

Ontario Municipal Board
Commission des affaires municipales
de l'Ontario



ISSUE DATE: March 24, 2017

CASE NO(S): PL140790

PROCEEDING COMMENCED UNDER subsection 41(12) of the *Planning Act*, R.S.O. 1990, c. P.13, as amended

Referred by:	Rosedale Developments Inc.
Subject:	Site Plan
Property Address/Description:	4917-4975 Yonge Street
Municipality:	City of Toronto
OMB Case No.:	PL140790
OMB File No.:	PL150005
OMB Case Name:	Rosedale Developments Inc. v. Toronto (City)

Heard: February 2, 2017 in Toronto, Ontario

APPEARANCES:

Parties

Counsel

Rosedale Developments Inc.

John Alati
Andy Margaritis

City of Toronto

Gordon Whicher

**MEMORANDUM OF ORAL DECISION DELIVERED BY STEFAN KRZECZUNOWICZ
ON FEBRUARY 2, 2017 AND ORDER OF THE BOARD**

[1] This was a pre-hearing conference (“PHC”) in the matter of an appeal by Rosedale Developments Inc. (the “Appellant”) of the failure of the City of Toronto to make a decision on an application for site plan approval relating to property at 4917-4975 Yonge Street, 23 Hollywood Avenue, and 18 Spring Garden Avenue (the “site”).

[2] An Ontario Municipal Board (“Board”) hearing on amendments to the Official Plan and Zoning By-Law in respect of a proposed development on the site took place on May 19, 2015. The resulting decision, including an order authorizing the amendments, was issued on July 6, 2015. Notice of this PHC was provided to the parties and participants who attended the hearing.

[3] At the PHC, Counsel for the Appellant provided the Board with a draft Procedural Order and list of issues to be addressed by evidence at the site plan appeal. The Procedural Order and issues list have since been finalized on consent of the parties.

[4] On the basis of the progress made to date, the parties requested a four day hearing.

[5] The parties also requested that the Board amend its decision of July 6, 2015 to clarify language in s. 1.2 (c) of the Amending By-law (see Attachment 2 of that decision). The change would have the effect of ensuring that the regulation in the By-law relates only to above grade floors of the proposed building on the site.

ORDER – ZONING BY-LAW AMENDMENT

[6] Upon review, the Board orders that Attachment 2 of its decision of July 6, 2015 be replaced with Attachment 1 to this Order.

[7] The result will be to modify a paragraph in s 64.20-A(155)RM6(155)(h) of By-law No. 7625 of the former City of North York, as amended by City of Toronto By-law No. 459-2005 (OMB), so that paragraph reads:

Only non-residential uses shall be contained in the first three floors of the building, except for accessory residential uses (including but not limited to residential lobby space, mail rooms, garbage/recycling rooms, mechanical rooms, utility rooms, exit stairs and corridors). No non-residential uses shall be permitted in the remaining above-grade floors of the building. The gross floor area of the non-residential uses shall be a minimum of 8,428 m².

[8] For further clarification, the only effect of this Order is to add the words "above-grade" to the above paragraph.

ORDER – SITE PLAN APPEAL

[9] The Board orders that a hearing be scheduled to commence on **Tuesday, August 15, 2017 at 10 a.m. and continue for four days**. The hearing will be held at:

**Ontario Municipal Board
655 Bay Street, 16th Floor
Toronto, ON M5G 1E5**

[10] The Board orders that the Procedural Order set out in Attachment 2 herein is in full force and effect.

[11] No further notice will be given.

[12] The Member is not seized.

“Stefan Krzeczunowicz”

STEFAN KRZECZUNOWICZ
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.

Ontario Municipal Board
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Website: www.elto.gov.on.ca Telephone: 416-212-6349 Toll Free: 1-866-448-2248

CITY OF TORONTO

BY-LAW No. ~ -2015(OMB)

**To amend the former City of North York By-law No. 7625, as amended,
with respect to lands known municipally as
4917-4975 Yonge Street, 23 Hollywood Avenue and 18 Spring Garden Avenue**

WHEREAS the Ontario Municipal Board, pursuant to its Order issued on ~ 2015, having held a hearing, has decided to amend By-law No. 7625 of the former City of North York; and

WHEREAS the Ontario Municipal Board has decided that the minor variances granted by the Committee of Adjustment on June 23, 2010 in File No. A0221/10NY are to be superseded by amending Section 64.20-A(155)RM6(155) in Zoning By-law No. 7625 for the former City of North York; and

WHEREAS the Ontario Municipal Board has decided to also otherwise amend Sections 64.20-A(155)RM6(155) and 64.20-A(107)RM6(107) of By-law No. 7625;

THEREFORE By-law No. 7625 of the former City of North York is hereby amended as follows:

64.20-A(155)RM6(155)

1.1 Subsection 64.20-A(155)RM6(155)(e) of By-law No. 7625, headed “GROSS FLOOR AREA”, is amended by replacing

“(ii) below grade space used exclusively for motor vehicle parking; and”

with

“(ii) below grade space used exclusively for motor vehicle or bicycle rack parking and access thereto, and at grade space used exclusively for motor vehicle loading; and”

1.2 Subsection 64.20-A(155)RM6(155)(h) of By-law No. 7625, headed “PERMITTED USES” is amended as follows:

(a) by replacing “retail stores” in the list of permitted uses with “retail stores (including grocery stores, supermarkets and pharmacies)”;

(b) by replacing the first sentence in the second paragraph “Only non-residential uses, except for residential lobby space, shall be contained in the first three floors of the building.” with “Only non-residential uses shall be contained in the first three floors of the building, except for accessory residential uses (including but not limited to

residential lobby space, mail rooms, garbage/recycling rooms, mechanical rooms, utility rooms, exit stairs and corridors).”;

- (c) by replacing the second sentence in the second paragraph “No non-residential uses shall be permitted in the remainder of the building.” with “No non-residential uses shall be permitted in the remaining above-grade floors of the building.”; and
 - (d) by deleting the last sentence in the third paragraph “All other ground floor uses shall be subject to a maximum frontage width of 14 metres.”
- 1.3 Subsection 64.20-A(155)RM6(155)(j) of By-law No. 7625, headed “NUMBER OF DWELLING UNITS”, is amended by replacing “420” therein with “478”.
- 1.4 Subsection 64.20-A(155)RM6(155)(l) of By-law No. 7625, headed “BUILDING ENVELOPE”, is amended by replacing the entire subsection as follows:

“BUILDING ENVELOPE

- (l) No portion of any building or structure erected and used above established grade shall be located otherwise than wholly within the building envelope identified on Schedule “RM6(155)” except for a canopy and a three storey roof element along the Yonge Street frontage, which may project a maximum of 2.5 m into the yard setback.”
- 1.5 Subsection 64.20-A(155)RM6(155)(m) of By-law No. 7625, headed “PARKING”, is amended by replacing the entire subsection as follows:

“PARKING

- (m) Parking spaces shall be provided within the net site in accordance with the following requirements and conditions:
 - (i) A minimum of 1.00 parking spaces per dwelling unit, including 0.10 parking spaces per dwelling unit allocated for residential visitor use.
 - (ii) A maximum of 1.20 parking spaces per dwelling unit, including 0.10 parking spaces per dwelling unit allocated for residential visitor use.
 - (iii) A minimum of 0.90 parking spaces per 100 m² of gross floor area devoted to retail, service commercial and office uses.
 - (iv) A maximum of 1.26 parking spaces per 100 m² of gross floor area devoted to retail, service commercial and office uses.
 - (v) Up to 40 additional parking spaces may be allocated for use by the social facility located on the lands zoned C1(103) and known municipally as 6

Spring Garden Avenue, provided that the overall number of parking spaces does not exceed the sum of the maximum limits specified in (ii) plus (iv) above.

- (vi) Residential visitor parking spaces and social facility parking spaces may be commingled with commercial parking spaces. Non-residential parking spaces and residential visitor parking spaces may be made available to the general public and a charge may be imposed for the use of such spaces.
- (vii) Notwithstanding the minimum requirement specified in (i) above and the maximum limit specified in (iv) above, unsold residential tenant parking spaces located on the second level of the underground garage may be converted from residential to non-residential use provided that at least two parking spaces located in the non-residential portion of the garage are dedicated to motor vehicle sharing. As used herein, “motor vehicle sharing” refers to a practice whereby a number of people share the use of one or more vehicles owned by an entity so authorized by the owner of the non-residential portion of the underground garage.
- (viii) Notwithstanding the requirement that parking spaces are to be provided within the net site, a maximum of 64 parking spaces may be contained, in whole or in part, in a directly accessible, underground parking garage located, in whole or in part, on abutting lands zoned RM6(107).
- (ix) No surface parking spaces shall be permitted other than a maximum of 40 temporary spaces on an interim basis for the use of the social facility located on the lands zoned C1(103) and known municipally as 6 Spring Garden Avenue, pending completion of the building to be located on lands zoned RM6(155).
- (x) A maximum of 64 parking spaces, located in the first four levels of the underground garage, shall have a minimum width of 2.7 metres and a minimum length of 5.5 metres, irrespective of any side obstructions.”

1.6 Subsection 64.20-A(155)RM6(155)(o) of By-law No. 7625, headed “LOT COVERAGE”, is amended by replacing “74 per cent” with “82 per cent”.

1.7 Subsection 64.20-A(155)RM6(155)(p) of By-law No. 7625, headed “LANDSCAPING”, is amended by replacing “900 m²” with “500 m²”.

1.8 Subsection 64.20-A(155)RM6(155)(t) of By-law No. 7625, headed “PROVISIONS NOT APPLICABLE”, is amended by adding 6A(3)(d)(ii) to the list specified therein.

1.9 Subsection 64.20-A(155)RM6(155)(w) of By-law No. 7625, headed “ADDITIONAL GROSS FLOOR AREA”, is amended by replacing “bicycle rack or locker” wherever it appears in (ii) therein with “bicycle locker”.

- 1.10 Schedule “RM6(155)” to By-law No. 7625 is replaced with Schedule “RM6(155)” attached to this By-law.

64.20-A(107)RM6(107)

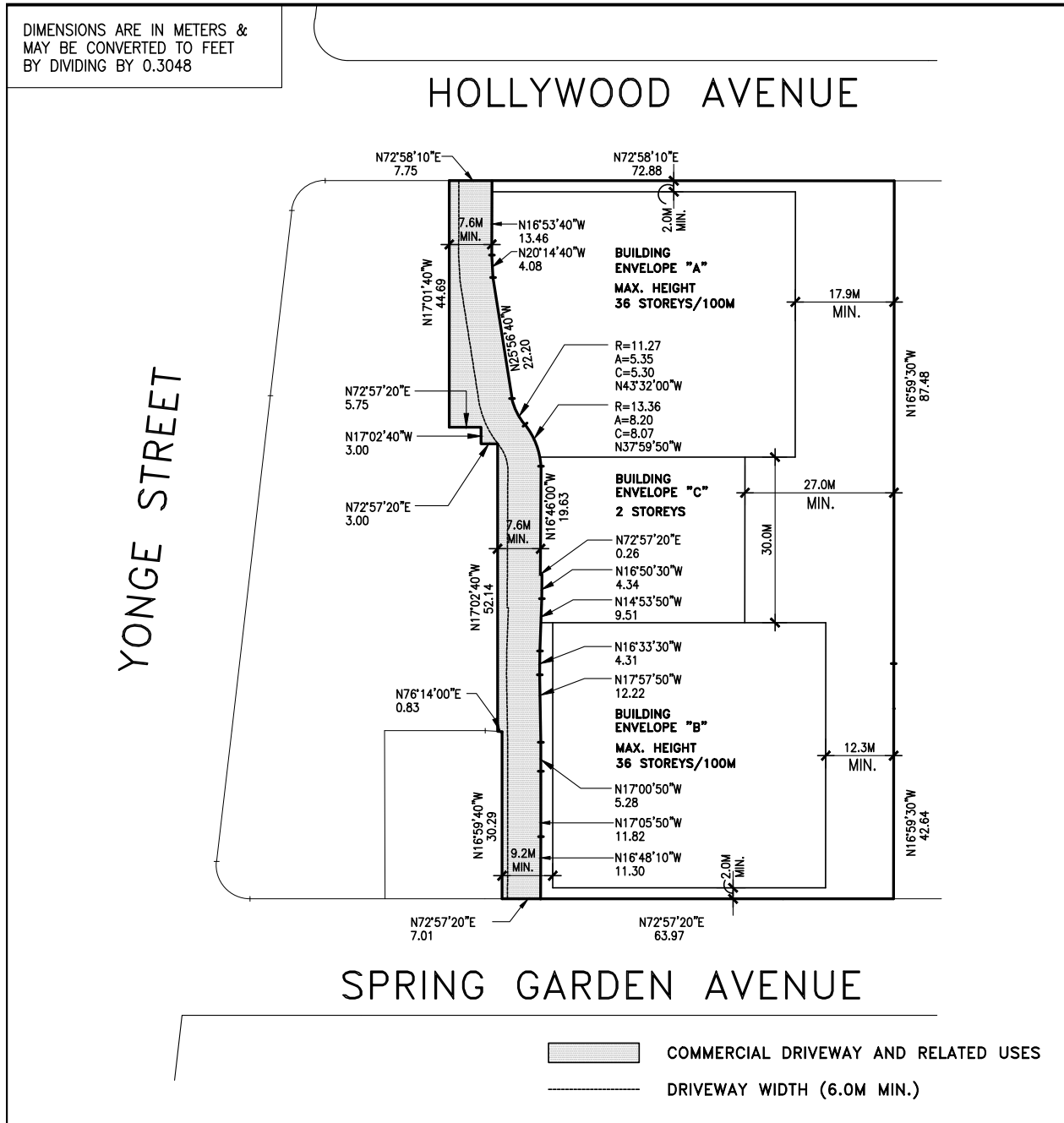
- 2.1 Subsection 64.20-A(107)RM6(107)(h) of By-law No. 7625, headed “PERMITTED USES”, is amended by deleting the word “and” at the end of the first item in the list of permitted uses, replacing the period at the end of the second item with a semi-colon followed by the word “and”, and adding to the list of permitted uses the following uses:

“a commercial driveway and related uses (including but not limited to loading bays, pedestrian walkways, surface parking spaces associated with the abutting lands zoned C1(103), and parking garage ramps and entrances) within the area so identified on Schedule “RM6(107)”, serving the buildings located on the abutting lands zoned C1(103) and RM6(155) in addition to serving the buildings located on the lands zoned RM6(107)”.

- 2.2 Schedule “RM6(107)” to By-law No. 7625 is replaced with Schedule “RM6(107)” attached to this By-law.

PURSUANT TO THE DECISION/ORDER OF THE ONTARIO MUNICIPAL BOARD ISSUED ON ~2015 IN BOARD FILE NO. PL140791.

DIMENSIONS ARE IN METERS & MAY BE CONVERTED TO FEET BY DIVIDING BY 0.3048



CITY OF TORONTO

SCHEDULE "RM6(107)" TO BY-LAW _____

PASSED ON _____

FILE NO.

LOCATION: 4917-4975 YONGE ST., 23 HOLLYWOOD AVE., 18 SPRING GARDEN AVE.

ONTARIO MUNICIPAL BOARD
Commission des affaires municipales de l'Ontario

PROCEEDING COMMENCED UNDER Subsection 41(12) of the *Planning Act*, R.S.O. 1990, c. P.13, as amended

Applicant/Appellant:	Rosedale Developments Ltd.
Subject:	Site Plan
Property Address:	4917-4975 Yonge Street
Municipality:	City of Toronto
O.M.B. Case No.:	PL140790
O.M.B. File No.:	PL150005
O.M.B. Case Name:	Rosedale Developments Ltd. v. Toronto (City)

PROCEDURAL ORDER

The Board orders that:

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

Organization of the Hearing

2. The Hearing will begin on **Tuesday, August 15, 2017** at the Ontario Municipal Board Office, 655 Bay Street, 16th Floor, Toronto, Ontario, M5G1E5. All parties and participants shall attend the first day of the hearing.
3. The length of the Hearing will be four (4) days. The length of the Hearing may be shortened as issues are resolved or settlement is achieved.
4. The Parties (see **Attachment 1** for the meaning of this term) identified at the Prehearing Conference are listed in **Attachment 2** to this Order.
5. The Parties will provide to the Board an Issues List on or before **February 10, 2017** which will be appended to this procedural Order as **Attachment 3**. There will be no changes to this list unless the Board permits. A Party who asks for changes may have costs awarded against it.
6. The order of evidence at the hearing is listed in **Attachment 4** to this Order. The Board may limit the amount of time allocated for opening statements, direct evidence (including the qualification of witnesses), cross-examination, evidence in reply and final argument. The length of written argument, if any, may be limited either on consent or by Order of the Board.

Requirements Before the Hearing

7. All Parties (or their representatives) shall provide a mailing address, email address, and telephone number to the Board. Any such person who retains a representative (legal counsel or agent) subsequent to the prehearing conference must advise the other Parties and the Board of the representative's name, mailing address, email address and phone number.
8. A Party who intends to call witnesses, whether by summons or not, shall provide to the Board, the other Parties and the Township Clerk a list of the witnesses and the order in which they will be called. This list must be delivered by **June 2, 2017**. For expert witnesses, a Party is to include a copy of the *curriculum vitae* and the area of expertise in which the witness is proposed to be qualified.
9. Expert witnesses in the same field shall have a meeting on or before **June 23, 2017** to try to resolve or reduce the issues for the Hearing. The experts must prepare a list of agreed facts and the remaining issues to be addressed at the Hearing, and provide this list to all of the Parties and the City Clerk.
10. An expert witness shall prepare an expert witness statement that shall include: an acknowledgement of expert's duty form, the area(s) of expertise, any reports prepared by the expert, and any other reports or documents to be relied on at the Hearing. Copies of this must be provided as in **Section 12**. Instead of a witness statement, the expert may file his or her entire report if it contains the required information. If this is not done, the Board may refuse to hear the expert's testimony.
11. Expert witnesses who are under summons but not paid to produce a report do not have to file a witness statement; but the Party calling them must file a brief outline of the expert's evidence and his or her area of expertise, as in **Section 12**.
12. On or before **July 14, 2017**, the Parties shall provide copies of their witness and expert witness statements to the other Parties and to the Township Clerk. The Parties shall prepare a Joint Document Book to be filed with the Board on the first day of the Hearing. A paper copy of any document proposed to be entered into evidence or relied upon shall be provided at the Hearing unless ordered otherwise by the presiding Member.
13. On or before **July 28, 2017**, the Parties shall provide copies of their visual evidence to all of the other Parties. If a model is proposed to be used, the Board must be notified before the hearing. All Parties must have a reasonable opportunity to view it before the hearing.
14. Parties may provide to all other Parties and to the City Clerk a written response to any written evidence within 14 days after the evidence is received.

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

This Member is [not] seized.

So Orders the Board.

ATTACHMENT 1

Purpose of the Procedural Order and Meaning of Terms

The Board recommends that the Parties discuss this draft Order before the prehearing conference to try to identify the issues and the process that they want the Board to order following the conference. The Board will hear the parties' comments about the contents of the Order at the conference.

Prehearing conferences usually take place only where the hearing is expected to be long and complicated. If you are not represented by a lawyer, you should prepare by obtaining the Guide to the Ontario Municipal Board, and the Board's *Rules*, from the Board Information Office, 15th Floor, 655 Bay Street, Toronto, M5G 1E5, 416-326-6800 or Toll-Free 1-866-887-8820, or from the Board website at www.OMB.gov.on.ca.

Meaning of Terms used in the Procedural Order:

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

NOTE that a person who wishes to become a Party before or at the Hearing, and who did not request this at the Prehearing Conference, must ask the Board to permit this.

Participant is an individual, group or corporation, whether represented by a lawyer or not, who may attend only part of the proceeding but who makes a statement to the Board on all or some of the issues in the Hearing. Such persons may also be identified at the start of the Hearing. The Board will set the time for hearing these statements.

NOTE that such persons will likely not receive notice of a mediation or conference calls on procedural issues. They also cannot ask for costs, or review of a Decision as Parties can. If a Participant does not attend the Hearing and only files a written statement, the Board will not give it the same attention or weight as evidence given orally. The reason is that Parties cannot ask further questions of a person if they merely file material and do not attend.

Written and Visual Evidence:

Written evidence includes all written material, reports, studies, documents, letters and witness statements which a Party or Participant intends to present as evidence at the Hearing. These must have pages numbered consecutively throughout the entire document, even if there are tabs or dividers in the material.

Visual evidence includes photographs, maps, videos, models, and overlays which a Party or Participant intends to present as evidence at the Hearing.

Witness Statements:

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

An **expert witness statement** should include his or her (1) name and address, (2) qualifications, (3) a list of the issues he or she will address, (4) the witness' opinions on those issues and the complete reasons for the opinions and (5) a list of reports that the witness will rely on at the hearing.

A **participant statement** is a short written outline of the person's or group's background, experience and interest in the matter; a list of the issues which the participant will address and a short outline of the evidence on those issues; and a list of reports, if any, which the Participant will refer to at the hearing.

Additional Information:

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

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

- direct examination by the Party presenting the witness;
- direct examination by any Party of similar interest, in the manner determined by the Board;
- cross-examination by Parties of opposite interest;
- redirect-examination by the Party presenting the witness; or
- another order of examination mutually agreed among the Parties or directed by the Board.

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

ATTACHMENT 2

List of Parties

1. **Rosedale Developments Ltd.**
John Alati and Andy Margaritis
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99 Spadina Avenue, 5th Floor
Toronto, ON M5V 3P8
Tel: 416-977-7088
Fax: 416-977-8931
E-mail: *johnm@davieshowe.com*
E-mail: *andym@davieshowe.com*

2. **City of Toronto**
Gordon Whicher
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Toronto, ON M5V 3C6
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Fax: 416-397-4420
E-mail: *gwhiche@toronto.ca*

ATTACHMENT 3

Issues List

1. What is the appropriate alignment of the Yonge St. corridor at 4917 Yonge St. and who is responsible to provide funding and a construction strategy for same?
2. Is layby parking along Yonge St., between Hollywood Ave and Spring Garden, as well as additional streetscaping, appropriate and necessary?
3. What are the appropriate traffic demand management (TDM) measures to be incorporated into the site plan?
4. Is an extension of the metal and glass canopy at the main entrance facing Yonge St. appropriate and if so, what revisions would be required to the approved zoning?
5. Is it appropriate to require streetscape improvements on lands not owned by the proponent (NTD: Legion Building)?
6. Is a layby necessary on Hollywood Ave.? If not, what is the appropriate number, and spacing, of street trees to be provided?
7. What is the appropriate and acceptable language for the site plan drawing note regarding land division and easements?
8. Is it appropriate for the proponent's engineers to stamp and certify the City's own design specifications and standards if there is some question about the acceptability of these standards?
9. Should the applicant be required, as a condition of site plan approval, to satisfy the conditions of the Memorandum of Alick Wong, Acting Manager, Development Engineering, North York District dated August 30, 2016?
10. Should the applicant be required, as a condition of site plan approval, to satisfy the urban design conditions and comments in the e-mail from Guy Matthew to George Belza dated October 27, 2016?
11. Should the Board approve conditions of site plan approval, what are the appropriate pre and post approval conditions?

ATTACHMENT 4

Order of Evidence

1. Rosedale Developments Ltd.
2. City of Toronto
3. Reply evidence of Rosedale Developments Ltd.