

ISSUE DATE:

November 13, 2013



PL120944

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

501 Lakeshore Inc. 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 neglect to enact a proposed amendment to the Official Plan for the City of Mississauga to redesignate land municipally known as 447, 453 and 501 Lakeshore Road East and 1021, 1027, 1077 and 1087 Enola Avenue from "Business Employment", "Mainstreet Retail", "Commercial", "Residential - Low Density" and "Greenbelt" to "Mainstreet Retail", "Commercial", "Residential - High Density II" and "Greenbelt" and to create a new special site policy in the Lakeview District Policies section of the Mississauga Official Plan

Approval Authority File No.: OZ 11/017 W
OMB File No.: PL120944

501 Lakeshore Inc. 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 neglect to enact a proposed amendment to Zoning By-law 0225-2007 of the City of Mississauga to rezone lands respecting 447, 453 and 501 Lakeshore Road East and 1021, 1027, 1077 and 1087 Enola Avenue from "E2", "C4", "R3" and G1" to permit redevelopment of the site from A-2 to "C4" and "RA5", the majority of the "G1" zoning will be maintained, to permit the mixed-use redevelopment of the site
OMB File No.: PL120945

APPEARANCES:

Parties

Counsel/Agent*

501 Lakeshore Inc.

S. Zakem

City of Mississauga

R. A. Biggart

Region of Peel

R. Maciver

Credit Valley Conservation Authority

L. Smith*

Cranberry Cove Port Credit Ratepayers
Association

C. J. Mackie*

DECISION DELIVERED BY M. C. DENHEZ AND ORDER OF THE BOARD

INTRODUCTION

[1] This dispute, concerning a proposed Official Plan Amendment (“OPA”) and rezoning, was apparently settled between the parties, but there were still participants from the neighbourhood, expressing concerns.

[2] 501 Lakeshore Inc. (“the applicant”) proposed redevelopment on 14½ acres of formerly industrial lands in the City of Mississauga (“the City”), in the Region of Peel (“the Region”). Part of the property is at risk of flooding from abutting Cooksville Creek, which is under the jurisdiction of the Credit Valley Conservation Authority (“the Conservation Authority”).

[3] The applicant proposed a substantial Mixed-Use project, including two residential towers (12 storeys and 20 storeys), townhouses, office space, and some 150,000 square feet of retail space (neighbours anticipated a Walmart). The applicant also undertook to do engineering work on the creek, to reduce its floodplain.

[4] This application involved an OPA and rezoning. However, City Council did not adopt them, and the applicant appealed to the Ontario Municipal Board (“the Board”).

[5] At a Pre-Hearing Conference (“PHC”), the Board recognized six parties: the applicant, three public authorities (the City, the Region, and the Conservation Authority), plus two other parties – Mr. F. Capobianco, and the Cranberry Cove Port Credit Ratepayers Association (“CCPCRA”).

[6] Over time, the project changed substantially, reducing the height of the residential towers, relocating an internal road, and relocating a proposed pumping station.

[7] In the lead-up to the Board hearing, four parties reached formal consensus on project revisions – the applicant, the City, the Region, and the Conservation Authority.

[8] As for the other two parties, Mr. Capobianco did not attend the hearing (though notified), and the CCPCRA asked to change its status from that of a party to that of a participant. The CCPCRA nonetheless sought clarifications.

[9] Participants came forward with other concerns. One neighbour, Halina Kiluk, expressed apprehension about impacts on her property. Representatives of two community associations (the Town of Port Credit Association and the Lakeview Ratepayers Association) also expressed concerns about the kind and amount of retail which could occur under the proposal. Yet another participant, Ian L. Smith, supported the project.

[10] The Board has carefully considered all the evidence, notably the testimony of Terry Korsiak, the applicant's planner. It was his expert opinion that, subject to the conditions agreed, the OPA and rezoning (all as modified) met all statutory criteria, and represented good planning. On review, the Board finds that although the participants' concerns are understandable, they are also manageable. The Board gives effect to the OPA and rezoning, as agreed between the applicant and the public authorities, though subject to specific conditions, notably of an environmental nature. The details and reasons are outlined below.

BACKGROUND AND CONTEXT

[11] Most of the 5.85 hectare site belonged to the former Inglis appliance factory, which closed years ago. Although those lands were mainly designated "Employment" under the City's Official Plan ("OP"), it was common ground that they would not be considered "Areas of Employment" under either the Provincial Policy Statement or the Growth Plan for the Greater Golden Horseshoe; nor was it suggested that they were needed for long-term employment objectives.

[12] Another part of the property, estimated to be at flood risk, had been designated "Natural Hazard". The OPA would change the "employment" designation, and redefine the area of the "Natural Hazards" designation, pursuant to the work on the creek.

[13] The site is on the north side of Lakeshore Road East, between Enola Avenue and the creek. At the southwest corner is an existing commercial building; at the southeast corner, land had recently been expropriated by the Region for a pumping station.

[14] The properties along Lakeshore Road were described as a mix of residential and commercial, of various sizes and shapes; along Enola Avenue was another mix of residential properties of various sizes and shapes.

[15] Under the proposal, the existing buildings on the subject property would all be demolished. The property would be crossed by a new street, with some truck access to Enola Avenue. The subject site then be divided into three main parts:

- One part, to the south, would be designated commercial. The Lakeshore Road frontage, plus a corner portion extending from Lakeshore Road along Enola Avenue, would be lined by two-storey buildings with at-grade retail plus office uses, said to reinforce the “village” or “Main Street” feel of Lakeshore Road. Behind those buildings, to the north, would be parking; part of that parking would be provided in a structure, surmounted by more retail space.
- The second part, to the north, would be designated residential, with two residential towers (12 storeys and 20 storeys), plus townhouses.
- A third part would be comprised of a strip along the east side, for greenspace. The work on the creek was expected to confine the floodplain to that area, and the “Natural Hazards” designation would be redefined accordingly. The pumping station would also have a distinct designation.

[16] Those proposed physical arrangements changed. Pursuant to the negotiations with other parties, the applicant produced a revised proposal:

- The pumping station would be moved north, away from Lakeshore Road.
- The street crossing the property would be shifted further east.
- Trucks would no longer have access to Enola Avenue.

- The apartment buildings would no longer measure 20 storeys and 12 storeys, but 14 storeys and 8 storeys respectively. The project height would also be subjected to a 45° angular plane.
- The zoning would have an “H” “Holding” provision, specifying that no development could proceed until it had met four preconditions:
 - execution of servicing and development agreements;
 - an agreement to pay benefits to the City under s. 37 of the *Planning Act*;
 - acceptance, by the Ministry of Environment (MOE), of a Risk Assessment, and a Record of Site Condition; and
 - registration of the agreement concerning lands for the pumping station.

[17] Those provisions apparently satisfied public authorities, but not everyone. One owner of property abutting the existing industrial site expressed concern that the project would “overpower” her property in terms of privacy, pollution, and traffic.

[18] Two representatives of community associations, namely the Town of Port Credit Association and the Lakeview Ratepayers Association, expressed concern that a potential big box store could have a disruptive effect on business planning for the entirety of Lakeshore Road.

[19] The representative of CCPCRA, for his part, wanted clarification that no development would proceed, without proper MOE vetting of environmental risks. Counsel for the applicant and for the City replied that this was exactly what one of the preconditions of the “H” “Holding” provisions would assure. The “hold” on development would be removed only:

Upon satisfaction of the following requirements: ... Acceptance by the Ministry of Environment of the Risk Assessment and issuance of a Record of Site Condition for the uses permitted in this zoning by-law....

APPLICABLE CRITERIA

[20] Assessment of a proposed OPA or rezoning may involve several factors, notably whether they comply with the *Planning Act*, the Provincial Policy Statement (“PPS”), the applicable Official Plan(s) and the fundamentals of good planning.

ANALYSIS

[21] As mentioned, the expert planning evidence supported the OPA and rezoning.

[22] The skeptics pursued two themes. Ms. Kiluk focused on the impact of the project, which would back onto her property. However, according to the plans, her property would eventually back onto a part of the project’s landscaped area, whereas it now backs onto an industrial site. Although this large new project would undoubtedly have a significant impact, the Board was not shown how that impact would be notably more negative than what exists today.

[23] As for the associations’ concerns arising from the possible use of commercial space for a “big box” store, the spokespersons Gavin Clark and Deborah Goss argued that it could represent inappropriate competition for authentic “Main Street” merchants elsewhere along Lakeshore Road. Ms. Goss added that this anchor destination (what she called a “node”) would be in the wrong location along Lakeshore Road.

[24] Those views were thoughtfully presented. The overall commercial well-being of Lakeshore Road is indeed a significant question, deserving the full attention of City planners in the short, medium and long term. This Board, however, is not an economic regulator: its mandate involves application of formal planning policies – and in Mississauga, the OP does *not* intervene in marketing.

[25] The Board would add, however, that if the retail space is indeed allotted to a “big box” function, then the Board can only observe that most developers do not conceal big box stores behind “Main Street” style storefronts: instead, they isolate them in a sea of parking. Compared to that, some observers would call the current proposal a “revolutionary” improvement, in the prospective treatment of streetscapes.

[26] Similarly, it is not every developer who reduces the risk of flooding by undertaking engineering works in the watercourse.

[27] Although the Board acknowledges the participants' concerns, the above factors lead the Board to agree with the public authorities, and with the expert evidence, that the project represents a step forward.

ORDER

[28] The appeals are allowed in part:

1. The Amendment to the Official Plan of the City of Mississauga is approved, in accordance with the wording that appears at Exhibit 6.
2. Zoning By-law No. 0225-2007 of the City of Mississauga is amended in accordance with the wording that appears at Exhibit 7.
3. The appeals are otherwise dismissed.
4. The Board authorizes the City Clerk to assign a number to the Official Plan Amendment and the By-law for record-keeping purposes.
5. No costs shall be awarded in respect of these proceedings.
6. In the event that some matter or matters should arise in connection with the implementation of this Order, the Board may be spoken to.

“M. C. Denhez”

M. C. DENHEZ
MEMBER