

Ontario Municipal Board
Commission des affaires municipales
de l'Ontario



ISSUE DATE: September 16, 2015

CASE NO(S): PL140799

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

Appellant: Lisgar Development Ltd.
Appellant: Steve & Dina Makridis
Appellant: RioCan (Clarkson) Inc.
Appellant: Gary Uhlman; and others
Subject: Proposed Official Plan Amendment No. 9
Municipality: City of Mississauga
OMB Case No.: PL140799
OMB File No.: PL140799
OMB Case Name: Makridis v. Mississauga (City)

PROCEEDING COMMENCED UNDER subsection 34(19) of the *Planning Act*, R.S.O. 1990, c. P.13, as amended

Appellant: Lisgar Development Ltd.
Appellant: Steve & Dina Makridis
Appellant: RioCan (Clarkson) Inc.
Appellant: Gary Uhlman; and others
Subject: By-law No. 0194-2014
Municipality: City of Mississauga
OMB Case No.: PL140799
OMB File No.: PL140800

Heard: August 31, 2015 in Mississauga, Ontario

APPEARANCES:

Parties

RioCan (Clarkson) Inc.

Counsel*/Agent

Joel Farber*

City of Mississauga	Marc Kemerer*
Steve Zorbas, Gary Uhlman, Steve and Dina Makridis and Lisgar Development Ltd.	Steve Zorbas
607074 Ontario Limited	Bruce Engell*

**MEMORANDUM OF ORAL DECISION DELIVERED BY J. de P. SEABORN ON
AUGUST 31, 2015 AND ORDER OF THE BOARD**

[1] These appeals were scheduled for a second pre-hearing conference. In addition to the parties (identified above) several members of the public attended the hearing and will be added to the Board's mailing list. Individuals or representatives who file Participant Statements may testify at the hearing. Members of the public may attend all or a portion of the hearing, regardless of whether they intend to testify.

[2] Mr. Kemerer provided several updates with respect to these appeals and confirmed that the City of Mississauga ("City") continues to discuss the issues with the parties and there is some prospect of a settlement or at least, a narrowing of the matters at issue. For this reason, the issues list is not finalized. Nonetheless, the Procedural Order (Exhibit 3, draft) governing the conduct and organization of the hearing is issued as Attachment 1 to this decision. The significant dates include the deadline for filing Participant Statements (**November 13, 2015**) and the commencement of the hearing (**November 23, 2015**), notice of which was previously given. All parties and Participants should attend the first day of the hearing as evidence in support of a settlement with some or all of the Appellants may be heard. In this regard, if there are settlements, Mr. Kemerer indicated that a public meeting will be convened with the local residents in advance of the hearing to present the details of any settlement agreement.

[3] In advance of the hearing, a notice of motion (Exhibit 2, Motion Record) was made by the City seeking an order to add 607074 Ontario Limited ("Company") as a party to the proceedings for the purpose of addressing a technical matter in respect of

appeals previously made by the Company. The background and rationale for the request was described in the affidavit of Marianne Cassin, a land use planner and Manager with the City and relates to resolving the status of Official Plan Amendment No. 121. The end result is that the City requests that the Company be made a party to the Official Plan Amendment No. 9 (“OPA 9”) appeals. The City and the Company have agreed that the appeal “can be settled through the inclusion of site specific policy provisions in, and mapping revisions to, OPA 9 to reinstate OPA 121. The settlement would mirror the Approvals and would continue the previously secured section 37 benefits, which is important for the City” (Affidavit of Marianne Cassin, para. 15). There was no objection and the Board orders that the Company be added as a party. In the event that the policy wording and mapping revisions are resolved prior to the commencement of the November 2015 hearing, the Board will issue the appropriate order upon receipt of evidence by way of affidavit.

[4] The hearing will begin on **Monday, November 23, 2015 at 10 a.m. at:**

**The Municipal Hearing Room
City of Mississauga
300 City Centre Drive
Mississauga, ON L5B 3C1**

and there shall be no further notice. If settlements are achieved, the parties should contact the Case Coordinator, Nazma Ramjaun at 416-326-6796 as soon as practicable and advise if any days set aside for the hearing can be released from the calendar.

“J. de P. Seaborn”

J. de P. SEABORN
VICE-CHAIR

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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ONTARIO MUNICIPAL BOARD

PROCEDURAL ORDER

PROCEEDINGS COMMENCED UNDER subsections 17(24) and 34(11) of the *Planning Act*, R.S.O. 1990, c. P.13, as amended

Appellant: Lisgar Development Ltd.
Appellant: Steve & Dina Makridis
Appellant: RioCan (Clarkson) Inc.
Appellant: Gary Uhlman; and others
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The Board orders that:

- [1] The Board may vary or add to these rules 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 Monday November 23, 2015 at 10 a.m. at Mississauga City Hall, Municipal Hearing Room, 300 City Centre Drive in the City of Mississauga.
- [3] The length of the hearing will be 5 days.
- [4] The parties are listed in Attachment 1 to this Order and the participants are listed in Attachment 2 to this Order.

- [5] The Issues are set out in the Issues List attached as Attachment 3. The Issues List will be finalized no later than Friday October 30, 2015. There will be no changes to this list unless the Board permits, and a party who asks for changes may have costs awarded against it.

Requirements Before the Hearing

- [6] All parties and participants (or their representatives) shall provide a mailing address, email address and telephone number to the Board). Any such person who will be retaining a representative should advise the other parties and the Board of the representative's name, address and phone number as soon as possible.
- [7] A party who intends to call witnesses, whether by summons or not, shall provide to the Board, the other parties and to the Clerk a list of the witnesses and the order in which they will be called. This list must be delivered at least 20 calendar days before the hearing.
- [8] An expert witness shall prepare an expert witness statement, which shall list any reports prepared by the expert, or any other reports or documents to be relied on at the hearing. Copies of this must be provided as in section [11]. Instead of a witness statement, the expert may file his or her entire report if it contains the required information. If this is not done, the Board may refuse to hear the expert's testimony.
- [9] On or before Friday November 13, 2015 a participant must provide to the Board and the parties a participant statement, or the witness or participant may not give oral evidence at the hearing.
- [10] Expert witnesses who are under summons but not paid to produce a report do not have to file an expert witness statement; but the party calling them must file a brief outline of the expert's evidence, as in section [11].
- [11] On or before Friday November 13, 2015, the parties shall provide copies of their witness and expert witness statements to the other parties and to the Board.
- [12] On or before Friday November 20, 2015, the parties shall provide copies of their visual evidence to all of the other parties. If a model will be used, all parties must have a reasonable opportunity to view it before the hearing.
- [13] Parties may provide to all other parties and file with the Board a written response to any written evidence within 7 days after the evidence is received.
- [14] A person wishing to change written evidence, including witness statements, must make a written motion to the Board. (*see Rules 34 to 38, inclusive, of the Board's Rules, which require that the moving party provide copies of the motion to all other parties 10 days before the Board hears the motion.*)
- [15] A party who provides a witness' written evidence to the other parties must have the witness attend the hearing to give oral evidence, unless the party notifies the Board at least 7 days before the hearing that the written evidence is not part of their record. \

- [16] Documents may be delivered by personal delivery, facsimile or registered or certified mail, or otherwise as the Board may direct. The delivery of documents by fax shall be governed by the Board's Rules [26 – 31] on this subject. Material delivered by mail shall be deemed to have been received five business days after the date of registration or certification.
- [17] No adjournments or delays will be granted before or during the hearing except for serious hardship or illness. The Board's Rules 61 to 65 apply to such requests.

This Member is [not] seized.

So orders the Board.

ATTACHMENT 1

PARTIES	COUNSEL/AGENT
City of Mississauga	Marc P. Kemerer, Devry Smith Frank LLP
607074 Ontario Limited	Chris Tzekas, Bruce Engell, Weir Foulds LLP
RioCan (Clarkson) Inc.	Joel Farber, Fogler Rubinoff LLP
Steve Zorbas, Gary Uhlman, Steve and Dina Makridis and Lisgar Development Ltd	Steve Zorbas, Agent

ATTACHMENT 2

PARTICIPANTS
Donald Baer, Clarkson Fairfield South Ratepayers Association
Sue Shanley, Meadowood Rattray Ratepayers Association
Eric Smith, White Oaks Lorne Park Community Association
Beverly Bleackley
John Pegram
Cameron McCuaig
David Dodaro
Don Benoit
Wendy Davies
Tamara Chipperfield
Boyd Hubbar
Kirstin Madsen
Camille Ansara
Sara Grant
Julie Puypera
Gabrielle Zustagtis

ATTACHMENT 3

ISSUES LIST

[To be determined]

Purpose of the Procedural Order and Meaning of Terms

Prehearing conferences usually take place only where the hearing is expected to be long and complicated. If you are not familiar with the hearing process 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, 416-212-6349, or from the Board website at www.omb.gov.on.ca.

The parties should discuss the draft Procedural Order before the prehearing conference and identify the issues and the process they propose the Board order following the prehearing. The Board will hear submissions about the content of the Procedural Order at the prehearing.

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 will become the party and assume the responsibilities of a party as set out in the Procedural 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.

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. At the hearing, a participant may be asked questions by the parties about their statements. Participants do not normally receive; notice of a mediation or conference calls, on procedural issues and cannot ask for costs, or review of a decision as parties can.

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, if a model forms part of the evidence, photographs of the model shall also be filed.

Witness Statements:

A **witness statement** or 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 he or she will discuss and the witness' or participant's position on those issues; and a list of reports that the witness or participant will rely on at the hearing.

An **expert witness statement** should include his or her (1) name and address, (2) qualifications, acknowledgement of the expert's duty, and specific area(s) of expertise, (3) a list of the issues to be addressed, (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.

The Procedural Order will set out when and how witness statements are to be exchanged.

Additional Information

Summons: A party may ask the Board 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.) An affidavit may be requested 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 re-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;
re-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 may 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.

OCTOBER 20, 2014