

**Local Planning Appeal Tribunal**  
Tribunal d'appel de l'aménagement  
local



**ISSUE DATE:** July 26, 2018

**CASE NO(S):** PL140860

The Ontario Municipal Board (the “OMB”) is continued under the name Local Planning Appeal Tribunal (the “Tribunal”), and any reference to the Ontario Municipal Board or Board in any publication of the Tribunal is deemed to be a reference to the Tribunal.

**PROCEEDING COMMENCED UNDER** subsection 17(36) of the *Planning Act*, R.S.O. 1990, c. P.13, as amended

Appellants:	Multiple Appellants
Subject:	Proposed Official Plan Amendment No. 231 (Phase 1B - Part IV)
Municipality:	City of Toronto
OMB Case No.:	PL140860
OMB File No.:	PL140860
OMB Case Name:	A. Mantella & Sons Limited v. Toronto (City)

**Heard:** July 9, 2018 at Toronto, Ontario

**APPEARANCES:**

**Parties**

**Counsel**

City of Toronto

Andrew Biggart

Morguard Investements Ltd. &  
Revenue Properties Company Limited

Dennis Wood and Raj Kehar

Toronto Industry Network

Calvin Lantz

Mondelez Canada Inc.

Mary Bull

Governing Council of the University of  
Toronto

Christie Gibson

1147390 Ont. Ltd., Queen Quay  
Avante Limited & BILD

John Dawson

10 QEW Inc., Midland Corp. Centre &  
Samuel Sarick Ltd.

Katarzyna Sliwa

**MEMORANDUM OF ORAL DECISION DELIVERED BY GERALD S. SWINKIN ON  
JULY 9, 2018**

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[1] This hearing event concerned what has been procedurally organized as Phase 1B-Part IV of the Official Plan Amendment 231 (“OPA 231”) appeals. This Phase Part is described as relating to sensitive uses within Employment Areas. It follows on the disposition of Phase 1B-Part III, which disposition was reflected in an oral decision pronounced by this panel of the Tribunal on June 14, 2018 and formally issued on July 10, 2018. The Part III subject matter was Compatibility and Mitigation, and concerned sensitive uses in proximity to Employment Land and major facility uses.

[2] At the outset of the session, Andrew Biggart, counsel for the City of Toronto (the “City”), informed the Tribunal that discussions had been occurring among the City and the various appellants who have active issues in the subject matter of this Phase Part, and that considerable progress had been made toward the settlement of those issues. However, there remained some outstanding matters and some drafting to be completed.

[3] Mr. Biggart requested that the Tribunal stand down the hearing in order to allow the City and the active appellants to continue their discussions, as they were gathered together in the Tribunal’s hearing room and willing to pursue resolution of the outstanding matters. Those settlement discussions amongst the City and counsel for the Appellants present continued for the balance of the day, whereupon it was resolved to adjourn for the day and return the following afternoon, at which time it was expected that a finally crafted set of modifications to various policies would be presented to the Tribunal on a consent basis.

[4] The hearing reconvened the following afternoon and Mr. Biggart confirmed that

consensus had been achieved and modifications had been settled for presentation to the Tribunal for approval.

[5] The final form of the modified policies was put before the Tribunal and supported by the testimony of Christina Heydorn, a senior planner in the City Planning Department, who has been directly involved in the issues associated with the Employment Lands policy.

[6] The modifications were fourfold.

[7] The first modification was to s.4.6.5 (i) of OPA 231. This clause references the mitigation of the potential adverse effects of noise and vibration. As modified, the clause will now also include reference to air quality and/or odour.

[8] The second modification adds to the Schedule 3 chart of Application Requirements in the City Official Plan two further additional requirements, an Air Quality Study and Odour Study. Despite the inclusion of these two Studies to the chart, the evidence of Ms. Heydorn was that the necessity for supplying either or both of such studies will be determined by City staff as part of the exercise of establishing the items which will be required in the circumstances of any given application in order to be confirmed as a complete application.

[9] It was Mr. Biggart's submission on this point that the policies regarding complete application as modified are designed to preserve a discretion in City staff as to which studies otherwise listed on the chart are to be required in any given application. He asked that that submission be documented in the Decision as it was a critical understanding among the Parties.

[10] This understanding is further articulated in a modification to s.4.6 by way of additional text inserted at the end of the current sidebar definition for Sensitive Land Uses (which sidebar definition was updated through the Tribunal's disposition issued on July 10, 2018) and which deals with applications for sensitive uses within the

Employment Areas designation. The text here is clear concerning that reserved discretion as it stipulates that the City “may” require noise, vibration, air quality and/or odour studies as part of a complete application.

[11] This additional text at the end of the definition for Sensitive Land Uses, in conjunction with a modification to s.2.2.4 concerning an addition to the sidebar definition of Influence Area, also deals with the third and fourth modifications which were before the Tribunal. In connection with the expansion of the definition of Influence Area, the modification by way of added text is that Influence Area, for the purposes of the Official Plan, does not include land and land uses within Employment Areas.

[12] This goes back to the text added to the sidebar definition of Sensitive Land Uses. That added text declares that if the Plan permits a use in an Employment Area, the use is not a sensitive land use within the Employment Area for the purposes of this Plan, but may be a sensitive land use as defined in the Provincial Policy Statement and, if so, such land use may require noise, vibration, air quality and/or odour studies as part of complete application.

[13] It was the testimony of Ms. Heydorn and the submission of Mr. Biggart that this latter addition really clarifies that the requirement for a Compatibility Study (which was addressed by way of modification text in the Tribunal’s July 10, 2018 disposition) does not apply with respect to a sensitive use within an Employment Area as, by this policy, it is essentially deemed for Compatibility Study purposes not to be a sensitive use.

[14] Ms. Heydorn canvassed the matter of Provincial policy and offered the opinion that the proposed modifications are consistent with the Provincial Policy Statement and conform with the provisions of the Growth Plan for the Greater Golden Horseshoe. She further concluded that the modifications represent good planning and recommended them to the Tribunal for approval.

[15] The Tribunal will accept the uncontroverted evidence of Ms. Heydorn and the submissions of Mr. Biggart, and the modifications as set out in Exhibit 3 in the

proceeding will be approved in principle.

[16] Mr. Biggart requested that the Tribunal withhold its Order arising out of this Decision as there was a minor edit to be made to Exhibit 3 and as the document had only been circulated to all counsel late in the day and he had not had final clearance from all as of this attendance, he was under some obligation to keep the matter open in the event that any further non-material revisions may be necessary.

[17] As OPA 231 will be the subject of a further Pre-hearing Conference before the Tribunal on August 8, 2018, he undertook to have the final version and a draft Order ready for that attendance and to then submit it to the Tribunal. He also undertook to provide for the Tribunal and others at that hearing session an up-to-date consolidation of OPA 231 as it has been modified to date by the Tribunal.

Gerald S. Swinkin”

GERALD S. SWINKIN  
MEMBER

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**Local Planning Appeal Tribunal**

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