

**ORAL DECISION OF R. ROSSI FOLLOWING A TELECONFERENCE CALL ON
MAY 21, 2014**

[1] A teleconference call was convened by the Board on Wednesday, May 21, 2014 to consider a request of the City of Mississauga (“City”) to adjourn the hearing scheduled to commence on May 26, 2014.

[2] Co-counsels Mr. Kehar and Mr. DeMelo represented the City. Credit Mills Development Corporation (“Credit Mills”) (represented by counsel Mr. Swinkin) has presented to the Board an Official Plan Amendment and a Zoning By-law Amendment as well as a draft plan of subdivision to facilitate development of its lands located at 5267 Mississauga Road for commercial and residential uses. No site plan is before the Board but a site plan concept provides a suggested development approach of the Credit Mills lands.

[3] The other parties to these proceedings include Metrolinx (represented by Mr. Kussner) and Mondelez Canada Inc. (“Mondelez”) (represented by co-counsels Ms Bull and Ms Sadvari).

[4] The Board received the City’s request for an adjournment (with reasons for the request) by e-mail on May 14, 2014. Credit Mills opposed the adjournment and on file is Mr. Swinkin’s e-mail correspondence of May 15, 2014 providing reasons for opposing the request. On May 16, 2014, Mr. Kehar’s e-mail correspondence to the Board proposed an alternative solution by requesting that the Board vary its Procedural Order (issued May 2, 2014) in order to obtain a summons for an additional witness to speak to issues arising from the Metrolinx letter of May 9, 2014 (on file) and ultimately to add an issue. At that point, the Board directed the counsels to attend a teleconference call on May 21, 2014 to speak to the issue of whether an adjournment should be granted.

[5] On May 20, 2014, Mr. Swinkin responded to Mr. Kehar’s alternative solution by way of an e-mailed letter to the Board, expressing no opposition to the addition of the proposed witness and observing that the proposal to proceed with a witness meant that

the City was abandoning its adjournment request since Mr. Swinkin and his client would not oppose the attendance of the witness at the hearing. Late that same day, Mr. DeMelo responded to Mr. Swinkin by e-mail (with the Board included on the response). Mr. DeMelo responded that the City was indeed continuing to seek an adjournment of the hearing "...to allow for a reasonable period to work through this new development [the May 9, 2014 Metrolinx letter] and failing which we will ask the Board to consider the appropriateness of the adjournment on its own given this information." Shortly thereafter, Mr. Swinkin confirmed that his client still did not consent to the adjournment.

[6] The Board noted that Mondelez takes no position regarding the adjournment request or suggested variance to the Procedural Order in the manner that the City sought. During this call, the Board sought and received unanimous consent from the counsels for the Board to issue its decision on whether to adjourn the May 26th hearing and to provide these reasons to all parties by e-mail on May 22, 2014.

[7] The Board carefully reviewed the written comments and arguments of the counsels and considered their verbal submissions presented during the conference call in arriving at its decision to grant the adjournment.

The Positions of the City and Metrolinx

[8] The basis for the City's request derives largely from the May 9, 2014 letter of Michael Wolczyk, Vice President (Acting), GO Capital Infrastructure (Metrolinx). The substantive details of this letter were largely unchallenged. The City argued that the contents of this letter generates new information regarding Metrolinx's future land needs for a Grade Separation between Mississauga Road and the Canadian Pacific Railway (CP) corridor that affects a portion of the Credit Mills lands; specifically, that additional property is likely required. The letter references the possible need for a linear strip of land along the west side of the subject property for construction staging purposes including a temporary detour roadway, which will serve to provide, among other things, access to the Mondelez property and other properties immediately north of the subject property that enjoy access to Mississauga Road from Reid Drive. The City requests an adjournment until additional exploratory work and the Metrolinx review is completed,

likely requiring an additional three months of time.

[9] Mr. Kussner confirmed for the Board the contents of this letter in respect of Metrolinx's current efforts to determine its precise land envelope requirements "...in order to determine what the revised implications are for the proposed development at 5267 Mississauga Road." The letter also explains that both CP and the City would have to review those requirements and that specific designs will still require an environmental assessment, which has yet to be initiated. The letter notes that potential future construction activities associated with expansion and electrification of the corridor would be in close proximity to buildings in the proposed development (although the Board recognizes that a finalized site plan is not before it and it heard Mr. Swinkin's suggestion that such details might reasonably be worked out during and/or following the hearing process through direction from the Board).

[10] The Metrolinx letter concludes with a request that the City "take all necessary and appropriate steps to ensure that Metrolinx's future property needs, as they relate to the proposed development...are adequately accommodated and safeguarded..." Mr. Kussner explained that the project is in fact in its preliminary design works stage and consultation with all stakeholders will be required. Accordingly, while taking no position, the agency nevertheless views the City's request for an adjournment as a substantive demonstration of the City's desire to "ensure Metrolinx's future property needs."

The Position of Credit Mills

[11] Mr. Swinkin submitted that the letter offers no new information and nothing that could not be adjudicated in the course of the hearing process. He submitted that the hearing should begin as scheduled without delay as the real issues for the Board will be the assignment of appropriate land use entitlements (designations) for the entire large parcel of Credit Mills land. He emphasized that the lands that are implicated by the potential Grade Separation lie at the very northwest extreme of the property. As such, any additional land to be taken from Block 3 will be something that the designers will take into account once a formal site plan for the lands is settled and do not affect the

larger issues to be adjudicated. Mr. Swinkin also submitted in his letter that it is within the scope of the Board's jurisdiction to direct, among other things, a "redlining" of the plan to alter the limits of Block 3 (site of the possible future grade separation). He argued that the hearing is not affected in any shape or form than what is currently shown on the plan.

[12] According to Mr. Swinkin's submissions, so imprecise are the details of what might be developed, devised or constructed in the future in respect of the Grade Separation issue or the matter of providing uninterrupted access to Reid Drive via lands adjacent to Mississauga Road or the identification of the additional lands that Metrolinx might eventually require, that staging could possibly be achieved along the west side of Mississauga Road, which invariably might not even affect the Credit Mills property. This potential was given serious consideration by the Board as was his argument that Grade Separation is a long way from becoming a reality, particularly where no money has been dedicated to the project; no environmental assessment has been commenced; and neither CP nor the City has commented on a substantive proposal. In Mr. Swinkin's view, this lack of progress and detail should not encumber or delay Credit Mills' right to its hearing. At best, he submitted, these are discussions of technical aspects that affect only a portion of the periphery of the Credit Mills site and the Board could easily defer its decision post-hearing on some aspect of the case and/or affix a further appearance after the preliminary matters.

The Board's Findings

[13] The Metrolinx letter and its contents represent, in the Board's view, new information and a fundamental change in the position of Metrolinx (from its earlier opinion on the sufficiency of land and based upon its subsequent and more recent review of these matters) vis-à-vis the importance of finalizing the agency's land requirements for transit corridor development in advance of a Board hearing on the planning merits of the Credit Mills application.

[14] It is undisputed that Metrolinx has long planned for all-day, two-way rail service

as originally detailed in *The Big Move* in 2008. This, and incremental expansion of the Milton corridor along with plans for the electrification are integral components of Metrolinx's strategy. City Council has had concerns with the potential development of a Mississauga Road allowance vis-à-vis Grade Separation such that it pursued further discussions with Metrolinx and the result for the Board's purposes, was the May 9, 2014 letter asking the City to safeguard Metrolinx's interests.

[15] It remains unknown at this time in what form uninterrupted access will be provided to the Reid Drive properties and for Mississauga Road traffic during future construction of the Grade Separation and when/if such development will occur. As referenced above, Mr. Swinkin emphasized this unknown quotient as hardly being something on which to pursue an adjournment of the hearing. It also remains unknown how wide the strip of land will have to be (or even what side of Mississauga Road development might proceed). All the Board knows at this stage is that Metrolinx is working on concept plans to determine how much land should be protected, to determine the timeframe and to define the terms of phasing development.

[16] Notwithstanding the as yet unknown additional land requirements and the details for future construction staging, development phasing and/or impacts on the Credit Mills lands, the Board finds persuasive the City's argument that these matters must be determined and made known before the hearing commences. Despite Mr. Swinkin's characterization of the process as a "phantom process", the Board is persuaded otherwise: the contents of the City's concerns are legitimate issues that should be addressed before a hearing proceeds and this must be done through the recently-initiated review process – one that the City estimates will require three months of additional time. Specifically, the City and Metrolinx will have to be on firmer ground to know with reasonable certainty the impacts of the proposed development as well as how much land must be set aside and protected to support the future development of the transit corridor as those lands interact with the Credit Mills property. To proceed in the absence of this information would be premature in the Board's view and it is not in the public interest for the reasons stated below.

[17] The Board is unconcerned with the lateness of the City's request for the adjournment. While not made an issue by Credit Mills, the circumstances surrounding the City's request are clear and relevant to the Board's determination. Specifically, the very recent arrival of the Metrolinx letter and the fundamental change in the agency's requirements for additional land are significant and must be studied. Indeed, Metrolinx's property requirements, which were previously identified, represented a minimum amount for a typical grade separation.

[18] By virtue of Metrolinx's public agency status, there is an inherent public interest in not proceeding with the hearing on May 26th. This is also borne out of Metrolinx's role as the Provincial Government's body that oversees coordination and integration of all modes of transportation in the Greater Toronto and Hamilton Area. The impact of development on expansion of a transit corridor that carries and will carry many thousands of commuters and travelers on a daily basis warrants the best and most comprehensive information possible so that all parties might be aware of the impacts of development proposals such as that pursued by Credit Mills. Accordingly, Mr. Kussner submitted that Metrolinx has an obligation not to prejudice the only potential Grade Separation available to it along this portion of the corridor. As Metrolinx relies on the comments of its official as contained in the May 9, 2014 letter requiring the City to protect its interests, Metrolinx also takes no issue with the adjournment, which in fact appears from the evidence provided to be the best approach to dealing with the land requirement issue as far as the Board is concerned.

[19] The Board determines that an adjournment of the hearing is necessary to allow for a full evaluation of the project insofar as the amount of additional lands required, the Grade Separation and the proposal are concerned. The City's concerns in this regard are valid ones: as the area is part of a major Metrolinx transit corridor, a hearing without all of the necessary information beforehand should not proceed by virtue of the established public interest – a position the Board finds persuasive and reasonable. Moreover, the City's response to Mr. Swinkin's submission – that holding off on elements of a Board decision vis-à-vis this matter of land requirements and potentially

calling parties to assemble again is neither a profitable nor appropriate use of the Board's resources – is a response reflective of the Board's own concern and one that the Board finds supportable.

[20] While stated as eloquently and directly as ever by Mr. Swinkin, the Board nevertheless determines that no persuasive planning or procedural arguments were proffered that would reasonably see the hearing proceed on May 26th. The Board also determines – and no argument was so made – that Credit Mills is in any way prejudiced by adjourning this hearing. Credit Mills will still be able to have its hearing before the Board although not on the date originally scheduled. It is the Board's finding that, to proceed with a full hearing without first obtaining a better understanding of the implications of development of the subject lands in the context of the Grade Separation and without a better understanding by all parties of Metrolinx's more precise additional land use requirements, is premature and not in the public interest.

[21] By ordering an adjournment of these matters, the Board determines that all parties are better served by knowing all of the issues that must be addressed beforehand than by conducting a hearing with only partial information. Indeed, the Metrolinx position detailed in the May 9, 2014 letter establishes the fundamental change in a position that has bearing on the hearing and that also introduces the potential for a revision of the Issues List that will guide the future hearing. Accordingly, the Board will provide flexibility to the parties insofar as the existing Procedural Order is concerned – by permitting possible additional modifications of this document by the City and Credit Mills that are limited to the issue of additional land requirements and impacts – that might flow from the in-progress work of Metrolinx as described herein.

[22] Having considered the submissions of the counsels, the Board grants the City's adjournment request for a period of three months commencing from May 26, 2014. The Board will subsequently arrange a conference call with all of the parties to determine their progress on this matter. The Board is amenable to receiving new dates from the parties for a 10-day hearing of the Credit Mills appeals before completion of this additional work so that a new hearing date can be entered on the Board's calendar.

"R. Rossi"

R. ROSSI
MEMBER