advisors Inc.

First Gulf King Street Inc. and Church-Lombard Development Inc.

Allied Properties REIT and Canadian Opera Company

Premium Properties Limited

Market Street Block Inc. and Greey Esplanade Limited

NorthWest Value Partners Inc.

Larco Investments Ltd.

Northam Realty Advisors Ltd., Citipark Inc., 71-75 King East LP and 485236 Ontario Limited

Emerald Valley Developments Inc., Albany Club of Toronto and Tom Jones Steak House Inc. 1623037 Ontario Limited

#### **Participants**

St Lawrence Neighbourhood Association

Spire Condominium (TSSC-1864)

**Attachment 2**  
**Order of Evidence**

City of Toronto

Parties in Opposition (order to be organized)

Reply – City of Toronto



## Attachment 3

### Issues List

#### ISSUES LIST OF ALLIED PROPERTIES REIT and YORK HERITAGE PROPERTIES

##### Interpretation

1. Are the Plan's explanations of the "Context", "Policy" "Guidelines", "Side Bar" and "Best Practice" sections sufficiently clear so as to permit the Plan to be properly interpreted and applied?

##### Boundary

2. Has a reasonable rationale been provided for the HCD boundary?
3. Does the Plan provide a sufficient rationale for the sub-character areas?

##### Periods of Significance

4. Does the Plan adequately recognize the later periods of significance, "commercial decline (1920s to 1970s)" and; "regrowth and redevelopment (1970s to today)" such that the cultural heritage value of the District has been appropriately identified and described?

##### Objectives

5. Are the Plan's objectives sufficiently clear, precise, accurate so as to provide certainty with respect to the application of section 41.2 of the *Ontario Heritage Act*?
6. Are the Plan's policies and guidelines consistent with the objectives?
7. Are the Plan's objectives compatible with the existing and planned context of the St. Lawrence Neighbourhood given that the lands contained in the HCD boundary include lands designated as a *Mixed Use Areas* and *Regeneration Areas* which are located in the *Downtown* and are therefore designated for growth?
8. Are the Plan's policies and guidelines sufficiently flexible to permit adaptive reuse of heritage buildings in the area, as contemplated in objective 8 and as necessary for the conservation of the District and the cultural vitality of the City as a whole?
9. Are objectives 4, 6, 9, 10, 11 12, 13 and 14 appropriate given that they focus on urban design considerations which are already addressed in existing policies of the City of Toronto Official Plan and King-Parliament Secondary Plan?
10. Is the objective 15 in the Plan appropriate given that archaeological resources are dealt with in Part VI of the *Ontario Heritage Act*?

11. Do the Plan's policies for demolition (5.3.1; 6.2.2), relocation (5.3.2), additions/alterations/new development (5.1.1, 5.1.2, 5.8.1; 5.8.2; 5.9.1; 5.9.2; 5.9.3; 5.9.4; 6.3.1; 6.4.1; 6.5.1; 6.5.2; 6.5.3) restrict the ability for creative built-form proposals that encourage the adaptive reuse of heritage buildings in accordance with Objective 8?

### **Guiding Principles**

12. Is it appropriate that section 4.0 of the Plan incorporates Standards from the Standards and Guidelines for the Conservation of Historic Places in Canada (Parks Canada, 2010) and Eight Guiding Principles in the Conservation of Built Heritage Properties (Ontario Ministry of Culture, 2007)?

### **Policies and Guidelines**

13. Are the Plan's policies, guidelines and objectives internally consistent?
14. Are there inconsistencies/internal contradictions between the characterization of the HCD (as reflected in the statement of cultural heritage value and the characterization of the sub-character areas) and the policies, guidelines, and objectives?
15. Are mandatory policies or guidelines appropriate in the context of an HCD Plan?
16. Are quantified urban design policies including setbacks and angular planes appropriate in the context of an HCD Plan?
17. Are the mandatory angular planes in the guidelines to policies 5.9.3 and 6.5.2 appropriate?
18. Are the mandatory step backs in the guidelines to policies 5.9.2 and 6.5.1 appropriate?
19. Is reference in the policies to the requirement to "maintain" appropriate?
20. Is the mandatory requirement in policies 5.14.4; 5.15.4; 5.17.3; 5.18.2 and in the guidelines to policies 5.6.2; 5.7.1; 5.18.5 to "replace in-kind" appropriate?
21. Is the mandatory language of the signage policies (5.19.1-5.19.4) reasonably necessary for achieving the Plan's objectives?
22. Are policies 5.19.5; 5.19.6; 6.12.3 and 6.12.4 appropriate given that the City has a sign by-law?
23. Do the policies related to entrances, windows/awnings, roofs and exterior walls support the adaptive reuse of buildings within the district?
24. Is it appropriate for an HCD Plan to contain policies dealing with shadow (5.10.1; 6.6.1)?

25. Are the Plan's Policies dealing with corner lots (5.12.1; 5.12.2; 6.8.1; 6.8.2; 6.8.3) sufficiently clear and appropriate?
26. Is Policy 8.12.1 concerning heritage views sufficiently clear?
27. Should the Plan include a "deeming" provision providing that any heritage permit granted by Council is deemed to be in accordance with the Plan?

#### **Mandatory Review Period**

28. Should the Plan require a mandatory review after a certain period of time?

#### **Inadequate Consideration of the Policy Landscape**

29. Does the Plan allow for conformity with the minimum density target of 200 residents and jobs per hectare within 500 metres of the Major Transit Station Areas within the District, as directed in policy 2.2.4.3 of the Growth Plan for the Greater Golden Horseshoe (2017)?
30. Is the Plan consistent with the Provincial Policy Statement 2014?
31. Does the Plan conform to the City of Toronto Official Plan?
32. Does the Plan allow for conformity with the King-Parliament Secondary Plan?
33. Are defined terms within the Plan adequate and are they consistent and in conformity with in force policy?

#### **Consistency with the Study**

34. Is the Plan consistent with the content and recommendations of the Study?
35. Are the Plan's objectives consistent with the objectives identified in the Study?
36. Does the Plan adequately resolve the policy conflicts identified in the Study?

#### **ISSUES LIST OF GWL Realty Advisors Inc. and BILD**

37. Should the HCD Plan be modified to provide an appropriate framework to integrate land use planning considerations, including but not limited to conformity with provincial plans and consistency with the Provincial Policy Statement, 2014 into the decision making thereunder? Does the failure to do so render it non-conforming with the Official Plan, inconsistent with the Provincial Policy Statement and in conflict with the Growth Plan for the Greater Golden Horseshoe, 2017? If so, what are appropriate modifications?
38. Should the HCD Plan be modified to provide a mechanism for its review and for future amendments thereto? Does the failure to do so render it non-conforming with the Official Plan, inconsistent with the Provincial Policy Statement, 2014 and

- in conflict with the Growth Plan for the Greater Golden Horseshoe, 2017? If so, what are appropriate modifications?
39. Should the HCD Plan be modified to remove therefrom mention of other documents incorporated by reference therein? If so, what are appropriate modifications?
  40. Should the HCD Plan be modified to, in addition to addressing the substantive issues identified herein, provide for an appropriate and legible distinction between objectives, policy statements, guidelines and procedures for achieving the stated objectives including, but not limited to, identifying which parts of the HCD Plan are intended to be operative for the purposes of Section 41.2 of the *Ontario Heritage Act* (“Section 41.2”) all in order to provide for the appropriate operation of the HCD Plan in the context of Section 41.2. If so, what are appropriate modifications?
  41. Should the HCD Plan be modified to remove the provisions which purport to have effect beyond the boundaries thereof? If so, what are appropriate modifications?
  42. Should the HCD Plan be modified to limit third-party recourse to the courts pursuant to Section 41.2 following Council or Local Planning Appeal Tribunal approval of an application thereunder? If so, what are appropriate modifications?
  43. Should the District Boundary be modified such that the HCD Plan only encompasses lands and properties which reflect and or relate to identified heritage attributes which collectively justify the invocation of a heritage conservation district and plan? If so, what are appropriate modifications?
  44. Should the HCD Plan be modified to remove directions/requirements for matters insufficiently related to heritage conservation under the *Ontario Heritage Act* or the heritage attributes of the resources within the District, such as but not limited to the provision and maintenance of “POPs”, laneways, “gateways”, “Public Art”, sustainability and street trees.
  45. Should the HCD Plan be modified to clarify how the Statement of Attributes should be applied in the context of an approval under the HCD Plan, given:
    - (a) “sub-areas” therein which have different characters;
    - (b) differing “periods of significance”;
    - (c) vagueness in the description of built-form, streetscape and landscape attributes; and
    - (d) a lack of connection between a number of the “Function” attributes (e.g. the importance of the District as a setting for...the film industry) and actual heritage attributes.
  46. If so, what are appropriate modifications?

47. Should the HCD Plan be modified such that the “Objectives” therein:
- (a) promote decision-making thereunder which adequately and appropriately acknowledges the immediate physical and locational context, including existing heritage resources but also, without limitation, the land use planning context including applicable policies;
  - (b) do not appropriate the jurisdiction of land use planning instruments under the *Planning Act* as implementing tools for land use planning objectives (e.g. Objective 13);
  - (c) are rendered as principles and not rendered in absolutist and/or over-simplified terms that foreclose contextual implementation on an *a priori* basis;
  - (d) appropriately frame the roles views may play; and
  - (e) once appropriately framed from a substantive perspective, are worded in a fashion which legibly indicates the nature of implementation required for consistency therewith.
48. If so, what modifications are appropriate?
49. Should the HCD Plan be modified such that all directions therein relating to built-form and massing are explicitly indicated to be applied as guidelines (i.e. interpretative aids to implementation as opposed to binding policy). If so, what modifications would be appropriate? Does this approach provide the best opportunity to synthesize the various desiderata into the ultimate conservation decision?
50. Should the HCD Plan be modified to re-orient generic provisions directed at skyview, views and shadows to a much more focussed approach? In other words, should these provisions be focussed on situations where there is a proximate and direct relationship to a particular heritage attribute of a specific resource? If so, what are appropriate modifications?
51. Should the HCD Plan be modified to permit a contributing property to be re-located provided that appropriate consideration is given to the provisions of the Official Plan and the other provisions of the HCD Plan? If so, what are appropriate modifications?
52. Should the HCD Plan be modified to acknowledge that any negative impact on the cultural heritage values of a heritage resource should not automatically justify preventing works intended to address health, safety, security, accessibility or sustainability? If so, what are appropriate modifications?
53. Should the HCD Plan be modified to remove provisions which purport to make a property designation under Part IV of the *Ontario Heritage Act* part of the HCD Plan policies? If so, what are appropriate modifications?

54. Should the HCD Plan be modified to acknowledge that rooftop elements may form part of the design of a building and it may be desirable to view same from the public realm? If so, what are appropriate modifications?
55. Should the HCD Plan respecting signage be modified to provide Council more discretion, in particular with respect to non-illuminated, non-digital/electronic signs, partially as an acknowledgement of the existing City regulation respecting signs. If so, what modifications are appropriate?
56. Should the HCD Plan be modified to delete reference to “Special Areas” given the lack of identification of what the “special planning circumstance” consists of?
57. Should the HCD Plan be modified to remove the provisions respecting views, given that to the extent they are necessary or justified they can be addressed through the Official Plan? If so, what are appropriate modifications?
58. If the HCD Plan premature pending the forthcoming review of the King Parliament Secondary Plan?
59. Do either the physical characteristics of the property known as 33 Yonge Street or its locational attributes from a cultural heritage perspective justify its inclusion in the St. Lawrence Heritage Conservation District and Plan? If not, should the District boundary and the HCD Plan each be modified to remove 33 Yonge Street therefrom? (**GWLRA** Issue only)

#### **ISSUES LIST OF FIRST GULF KING STREET INC.**

60. Are the mandatory set-back requirements in Policy 6.5.1 appropriate for the Former Toronto Sun Block?
61. Is the mandatory 45 degree angular plane requirement in Policy 6.5.2 for the King-St. James Sub-Area appropriate for the Former Toronto Sun Block?
62. Are the mandatory streetwall composition requirements in Policies 6.7.1 and 6.7.2 appropriate for the Former Toronto Sun Block?
63. Are the mandatory requirements in Policy 6.11.1 respecting cladding materials appropriate for the Former Toronto Sun Block?
64. Is it appropriate for the St. Lawrence Neighbourhood Heritage Conservation District Plan to establish mandatory urban design requirements for non-contributing properties?