

Ontario Municipal Board
Commission des affaires municipales
de l'Ontario



ISSUE DATE: June 20, 2016

CASE NO(S): PL111148
PL141198

PROCEEDING COMMENCED UNDER subsection 17(36) of the *Planning Act*, R.S.O. 1990, c. P.13, as amended

Appellant: A & W Food Services of Canada Inc.
Appellant: Derry-Ten Limited
Appellant: Orlando Corporation
Appellant: Latiq Qureshi and others
Subject: Proposed Official Plan Amendment No. P13-MOP 08.0
Municipality: City of Mississauga
OMB Case No.: PL111148
OMB File No.: PL111148
OMB Case Name: Konialian v. Mississauga (City)

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

Appellant: Derry-Ten Limited
Appellant: Orlando Corporation
Subject: Proposed Official Plan Amendment No. 25
Municipality: City of Mississauga
OMB Case No.: PL141198
OMB File No.: PL141198
OMB Case Name: Derry-Ten Limited v. Mississauga (City)

Heard: June 2, 2016 Mississauga, Ontario

APPEARANCES:

Parties

City of Mississauga

Counsel

Michal Minkowski and Raj Kehar

Orlando Corporation

Leo Longo

MEMORANDUM OF ORAL DECISION DELIVERED BY J. de P. SEABORN ON JUNE 2, 2016 AND ORDER OF THE BOARD

[1] The matters before the Board were scheduled for a pre-hearing conference and include appeals by Orlando Corporation (“Orlando”) with respect to both the new Official Plan (“MOP”) for the City of Mississauga (“City”) and proposed Official Plan Amendment No. 25. (“OPA 25”). Notice of the pre-hearing (Exhibit 1 in both PL111148 and PL141198) was given in respect of each set of appeals and following discussion between Counsel, agreement was largely reached with respect to scoping the appeals, scheduling going forward and the outstanding issues. As set out in the attached Order, certain appeals are withdrawn by Orlando and a hearing date is set for all remaining Orlando matters, which are consolidated.

[2] By way of background, Orlando has appealed several policies contained in the new MOP. In addition, it has appealed policies (and associated schedules and maps) with respect to OPA 25. However, Orlando has also proposed to scope its appeals and in this regard a draft order was filed (Exhibit 4). The draft order indicates which appeals are to be scoped and which appeals can be withdrawn. Mr. Longo requested that the draft order be issued as part of the Board’s disposition. Mr. Minkowski submitted that the Board should not, as contemplated in the draft order, retain the jurisdiction to consider any policy modifications that may be necessary to dispose of the outstanding appeals, regardless of the scoping and withdrawal of several appeals. It was his submission that the Board should not exercise its discretion in these circumstances to maintain any jurisdiction as has been done in previous cases. In light of the fact that the Board is dealing with several withdrawals, as opposed to modifications there is, in Mr. Minkowski’s submission, no jurisdiction under s. 17(39) of the *Planning Act* to use the wording proposed by Mr. Longo. Following further discussion with Counsel, I determined that the technique and wording employed by Mr. Longo has been relied

upon in several other occasions. To partially address the City's concern, Mr. Longo proposed amended wording to the draft order to make it clear that the jurisdiction modify policies will only extend to Orlando's appeals. I find that Orlando's approach and the draft order is an appropriate response and consistent with the Board's jurisdiction under s. 87 of the *Ontario Municipal Board Act*. Orlando should not be prejudiced because it is scoping certain appeals and withdrawing other appeals. As a result, the scoping order is issued as set out in Attachment 1 to this decision. It is clear from the order that several appeals are withdrawn by Orlando, which is helpful and narrows the matters in dispute.

[3] The issues for the hearing are now included as part of the Procedural Order. A draft issues list was filed (Exhibit 3) and a further draft filed by the City (Exhibit 3B), recommending some amendments. Following submissions, I determined that the issue, as framed by Orlando, with respect to Schedule 10 of OPA 25 should not be re-worded as requested by the City. I also determined that the additional issue proposed by the City (also relating the Schedule 10 of OPA 25) should be included as an issue. As a result, the issues for the hearing (which consolidates Orlando's appeals of the new MOP and the remaining appeals of OPA 25) are finalized, as set out in part of the Procedural Order.

[4] At the request of the parties and with their consent, the Orlando appeals are consolidated and a hearing is scheduled for **5 days, commencing at 10 a.m. on Monday, February 27, 2017 at:**

**City Hall
City of Mississauga
300 City Centre Drive
Mississauga, ON L5B 3C1**

There shall be no further notice and I am not seized of the hearing.

[5] The Procedural Order that will govern the organization and conduct of the hearing is issued as Attachment 2 to this decision. The issues are set out in the

Procedural Order as well as the order of evidence and the dates upon which material is to be exchanged. Subsequent to the pre-hearing, there was an objection raised by Mr. Longo with respect to how the City's overview evidence is characterized in the Procedural Order. The description as provided by the City need not be amended. However, I reiterate that the overview should not include opinion evidence. The Board expects Counsel to cooperate in this regard to ensure an efficient hearing. With respect to the timelines for the exchange of materials the requirements are set out in the Procedural Order and minor modifications do not require approval from the Board as the expectation is again that Counsel will cooperate and be sensible.

"J. de P. Seaborn"

J. de P. SEABORN
VICE-CHAIR

If there is an attachment referred to in this document,
please visit www.elto.gov.on.ca to view the attachment in PDF format.

Ontario Municipal Board

A constituent tribunal of Environment and Land Tribunals Ontario
Website: www.elto.gov.on.ca Telephone: 416-212-6349 Toll Free: 1-866-448-2248

ATTACHMENT 1 (To Decision)
Statement of Proposed Modification by
the Partial Settlement of Appeals

Appeals to be Withdrawn

Policy/Matter	Source Appeal	Issue	Response
5.4.14	MOPA 25	Policy on Hurontario Street Intensification Corridor	Orlando to withdraw appeal
5.4.15	MOPA 25	Hurontario Light Rail Transit Stations policy	Orlando to withdraw appeal
Map 5-1	MOPA 25	Map of Hurontario Street Intensification Corridor	Orlando to withdraw appeal
Schedule 1	MOPA 25	Intensification Corridor	Orlando to withdraw appeal
Schedule 1c	MOPA 25	Intensification Corridor	Orlando to withdraw appeal
Schedule 2	MOPA 25	Major Transit Stations	Orlando to withdraw appeal
Schedule 6	MOPA 25	Light Rail Transit Stations	Orlando to withdraw appeal

Scoped Appeals

Policy/Matter	Source Appeal	Issue	Response
9.3.1.5	MOP	City wide policy on new roads and small blocks to enhance connectivity	Orlando agreeable to scoping appeal to Gateway Corporate Centre Planning Area
15.1.1.2	MOP	Minimum height requirement on corridors and at Major Transit Stations	Orlando agreeable to scoping appeal to Gateway Corporate Centre Planning Area
15.1.1.4	MOP	Accessory uses must be in the same building as the principal use	Orlando agreeable to scoping appeal to Gateway Corporate Centre Planning Area

AND THE BOARD ORDERS that the partial approval of the Secondary Plan shall be strictly without prejudice to, and shall not have the effect of limiting:

- (a) the rights of a party to seek to modify, delete or add to the unapproved policies, schedules, maps, figures, definitions, tables and associated text in the Secondary Plan;
or

- (b) the jurisdiction of the Board to consider and approve modifications, deletions or additions to the unapproved policies, schedules, maps, figures, definitions, tables and associated text in the Secondary Plan on an area-specific or site-specific basis, as the case may be, provided that the parties shall be bound by the commitments made by them to scope their issues to a site-specific or area-specific basis.

AND THE BOARD FURTHER ORDERS that the scoping of appeals to a specific site or area is without prejudice to the positions taken by the parties to those appeals so that if those appeals proceed to a hearing, either on their own or as may be consolidated with other site-specific appeals, the City will not take the position that the Board ought not to approve site-specific or area-specific modifications to the affected policies, schedules, maps, figures, definitions, tables and associated text on the basis that they deviate from or are inconsistent with such policies, schedules, maps, figures, definitions, tables and associated text as approved on a Secondary Plan-wide basis (or as approved in respect of other lands which are subject to the same policies, schedules, maps, figures, definitions, tables and associated text). However, this does not affect the City's right to assert that the approved policies, schedules, maps, figures, definitions, tables and associated text should be applied to the specific sites or areas without modification on the basis that they constitute good planning.

AND THE BOARD ORDERS that notwithstanding anything ordered above, the Board hereby retains jurisdiction to consider and approve modifications to any policies, non-policy text, mapping, Secondary Plans and Site and Area Specific Policies approved herein as may be appropriate to dispose of any of the outstanding Orlando appeals before the Board, in accordance with section 87 of the *Ontario Municipal Board Act*, R.S.O. 1990 c. O.28.

ONTARIO MUNICIPAL BOARD

ATTACHMENT 2 (To Decision)

Case No: PL141198

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

Appellant: Derry-Ten Limited
Appellant: Orlando Corporation
Subject: Proposed Official Plan Amendment No. 25
Municipality: City of Mississauga
OMB Case No.: PL141198
OMB File No.: PL141198
OMB Case Name: Derry-Ten Limited v. Mississauga (City)

Case No: PL111148

PROCEEDING COMMENCED UNDER subsection 17(36) of the *Planning Act*, R.S.O. 1990, c. P.13, as amended

Appellant: A & W Food Services of Canada Inc.
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Subject: Proposed Official Plan Amendment No. P13-MOP 08.0
Municipality: City of Mississauga
OMB Case No.: PL111148
OMB File No.: PL111148

PROCEDURAL ORDER

The Board orders that:

- [1] The Board may vary or add to this Order at any time either on request or as it sees fit. It may amend this Order by an oral ruling or by another written Order.

Organization of the Hearing

- [2] The hearing will begin on February 27, 2017 at 10:00 a.m. at City of Mississauga City Hall, 300 City Centre Drive, Mississauga, Ontario, L5B 3C1, 2nd Floor, in the Municipal Hearing Room. All parties and participants shall attend the first day of the hearing.
- [3] The length of the hearing will be five (5) days. The length of the hearing may be shortened as issues are resolved or settlement is achieved.
- [4] The parties and participants identified at the prehearing conference are listed in

Attachment 1 to this Order.

- [5] The Issues are set out in the Issues List attached as Attachment 2. There will be no changes to this list unless the Board permits it. A party who asks for changes may have costs awarded against it.
- [6] The order of evidence is listed in Attachment 3 to this Order. The Board may limit the amount of time allocated for opening statements, evidence in chief (including the qualification of witnesses), cross-examination, evidence in reply and final argument. The length of written argument, if any, may be limited either on consent or by Order of the Board.

Requirements Before the Hearing

- [7] All parties and participants (or their representatives) shall provide a mailing address, email address, and telephone number to the Board. Any such person who retains a representative (legal counsel or agent) subsequent to the prehearing conference must advise the other parties and the Board of the representative's name, mailing address, email address and phone number.
- [8] A party who intends to call witnesses, whether by summons or not, shall provide to the Board, the other parties a list of the witnesses and the order in which they will be called. This list must be delivered at least ninety (90) calendar days before the hearing. For expert witnesses, a party is to include a copy of the curriculum vitae and the area of expertise in which the witness is proposed to be qualified.
- [9] An expert witness shall prepare an expert witness statement that shall include: an acknowledgement of expert's duty form, the area(s) of expertise, any reports prepared by the expert, and any other reports or documents to be relied on at the hearing. Copies of this must be provided as in section 12. 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.
- [10] A witness or participant must provide to the Board and the parties a witness or participant statement at least sixty (60) calendar days before the hearing or the witness or participant may not give oral evidence at the hearing.
- [11] 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 and his or her area of expertise, as in section [12].
- [12] On or before sixty (60) calendar days before the hearing, the parties shall provide copies of their witness and expert witness statements to the other parties and to the Clerk of the Corporation of the City of Mississauga.
- [13] On or before thirty (30) calendar days before the hearing, the parties shall provide copies of their visual evidence to all of the other parties. If a model is

proposed to be used the Board must be notified before the hearing. All parties must have a reasonable opportunity to view it before the hearing.

- [14] Parties may provide to all other parties and to the Clerk of the Corporation of the City of Mississauga a written response to any written evidence forty-five (45) calendar days before the hearing.
- [15] A person wishing to change written evidence, including witness statements, must make a written motion to the Board in accordance with the Board's Rules [34 to 38].
- [16] A party who provides the written evidence of a witness to the other parties must have that witness attend the hearing to give oral evidence, unless the Board and the parties are notified at least 7 days before the hearing that the written evidence is not part of their record.
- [17] Documents may be delivered in person, by courier, by facsimile, registered or certified mail or by email or otherwise as the Board may direct. The delivery of documents by fax and email shall be governed by the Board's Rules [26 - 31] on this subject. Material delivered by mail shall be deemed to have been received five business days after the date of registration or certification.
- [18] No adjournments or delays will be granted before or during the hearing except for serious hardship or illness. The Board's Rules 61 to 65 apply to such requests.

This Member is [not] seized.

So orders the Board.

ATTACHMENT 1
LIST OF PARTIES AND PARTICIPANTS

PARTIES:

1. Corporation of the City of Mississauga
Attention: Michal E. Minkowski
4th Floor
300 City Centre Drive
Mississauga, Ontario
L5B 3C1

2. Orlando Corporation
c/o Aird & Berlis LLP
Attention: Leo F. Longo
Brookfield Place
Suite 1800, Box 754
181 Bay Street
Toronto, ON
M5J 2T9

PARTICIPANTS:

None

ATTACHMENT 2

ISSUES LIST

Scoped Appeals + to Mississauga Official Plan ("MOP")

Policy/Matter	Source Appeal	Issue	Comments
9.3.1.5	MOP	Are a fine grain public road system, short streets and small blocks necessary or desirable for the proper and orderly development of lands within the Gateway Corporate Centre Character Area?	Orlando has scoped appeal to Gateway Corporate Centre Character Area +
15.1.1.2	MOP	Is the proposed minimum two storey height requirement on a corridor and within a Major Transit Station Area necessary and represent good planning?	Orlando has scoped appeal to Gateway Corporate Centre Character Area +
15.1.1.4	MOP	Is the proposed requirement that accessory uses be in the same building as the principal use necessary or desirable for the proper and orderly development of lands within the Gateway Corporate Centre Character Area?	Orlando has scoped appeal to Gateway Corporate Centre Character Area +

Additional Appeal to MOP

Appeal #9	MOP	Is it appropriate and does it constitute good planning if when a public park within "Business Employment" designation areas is deemed surplus and sold, such site assumes the abutting "Business Employment" designation without the necessity of an Official Plan Amendment?	Orlando has raised this issue solely respecting Public Park No. P-317 located within the Gateway Corporate Centre Character Area
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Appeals to Official Plan Amendment 25 (“MOPA 25”)

Policy/Matter	Source Appeal	Issue
15.3.1.2 a,b,c,f,i,k,r,v	MOPA 25	Do the proposed various design criteria including parking, tall buildings, pedestrian access, and main front entrances, constitute good planning and urban design for the development of lands on the Hurontario Street corridor?
15.3.2.1 – 15.3.2.4	MOPA 25	Do the proposed Gateway Corporate Centre land use policies for the Hurontario Street Corridor regarding: single storey financial institutions and restaurants; permitted existing uses; screening of buildings; office permitted uses; minimum height of 3 storeys at Major Transit Stations; maximum building setbacks; transparent windows; minimum streetwall requirements, constitute good planning and urban design?
15.3.3.3.2	MOPA 25	Special Site 3 – Is it appropriate to maintain the existing approved urban design policies affecting these sites?
Schedule 10	MOPA 25	<p>Does the proposed Land Use redesignation from “Business Employment” to “Office” of the Gateway Corporate Centre between Highway 401 and the Mississauga/Brampton border constitute good planning?</p> <p>Is the proposed redesignation required to meet the City’s employment growth allocation?</p> <p>Should the “Office” designation on lands between Highway 401 and Matheson Boulevard permit business employment uses should office development not occur despite reasonable efforts to attract such development?</p> <p>Is it reasonable to protect for higher density uses at or near major transit stations areas and transit infrastructure?<input checked="" type="checkbox"/></p>

+ = on a without prejudice basis

= issue added by the City

ATTACHMENT 3
ORDER OF EVIDENCE

1. **Presentation of Overview of Policy Context (how policies under appeal were developed and basis for those policies):**

City

- No opinion evidence
- No cross-examination of City witness

2. **In Chief:**

Orlando

3. **In Response:**

City

4. **In Reply:**

Orlando

ATTACHMENT 4

Purpose of the Procedural Order and Meaning of Terms

Prehearing conferences usually take place only where the hearing is expected to be long and complicated. If you are not familiar with the hearing process you should prepare by obtaining the Guide to the Ontario Municipal Board, and the Board's Rules, from the Board Information Office, 15th Floor, 655 Bay Street, Toronto, MSG 1E5, 416-212-6349, or from the Board website at www.omb.gov.on.ca.

The parties should discuss the draft Procedural Order before the prehearing conference and identify the issues and the process they propose the Board order following the prehearing. The Board will hear submissions about the content of the Procedural Order at the prehearing.

Meaning of terms used in the Procedural Order:

Party is an individual or corporation permitted by the Board to participate fully in the hearing by receiving copies of written evidence, presenting witnesses, cross-examining the witnesses of the other parties, and making submissions on all of the evidence. If an **unincorporated group** wishes to become a party, it must appoint one person to speak for it, and that person will become the party and assume the responsibilities of a party as set out in the Procedural Order. Parties do not have to be represented by a lawyer, and may have an agent speak for them. The agent must have written authorisation from the party.

Participant is an individual, group or corporation, whether represented by a lawyer or not, who may attend only part of the proceeding but who makes a statement to the Board on all or some of the issues in the hearing. At the hearing, a participant may be asked questions by the parties about their statements. Participants do not normally receive notice of a mediation or conference calls on procedural issues and cannot ask for costs, or review of a decision as parties can.

Written and Visual Evidence: **Written evidence** includes all written material, reports, studies, documents, letters and witness statements which a party or participant intends to present as evidence at the hearing. These must have pages numbered consecutively throughout the entire document, even if there are tabs or dividers in the material. **Visual evidence** includes photographs, maps, videos, models, and overlays which a party or participant intends to present as evidence at the hearing. If a model forms part of the evidence, photographs of the model shall also be filed.

Witness Statements:

A **witness statement** or a **participant statement** is a short written outline of the person's or group's background, experience and interest in the matter; a list of the issues which he or she will discuss and the witness' or participant's position on those issues; and a list of reports that the witness or participant will rely on at the hearing.

An **expert witness statement** should include his or her (1) name and address, (2) qualifications, acknowledgement of the expert's duty, and specific area(s) of expertise, (3) a list of the issues to be addressed, (4) the witness' opinions on those issues and the complete reasons for the opinions and (5) a list of reports that the witness will rely on at the hearing.

The Procedural Order will set out when and how witness statements are to be exchanged.

Additional Information

Summons: A party may ask the Board to issue a summons. This request must be made before the time that the list of witnesses is provided to the Board and the parties. (See Rules 45 and 46 on the summons procedure.) An affidavit may be requested indicating how the witness' evidence is relevant to the hearing. If the Board is not satisfied from the affidavit, it will require that a motion be heard to decide whether the witness should be summoned.

The order of examination of witnesses: is usually direct examination, cross-examination and re-examination in the following way:

direct examination by the party presenting the witness;

direct examination by any party of similar interest, in the manner determined by the Board; cross-examination by parties of opposite interest;

re-examination by the party presenting the witness; or

another order of examination mutually agreed among the parties or directed by the Board.

Role of Participants: Participants are identified at the start of a prehearing or at the start of a hearing. Participant statements should be filed with the Board and the parties in accordance with the direction set out in the Board's Procedural Order. If a participant does not attend the hearing and only files a written statement, the Board may not give it the same attention or weight as submissions made orally. The reason is that parties cannot ask further questions of a person if they merely file the material and do not attend.

OCTOBER 20, 2014