

ISSUE DATE:

December 28, 2012



PL120906

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

Dwight Slessor Holdings Limited and George St. Retirement Residence Partnership have 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 neglect to enact a proposed amendment to Zoning By-law No. 2010-40 of the Town of Newmarket to rezone a 1.86 hectare (4.6 acres) parcel of land located on the east side of Yonge Street and approximately 244 metres (800 feet) north of Davis Drive, municipally known as 17645 Yonge Street, from "Provincial Urban Centre (UC-P)" to "Provincial Urban Centre – Exemption (UC-P-EX)" to recognize a Long Term Care Facility, Retirement Residence and Conference Centre as permitted uses in addition to those permitted as of right as well as to permit increased height, increased parking standards and increased height and density for the purpose of permitting the development of the subject lands consisting of a 7-storey retirement residence and banquet centre containing 190 suites, a 7-storey long-term care centre containing 178 units with a medical centre proposed for the ground floor, a 23-storey residential tower containing 155 units with commercial and retail uses proposed, and a 26-storey residential tower containing 152 hotel suites and 120 residential units with commercial and retail uses proposed

Town of Newmarket File No. D14-NP-11-15

O.M.B. File No. PL120906

Dwight Slessor Holdings Limited and George St. Retirement Residence Partnership have appealed to the Ontario Municipal Board under subsection 51(34) of the *Planning Act*, R.S.O. 1990, c. P. 13, as amended, from the failure of the Town of Newmarket to make a decision respecting a proposed plan of subdivision on a 1.86 hectare (4.6 acres) parcel of land located on the east side of Yonge Street and approximately 244 metres (800 feet) north of Davis Drive, municipally known as 17645 Yonge Street, for the purpose of permitting the development of the subject lands consisting of a 7-storey retirement residence and banquet centre containing 190 suites, a 7-storey long-term care centre containing 178 units with a medical centre proposed for the ground floor, a 23-storey residential tower containing 155 units with commercial and retail uses proposed, and a 26-storey residential tower containing 152 hotel suites and 120 residential units with commercial and retail uses proposed

Plan of Subdivision File No. 19TN-2012 001

Town of Newmarket File No. D12-NP-12-02

O.M.B. File No. PL120935

APPEARANCES:

<u>Parties</u>	<u>Counsel</u>
Dwight Slessor Holdings Ltd. and George Street Retirement Residence (Slessor)	I. Kagan
Town of Newmarket	E. Armchuk-Ball
Region of York	B. Montgomery

MEMORANDUM OF ORAL DECISION DELIVERED BY S. SUTHERLAND AND H. JACKSON ON NOVEMBER 30, 2012 AND ORDER OF THE BOARD

[1] This is the first prehearing conference for an appeal by Dwight Slessor Holdings Ltd. (the property owner) and George Street Retirement Residence (“Slessor”), pursuant to s. 34(11) and 51(34) of the *Planning Act* from Council’s failure to make a decision regarding a Zoning By-law amendment and a draft plan of subdivision application for their property at 17645 Yonge Street in the Town of Newmarket (“Town”).

[2] The Zoning By-law amendment and draft plan of subdivision are to permit a development comprised of four buildings, as follows:

- a) a seven-storey retirement residence with 190 suites;
- b) a 26-storey apartment building with 120 units and 152 hotel suites;
- c) a 23-storey apartment building with 155 units; and
- d) a seven-storey long term care centre with 178 units and a one-storey medical centre.

[3] The Board is satisfied that sufficient notice was given of this pre-hearing conference. There are two Affidavits of Service; the first Notice (Exhibit 2a) was provided according to the direction provided to the Applicant by the Board, and the second Notice (Exhibit 2b) was provided by the Applicant to additional persons identified by the Town who had expressed an interest in the matter.

[4] The Applicant indicated to the Board that there have been numerous discussions between Slessor, the Town, the Region of York (“Region”), the consultants, and some residents, in an attempt to reach a compromise regarding the proposed development. Slessor made a “without prejudice” offer to the Town on August 16, 2012, and indicated that this offer should be made public so that the local residents would be apprised of the new proposed development. This new offer is comprised of four buildings, as follows:

- a) a ten-storey apartment building with 203 units;
- b) a 20-storey apartment building with 248 units;
- c) a 20-storey apartment building with 193 units; and
- d) a nine-storey retirement residence.

[5] The Applicant indicated to the Board that negotiations are on-going, and there have been and may be further minor changes to the proposed settlement offer.

PARTIES/PARTICIPANTS

[6] Mr. W. Chadwick requested party status on behalf of the residents group, “Shrink Slessor Square”. He stated that the group is presently seeking status as an incorporated group in order to participate fully in this matter. Slessor indicated that it was not opposed to the resident group being granted party status, subject to residents in the group having a direct interest, either by living nearby, or within a reasonable walking distance of the proposed development. It was agreed by the parties that in the interim, Mr. Chadwick would be designated as a Party to the matter, and when the group is incorporated, the party status would transfer to the residents’ group.

[7] A number of residents expressed their desire to be participants in the matter. The following people requested and were granted participant status for this matter.

- Gordon Prentice
- Anna O’Rourke
- Dr. Robert Bahlheda
- Yvonne Carvalho

SCHEDULED HEARING DAYS

[8] Slessor requested that the Board set aside three days in the latter part of February 2013, for a settlement hearing, should the parties be successful in reaching a settlement. The Board has set aside three days (February 19, 20, 21, 2013) for a settlement hearing, or alternatively, a further prehearing conference if settlement is not reached.

[9] The settlement hearing / pre-hearing conference will commence on February 19, 2013, at 10:30 a.m. at a venue to be provided by the Town.

[10] The Board has additionally set aside hearing dates for April, should a full hearing be required. These dates are April 11 to May 2, 2013. The hearing will commence on April 11, 2013, at 10:30 a.m. at a venue to be provided by the Town.

[11] There will be no further notice of the settlement hearing / pre-hearing conference.

ISSUES LIST

[12] Slessor undertook to prepare a draft procedural order to be circulated to the parties outlining the issues and disclosure dates. Should a full hearing be required, Slessor anticipates calling experts in planning, urban design, transportation, and service engineering.

[13] The draft procedural order having been received, it is approved and attached to this decision as Attachment "1".

[14] These members are not seized.

"S. Sutherland"

S. SUTHERLAND
MEMBER

"H. Jackson"

H. JACKSON
MEMBER

ATTACHMENT 1

ONTARIO MUNICIPAL BOARD

In the matter of appeals to the Ontario Municipal Board pursuant to sections 34(11) and 51(34) of the Planning Act R.S.O. 1990, c. P. 13, as amended, by Dwight Slessor Holdings Limited and George St. Retirement Residence Partnership, from Council's neglect to enact a proposed amendment to Zoning By-law No. 2012-40 of the Town of Newmarket and a plan of subdivision.

Property Address: 17645 Yonge Street, Newmarket

Town of Newmarket File Nos. D14-NP-11-111 (zoning) and D12-NP-12-02 (subdivision)

O.M.B. File No. PL120906

PROCEDURAL ORDER

1. The Board may vary or add to these provisions (orally or in writing) at any time, either on request or as it sees fit.

Organization of the Hearing

2. The Appellant has made a without prejudice offer to the Town of Newmarket which, if accepted, would resolve all issues between the Appellant and the Town. If the Town accepts that offer (subject to any adjustments which the Appellant and Town agree upon), then the appeals will be dealt with in a settlement hearing (subject to any position taken by any other party to this hearing) commencing on **Tuesday, February 19, 2013 at 10:30 a.m. at the Newmarket Community Centre and Lions Hall, 200 Doug Duncan Drive, Newmarket. Three (3) days have been set aside for the settlement hearing.** If the appeals are dealt with at the settlement hearing then none of the other terms of this Procedural Order shall apply (i.e. exchange dates for materials, etc.). If the appeals are not disposed of at the settlement hearing then the first day of the settlement hearing (February 19, 2013) will be converted to the second prehearing conference and the appeals will be heard in accordance with the balance of this Procedural Order.

3. If the Town of Newmarket does not accept the settlement offer in time for the settlement hearing, then the appeals will be heard commencing on **Thursday, April 11, 2013 at 10:30 a.m. at the Newmarket Community Centre and Lions Hall, 200 Doug Duncan Drive, Newmarket and ending on Thursday May 2, 2013. The length of this hearing is fifteen (15) days.**

4. The parties and participants (*see Attachment 1 for the meaning of these terms*) are listed in Attachments 2 to this Order.

5. The issues for the hearings are set out on the Issues List attached as Attachments 3 to the Order. There will be no changes to this list unless the Board permits and a party who asks for changes may have

costs awarded against it. The parties shall provide their Issues List **by no later than Friday, February 15, 2013**. In the case of any disagreement on the Issues List the matter will be dealt with by the Board at the **Tuesday, February 19, 2013** prehearing conference. Only parties can place issues on the Issues List.

6. Only parties may call witnesses. Participants may testify in their own right but may not call witnesses, may not make opening statements or closing submissions and may not cross-examine other witnesses.

Requirements Before the Hearing

7. A party who intends to call witnesses, whether by summons or not, shall provide to the Board, the other parties and to the Clerk, a list of the witnesses and the approximate order in which they will be called. This list must be delivered to all of the parties on or before **Friday, March 1, 2013**.

8. An expert witness shall prepare an expert witness statement, which shall list any reports prepared by the expert, and any other written evidence to be relied on at the hearing. Copies of this must be provided as in section 11. 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. For greater certainty, each expert witness statement must comply with the minimum content requirements specified in Rule 21 of the Board's *Rules of Practice and Procedure*. Regardless of whether the expert prepares a report or a witness statement, the expert shall include a signed Acknowledgement of Expert's Duty.

9. A non-expert witness or participant must provide to the Board and the parties a witness or participant statement on or before **Friday, March 15, 2013** otherwise the witness or participant may not give oral evidence at the hearing.

10. 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 on or before **Friday, March 15, 2013**.

11. On or before **Friday, March 15, 2013**, the parties shall provide copies of their witness and expert witness statements to the other parties and to the Board. The expert witness statement shall include an Acknowledgement of Expert's Duty.

12. Parties may provide to all other parties (and file with the Board) a written response to any written evidence on or before **Friday, March 29, 2013**.

13. The parties shall exchange their visual evidence by no later than **Monday, April 8, 2013**.

14. A party or participant wishing to change written evidence, including witness statements, must make a written motion to the Board. (*See: Rules 34 and 35 requiring at least ten (10) days service before a motion is heard.*)

15. A party who provides a witness' written evidence to the other parties must have the witness attend the hearing to give oral evidence, unless the party notifies the Board at least seven (7) days before the hearing that the written evidence is not part of their record.

16. Documents may be delivered by personal delivery, e-mail, facsimile, courier or registered or certified mail, or otherwise as the Board may direct. The delivery of documents by fax shall be governed by the Board's Rules [26 – 31] on this subject. For documents delivered by e-mail, a hard copy shall also be delivered on request. Material delivered by mail shall be deemed to have been received five business days after the date of registration or certification.

17. 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 / is not seized.

So orders the Board.