

Ontario Municipal Board
Commission des affaires municipales
de l'Ontario



ISSUE DATE: March 31, 2015

CASE NO(S): PL130885

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

Appellant:	1026046 Ontario Limited
Appellant:	Shoreline Towers Inc.
Appellant:	Peggy Moulder
Appellant:	Paul Chomik
Subject:	Proposed Official Plan Amendment No. 197
Municipality:	City of Toronto
OMB Case No.:	PL130885
OMB File No.:	PL130885

Heard: March 9-10, 2015 in Toronto, Ontario

APPEARANCES:

Parties

Counsel*/Representative

City of Toronto

Sharon Haniford* and Leslie Forder*

Mimico Lakeshore Network

Martin Gerwin

Lakeshore Planning Council

Peggy Moulder

1026046 Ontario Limited and
Shoreline Towers Inc.

Piper Morley

Toronto Region Conservation
Authority

(absent)

**DECISION DELIVERED BY R. ROSSI ON MARCH 10, 2015 AND ORDER OF
THE BOARD**

INTRODUCTION

[1] This is the Phase I hearing of the Ontario Municipal Board (“Board”) that adjudicated policy issues raised in the appeals of Peggy Moulder and Lakeshore Planning Council (“LPCC”) who have appealed the proposed Official Plan Amendment No. 197, also known as the Mimico-by-the-Lake Secondary Plan (“OPA 197”) of the City of Toronto (“City”). Appearing in support of OPA 197 was Mimico Lakeshore Network, represented by its agent Martin Gerwin. On consent and in the course of its processing of various pre-hearing matters, the Board withdrew the party status of Judith Rutledge and Peter Shepherd so that these two residents might shelter with equally-weighted presence under the party status of Mimico Lakeshore Network. The attending participant was Ward 6 Community Action Team, represented by its agent Abbe Edelson, who attended the first day of the hearing only.

[2] The Board’s subsequent Phase II hearing for OPA 197 will address the site-specific appeals of Shoreline Towers Inc. and 1026046 Ontario Limited (properties located along Lake Shore Boulevard West). Counsel Piper Morley appeared on their behalf. Toronto Region Conservation Authority continues to enjoy party status but no agent or counsel appeared on its behalf at these proceedings. These three parties agreed not to be active parties at the Phase I hearing by virtue of the terms set out in Clause 4 of the Procedural Order on file. The Board also confirmed the Procedural Order’s direction that all parties and participants to the Phase I hearing are also parties and participants to the Phase II hearing.

[3] With the Board’s consent, LPCC through Ms. Moulder brought a court reporter for the proceedings. City co-counsel Sharon Haniford requested as per the Board’s *Rules of Practice and Procedure* that the complete proceedings be recorded and that LPCC make this court reporter available for recording of the Phase II hearing later this year. Ms. Moulder agreed to do so although the Board offered LPCC an opportunity to seek relief from that requirement in consultation with the City should it become a financially burdensome exercise for it at the later hearing.

[4] The first half of the first day of the Phase I hearing dealt extensively with procedural, administrative and legal issues arising from party status, the submission of late evidence, the presentation and order of exhibits and the qualification of witnesses. The Board made the following determinations as identified below.

[5] First, the City requested that the Board declare certain parts of OPA 197 to come into full force and effect in accordance with the *Planning Act* (“*Act*”) and based on the withdrawal of appeal letters of the appellants to both the Phase I and Phase II hearing filed prior to the commencement of today’s hearing and currently on file in Exhibit 1. These related to withdrawals of certain general and site-specific appeals that occurred as stated prior to commencement of the Phase I Hearing and that identify and serve to confirm the parts of OPA 197 intended to come into full force and effect in accordance with the *Act* and based on these withdrawals. On consent and as documented at this Phase I hearing, the Board finds the City’s request to be persuasive and supportable and it orders those parts of OPA 197 not under appeal as identified below to be in full force and effect as of March 9, 2015.

[6] To give effect to this Order, the Board has also sent a letter to the City Clerk identifying the parts of OPA 197 to which appeals were withdrawn and which are deemed to be in full force and effect, recognizing that some parts will continue to be the subject to a site-specific appeal as indicated in the Chart found in Exhibit 1, Tab 1 entitled “Parts of OPA 197 To Come into Full Force and Effect” (attached to this Order and accompanying the letter to the City Clerk). The Board therefore acknowledges that the parts of OPA 197 identified in the Chart are in full force and effect subject only to the site-specific appeals identified in the Chart and as they apply to 2313 and 2323 Lake Shore Boulevard West and 2491 Lake Shore Boulevard West. Note: for clarity, this Order with respect to today’s Phase I hearing relates solely to the general appeals and parts of OPA 197 that remain at issue except to the extent that those appeals relate to the appropriateness of a shoreline road in Precinct B.

[7] The Board next dealt with the list of parties in order to bring clarity to the list of appellants. The Board determines that the incorporated entity LPCC is the appellant party to these proceedings. Mr. Chomik had been listed as LPCC's agent while simultaneously retaining appellant party status. Various documents list Ms. Moulder as LPCC's secretary while she simultaneously held independent appellant party status. Timothy Dobson is LPCC's president and chairman yet he sought to appear as an expert witness for LPCC. As established at this hearing, all three people are associated through LPCC as identified by their respective positions or association. Procedurally and to ensure the most efficient running of the hearing process as well as to ensure fairness to both sides, the Board was unwilling to proceed by permitting two of these three LPCC members to continue to enjoy separate party status with LPCC's president and chairman also acting as an expert witness – all while LPCC also enjoyed its own party status. Therefore, after much discussion and hearing from all parties, and with the concurrence of Mr. Chomik, Ms. Moulder and Mr. Dobson, the Board ordered the following status changes: LPCC is the sole appellant party; Ms. Moulder relinquished her party status to become LPCC's agent; Mr. Chomik relinquished his party status to become a resident witness for LPCC; and Mr. Dobson became an informed witness for LPCC. The Board was unable to qualify Mr. Dobson as an expert witness on this Mimico case by virtue of the extensive evidence on hand supplied by City co-counsel Ms. Haniford in her persuasive and legally-supportable submissions that established Mr. Dobson could not possibly meet the Board's requirements for appearing as an expert witness. This was by virtue of his position as the LPCC president and chairman and the tenor and substance of his documented correspondence and statements compromised his capacity to meet the Board's requirements for evidence that is fair, objective and non-partisan.

[8] Rule 21.01 of the Board's *Rules of Practice and Procedure* sets out the duty of the expert witness as follows:

It is the duty of every expert engaged by or on behalf of a party who is to provide opinion evidence at a proceeding under these Rules to acknowledge, either prior to (by executing the acknowledgement form attached to the Rules) or at the proceeding, that they are to,

- (a) provide opinion evidence that is fair, objective and non-partisan;
- (b) provide opinion evidence that is related only to the matters that are within the expert's area of expertise; and
- (c) to provide such additional assistance as the Board may reasonably require to determine a matter in issue.
- (d) These duties prevail over any obligation owed by the expert to the party by whom or on whose behalf he or she is engaged.

[9] Nor is it enough to simply sign an Acknowledgement of Expert's Duty Form (mandated by Rule 53.03(2.1) of the *Rules of Civil Procedure*, R.R.O. 1990, Reg. 194) to guarantee that the Board will qualify someone as an expert witness. The law is instructive on the duty of an expert witness to provide "fair, objective and non-partisan evidence" (see for example *Moore v. Getahun*, 2015 ONCA 55 at page 18 of 50) and the frequently cited passage from *National Justice Compania Naviera S.A v. Prudential Assurance Co. Ltd.* ("The Ikarian Reefer") [1993] 2 Lloyd's Rep. 68, at p. 81 (Eng. Q.B. Comm.) and endorsed on this point, [1995] 1 Lloyd's Rep 455 (Eng. C.a. Civ.), at p. 496:

1. Expert evidence presented to the Court should be, and should be seen to be, the independent product of the expert uninfluenced as to form or content by the exigencies of litigation [citation omitted].
2. An expert witness should provide independent assistance to the Court by way of objective unbiased opinion in relation to matters within his expertise [citation omitted]. An expert witness...should never assume the role of an advocate.

[10] The Board values greatly these concepts of fairness, objectivity and the provision of non-partisan evidence and requires experts to strive for the same ideals. The Board considered and weighed all of Ms. Haniford's persuasive submissions on this matter and her corresponding examples of previous Board jurisprudence. With no persuasive evidence from LPCC's agent to support the qualification of Mr. Dobson as an expert witness in this case, the Board determined that he was nevertheless welcome to speak as an informed resident in opposition to OPA 197.

[11] As a final point on this matter, although LPCC was determined to be the sole appellant party against OPA 197, the Board consented to allow entry of all of the witness/reply witness statements and associated evidence of all three LPCC people so that a full and complete understanding of their concerns could be presented, recorded and considered.

[12] The Board observed that Ms. Moulder and Mr. Dobson had missed the revised deadline dates as outlined in the Procedural Order for the exchange of witness statements and visual exhibits as the Procedural Order directed. Nevertheless, recognizing that they and the City had already agreed to extensions of the earlier established dates for such submissions during a recently teleconference call with the Board, the Board determined that flexibility should be granted to LPCC and the materials of these people should be permitted to remain as part of the record for the Board's consideration and review.

[13] The Board noted that all three witnesses arrived late to the hearing on the first day. When Ms. Moulder arrived, she brought with her a cardboard box containing what the Board estimated to be close to several thousand pages of papers, all uncollated, not paginated and not separated into packages for the City and the Board to access and review. Ms. Moulder advised the Board that she did not have enough time to organize her materials. The Board noted Ms. Moulder's and LPCC's lengthy participation in the appeals process over many months and it stated its expectation that their documentation should have been prepared before the hearing for appropriate presentation to the Board for its consideration and review by all parties. However, once more, the Board accorded considerable latitude to Ms. Moulder and LPCC in light of Ms. Moulder's unfamiliarity with the hearing process and in light of her decision prior to the hearing to proceed with the appeal without the benefit of legal counsel or planning witness. Specifically, the Board provided LPCC and Ms. Moulder in particular extra time to organize their materials (overnight and until the second day of the hearing) and to distribute these at the hearing on the next day. Ms. Moulder confirmed for the Board that all of her materials were already in the Board's possession as these

had been filed electronically (visual exhibits and charts) or were part of the City's exhibits (witness statements and reply witness statements). On the second day of the hearing, Ms. Moulder had organized and bound her materials as directed and she acknowledged once more that the contents of these materials had already been received and reviewed by the Board.

[14] The Board in turn confirmed with the City's co-counsels all of the documentary evidence to be submitted and the City's documents were entered as exhibits. Ms. Haniford read through the contents of each of the City's exhibits and she confirmed that many other materials (most of these dated) relating to the City's extensive preparatory and public consultative work that went into the preparation of OPA 197 were not included because of the volume of data, reports and information captured during the public meetings and workshops. The co-counsel also confirmed for the Board that the City's documentary exhibits and expert evidence were part of City Council's consideration that informed their decision to pass OPA 197.

[15] There have been six Board-led pre-hearing conferences and at least two mediation exercises held with a further mediation scheduled for later in the spring in respect of the OPA 197 appeal. The Board's involvement in these matters to date has been, therefore, both comprehensive and inclusive. However, as of the first day of the hearing, the Board noted and expressed its concern that the parties had yet to finalize their issues list. The Board recognizes that it has not been for lack of trying on the City's part by virtue of its co-counsels' fruitless attempts to finalize these items with Ms. Moulder and Mr. Chomik. The Board recessed and directed the parties to meet over the balance of the first day of the Phase I hearing and then to submit their finalized issues list on the second day of the hearing. The Board also directed the parties to use the time to see whether any outstanding issues might be resolved. This resulted in the deletion of issues 3, 5, 7 and 11 from the earlier issues list and the Board thanks the parties on both sides for providing the required final list.

[16] The Board also advised the parties that it had read and considered all of the documentary evidence and witness/reply witness statements submitted by them to

date including their most recent filings. The Board advised the parties that it was well-versed in the substance of the case being made by LPCC with regard to its criticism of and further amendments to OPA 197 and well-versed in the City's expert evidence that recommends the Board's implementation of OPA 197. All parties had opportunities to submit their statements and respond to each other's evidence through reply witness statements (all on file) for this Phase I hearing. The Board was unwilling at this stage to then commence a hearing process whereby the parties' witnesses would essentially repeat verbatim what the parties had already submitted. The Board advised the parties that it had considered the entirety of this evidence as presented as if it had been given orally and no requirement existed for a repeat of this evidence.

[17] Flowing from this notice of how it considered the written evidence as presented, the Board exercised its statutory authority to identify for these parties a singular additional issue to adjudicate: whether s. 2.1(b) of the *Act* applies; *viz.*, whether the Board should have regard for the decision of Council and the information available to it in deciding to enact OPA 197. The Board directed the parties to use the balance of the first day of the hearing and overnight to prepare their submissions on this issue to be heard on the second day of the hearing.

[18] The Board also advised the parties that s. 2.1(b) was the threshold issue for the hearing. The Board directed that if LPCC could establish persuasively for the Board that the decision of the municipal authority should be set aside, the Board would proceed with the balance of the hearing to adjudicate LPCC's issues. If it could not do so, the hearing would end and the Board would dismiss the appeal against OPA 197.

Section 2.1(b) of the *Act*

[19] On the second day of the hearing, the Board heard submissions and evidence from LPCC and the City regarding the applicability of s. 2.1(b) of the *Act*. To assist the Board, City Planner Matthew Premru was qualified to provide his brief evidence on what information was presented to the community council and to City Council as well as a short overview of the process.

[20] OPA 197 was approved by Toronto City Council in July 2013 by enactment of Zoning By-law No. 1103-2013. The planning process for OPA 197 began in 2005-2006 and involved a level of community involvement through statutory public meetings, workshops and charettes that can only be characterized by the Board as significant, comprehensive and thorough. That municipal process fed into and resulted in amendments to the resulting secondary plan.

[21] The extent of the background information and communications materials associated with the development of this planning instrument is a matter of public record. Mr. Premru presented the Board with City planning staff's "Final Report – Mimico-by-the-Lake Secondary Plan" (Exhibit 8, Tab 11) and City Council's 2013 decision to amend the City of Toronto Official Plan with OPA 197. Contained therein are links to no less than three "Supplementary Reports" on this instrument that informed the City including the vote results of all City Councillors. The Board also learned that City Council also adopted the Mimico 20/20 Urban Design Guidelines in this regard. The wealth of information that informed the drafting and development of OPA 197 has been comprehensive and the extent of the public's involvement in the process has been equally broad and ongoing. It is the Board's determination, supported by the expert opinion of Mr. Premru in response to a question from Ms. Haniford, that City Council was and had been very well informed as to stakeholder kudos and concerns related to OPA 197. Mr. Premru also confirmed for the Board that many of the materials contained in the LPCC materials were also considered by municipal officials and community council before recommending OPA 197 to City Council for approval.

[22] Mr. Premru explained that the City's creation and processing of the OPA 197 instrument involved a comprehensive planning review process, appropriate community consultation process and community and City council reporting processes. Regarding the community consultation process, the Board reviewed the extensive list of public meetings the City held since late-2012 that fed into and guided the municipal planning process in consultation and collaboration with the public (detailed fully in the March 20, 2013 report from the Director, Community Planning to Etobicoke York Community

Council (Exhibit 8, Tab 11C, pages 281 and 282 “community consultation” summary – it has a list – two pages long of the various consultation items, dates and what they were). The comments and input obtained at all of these sessions then informed and led up to preparation of the final planning report. Mr. Premru noted that the City not only received extensive written submissions but numerous oral deputations as well. Even then, it was the decision of the community council to defer its decision on OPA 197 in order to afford staff an opportunity to report back to it on residents’ feedback. This in turn led to the production of City planning’s May 20, 2013 report that responded to public comments and suggested further amendments to the forthcoming secondary plan.

[23] Mr. Premru explained that the final report as referenced also directed that the process for revitalization of Mimico has not ended and that the appropriate managers will once more “explore options and actions the City could undertake to support the implementation of this new planning framework [OPA 197] and report back within eight months to the appropriate Standing Committee.” It is evident to the Board that despite its enactment, OPA 197 will be an ongoing process to ensure it is reflective of the City’s preferred approach to guide subsequent and future development applications in Mimico. What is more, a further report related to ongoing approaches was submitted to the City’s Executive Committee last August.

[24] It is evident to the Board that the wealth of materials on file in this Phase I hearing establish the comprehensive nature of the information presented to the City to inform its decision to pass OPA 197.

[25] In contrast, neither Ms. Moulder nor Mr. Chomik nor Mr. Dobson offered any planning evidence or other persuasive oral evidence in respect of s. 2.1(b) that would compel the Board to overturn the decision of the municipal authority in this case. Their criticism was directed to the format of the public events in which all three people participated. Ms. Moulder advised that she had videotaped one of these statutory public meetings. Specifically, Ms. Moulder and Mr. Chomik opined that instead of breaking out into smaller groups, all of the participating residents should have sat

together at these meetings and they should have been able to hear all of the ideas emanating from the smaller groups. They countered that not all of the ideas were presented to all participants. In the Board's view, this concern is unfounded and it assigns no weight to the criticism. The City clearly conducted its sessions by offering as much information as possible to attendees and it engaged the public through a variety of participative sessions. Not only did the City capture all of the participants' comments – Mr. Premru noting for the Board that by and large the comments were mostly supportive of OPA 197 – the City made all of the data public and available for public consumption. Residents reviewing those materials were able to know and read the full range of comments and results of the public meetings as held.

[26] The Board finds nothing untoward, detrimental or non-consultative in the City's preferred approach to meeting its statutory obligation to consult with the public in the drafting of the secondary plan. Moreover, that consultative process took many forms: large information presentations, smaller working groups, focus groups, charettes and workshops as stated and the compilation of numerous comments from the public gathered at these fora as well as provided electronically to the City and subsequently posted publicly. If the three people attached to LPCC had such significant concerns with the consultation process, the Board has no doubt they would have made these concerns known to the City immediately and failing any responsive change to the format by the City, the Board would have seen specific details of this concern other than blanket statements. The Board finds the process as devised and executed was fair, transparent and all-inclusive and resulted in all of the information being presented to the various councils.

[27] Secondly, the Board assigns no weight to Ms. Moulder's statement that the City's planners misled City Council by providing to community and City councils "incorrect advice and information" or that City Council was "misguided" and that it "misapprehended" the information. Ms. Moulder offered no substantive evidence to support such a charge and the Board assigned no weight to these broad and meritless sweeping statements particular when juxtaposed against the specific consultation

details presented at the hearing. Most importantly, in the context of the highly persuasive planning, urban design, parkland and transportation evidence and supporting rationales contained in the detailed expert witness statements and reply witness statements on file, it was evident to the Board that all of the responding City witnesses – and all in attendance at this hearing – had successfully countered the opinion evidence of LPCC to the extent that the Board could assign little weight to LPCC’s various concerns related to OPA’s alleged lack of conformity with the City of Toronto Official Plan. On this point, the Board finds Mr. Premru’s oral evidence of the extent of consultation and information given to City Council – together with his witness/reply witness statements and those of the other City experts – to be both persuasive and uncontradicted.

[28] The Board determines that s. 2.1(b) of the *Act* should apply in this case and the Board should have full regard for the decision of the municipal authority to enact OPA 197. What is more, the Board is satisfied that all of the most salient, informed and expert evidence was considered by the municipal authority to approve it along with its full consideration of all of the public input and communications that shaped and informed this secondary plan instrument. As the City has demonstrated persuasively that all of the information was before it in making its decision and that no good planning or other reason exists for calling into question the decision of the municipal authority, and recognizing LPCC’s failure to offer any persuasive opposing evidence, the Board determines that no further review of OPA 197 is required save for the site specific appeals that will be addressed at a later Board hearing.

[29] The Board went to great lengths to assist the unrepresented appellant in this hearing. With the expressed consent and ongoing support of the City’s co-counsel, the Board was able to work with, negotiate and assist the LPCC principals in the presentation of their information to the Board; in their agent’s questioning of the City planner and LPCC’s own lay witness Mr. Chomik and in how to make submissions. Both Ms. Moulder and Mr. Chomik acknowledged on the record their general lack of preparedness for this hearing but working together, the Board and the parties were

able to organize the issues list, organize their status, provide time to collate their materials and the Board was able to offer the LPCC principals no less than four recesses to consider the Board's directions and to formulate their evidence and responses. This also led to the City accepting some other amendments to OPA 197 that are detailed below.

[30] The Board understands that with its limited resources, LPCC did its best to speak to the matters at hand and the civic mindedness of Ms. Moulder, Mr. Chomik and Mr. Dobson is to be commended. Respectful of the proceedings to the extent possible, they participated fully and to the best of their ability and the Board appreciated their efforts. However, it is on planning evidence that the Board must make its determination as well as on the s. 2.1(b) threshold issue. On these two points, it is the evidence of the City that must be preferred in the planning context as more comprehensive, rationalized and supportable. At the conclusion of the hearing, the Board advised LPCC's agent that if LPCC wishes to participate in the Phase II hearing later this year, it must organize its materials more fully and in a shareable format; it must scope its issues since the Phase II portion will largely be site-specific; and it must come to any subsequent mediation sessions and pre-hearing conferences before the Board on time and prepared. The Board requested that City co-counsels keep the Board apprised of any issues that arise from any perceived failure to comply.

ORDER

[31] The appeals in this Phase I hearing are allowed in part. OPA 197 will be amended in accordance with the revisions accepted by City Council at its meeting of February 10 and 11, 2015 and which are included in Exhibit 8, Tab 13, pages 306-312 inclusive. The Adobe PDF copy of these amendments as included in the Council Decision and as they appear in the aforementioned exhibit have been appended to this Order as Attachment "1".

[32] The Board also determines that OPA 197 will be amended in accordance with the additional revisions to two policies as per the recommendation of Mr. Premru and City urban design witness Emilia Floro in the reply witness statements (Exhibit 5, Tab 1A, Section 2.2 and Exhibit 5, Tab 2A respectively) as follows:

OPA 197 Policy 4.2.4 b) viii is amended by inserting the following sentence after the words “Neighbourhoods in the Official Plan”: “In no circumstance will such angular plan determination permit the maximum permitted building heights in Policy 4.2.4 b) i to be exceeded.”

OPA 197 Policy 4.2.4 c) vi is amended by inserting the following sentence after “Neighbourhoods in the Official Plan”: “In no circumstance will such angular plane determination permit the maximum permitted building heights in Policy 4.2.4 c) ii to be exceeded.”

[33] Those parts of OPA 197 not under appeal are in full force and effect pursuant to the *Act* as stated in this decision. The Board recognizes that some of those parts of OPA 197 identified as being in force might also still be the subject of a site-specific appeal. The Board will adjudicate the remaining parts of OPA 197 under appeal – either as general appeals or as site-specific appeals – in the course of the Phase II hearing as appropriate and having regard to the fact that the general appeals as to the appropriateness of the shoreline road in Precinct B will be determined in that Phase II hearing.

[34] To the extent that the appropriateness of the shoreline road in Precinct B is to be determined in the context of the Phase II hearing, it is evident to the Board that OPA 197 policies 3.1.2 b), 4.4.3 g), j) and 4.4.6, as well as Maps 33-2 to Maps 33-7, will remain subject to general appeals only insofar as they relate to or identify a shoreline road within Precinct B.

"R. Rossi"

R. ROSSI
MEMBER

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

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ATTACHMENT "1"

MM3.39 - Mimico-by-the-Lake Secondary Plan (OPA 197) - Request for Direction Report

APPENDIX A TO ATTACHMENT 1: CONFIDENTIAL INFORMATION

PROPOSED AMENDMENTS TO OPA 197 - SETTLEMENT MADE PUBLIC ON FEBRUARY 23, 2015

The following are amendments to the Mimico-by-the-Lake Secondary Plan (OPA 197) organized below by general topic category are proposed in partial settlement of the issues before the Ontario Municipal Board (PL130885):

Growth in the Secondary Plan Area

- a) Incorporation of additional text in OPA 197, Policy 4.9.1 as follows and shown in bold italics:

"4.9.1 New development will not exceed the physical capacity of the available municipal servicing infrastructure as improved from time to time. Development proponents in the Secondary Plan area will have appropriate and meaningful regard for the Mimico 20/20 Infrastructure Analysis and Functional Servicing Plan and will be required to fund and/or construct upgrades to municipal servicing infrastructure where existing infrastructure capacity is inadequate to support proposed and planned growth. Development proponents ..."

Boundaries and Stable Neighbourhoods

- b) Addition of new OPA 197 policy, as Policy 5.7.7 as follows and shown in italics:

"5.7.7 Site-specific amendments to this Secondary Plan that alter provisions in terms of boundaries, land use, height and built form will not be permitted without a comprehensive review of this Secondary Plan. Site-specific amendments that could destabilize areas within or adjacent to the Secondary Plan area or that are not consistent with the intent or the vision and principles of this Secondary Plan will be discouraged."

- c) Addition of sidebar text adjacent to Section 4.2 – Built Form as follows:

"The Mimico Neighbourhood

The Mimico-by-the-Lake Secondary Plan area is surrounded by the predominantly low density residential neighbourhood of Mimico to the south and west. A cornerstone policy of the Official Plan is to ensure that new development respects the existing physical character of *Neighbourhoods*, reinforcing the long term stability of these areas. The purpose of a Secondary Plan is to provide guidance to an area that is anticipated to

experience growth and change. In consultation with the broader community, the boundary of the Mimico-by-the-Lake Secondary Plan area was purposefully drawn to exclude any areas within a *Neighbourhoods* designation to ensure that these areas remain stable and not subject to the growth and change envisioned within the Plan area. Any boundary changes to the Secondary Plan area, due to the nature of the surrounding neighbourhoods will not be supported. In addition to the built form policies of this Secondary Plan, including those related to height, setbacks, stepbacks and angular planes, the Mimico 20/20 Urban Design Guidelines contain further performance standards to guide appropriate transition to the surrounding neighbourhoods."

- d) Addition of sidebar text in margin adjacent to OPA 197 Policy 3.2.1 g) as follows:

"Avenues & Mid-Rise Buildings Study

The City's Official Plan encourages a significant portion of growth to be directed towards intensification areas, one of which is the Avenues.

The Avenues policies in the Official Plan are intended to help the City direct growth to key main streets, and areas with existing infrastructure, including transit, retail and community services, while protecting the character and stability of existing adjacent neighbourhoods. The character of growth that will occur through mid-rise built form will recognize the unique connection to these neighbourhoods through a development form that is moderate in scale and reflects high quality design and materials.

Mid-rise buildings are no taller than the width of the street right-of-way. The as-of-right height of a mid-rise building will be determined by a series of factors. The maximum height is established based on a 1:1 ratio where the maximum height of a building is equivalent to the width of the right-of-way. The ability to realize the maximum height is tempered by angular planes applied to the front of the site and the rear of the site respectively. Not all sites on the Avenues will be able to achieve the maximum height, as some properties are physically constrained."

- e) Addition of new OPA 197 policy as Policy 2.2, as follows and shown in italics:

"2.2 Adjacent residential areas designated Neighbourhoods and/or Apartment Neighbourhoods (including their various components such as homes, schools and parks) which are not within the boundaries of this Secondary Plan and are therefore outside the redevelopment areas proposed by this Secondary Plan, are considered to be stable residential areas."

Character of the Area

- f) Addition of new OPA 197 policy as Policy 4.2.4 a) vi and vii as follows and shown in italics:

"4.2.4 a) vi: Mimico-by-the-Lake has a fine grain main street retail character of storefronts and building entrances along Lake Shore Boulevard West. New buildings are to be designed to reflect a similar rhythm of entrances and multiple retail units in order to contribute to a highly animated pedestrian environment.

4.2.4 a) vii: New Buildings along Lake Shore Boulevard West will acknowledge the existing building character along the block through an appropriate cornice line. This may be achieved in a number of ways, including façade detail, articulation and stepbacks."

- g) Incorporation of additional text in OPA 197 Policy 4.2.2 as follows and shown in bold italics:

"4.2.2 Consolidation of properties is encouraged in all areas of the Secondary Plan located east of Lake Shore Boulevard West in order to achieve appropriately sized and dimensioned development blocks..."

Minimizing Shadow Impacts

- h) Addition of new OPA 197 policies as Policy 4.2.9, 4.2.10 and 5.1.5 as follows and shown in italics:

"4.2.9 To minimize the effect of shadows, new buildings will be designed and oriented to minimize shadow impacts on all parks and open spaces at all times of the day particularly during the spring and fall equinoxes.

4.2.10 To maintain views and vistas to the lake, open spaces or other significant features, new buildings will be located and oriented in a way to preserve the view corridors shown on Map 33-4."

5.1.5 s): Shadow studies to ensure that shadow impacts are minimized on sensitive land uses such as parks and open spaces within the Secondary Plan area and Neighbourhoods adjacent to the Secondary Plan Area."

Built Form, Stepbacks and Angular Plane

- i) Amend OPA 197 Policy 4.2.4 a) ii as follows with revision shown in bold italics::

"4.2.4 a) ii a maximum building height of 21.5 metres or 6 storeys along the Lake Shore Boulevard West frontage stepping upback to a maximum 27 metres or 8 storeys, as illustrated on Map 33-6 to this Secondary Plan;

- j) Addition of sidebar text adjacent to OPA 197 Policy 4.2.4 a) as follows:

"Building Stepbacks and Pedestrian Perception on the Lake Shore Boulevard West Avenue:

Stepbacks on buildings taller than 21.5 metres should be required to mitigate the perception of height and create buildings at the street that are of a comfortable scale for pedestrians.

The required stepback at the 6 storey height is to be substantial so that the pedestrian perception while walking on the sidewalk is of a 6 storey building, with any additional storeys well setback from the street wall of the building. The stepback will also ensure that there is sunlight penetration onto the sidewalk on the opposite side of the street, generally a 45 degree angle projecting from the front façade of the building back to the face of the stepback wall will achieve the required sunlight penetration onto the street."

- k) Addition of new OPA 197 policy as Policy 4.2.4 b) ix as follows and shown in italics:

"4.2.4 b) ix. a building stepback is required above the podium building height"

- l) Incorporation of additional text in OPA 197 Policy 4.2.4 c) i as follows and shown in bold italics:

"4.2.4 c) i. minimum base building height of 8 metres or 2 storeys, and a maximum base building height of 14 metres or 4 storeys with a building stepback above the base building height."

- m) Addition of new OPA 197 policy as Policy 4.2.4 e) as follows and shown in italics:

4.2.4 e) For mitigating the effects of building heights, the building stepback requirements under Policies 4.2.4 a), b), and c) are considered important elements in establishing comfortable scales of pedestrian perception."

Roads and Infrastructure

- n) Incorporation of additional text in OPA 197 Policy 4.4.5 as shown in bold italics:

"Transportation Impact Studies are required in support of any new applications on a block and site basis that will take into account the potential traffic which would be generated by other existing and approved developments and that will demonstrate that traffic can be accommodated on the area road network, including any new roads, and will identify necessary off site improvements.

- o) Addition of sidebar text adjacent to Policy 4.4.11 as follows:

"Functional Streets

For the purposes of this Plan, a functional street is defined as an operational public street, or portion of a public street, that meets all City standards for local streets or secondary

local streets, as applicable, and that can accommodate vehicles, cyclists, and pedestrians. A functional street must connect to an existing public street network."

- p) Addition of new OPA 197 policies as Policy 4.4.10, 4.4.11 and 4.4.12 as shown in italics as follows:

"4.4.10 Lands that are required for new public streets, new trail extensions and cycling and pedestrian connections pursuant to policies of the Plan and as generally illustrated on Map 33-5 will be identified and appropriately secured through development applications. For a development site, the development application process and submission requirements will help to identify the necessary transportation components, alignments and associated land requirements.

4.4.11 Development applications will not be approved until the appropriate arrangements are in place for securing the necessary lands to accommodate the transportation facilities required for the development. All new functional streets, or segments of them, are required to:

- a) meet the City's Development Infrastructure Policy & Standards (DIPS) for public local streets or be otherwise acceptable to the City; and*
- b) provide public road frontage and address to all buildings to, in part, avoid development patterns that are based on a "building located behind a building" pursuant to policies 3.1.2 (f) and 4.2.2 c) of this plan; and*
- c) connect to an existing public street network.*

4.4.12 A development application may propose an interim new functional street connection that is built to City approved standards, provided that it directly connects with the existing area public street network, and where possible, should align with existing streets. Under interim conditions, temporary transportation facilities built to City approved standards, such as cul-de-sacs, may need to be provided to in order facilitate the movement of traffic until the full street network is built out."

- q) Addition of sidebar text adjacent to Policy 4.4 as follows:

"The proposed Transportation Infrastructure on Map 33-5 of this Secondary Plan, including the new public and secondary local streets, trail extensions and cycling and pedestrian connections, are all shown as approximate locations that will require future study and analysis when development applications come forward. To support more intensive redevelopment and in most cases to achieve the maximum height and density potential provided by this Plan, particularly on lands on the east side of Lake Shore Boulevard West, it is anticipated that this will be done by consolidation of properties and, as appropriate, with cooperation from adjoining individual land owners. Applicants will be required to complete a comprehensive Transportation Precinct Study that will include a detailed assessment of where local streets and other transportation infrastructure will be located, and how these will be achieved. Applications on smaller landholdings may proceed, provided that they also demonstrate how the public street requirements of this Plan will be achieved for both the short and long term."

- r) Addition of sidebar text adjacent to Policy 4.4.10 as follows:

"Public Street Standards

One of the key principles for new development in the Mimico-by-the-Lake Secondary Plan is that new streets are required to be public streets – built in accordance to the applicable provisions of this Plan, the Mimico 20/20 Urban Design guidelines, and all municipal standards including the City of Toronto Streetscape manual and the Development Infrastructure Policy and Standards (DIPS). The DIPS standards were adopted by Council and establish uniform and high quality street standards for new local streets. The DIPS initiative is also consistent with the main Official Plan policy that all new streets should be public and is one of the key factors in establishing a high quality and desirable public realm. Consistent with the policies of this Secondary Plan, the DIPS document also advocates for the creation of public streets through the Plan of Subdivision process."

- s) Renumbering existing OPA 197 Policy 4.4.10, Transit, as 4.4.13 and renumbering existing OPA 197 Policies 4.4.10, Cycling and Pedestrian Network as 4.4.14 and 4.4.15, respectively.

Parks and Open Spaces

- t) Addition of new OPA 197 policies as Policy 4.5.10 and 4.5.11 as follows and shown in italics:

"4.5.10 Additional park and open spaces areas contemplated in the vision and policies of this Secondary Plan, including those identified as proposed open space on Map 33-7, are intended to be secured primarily in the context of development approvals and parkland related public actions/initiatives including land acquisitions as they may occur from time to time.

4.5.11 The broader public realm and parkland objectives of this Plan will include improved interconnectivity and access to waterfront parklands for the residents located within the Secondary Plan and the outside surrounding area, including those on the west side of Lake Shore Boulevard West."

- u) Addition of a new OPA 197 site specific policy as Policy 6.2 as follows and shown in italics:

"6.2 Special Policy Area 2 – Map 33-9

Within Site Specific Policy Area 2 on Map 33-9, lands designated Parks and Open Space Areas that are in City ownership and located adjacent to Superior Avenue, could be considered for a land exchange concurrent with a development application for the adjacent property provided any such land exchange is for land adjacent to the lake front park area and is of an equivalent or larger area and of comparable or superior green space utility, consistent with Official Plan policies, in particular Policies 2.3.2.4 and

4.3.8. "

- v) Addition of a new OPA 197 site specific policy as Policy 6.3 as follows and shown in italics:

"6.3 Special Policy Area 3 – Map 33-9

Within Site Specific Policy Area 3 on Map 33-9 (a cross hatched area that includes private lands previously designated Parks and Open Space Areas under Official Plan Map 15), if an application is made to develop such lands the City or a public agency will be given opportunity to purchase the land for the purpose of extending the public open space system. If the City or public agency does not wish to purchase the lands the application will be considered on the basis of consistency with the policies of this Secondary Plan.

- w) Amend the first sentence in Policy 6.1 as follows with revisions shown in bold italics:

"6.1 Special Policy Area 1 – Map 33-6

"The area identified as '~~Subject to~~ Site Specific ~~Policy Review~~ – 1' located within Precinct F on Map 33-6 and Map 33-9 contains a concentration of significant heritage resources including buildings and landscapes...."

- x) Addition of new OPA 197 map as Map 33-9, Special Policy Areas to identify special policy areas and as follows:

MIMICO-BY-THE-LAKE SECONDARY PLAN

CITY OF TORONTO OPA 197

PARTS OF OPA 197 TO COME INTO FULL FORCE AND EFFECT

(February 6, 2015)(Modified February 23, 2015)

NOTES:

1. The chart identifies those parts of OPA 197 (sections, subsections, sidebar inserts, policies, maps) that are not under appeal and that are to come into full force and effect.
2. "(Text)" in the Chart refers to those parts of OPA 197 that are unshaded text, including sidebar inserts, that are intended to come into full force and effect. Policies are specifically stated.
3. The chart identifies in the shaded area those part of OPA 197 that, once in full force and effect, will continue to be the subject of site specific appeals and also identifies the properties that are the subject of such site specific appeals.

PARTS OF OPA 197 TO COME INTO FULL FORCE AND EFFECT			IN FORCE PARTS OF OPA 197 THAT WILL CONTINUE TO BE SUBJECT TO SITE SPECIFIC APPEAL(S)	
SECTION	SUBSECTION / MAP	POLICIES		
			2313 & 2323 Lake Shore Blvd. West (Shoreline Towers Inc.)	2491 Lake Shore Blvd. West (1026046 Ontario Ltd.)
Section 1: Introduction (Text)	Text - Except reference to "Mimico- by-the-Lake" in first paragraph text			
Section 2: Vision and Priorities (Text)	Text - Except reference to "Mimico-by-the-Lake" in the Vision Statement Quote	Policy 2.1		

Parts of OPA 197 to come into full force and effect			In force parts of OPA 197 that will continue to be subject to a site specific appeal	
Section	Subsection / Map	Policies		
			2313 & 2323 Lake Shore Blvd. West (Shoreline Towers Inc.)	2491 Lake Shore Blvd. West (1026046 Ontario Ltd.)
Section 3: Development Framework	3.1 Urban Structure (Text)	Policies 3.1.1, 3.1.2 a) c) & d)	Policy 3.1.2 c)	
	3.2 Precincts (Text) (under appeal)	Policies (under appeal)		
Section 4: Shaping the Community - the Built Environment	4.1 Public Realm (Text)	Policies 4.1.1 a) b) d) f), 4.1.2 - 4.1.9, inclusive	Policy 4.1.1 b)	
	4.2 Built Form (Text)	Policy 4.2.8		
	4.3 Housing (Text)	Policies 4.3.1 - 4.3.12, inclusive	Policy 4.3.3, 4.3.12	Policy 4.3.4
	4.4 Transportation/Mobility (Text)	Policies 4.4.7 - 4.4.8, inclusive, 4.4.9 ^{Transportation/Mobility} , 4.4.9 ^{Transit} , 4.4.10, 4.4.11	Policies 4.4.6-4.4.8, inclusive, 4.4.9 ^{Transportation/Mobility}	
	4.5 Land Use Designations (Text)	Policies 4.5.2, 4.5.7-4.5.9, inclusive	Policies 4.5.7- 4.5.9, inclusive	Policies 4.5.8, 4.5.9
	4.6 Community Services and Facilities (Text)	Policies 4.6.1- 4.6.3, inclusive, 4.6.5		
	4.7 Heritage and Archaeology (Text)	Policies 4.7.1 - 4.7.4, inclusive		
	4.8 Natural Environment (Text)	Policies 4.8.1 - 4.8.8, inclusive	Policy 4.8.2	
	4.9 Municipal Servicing (Text)	Policies 4.9.2 - 4.9.5, inclusive		

Parts of OPA 197 to come into full force and effect			In force parts of OPA 197 that will continue to be subject to a site specific appeal	
Section	Subsection / Map	Policies		
			2313 & 2323 Lake Shore Blvd. West (Shoreline Towers Inc.)	2491 Lake Shore Blvd. West (1026046 Ontario Ltd.)
Section 5: Making it Happen /Implementation (Text)	5.1 Development Framework for Precincts	Policies 5.1.2, 5.1.4, 5.1.6	Policies 5.1.2, 5.1.4, 5.1.6	Policies 5.1.2, 5.1.4, 5.1.6
	5.2 Zoning By-laws	Policy 5.2.1		
	5.3 Land Division	Policies 5.3.1, 5.3.2	Policy 5.3.2	
	5.4 Site Plan Control	Policies 5.4.1, 5.4.2		
	5.5 Holding By-laws	Policies 5.5.1 - 5.5.3, inclusive	Policy 5.5.2 g)	
	5.6 Section 37 (under appeal)	Policies (under appeal)		
	5.7 Interpretation	Policies 5.7.1 - 5.7.6, inclusive		
Section 6: Site Specific Policies	6.1 Special Policy Area 1 - Map 33-6	Policy 6.1		
MAPS	33-1 Boundaries			
	33-2 Precincts - except the identification of new public local streets			
	33-3 Land Use Designations (under appeal)			
	33-4 Urban Structure (under appeal)			
	33-5 Transportation Structure (under appeal)			
	33-6 Maximum Building Height (under appeal)			

Parts of OPA 197 to come into full force and effect			In force parts of OPA 197 that will continue to be subject to a site specific appeal	
Section	Subsection / Map	Policies		
			2313 & 2323 Lake Shore Blvd. West (Shoreline Towers Inc.)	2491 Lake Shore Blvd. West (1026046 Ontario Ltd.)
Maps continued...				
	33-7 Parks and Open Space (under appeal)			
	33-8 Off Site Rental Replacement			