

ISSUE DATE:

Oct. 21, 2008



**Ontario Municipal Board
Commission des affaires municipales de l'Ontario**

PL060854

2053785 Ontario Inc. (Terrasan Corporation) has appealed to the Ontario Municipal Board under subsection 22(7) of the *Planning Act*, R.S.O. 1990, c .P. 13, as amended, from Council's refusal or neglect to enact a proposed amendment to the Official Plan for the City of Toronto to redesignate lands municipally known as 6 Lloyd Avenue to allow for the conversion of an industrial property to a mix of high-density residential and office uses
(Approval Authority File No. 05 151779 WET 11 OZ)

O.M.B. File No. O060165

2053785 Ontario Inc. (Terrasan Corporation) has appealed to the Ontario Municipal Board under subsection 34(11) of the *Planning Act*, R.S.O. 1990, c. P. 13, as amended, from Council's refusal or neglect to enact a proposed amendment to Zoning By-law 438-86 of the City of Toronto to rezone lands respecting 6 Lloyd Avenue to permit the conversion of an industrial property to a mix of high-density residential and office uses

O.M.B. File No. Z060115

APPEARANCES:

Parties

City of Toronto

Canada Bread Ltd.

National Rubber Technologies Inc.

Terrasan Corporation

Counsel

B. Haley

M. Bowman
G. Henderson

J. Harbell

C. Barnett
L. Bisset

DECISION DELIVERED BY C. HEFFERON AND ORDER OF THE BOARD

Background

Terrasan Corporation ("the Appellant") has acquired the site of the former Benjamin Moore paint plant, municipally known as 6 Lloyd Avenue, Toronto, as well as six existing semi-detached homes with addresses on Mulock Avenue (together, "the subject property"). Terrasan is in the process of cleaning up the contaminated Benjamin

Moore site and, after demolishing the six townhouses, proposes to redevelop the subject site with an 18-storey residential building with frontage on St. Clair Avenue West; a 21-storey residential building with frontage on Mulock Avenue; a 2-storey employment-use building with frontage on Lloyd Avenue and an above-ground parking structure serving all three of the buildings.

A total of 418 residential units and 2,300 square metres of office space are proposed for the site as well as the requisite number of parking spaces to serve them. A large outdoor amenity area is provided for the residents in a landscaped area located on top of the parking garage. The outdoor amenity area is to be protected from noise emanating from CN's MacTier Subdivision rail tracks by a 4.2 metre high sound attenuation wall.

The bulk of the subject lands are designated for Employment uses in the City of Toronto Official Plan ("Official Plan") and are zoned I-4 in the City of Toronto Zoning By-law 438-86 ("By-law").

Terrasan has appealed the February 2007 and September 2007 decisions of the Council of the City of Toronto refusing its application to amend the Official Plan and the By-law in order to allow development of the two proposed residential towers and 2-storey office building on the subject site.

Terrasan's appeal is opposed by the City of Toronto, Canada Bread and National Rubber Technologies, Inc. (together, "the respondents"). The respondents co-operated with one another in presenting their case opposing the Terrasan proposal.

The Matter before the Board

Terrasan requests an amendment to the Official Plan to re-designate a part of the site from Employment uses to allow for its conversion to a mix of high density residential and office uses. It also requests an amendment to the By-law to permit conversion of the site from industrial (I-4) to a mix of high density residential and office uses.

Opposing the Terrasan application, the City of Toronto prefers the lands to continue to be used for employment purposes, including office and/or industrial. The other two respondents to this hearing, Canada Bread and National Rubber Technologies Inc. (NRT) also prefer the lands to continue to be used for employment, and strongly contend that high rise residential, such as Terrasan proposes, will lead to the demise of both their industries.

The subject lands are located at one end of what came to be variously referred to during the hearing as the “SE quadrant” or the “Cawthra Avenue sub-area”, which is a triangular piece of land bounded on the south (the widest part) by Junction Road, on the west by Keele Street, on the north by St. Clair Avenue West, and on the east by the CN mainline rail tracks. It is something of an anomaly in Toronto since the area includes both very heavy industrial uses like NRT; a variety of other commercial industrial uses such as Topper Linen, International Cheese, various automotive repair shops: as well as an estimated 75 - 100 well-kept single family residences on tree lined interior streets. The 2 and 2 ½ storey residential dwellings range in age from six or seven years to more than 80 years. All of these uses – the commercial, industrial and low density residential are located in very close proximity to one another, and, as was pointed out by more than one of the expert witnesses, all appear to have found a way to co-exist harmoniously with one another.

The Cawthra Avenue Sub-area is part of the storied Junction/Stockyards triangle, which housed the slaughterhouses, the packing plants, oilseed crushing plants and the large scale bakeries that fed Toronto, as well as the rail yards and main lines that transported the food produced there to the rest of Ontario. It was noisy and smelly. People who lived in this neighbourhood in those days had little choice but to live near the family breadwinners’ job, which was typically in one of the 24/7 food-producing operations in the area.

The change in the Junction/Stockyards area began in the late 1980s when Maple Leaf Foods closed both the stockyards as well as its food processing operations. By the mid-1990s, considerable pressure had mounted to use the former Stockyards site as a regional big-box centre, and the food processing plant for residential. By 2005, the conversion had been very near complete. By late summer, 2008, only the recently-sold Bunge oilseed crushing plant and a few of the smaller food processing operations on

the north side of St. Clair Avenue West still stand in this area. Some question remains as to whether the new owners of the Bunge plant intend to continue to operate it as an oilseed crusher or to demolish it.

Procedural Matters

The original Issues List compiled by the parties comprised some 47 general issues, many of which included several sub-issues. Very early in the hearing, the Board requested that the parties re-organize this list so that the hearing could proceed in two phases. The first phase would deal with what the parties agreed was the “threshold” issue – that is, compliance with section 1.3.2 of the Provincial Policy Statement 2005 pertaining to the conversion of Employment lands – and the second phase with any other issues including the site plan matters.

While the Board was hearing evidence respecting the pure planning provisions under section 1.3.2 of the PPS, it was also hearing technical and engineering evidence as to the compatibility of the proposed development with existing development in the surrounding area. The compatibility issues concerned the potential adverse impact of the noise, odour and truck traffic generated by local industries – Canada Bread and National Rubber Technologies Inc., in particular – on the proposed high rise residential development.

What is noteworthy about this case is that the best interest of two of the three respondents, Canada Bread and NRT (the City of Toronto was the third respondent) clearly lay in their conclusively demonstrating to the Board that emissions generated as an integral part of their respective operations are likely to have an adverse impact on any high rise housing in the surrounding area.

Canada Bread and NRT argued that these emissions will inevitably trigger complaints from new residents of the tall buildings proposed; these complaints will result in Provincial Orders being issued under the provisions of the *Environmental Protection Act*. Both Canada Bread and NRT indicated they would not be able (either economically or from a practical engineering perspective) to comply with a Provincial Order by applying mitigation measures at source. This would oblige the Minister to shut down

their operations thereby, they contend, throwing "hundreds of well-paid unionized employees out of work". This prospect was one of the main concerns of the third respondent in this case - the City of Toronto - though certainly not the only concern.

Expert Witnesses

During the 41 days the Board sat, no members of the community attended; nor were there any participants to the hearing. The Board received 124 exhibits, and took the testimony of 22 expert witnesses:

For the Appellant – Terrasan Ltd.

Douglas Annand, principal with urbanMetrics, was qualified to give opinion evidence on land economics.

Stephen Armstrong, principal with Armstrong, Hunter, was qualified to give opinion evidence on land use planning.

Berardo Graziani, principal with Graziani + Corozza Architects, Inc. was qualified to give opinion evidence on urban design and architecture.

Terry Wallace, professional engineer with LEA, was qualified to give opinion evidence on traffic.

Coleen Fitzgerald-Hubble, professional engineer with RWDI Air, was qualified to give opinion evidence on odour.

Alan Mihalj, a professional engineer with MMM Ltd., was qualified to give opinion evidence on acoustical engineering and noise.

For the City of Toronto

Luisa Galli was qualified to give opinion evidence on land use planning.

Emilia Floro was qualified to give opinion evidence on urban design.

Michael Wright is project manager in the Policy and Research Section of City of Toronto Planning. He was qualified to give opinion evidence on land use planning, as well as population, household and employment projections.

Kyle Benham is Director of Business Development and Retention with City of Toronto's Economic Development Division. He was qualified to give opinion evidence on land use planning and economic development.

Joe Tomeselli, a professional engineer with Golders Associates Ltd., was qualified to give opinion evidence on acoustical engineering and noise.

Martin Rawlings, a professional engineer with Golder Associates Ltd., was qualified to give opinion evidence on air quality and odour.

For Canada Bread

Russell Mathew, a professional planner with Hemson Consulting Ltd., was qualified to give opinion evidence on land use economics and land use planning.

Barry Morrison, a professional planner, was qualified to give opinion evidence on land use planning.

Ray Bacquie, PEng, was qualified to give opinion evidence on traffic.

Paul Geisberger, PEng, Pinchin Environmental was qualified to give opinion evidence on odour.

Dr. Werner Richarz, PEng, from Aercoustics Engineering Limited (which was retained by Pinchin Environmental) was qualified to give opinion evidence on acoustical engineering and noise.

Rino Liberatore is production manager of Canada Bread's Cawthra Avenue bakery.

For National Rubber Technologies Inc.

Paul Complin, a professional engineer with Ortech Environmental, was qualified to give opinion evidence on odour.

David Butler was qualified to give opinion evidence on land use planning.

Greg Bavington, a professional engineer, is the president and CEO of National Rubber Technologies, Inc.

Province of Ontario

Doris Dumais is director, Approvals Program, Environmental Assessment and Approvals Branch, Ministry of the Environment. Ms Dumais presented opinion evidence on the Certificate of Approvals process in Ontario.

Applicable Statutory Documents

The *Planning Act*, as amended

Provincial Policy Statement (2005)

City of Toronto Official Plan

City of Toronto Zoning By-law 438-86

The parties jointly submitted that the *Places to Grow Act* does not apply as the original development application is prior to the day on which the Act came into force. The Board concurred.

Summary of Board's Findings

Having considered all of the evidence presented, and having regard for matters of Provincial interest as well as the decision of City Council, the Board finds the proposal and resulting proposed amendments to the City of Toronto Official Plan (Official Plan) and Zoning By-law 438- 86 (By-law) are not consistent with the Provincial

Policy Statement (PPS), and do not conform to the overall intent and purpose of either the Official Plan or the By-law. The proposal does not represent good planning, and is not in the overall public interest of the community as required by sections 1.1 and 2.0 of the *Planning Act*.

The Board's reasons follow.

Official Plan Compliance

Ms L. Galli, who was qualified to give opinion evidence on land use planning, explained that at least two applications for conversion of the site had previously been considered and subsequently refused by the City of Toronto planning authorities. She reminded the Board that one of the purposes of the *Planning Act* (section 1.1.f) is to:

Recognize the decision-making authority and accountability of municipal councils in planning.

Underpinning Terrasan's planning case is Mr. Armstrong's contention that the Official Plan makes a distinction between employment *districts* and employment *areas* when a development application is being considered. Relying on the land use planning opinion of Mr. Armstrong, Mr. Annand, who was qualified as a land economist, argued for the Appellant that the proposal does not constitute a conversion of lands that the City really intends as "untouchable" (sic). Only the lands within employment Districts (as identified in Map 2 of the Official Plan) should be thought of as being lands that the City must retain for future employment growth and should be therefore considered ineligible for conversion.

In his testimony, Mr. Armstrong maintained that it is the intent and purpose of the Official Plan (read as a whole) that all of the relevant policies in the Official Plan should be balanced against one another in order to realize the vision for the City as it is planned to exist in the future. The guiding principles to achieve this vision are contained in Chapter One, which refers to the need to seek balance and to make effective use of the existing (physical and social) infrastructure, including mass transit. One of the preferred strategies for development is the "mixed use" formula. Mr. Armstrong argued that the Terrasan proposal touches all these bases.

Disputing the conclusions of Mr. Armstrong, each of the respondents' expert land use planning witnesses in turn (Ms Galli, Mr. Wright, Mr. Benham, Mr. Morrison, and Mr. Butler) at some point in their testimony charged that the distinction between employment Districts and employment Areas is either spurious or, at best, irrelevant to the intent and purpose of the Official Plan. They agreed that Districts and Areas are both considered "untouchable" under the Official Plan – the proof being that no conversion policy even exists in the Official Plan. This "silent policy" (the term used by Mr. Barnett, counsel for Terrasan) effectively precludes, according to Ms Galli, any discussion of conversion. It represents, she maintains, conclusive proof that City Council had (and continues to have) absolutely no intention of permitting conversion of lands within employment Districts or Areas.

The Board finds the argument of the respondents' planning witnesses to be persuasive on this point. No reasons satisfactory to the Board were adduced by Mr. Armstrong and Mr. Annand that this distinction was ever more than a creative attempt to avoid coming to grips with the issue of conversion. Even though it was agreed among the parties that no testimony will be heard on the Growth Plan for the Greater Golden Horseshoe ("Growth Plan"), the Board has taken note that no distinction between employment Areas and Districts is made in section 2.2.6, which deals with Employment Lands. The Places to Grow Act and the Growth Plan are instructive as they represent the latest Provincial thinking on the question of the conversion of employment lands.

Mr. Annand drew the Board's attention to the draft St. Clair Avenue West Avenue Study that has been prepared by the consulting firm, Office for Urbanism. This draft "designates" the subject site as "Mixed Use" and indicates that redevelopment of the Terrasan site for mixed uses could lead to similar development not only on the car wash site immediately west of Mulock Street at the corner of St. Clair Avenue West and Keele Street, but also on the stretch along the east side of Keele Street between Lloyd Avenue and Junction Road. The Appellant did not call any witnesses from Office for Urbanism to testify in support of this study.

Mr. Annand then pointed to the extensive new residential development that has already occurred opposite the subject property north of St. Clair Avenue West on the former Maple Leaf Foods site and other nearby sites. He also referenced the successful

power centre on the former Stockyards lands to prove his thesis that the entire area is in “transition” from the industrial uses that once prevailed.

Mr. Annand also told the Board that he had inferred from conversations with Mr. J. Helik, of the City of Toronto Planning Department that Mr. Helik generally supported Terrasan’s initial application. (Mr. Annand references these discussions in a letter to Mr. Armstrong in Exhibit 16, Tab C, page 1, para 3). Mr. Annand said that if Mr. Armstrong and he had not been given more than just faint hope that the proposal might in the future be supported, they would never have encouraged Terrasan to continue in its attempt to secure development approval.

Ms Galli rejected the testimony of both Mr. Annand and Mr. Armstrong respecting the position of Mr. Helik and the City Planning Department on the subject property. She told the Board that the Office for Urbanism study referenced by Mr. Annand has been in a state of limbo for months. She also offered a number of reasons why this study would “never in its present state” be adopted by Council. She maintained that since the conversion of the Maple Leaf Foods plant and the Stockyards site was allowed, Planning Staff have had a complete change of heart, and have realized the long term implications of those conversions. Because of the impact of those conversions, Planning Staff have no intention of allowing the Cawthra Avenue Sub-area to go the same way.

She also maintains that there is nothing in the correspondence from the City Planning Department that suggests either explicit or tacit support for the Terrasan proposal, and that if Mr. Annand and Mr. Armstrong inferred that support, there was no reason for doing so.

On the question of the City’s intentions regarding the future of the whole Junction/Stockyards area, the Board finds the testimony of Ms Galli to be the more persuasive. The fact is that no authorized “Avenues Study” for that part of St. Clair Avenue West has ever been adopted by Council. The Board finds that the Office for Urbanism study was never completed and has little probative value in this hearing.

Respecting the position of the City Planning Department on the Terrasan proposal, the Board finds the testimony of Ms Galli, who is a senior official in the City Planning Department, to be credible. The Board accepts her evidence that, from the

Planning Department's standpoint, the City had never offered to Mr. Armstrong and Mr. Annand that the Terrasan site was a candidate for conversion to high density residential development.

Zoning By-law Issue

Ms Galli took the Board to the City of Toronto Zoning By-law 438-86 to show that the existing zoning on the subject property conforms to its Official Plan designation. The Terrasan site is designated for employment uses and zoned I-4 D-7. This category permits the heaviest industrial uses found in Toronto, including asphalt batching and cement plants as well as recycling yards (Exhibit 3, Tab 10, section 9). She explained that finding sites on which these important uses would be allowed is almost impossible today in the mature areas of Toronto. She also pointed out that the site is an ideal size for uses like asphalt or cement plants. And because it is located with easy and convenient arterial road access to virtually the entire GTA, it would be much in demand for such uses. The D7 density, which permits seven times lot coverage for employment uses only, is another unusual but highly desirable property of the site.

The Board heard that while the Official Plan considered as a whole can inform the reader of Council's intent for a given area for the next few years, the zoning on any given parcel of land in Toronto details what you are permitted to do with it right now. This, the Board was told, indicates that a request for a zoning change will not be granted before serious thought had been given to the implications of such a change. Residential uses are expressly forbidden in Industrial Zones under City of Toronto Zoning By-law 438-86. The Board finds that the By-law permits employment uses only on the subject site, and not residential.

Urban Design Issue

Terrasan's architect for the proposed development is Mr. B. Graziani of Graziani + Corrazo. Mr. Graziani walked the Board through his design in order to demonstrate how the tall building he has proposed, in his words, "not only represents good design

and fits with the local streetscape, but also stimulates positive change in the area while not adversely impacting the existing employment uses".

He pointed out that the scale is pedestrian friendly at the street level, and minimizes shadow impact while providing an appropriate transition to the surrounding low rise residential. The design also highlights nearby sites that are appropriate for intensification, including the corner car wash site.

He told the Board that his design concentrates the tallest parts of the proposed buildings in the centre of the site. A stepping down to the existing neighbourhood, complies with both the City's design guidelines and its Official Plan policies regarding tall buildings (Exhibit 3, Tab 11). He also told the Board that the 2-storey street front dwelling units along Mulock Avenue and St. Clair Avenue West "reinforce the pedestrian scale" and, because all of these units will have their own individual entrances to the street, will also "animate the adjacent street edges."

He indicated that parking and vehicular access points are organized in covered areas under the buildings in order to minimize their impact on the surrounding properties. The elevated parking structure also serves as protection against possible train derailment.

This design, he further contends, is consistent with the vision for the subject property proposed by Office for Urbanism, the consulting firm preparing the St. Clair Avenue West Study. The northerly portion of the site, along St. Clair Avenue West, is identified in the Official Plan as part of an "Avenue" where "taller and denser" development is appropriate. In Mr. Armstrong's interpretation of the Official Plan, "mixed use" developments are directed to sites like the subject property.

Mr. Graziani's evidence was critically analysed by Ms E. Floro, who was qualified by the Board to give opinion evidence on urban design. Ms Floro pointed to the retaining wall to prove her point that "extraordinary" design measures are needed to protect residents from the possibility of conflict with trains using the CN tracks. She also included the sealed windows and closed balconies proposed for the towers among the "extraordinary" design elements needed. If such measures are necessary to provide minimal protection to future residents of the towers, she concluded, the site is obviously not suitable for residential uses.

The Board finds the testimony of Ms Floro to be more pertinent to the present situation and adopts her opinion evidence that the proposed high rise towers are not compatible with the surrounding industrial uses. And it is their compatibility with those nearby industrial uses, particularly NRT, that is, at the end of the day, perhaps the key issue in this hearing.

After consideration of all the testimony on the local level land use questions, the Board prefers the evidence of the City's planning witnesses over that of Terrasan's. It finds that for the reasons noted above the Terrasan proposal does not comply either with the intent and purpose of the Official Plan or with the intent and purpose of the By-law for the area.

The Board also attaches significant weight to Ms Galli's planning opinion and finds that Council policy today is to support employment uses on the subject property while resisting further conversions in the area. Evidence of this is found in Council's repeated refusal to permit high density residential development on the subject lands.

Provincial Policy Issues

Many of the issues in the original Issues List that are not addressed in this decision are matters that the Board, with the consent of the parties, concluded could be more efficiently determined in a second phase of the hearing once the primary questions pertaining to the appropriate future re-use of the subject lands are answered.

The fundamental disagreement between the respondents, on the one hand, and Terrasan, on the other, comprises two parts. The first concerns whether the proposed mixed use development constitutes an appropriate re-use of the subject site given the Provincial Planning Policy directions. The second area of disagreement has two parts:

- i) Are the proposed high rise residential towers compatible with the surrounding land uses?
- ii) Do these towers create an acceptable living environment for their inhabitants?

The Board considers these to be the central issues to be resolved in this hearing. It recognizes that in addition to the tests contained in section 1.3.2 of the PPS, the proposal must be found to be consistent with the PPS as a whole. The Board is aware that in order to establish whether the proposed development constitutes good planning and is in the public interest, the evidence must satisfy the test of reasonableness.

The Threshold Issue

The primary issue at this hearing was whether the proposed development represents a permitted conversion of employment lands. Very soon into the hearing, it became clear to the parties that this was also the “threshold” issue, and it was agreed that if it could *not* be demonstrated that this threshold had been successfully crossed, the Appellant would have failed to make its case and, as the parties had agreed, the hearing would be over. If on the other hand, it was demonstrated that the threshold had been surmounted, the hearing could continue to a second phase in which the other issues raised initially, including those pertaining to design and site planning, would be considered.

Section 1.3.2 of the Provincial Policy Statement 2005 (PPS) reads:

Planning authorities may permit conversion of lands within *employment areas* to non-employment uses through a *comprehensive review*, only where it has been demonstrated that the land is not required for employment purposes over the long term and that there is a need for the conversion.

Before a conversion of lands from employment to residential uses is permitted, therefore, three tests set down in section 1.3.2 of the PPS must be met. The first test is whether the lands are needed for employment uses; the second is whether they are needed for residential uses; and the third is whether the required “comprehensive review” has been completed. “Comprehensive review” is a defined term in the PPS.

In their testimony, the witnesses generally tried to answer the three questions – the three tests in PPS Policy 1.3.2 – in light of the definition of “comprehensive review” provided in the Definitions section of PPS 2005¹.

Test #1: Is the Land needed for Employment Uses?

Mr. M. Wright, who is responsible for developing the population, household and employment projections for the City of Toronto, told the Board that in preparing the demographic studies used as background for the Official Plan, he assessed development activity in the City against Council’s population targets used for the Official Plan.

Mr. Wright was one of the principal authors of the background studies to the City of Toronto’s growth strategy. The evidence he presented over almost four days on the stand was as comprehensive as it was credible. His detailed testimony to the Board demonstrated that the projections prepared in 2001 by City staff for the Official Plan estimated that there will be a total population of 2,724,500 in Toronto by 2006. The

¹ The definition reads: “For the purposes of ... PPS policy 1.3.2 comprehensive review means an official plan review, which is initiated by a planning authority, or an official plan amendment, which is initiated or adopted by a planning authority, which”:

1. is based on a review of population and growth projections and which reflect projections and allocations by ... provincial plans, where applicable; considers alternative directions for growth; and determines how best to accommodate this growth while protecting Provincial interests;
2. utilizes opportunities to accommodate projected growth through intensification and redevelopment;
3. confirms that the lands to be developed do not comprise specialty crop areas in accordance with policy 2.3.2;
4. is integrated with planning for infrastructure and public service facilities; and
5. considers cross jurisdictional issues .

2006 Census number adjusted so that similar conditions applied put the actual population at approximately 2,704,192. The two figures are remarkably close, which demonstrates a high degree of accuracy in Mr. Wright's work.

Mr. Wright also told the Board that his calculations revealed that in the 10 years between 1996 and 2006, Toronto had already accommodated almost one third (32%) of the projected population growth projected to occur over the 35 years between 1996 and 2031. This shows Toronto is on target towards meeting its share of the regional growth allocations.

He demonstrated in the course of his testimony that Toronto will easily accommodate its projected residential growth over the next 25 years (2006 – 2031) on less than 40% of the land currently designated in the Official Plan for residential uses. This indicates, he said, that there is no need whatsoever for conversion of any non-residential lands to accommodate the official population growth targets.

Mr. Wright's testimony was not shaken under cross-examination by Mr. Barnett who attempted to characterize Flashforward (the report on which Mr. Wright based key parts of his argument) as an “(academic) modelling exercise” based on assumptions whose accuracy has never actually been determined. These predictions, Mr. Barnett alleged, amount to little more than (guesswork) on Mr. Wright's part.

In contrast to Mr. Wright's testimony, which was grounded in hard population data and growth projections, Mr. Annand drew his conclusion from a variety of indicators. He explained that in calculating the long term or year 2031 need for residential lands in Toronto, he relied on the population projections published by the City of Toronto during its Official Plan review². Using these projections, he determined that there is the potential for a shortfall in the amount of land needed for residential uses by 2031 (Exhibit 4, Tab 85, page 14).

² Mr Wright pointed out that the original year 2031 employment and population goals for the Official Plan had been changed by Ministerial Order. Mr. Wright said that the Provincial projections, which established higher population and employment targets for the City of Toronto, tended to undermine Mr. Annand's rationale and militate against his conclusions. Mr Wright's testimony on this was later supported by the testimony of Mr Mathew, who actually developed the projections for the Province.

He characterized the subject property as an “obsolete industrial site” and pointed out that a number of precedents supporting conversion of such sites have already been established. The conversion of obsolete industrial sites (Exhibit 16, Tab D, page 13) is already the “norm” in the area, he argued. The sole problem with the present application from the City’s point of view is, he implied, that high rise development is proposed, whereas all the other conversions of former industrial sites in the area have been to low or medium density residential uses. He also noted that residential and employment uses have co-existed in the subject area for decades and pointed to several examples in the Cawthra Avenue Sub-area so residential is nothing new there.

Mr. Armstrong tabled a letter (Exhibit 51) summarizing the findings of N. Barry Lyon Consultants Ltd. (NBLC) on the marketability of the subject property for residential uses. NBLC stated that the site is well-positioned to cater to “price sensitive purchasers”, many of whom already live in the area. Ward 17 (the Junction/Stockyards area) is, the NBLC letter continues, an “ethnically diverse residential community”. The Appellant did not tender direct evidence from the author of the NBLC letter.

The Appellant’s witnesses seemed to largely base their conclusions respecting the need for residential lands in the city – particularly in this part of the city – on the fact that many conversions from industrial to residential uses had already occurred here, mostly in the past decade. The Board is aware that judging solely from the activity on the north side of St. Clair Avenue West and from the Power Centre to the west of the subject site, it would not be difficult for a developer interested in investing in the area to assume that the entire area is in transition to residential and that there is neither a market nor a need for industrial lands there. Indeed, until the Province with the adoption of the PPS 2005 put its foot down, as it were, on the conversion of employment lands anywhere in Ontario – even of underutilized industrial sites in the older parts of Toronto – it is possible that the transition of the entire Junction/Stockyards area may well have continued until no industrial or manufacturing uses remained.

The Board does not accept Terrasan’s contention that the conversion of certain lands from industrial to low rise residential uses that occurred in the mid-‘90s in nearby parts of the Junction/Stockyards area means that the historically unique Cawthra Avenue Sub-area is *ipso facto* in transition, especially in transition to high rise

residential towers. Nor is the Board satisfied that the conversion of those other sites indicates that there is a need for residential in the Junction/Stockyards area.

The Board finds the testimony of Mr. Wright to be the more credible and persuasive. Mr. Wright had himself been responsible for collecting much of the data he cited and seemed to know them almost by heart. Under cross examination, he was able to confirm the reliability of all these data and to re-affirm the accuracy of the conclusions he drew from them. Mr. Annand, on the other hand, used data that he himself had not collected. These data turned out to be draft data only; they were not the official numbers used for the Toronto Official Plan, and they were not relevant. Even if Mr. Wright's testimony had not been so compelling, the fact that Mr. Annand based a large part of his testimony on this question on inaccurate data was enough to render his conclusions on this question less than credible.

The Board therefore adopts and relies on Mr. Wright's opinion evidence that there is no need for the conversion of employment land to residential in order to accommodate the City's growth targets.

Test #2: Is there a Need for Employment Land?

Mr. Wright testified on behalf of the City of Toronto that his research shows that there is the distinct possibility of a shortfall in the supply of employment land required to meet Toronto's target of 1.835 million jobs, which is the target established by the Minister of Municipal Affairs and adopted by Council. This number represents, Mr. Wright told the Board, an increase of some 380,000 jobs over the 2001 figure (Exhibit 81).

Contradicting Mr. Wright's testimony, Mr. Annand stated that his research shows that there is ample employment land (to accommodate all the employment needs of Toronto's 2031 population) just in the designated Employment Districts shown on Map 2 of the Official Plan. He estimated this surplus to be between 310 and 360 ha (Exhibit 4, tab 85, pp 10-11).

Mr. R. Mathew, who was qualified by the Board to give expert opinion evidence on land use planning and land economics, testified on the availability of employment

lands in Toronto. He confirmed the accuracy of the evidence presented and conclusions drawn by Mr. Wright.

Mr. Mathew was principal author of the (Hemson) report that formed the basis for the population and employment projections prepared for the Minister of Municipal Affairs that were subsequently adopted by City Council for the Official Plan. He confirmed that while there is sufficient land to accommodate the target population of 3,000,000 residents by 2031, there is insufficient land designated for employment uses to accommodate the 1.835 million jobs needed in Toronto in the next 20 to 25 years. This supports the evidence and conclusions of Mr. Wright.

Mr. Benham, who is the City's chief economic development officer, explained the importance of designating and maintaining a range of employment lands able to accommodate future uses³. Some of these sites, the Board was told, may seem obsolete and unusable today but are necessary to ensure Toronto's continued viability as the economic engine of Canada. Mr. Benham pointed out by way of example that few people in the early 1990s could have foreseen the number and kind of jobs that the then pre-nascent IT industry would provide for Torontonians and the type of buildings and locations these jobs require.

He testified that his years of experience in the economic development industry had convinced him that a municipality like Toronto "simply cannot have too wide a variety" of employment sites. He also offered his opinion that every single parcel of employment land – even parcels of 1 ha - is essential to Toronto's employment strategy. Mr. Benham stated that his experience as the chief economic development officer for Toronto has taught him that the subject property is of a size (about 1 ha) and is located in an area that is suitable to a variety of industrial and office users.

³ The Board was told that section 1.3.2 is not meant to read in isolation. Section 1.3.1 mandates that planning authorities shall (that is, "must") promote economic development and competitiveness, and goes on to state how they (the planning authorities, which includes, in this instance, the Board) must proceed. They must:

- a) provide for an appropriate mix and range of employment (including industrial, commercial and institutional uses) to meet long term needs;
- b) provide opportunities for a diversified economic base, including maintaining a range and choice of suitable sites for employment uses, which support a wide range of economic activities and ancillary uses, and take into account the needs of existing and future businesses;
- c) (plan for, (protect) and (preserve) employment areas for current and future uses; and
- d) (ensure) the necessary infrastructure is provided to support current and projected needs.

On the issue of the availability of employment land, the Board prefers the evidence of Mr. Wright, Mr. Benham and Mr. Mathew. Based on their evidence, the Board finds there is a shortage of suitable employment land in Toronto.

Taking a slightly different tack on this question, Mr. Armstrong told the Board that the Terrasan proposal does not represent a loss in the number of jobs that can be provided on the subject site. The site plan provides for a 2-storey, 2,300 m² employment building at the south end of the site that fronts on Lloyd Avenue. Using the generally accepted jobs-per-square-metre ratio, he calculated this building will accommodate approximately 100 jobs. This, he said, represents an increase not only over the number of jobs that existed in the now-demolished paint plant (approximately 75) but also a significant increase over the maximum 33 to 70 jobs that could reasonably be expected from a typical 1 ha industrial (class 3) site. The Terrasan proposal does not by this reasoning, he said, represent the loss of employment lands to residential in the sense that there will be a numerical loss of jobs, and should not, he implied, be considered a conversion in the sense of section 1.3.2 of the PPS.

While the Board understands this rationale and might if the other circumstances were different even be inclined to give it full credit, the Board cannot give it any weight in this instance. Whether the project includes an employment component is not at issue here. Nor is it the number of jobs that will be created. Rather it is whether the conversion of an industrial site in the midst of an area of very heavy, potentially noxious industrial uses to high density residential is in the public interest and is consistent with Provincial policy and with proper planning principles.

A constant theme in the Appellant's case for conversion was that Terrasan had already spent an estimated \$2.5 million rehabilitating the site to residential standards. Mr. Barnett, counsel for the Appellant, characterized the site as "brownfield", based on the definition in the PPS.

However, Mr. Benham refused to accept that argument. His opinion was also supported by Ms Galli. The nub of their evidence is that while the Terrasan site may have some of the characteristics of a brownfield site, a determination would have to be made by Council that it is in fact a brownfield site, the redevelopment of which should be promoted by Council. No such determination has been made in the current instance.

After consideration of the evidence of Mr. Wright, Mr. Benham and Mr. Mathew testifying on behalf of the respondents and Mr. Annand, testifying in support of the Terrasan proposal, the Board prefers the evidence of the expert witnesses called by the respondents and adopts and relies on that evidence. The Board finds that not only is there a need for employment lands in the City of Toronto, there is a particular need for industrial sites like the subject property.

Test #3: Has the Required Comprehensive Review been completed?

Section 1.3.2 of the PPS says that “a conversion is permitted where a comprehensive review has demonstrated that the land is not required for employment purposes over the long term and that there is a need for the conversion”. This comprehensive review must have been done either by the planning authority itself (i.e., the City of Toronto) or for the City.

Mr. Armstrong and Mr. Annand, testifying for the Appellant, maintain that the City's own studies precedent to the new Official Plan constitute the necessary “comprehensive review” required by section 1.3.2 of the PPS. In support of this contention, counsel for the Appellant, Mr. Barnett, cited a planning report (Exhibit 42) and subsequent Council decision regarding the conversion of a parcel of land used for industrial purposes from the Scarborough Transit Corridor (STC) lands on Brimley Road east of Midland Avenue for residential purposes. In that report, City of Toronto planning officials determined that in this case the review conducted for the new Official Plan constituted the “comprehensive review” required by the PPS.

In addition, both the Old Stockyards Industrial District Part II Official Plan and the St. Clair Avenue West Avenue Study (being prepared by the consulting firm, Office for Urbanism), were cited as examples of secondary plans. Mr. Annand added that the City has also prepared an “Avenues Corridor” study that speaks directly to the future use of the subject property.

In his “Addendum Report on Employment Land Needs” (Exhibit 16, Tab D), Mr. Annand writes that a portion of the subject property is located in the City’s “Avenues Corridor” as defined in the Official Plan, and that the City has plans for accommodating

higher density residential uses along “Avenues”. He noted in the same document that City officials themselves have (in an Open House) discussed situating buildings up to 9-storeys tall on the portion of the Terrasan site that fronts on St. Clair Avenue West.

These studies, along with the background studies for the Official Plan itself would, they contend, satisfy the “comprehensive review” provision of the PPS.

This conclusion was vigorously opposed by both Ms Galli and Mr. Benham, who denied that any of these studies qualified as a “comprehensive review” as defined in the PPS. None of them addressed, for example, either the City’s employment or its residential needs. They would therefore represent, at best, exercises in urban design. Besides, they said, the 1996 Part II plan cited was, at the time of the subject application, “obsolete”.

In their testimony, Mr. Annand and Mr. Armstrong also contended that the City had, over the past 10 – 12 years, commissioned studies for the purpose of determining whether the employment area, of which the Old Stockyards industrial area is the heart, is “in transition”. They pointed to a number of residential and commercial/retail developments in the area as indicating that the area is in transition and is intended to be used ultimately for residential⁴.

The Board finds the evidence of Mr. Benham to be particularly helpful in deciding this question. Mr. Benham indicated that the Old Stockyards area, which includes the subject site, had been designated in the Part II plan as a “General Industrial Area”. The objective of this designation, he said, is both to retain the existing industrial clusters and to encourage new industrial development.

Mr. Benham allowed that while certain parcels in the Old Stockyards District had been permitted to transition out of traditional industrial uses (due to micro-economic circumstances in the late ‘90s and early 2000s), employment in the wider Junction

⁴ They cited the replacement of the old stockyards itself (in the mid-1990s) with big box retail; the demolition of the Maple Leaf Foods building and its replacement with the Tribute Homes development of ground oriented, family-type housing; the closing and subsequent (as of this writing unconfirmed) sale of the Bunge oilseed crushing plant and its potential demolition or conversion to a non-industrial use; the construction of stacked townhouses on the northeast corner of Weston Road and St Clair Avenue West; as well as the closing of the Kodak operations in the northern quadrant of the Weston Road/Junction Employment Area⁴ and the clearing of those lands, as conclusively demonstrating that a “transition” to non-industrial, non-employment uses has been underway in the area for years. The extension of the dedicated streetcar line west of Keele Street was cited as further demonstrating that a transition to higher density residential uses has been taking place.

Employment Area has remained, in his words, “incredibly stable” over the past 15 years. He produced detailed figures showing that between 1995 and 2005, it increased by 1%, while in the overall City, a large number of jobs were lost to the 905. The Junction area’s success, he said, was thanks to both the large existing resident labour pool, and to the many recent improvements made to the local infrastructure in order to accommodate the needs of local industry. He reminded the Board that the City is obliged to accommodate the needs of industry under subsection 1.3.1.d of the *Planning Act*.

One result of the City’s continuing review of the general area around the old Stockyards, which includes the Cawthra Avenue Sub-area, is that the subject property is critical to the vitality of the area for employment uses, according to Mr. Benham. He said that the Terrasan proposal will hinder the City’s ability both to retain the existing employment uses in the area and to accommodate new employment uses. Conversion of the site, he testified, is inconsistent with several of the requirements of section 1.3 of the PPS, and cannot possibly therefore have resulted from a “comprehensive review”.

In arguing his opposing position, Mr. Armstrong relied on the Brimley Road conversion (Exhibit 42). He contended that the facts in the two cases are identical. Brimley Road is an employment area. It was pointed out that Council’s decision to allow the conversion of the Brimley Road site did not reference either the need for saving employment lands for future employment nor the need to convert the lands to residential in order to accommodate the current or future City’s residential land needs.

Mr. Armstrong argued that insofar as the three tests under section 1.3.2 of the PPS are concerned, Terrasan can make the same case as TEDCO, the City agency that owns the Brimley Road site. In his final summation, Mr. Barnett charged that the City seems to hold Terrasan to a different more rigorous standard than it held itself in Brimley Road. And that if the “comprehensive review” required under section 1.3.2 of the PPS had been conducted for Brimley Road, then it has similarly been conducted for the Terrasan site.

The Board finds the characteristics of these two employment areas differ considerably. With few exceptions, the employment uses in the Brimley Road employment area produce no noxious odours; nor, with the exception of the (typically daytime) delivery trucks, do they produce excessive noise. No evidence was adduced

that the few industries remaining on the Brimley Road site that might be considered to emit “contaminants” (as defined in the MOE Guidelines) could not economically upgrade their mitigation processes to reduce or eliminate any impact on neighbouring residential uses. Evidence was produced that such is not the case with NRT and Canada Bread.

After weighing all the evidence presented on this subject, the Board finds that circumstances in Brimley Road differ markedly from those in the subject proposal, and adopts and relies on the opinions of the planners for the respondents that the requisite comprehensive review as defined in the PPS has not been conducted for the subject site.

Is the proposed residential development compatible with the existing employment uses?

In constructing his argument to prove that the Appellant is able to achieve the “threshold” established in section 1.3 of the PPS, Mr. Barnett introduced expert opinion evidence on noise, odour, traffic and urban design to demonstrate that the proposed development is both consistent with the PPS as a whole, and will be compatible with the existing industrial uses.

This evidence was countered by expert opinion evidence introduced by each of the three other parties.

The essence of the evidence of the Appellant’s expert witnesses (Ms Fitzgerald-Hubble, Mr. Graziani, Mr. Mihalj and Mr. Wallace) that the Board heard on the compatibility of the proposed development with the existing industrial uses, can be summed up in the following way:

- Using available technology, a residential building – even one 21-storeys in height
 - can be constructed in a way that will exclude any and all contaminants (including noise and odour) from the nearby industrial operations
- The building techniques to protect the interior of the buildings include the use of non-opening, double-glazed windows; enclosed balconies; air conditioning and carbon-based air filtration systems

- The 4.2 metre high wall surrounding the main outdoor amenity area of the proposed development should suffice to mitigate noise from the flour blower truck, which is the main or stationary noise source at Canada Bread
- To reduce or eliminate truck/car conflict on Cawthra Avenue, car traffic from the proposed development will be encouraged (perhaps via a Board order to re-orient traffic patterns) to use Lloyd Avenue rather than Cawthra to enter and exit the building.

In the following sections, the Board considers the potential of truck traffic, blower noise and (bread and rubber) odour for disruption of the operations of existing nearby employment uses.

Traffic

The Board heard expert opinion evidence from Mr. R. Blacquie, a professional engineer who was qualified to give opinion evidence on traffic engineering, that as an integral part of their operations, both Canada Bread and NRT regularly use the street in front of their plants (Cawthra Avenue) for parking and manoeuvring trailers. With reference to location maps, Mr. Blacquie showed the Board that the parking garage of the proposed residential towers will discharge cars onto Lloyd Avenue at the top of Cawthra Avenue, and that the most direct route to the central City is south on Cawthra. It is also the most direct route for pedestrians – especially children and younger teens – who will have to cross the rail tracks twice or more times per day to get to school.

The north part of Cawthra Avenue where it turns into Lloyd Avenue is the part most heavily used by Canada Bread. At any given time of the day or night, Canada Bread can have several trailers parked at the curb, waiting to load or unload.

Mr. Blacquie asserted that truck/trailer movements in the area pose a hazard for cars, bikes and pedestrians. Juxtaposing the proposed high density residential use with the existing MOE Class 3-type industrial uses represents a very real and obvious threat to the health and safety of the residents (which is contrary to section 1.1 of the PPS) as well as a threat to the efficient operation of the industries (which is contrary to section 1.6.5.4 of the PPS).

In Mr. Barnett's cross examination of Mr. Blacquie, it emerged that City staff had earlier signed off on the traffic report prepared for Terrasan by Mr. T. Wallace of LEA Consultants. It was not clear how and why Mr. Wallace arrived at his conclusions that the proposed development will not impact the safety of children and other future residents of the new towers. Mr. Wallace's research predicted that only a small percentage of the cars entering or leaving and a small percentage of the pedestrian traffic from the proposed new development would use Cawthra Avenue. He was thus able to conclude that an influx of 418 new high rise dwelling units would not have a significant impact on car/truck/pedestrian conflict rates.

Mr. Wallace said that he had arrived at this conclusion in part because the accident rate in the Cawthra Avenue Sub-area over the past 80 years has been no greater than the accident rate in other parts of the City. He said he did not believe that this rate would increase as a result of the proposed Terrasan development.

The Board finds Mr. Blacquie's testimony to be the more persuasive of the two. It is consistent with Provincial Planning Policy on health and safety in new communities and the preservation of the safety of children. The Board also finds that the introduction of approximately 1,000 new residents into a small, somewhat closed precinct like the Cawthra Avenue Sub-area will have an adverse impact not only on truck movements on Cawthra Avenue but also on public safety, which is clearly in violation of Provincial policy.

Noise

The Board heard the evidence of Mr. A. Mihalj (a noise expert testifying on behalf of Terrasan) that Canada Bread's flour blower truck - the only noise source under dispute - does not exceed 56 dba, which is less than the ambient noise levels either at ground level or at the 21st floor of Tower B. If the noise from the St Clair streetcar were included in the background levels, the ambient noise level rises to approximately 65 dba, which further increases the differential. He pointed out that MOE Guidelines do not allow transportation noises to be included in the calculation of ambient noise. Nevertheless, it was his opinion that the noise standards in the MOE guidelines (NPC 205) are easily complied with.

Testifying on behalf of Canada Bread, Dr. W. Richarz disagreed with the conclusions Mr. Mihalj drew from his (Mr. Mihalj's) data. The essence of Dr. Richarz's disagreement with Mr. Mihalj concerned the possibility that the sound from the blower truck was tonal in nature. Dr. Richarz presented the data in a form which seemed clearly to show tonality.

Mr. Mihalj disagreed with the form in which Dr. Richarz presented the data and maintained in his testimony that the sound from the blower truck was not tonal. The Board was told that Dr. Richarz had dealt with some 80 blower truck cases in his career; Mr. Mihalj conceded his experience with blower trucks was limited. Dr. Richarz testified that, in his experience, the noise from a blower truck was "almost always" tonal in nature.

Mr. Tomeselli, a professional engineer and noise expert with Golder, was retained by the City to peer review the reports of Mr. Mihalj and Dr. Richarz. He conceded that while his experience with blower trucks was less extensive than Dr. Richarz's, he had only been able to detect tonality in "four of the 12" blower truck cases he has dealt with in the course of his admittedly young career.

The point that the Board has to consider is that if the blower truck noise were tonal, it would exceed in loudness the background or ambient noise in the surrounding area, which would not only require special mitigation measures at the receptor (that is, at the face of the tower), but would also raise the possibility that Canada Bread would be out of compliance with its current Certificate of Approval (air). Canada Bread expressed understandable reluctance to go there.

After consideration of the evidence all three of the experts, the Board finds that the noise from the blower truck (regardless of whether or not it is tonal in nature) can be mitigated at the receptor. Nevertheless, the Board also recognizes the possibility raised by counsel for the Appellant, that the future residents of the new towers may not be satisfied with any at-receptor mitigation measures.⁵ The Board finds this fact troubling because the blower truck is essential to Canada Bread's operations. If it were the

⁵ In his summation, Mr. Barnett took the Board to the 2005 OMB decision involving Campus 2000 Developments Inc v. Richmond Hill (Town) in which it was noted that regardless of mitigation measures, the (Buttonville) airport will face challenges due to its location in a developed urban area, and that the proposed (residential towers) development poses no more threat to the airport than all of the other residential that already surrounds it.

subject of complaints to the MOE, the continued viability of Canada Bread at this location could, for reasons made clear in the evidence presented by the noise experts, be threatened.

Odour

Counsel for NRT characterized his client's plant as one of "heaviest of the heavy industries in this city". Indeed, a tour of the plant provided for the parties by NRT's president and CEO, Mr. Bavington, confirmed this description. From the street, the plant's exterior betrays little sign (beyond a slight scent of hot rubber) of what is going on inside - apart from the normal activities of shipping and receiving typical of a busy industrial plant. Inside, however, the plant is noisy, smelly, and clearly hazardous to the well-being of any visitor or worker not paying strict attention.

A considerable amount of highly technical evidence on odour – possibly, the Board learned, the most intractable contaminant - was put forward by four qualified experts. The testimony included measuring, regulating and mitigating the odour from NRT's plant. A considerable amount of expert testimony on the efficacy and economics of various means of at-source mitigation was also led. The Board was persuaded that of the at-source mitigation measures, only one had the potential to be both economically feasible and effective in the present instance. That one is stack height, provided the stack is high enough to disperse the (odour) plume over the roof tops of potential sensitive receptors, that is, over the homes, green spaces and parks in the surrounding area, which is the area of greatest potential impact. The Board also heard compelling evidence that any mitigation benefit resulting from increased stack height from the additional dispersion will be obviated by the presence of a high rise residential tower.

The question of the "Nexxt" high rise residential (now, Options for Homes) at 403 Keele Street, a few hundred metres south of the NRT plant came up repeatedly at the hearing. The Board was told that Nexxt, the City of Toronto and NRI (the precursor to NRT) entered into a settlement agreement, wherein the potential emissions from NRI would be mitigated by a number of as yet unproven at-receptor mitigation measures. Counsel for NRT told the Board that NRI was "not in a financial position at the time" to oppose the Nexxt proposal at the Board, and so had little choice but to agree to the

settlement when it was presented. In his final argument, counsel for NRT, Mr. Harbell, explained that agreeing to the Nexxt settlement in the first place was “a mistake” that his client did not intend to compound by staying silent before the Terrasan proposal.

A similar line of reasoning was applied in response to Mr. Barnett’s suggestion that the cat has, in effect, already been let out of the bag with the approval and development of both the Tribute Homes on the site of the former Maple Leaf Foods plant (immediately west of the subject site across St. Clair Avenue West) and the stacked townhouse development directly north of the subject site across St. Clair Avenue West. The Board heard evidence from odour experts, Mr. Complin (for NRT) and Mr. Geisberger (for Canada Bread) that the present situation of the proposed towers is entirely different because these two residential developments comprise low rise dwellings, which are a maximum of 2 and ½ storeys. In this case, the odour plume from NRT, by then considerably dispersed, does not touch ground until well past these (relatively new) homes. Again, the Board was shown convincing evidence both in the form of diagrams and numbers that the negative impact of the odour plume on the proposed Terrasan high rises would be significantly greater than on any of the low rise developments in the area.

The Pelham Court high rise rental development was cited by the odour expert for the Appellant, Ms Fitzgerald-Hubble. She claimed that there have been few, if any, complaints from the Pelham Court residents regarding the odour from NRT. The 12-storey Pelham Court apartment building is located about 1/2 km distant (as the crow flies) on Davenport Road. The Board declined to accept the rationale put forward by counsel for the Appellant that because nobody at Pelham Court has ever formally complained about odours from NRT, the odours must not have an adverse impact on them. The implication here is that owners of the new condominium suites on the Terrasan site will not complain about odours either.

The Board finds the opinion evidence of the experts that there is no economical way for either Canada Bread or NRT to eliminate odour emissions at source to be very convincing. It was explained that even though the odours can be kept out of the suites – especially those occupying the higher levels of the two proposed residential buildings - it cannot be kept out of the outside amenity areas, including the recreation area on the roof of the parking structure since these areas will be fully exposed to the elements.

The Board finds that the underlying question in this case is not whether the proposed development *can* be made compatible with the surrounding industrial uses from a habitability standpoint, but whether it *should* be. It also agrees with the expert testimony from the respondents' planning witnesses that the need to protect the existing industry and the jobs they represent should take precedence over the Terrasan's need or wish to maximize potential returns on its investment in the subject property.

The Board finds persuasive the land use planning conclusions of Mr. Butler and Mr. Morrison that the Terrasan proposal will not produce a liveable environment for its future inhabitants, who will be forced to keep their windows closed in order for the building air conditioning and carbon filtration systems to work. Residents will, in essence, have to hold their noses when they go outside during those times when the wind is blowing a certain way or, worse, the Board learned, when it was not blowing at all. During those times, the odours will not dissipate when they leave the stack but rather will settle to the ground around the towers.

The Board found the testimony of both Mr. G. Bavington, the president and CEO of NRT Technologies, and Mr. R. Liberatore, general manager of Canada Bread's Cawthra Avenue bakery to be particularly persuasive.

Mr. Liberatore explained that, in the warm weather (bar-bq) months, his plant operates around the clock, not only emitting both the generally, but not always to everyone, pleasant odour of baking bread from its rooftop stacks, but also creating commotion on Cawthra Avenue shunting its tractor trailers in and out of loading bays and sometimes receiving noisy flour blower trucks in the middle of the night. Neither of these potential contaminants – the odour from the ovens and the blower truck noise – is easily mitigated at source. In fact, he testified, if he were required by the MOE to mitigate at source, the cost of the new equipment required could well lead to his plant (that has operated on the current site for decades) shutting down completely. This would throw "hundreds of people" out of work, he said.

In his testimony, Mr. Bavington began by recounting to the Board the history of his company over its 80-year existence on the same site in Toronto. He then took the Board through the steps whereby used tires collected around the GTA and scrap rubber from places like China and India are converted into valuable new products, which are mainly exported for use by both the automotive and the building products industries.

Mr. Bavington stated that the existence of high rise towers in the Cawthra Avenue Sub-area close to the NRT plant "would mean the end of his plant's operations" with the attendant loss of "several hundred well-paid, highly desirable, union jobs". Of this, he stated, he had no doubts or illusions and cited his company's experience in other locations over the past 80 years in trying to achieve compatibility with nearby sensitive uses. He told the Board that the past ten years have been especially difficult for NRT not least because non-industrial (but not even "sensitive") uses keep setting up or trying to set up in close proximity to his operations. These users then complain to the MOE that NRT represents an unacceptable annoyance. He said that planned expansion of its 24/7 operations in the Portlands industrial district was thwarted both by the proposed FilmPort facility and by the complaints of the patrons and management of the Docks nightclub. He claims this experience, as much as anything that has happened over the years, soured him against the possibility of NRT's ever coexisting peacefully with any non-industrial use let alone any sensitive use like a new high rise tower. His testimony was not contradicted by the Appellant.

The Board finds that companies such as NRT to be especially valuable to this City as they form the backbone of a nascent, and essential, solid waste recycling industry. They perform an exceedingly valuable service not only to the natural environment by keeping tires out of landfills but also to the broader community since jobs like those at NRT are mostly filled by relative newcomers to Canada who use them to establish an economic foothold in this country.

The Board is of a similar view to Mr. Bavington that these so-called "dirty" industries can only function under a regulatory regime where land use policies protecting their right to exist are rigorously enforced.

The Appellants argue that the at-receptor mitigation measures proposed would preclude complaints and, therefore, MOE action. Attractive as that argument is, the Board was persuaded by the testimony of Mr. Bavington that odour complaints will inevitably follow high rise residential development in the Cawthra Avenue Sub-area. Within a few years, this will mean the demise of NRT's operations in the area. And, as soon as NRT announces its intention to leave, the other industrial uses in the Cawthra Avenue Sub-area will surely pull up their stakes as well. The Board finds that allowing

the conversion of the subject site would in all likelihood mean the end of NRT's and, possibly, Canada Bread's operations in the area.

The Board understands that it is not inconceivable for residential and many types of employment uses (both office and industrial) to be located in close proximity to one another as was pointed out by more than one of the witnesses for the Appellant.

However, the Board finds it would be imprudent in this instance where the presence of NRT especially, would, from the evidence, appear to be incompatible in the extreme with the proposed high rise residential uses on the Terrasan site. If the Terrasan proposal were allowed to go ahead, the disruption of the normal business of not only NRT and Canada Bread but possibly also that of Topper Linen and a half dozen or more of the smaller industries in the area will be adversely impacted. In many cases, these companies have conducted business uninterrupted for decades in the Cawthra Avenue Sub-area. The result of their dislocation would mean the loss of hundreds of industrial jobs to the central City and the disruption of perhaps thousands of lives that directly depend on those jobs.

After consideration of all the evidence presented on this question and notwithstanding Mr. Barnett's contention that good planning always involves balancing opposing interests, the Board finds the proposed high rise development on the subject property to be incompatible with the existing industrial-type employment uses in the immediate area, and that such incompatibility works against the liveability of the proposed residential towers.

From the evidence presented, it would appear that so long as the Terrasan site remains vacant, the threat to NRT's operations will continue. The Board therefore urges Terrasan to work with the City and with its neighbours in the Cawthra Avenue Sub-area to come up with a suitable employment use for the subject site.

Precedents

Counsel for the parties each cited a number of precedents in support of their arguments. After close review of all of the precedents named, the Board finds two to be particularly germane to the facts of this case.

The first, the 2005 OMB hearing into *Campus 2000 Developments v. Richmond Hill (Town)* OMBR 412 has already been cited above. The second, which is the 2004 OMB hearing into the matter of *Jannock Properties Ltd. v. Mississauga (City)* OMBC No. 202 represents a landmark in the area of employment land conversion. This panel read it with great interest and notes, in particular, Member P.L. Wyger's comments in paragraphs 119, 122, and 123:

In paragraph 119, Member Wyger finds that "the (Appellant's) proposed residential designation on this (industrial) site constitutes a significant and fundamental change to the basic structure of the City of Mississauga Official Plan." This panel of the Board finds the Terrasan proposal represents a similarly fundamental change to the basic structure of the City of Toronto Official Plan.

In paragraph 122, Member Wyger points out that "the Ontario Municipal Board understands and appreciates the significance of Official Plans and recognizes the important role they play within the policy planning framework of this province. The City's right to create and maintain its own vision for the direction of future growth is respected and valued. The Board recognizes that to a large extent the public interest is defined by the municipality and is articulated through the formulation of Official Plan policies."

With Member Wyger, this panel of the Board also recognizes the importance of the City of Toronto Official Plan in determining how the Junction Employment Area develops, and what role the Cawthra Avenue Sub-area plays in the total scheme. It has not been proven that City of Toronto Council has ever wavered in its reliance on the Official Plan in this instance, and in its conviction that the subject property should be preserved and protected for present and future employment uses.

In paragraph 123, Member Wyger notes that "The Board has had a long history of not interfering with or setting aside Official Plan designations lightly." ... (Such changes) must correspond to the public interest. The Board must be satisfied that on balance the change will create a good planning result." This panel of the Board agrees with that principle.

Summary of the Board's Findings

Overall, the Board finds the Terrasan proposal to be inconsistent with Provincial policy as expressed in the Provincial Policy Statement 2005 regarding the protection and preservation of employment lands for both existing and future users. It also finds the proposal offends the intent and purpose of both the City of Toronto Official Plan and Zoning By-law 438-86. After review of all the evidence, the Board finds the proposal does not represent good planning and is not consistent with the provisions of the PPS as required by section 2 of the *Planning Act*.

Conclusion

The Board orders the appeals dismissed. The requested Official Plan amendment is not approved, and Zoning By-law 438-86 is not amended.

The Board so Orders.

“C. Hefferon”

C. HEFFERON
MEMBER