

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



ISSUE DATE: October 09, 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 No.:	A. Mantella & Sons Limited v. Toronto (City)

Heard: September 20, 2018 in Toronto, Ontario

APPEARANCES:

Parties

City of Toronto

Toronto Industry Network
Atlantic Packaging Products Ltd.
Campbell Company of Canada
The Industrial Group Inc.
Redpath Sugar Ltd.
Canadian Propane Association

Menkes 225 Birmingham Street Inc.

Riocan REIT

Counsel

Andrew Biggart and Christina Kapelos

Jonathan Cheng

Jessica Smuskowitz

Amna Rehman

Rothmans Benson and Hedges	Peter Gross
Down 2 Earth Garden Centre Amexon Property Management Corp. Amexon Realty Inc. 2304009 Ontario Inc. 1742875 Ontario Inc. 1720194 Ontario Inc. Humberview Group 1234655 Ontario Inc.	Kailey Sutton
Dream Asset Management Corporation Berkley Carlyle (Junction) Inc. K2 2075 Kennedy Road Inc.	Daniel Artenosi and Michael Cara
The Governing Counsel of the University of Toronto May Flower Landscaping Design Ltd.	Meghan Rourke
Building Industry and Land Development Association	John Dawson
Leslie-Lakeshore Developments Inc.	Patricia Foran
Midland Corporate Centre Ltd. Samuel Sarick Limited 10 QEW Inc.	Aaron Kurts
Revenue Properties Co. Ltd. Morguard Investments Ltd.	Raj Kehar

**MEMORANDUM OF ORAL DECISION DELIVERED BY GERALD S. SWINKIN ON
SEPTEMBER 20, 2018 AND ORDER OF THE TRIBUNAL**

[1] This hearing event was a further Pre-hearing Conference (“PHC”) before the Local Planning Appeal Tribunal (the “Tribunal”) in the ongoing case management of City of Toronto Official Plan Amendment 231 (“OPA 231”).

[2] There were three Notices of Motion with respect to settlement of specific appeals. There was a request for the fixing of a hearing block of time for what was earlier identified as the Phase 3 appeals (relating to Conversion and Forecasting) and for the settlement of a Procedural Order for that hearing phase. And finally, a request for the fixing of a date for a further status PHC.

[3] Counsel for the City of Toronto (the "City") had earlier served and filed three Notices of Motion relating to settlements achieved with Appellants for properties respectively being municipally known as 158 Park Lawn Road, 225 Birmingham Street and 2075 Kennedy Road. Counsel for each of those Appellants was present and concurred in the proposed modifications to OPA 231 or, in the case of 2075 Kennedy Road, to the Agincourt Secondary Plan. Counsel for the City confirmed that no Notices of Response to the Motions had been served and that he was not advised by any person of any objection to the proposed settlements.

[4] The Notice of Motion with respect to 158 Park Lawn Road sought to modify OPA 231 Site and Area Specific Policy ("SASP") 459 to introduce and limit the floor area of a retail garden centre on those lands. The Affidavit of Christina Heydorn, Senior Planner in the Policy Unit of the Strategic Planning, Initiatives and Analysis Section of the City Planning Division of the City, was filed in support of the motion. Based upon the assertions in that affidavit as to the relevant background, issues of conformity and compatibility, consistency with the Provincial Policy Statement, 2014 ("PPS") and conformity with the Growth Plan for the Greater Golden Horseshoe, 2017 (the "Growth Plan"), the Tribunal allowed the motion and authorized the proposed modification, subject to issuance of the formal Order. Andrew Biggart, counsel for the City, undertook to file a draft Order to implement that decision. This will resolve Appeal No. 78 to OPA 231.

[5] The Notice of Motion with respect to 225 Birmingham Street sought to redesignate those lands from *Employment Areas* to *Mixed Use Areas, Apartment Neighbourhoods and Parks and Open Space Areas – Parks*, and to add a new SASP 554. SASP 554 lays out a concept plan organizing the new designations and stipulates a set of development criteria with respect to the provision of new private roads, height of buildings, floor area, unit count, landscaping and setbacks. The affidavit of Ms. Heydorn, was filed in support of the motion. Based upon the assertions in that affidavit as to the relevant background, issues of conformity and compatibility, consistency with the PPS and conformity with the Growth Plan, the Tribunal allowed the motion and authorized the proposed modification, subject to issuance of the formal Order. Mr. Biggart again undertook to file a draft Order to implement that decision. This will resolve Appeal No. 61 to OPA 231.

[6] The Notice of Motion with respect to 2075 Kennedy Road as originally filed was supplanted by an Amended Notice of Motion, which had been served the day prior to the PHC. The Amended Motion included a further prayer for relief in the form of a request for an abridgment of time for service of the Motion Record. The request for abridgement of time for service of the Motion Record was granted.

[7] Mr. Biggart explained that the reason for the Amended Motion Record was due to a misunderstanding as to the ownership interest in the lands which were the subject of the appeal. On reviewing the Amended Motion Record and after hearing submissions from Mr. Biggart and from Daniel Artenosi, counsel to the Appellant and the purchaser therefrom, it was confirmed that Dream Asset Management Corporation, the Appellant, was the owner of 2075 Kennedy Road at the time of the appeal. Since that time, that owner has sold the lands to K2 2075 Kennedy Road Inc. (referred to as “Kingsett”).

[8] Kingsett will assume carriage of the Dream appeal. The relief sought by the Motion will resolve a site specific objection of the owner but Mr. Artenosi wished to

make clear that Kingsett was reserving its appeal rights with respect to the general office replacement policies. That reservation was acknowledged by the Tribunal.

[9] The Notice of Motion with respect to 2075 Kennedy Road sought to add SASP 7 to the Agincourt Secondary Plan as it applies to 2075 Kennedy Road, and 26 and 50 Village Green Square. SASP 7 would redesignate the lands from *Core Employment Areas* to *Mixed Use Areas* and its policies would require development of the lands for residential purposes to provide a net gain of employment floor area in the first phase of any such development. The policies also deal with ensuring appropriate built form and transition to the surrounding existing and planned context, as well as demonstration of sufficient servicing and transportation capacity. Finally, the policy addresses a Section 37 contribution in the form of the provision of affordable housing.

[10] The Affidavit of Christian Giles, Senior Planner in the Policy Unit of the Strategic Planning, Initiatives and Analysis Section of the City Planning Division of the City, was filed in support of the motion. Based upon the assertions in that affidavit as to the relevant background, issues of conformity and compatibility, consistency with the PPS and conformity with the Growth Plan, the Tribunal allowed the motion and authorized the proposed addition of SASP 7 to the Agincourt Secondary Plan, subject to issuance of the formal Order. Mr. Biggart again undertook to file a draft Order to implement that decision. Subject to the reservation of the challenge to the general office replacement policies, this will resolve Appeal No. 79 to OPA 231.

[11] The Tribunal heard submissions from Peter Gross, counsel to Rothman Benson and Hedges. His client is the purchaser of 1500 Don Mills Road. An appeal against OPA 231 was filed by the prior owner of that property, Crown Realty Partners, which entity has been represented in this proceeding by Mary Flynn-Guglietti. This appeal is identified as Appeal No. 74. Mr. Gross simply wished it to be reflected in the record that his client will continue to prosecute the appeal filed by Crown Realty Partners and that Ms. Flynn-Guglietti will no longer represent this property in this proceeding.

[12] Mr. Biggart tendered a draft Procedural Order to govern the hearing of the Phase 3 appeals. This draft had been circulated to counsel of record and the Tribunal was advised that there was no registered objection to it (subject to clean up of some minor matters that were agreed upon and a few items directed by the Tribunal). Mr. Biggart is to submit to the Case Co-ordinator the finally revised form of Procedural Order. Provided that it is satisfactory to the Tribunal, it will issue by separate Order.

[13] Mr. Biggart also wished the Tribunal to acknowledge in this disposition the direction laid down by Vice-Chair Makuch at paragraph 9 of his Decision issued on April 19, 2018, that March 30, 2018 was the last date by which issues for this phase were to be identified by Appellants. Based upon that direction, the Issues List in the draft has been prepared. As such, this will be treated as the final Issues List (subject to the reservation to the Tribunal in the Procedural Order itself to modify any provision of the Procedural Order).

[14] Mr. Biggart, on the strength of the Issues having been settled and a draft Procedural Order having been developed, requested the fixing of a hearing date and a prior further status PHC date.

[15] Mr. Biggart provided the Tribunal with an estimate of hearing time on the order of six weeks. He also requested that the hearing date be fixed early enough in 2019 so that a decision arising out of that hearing could be issued before year end as the City is now looking at embarking on a fresh review of employment lands in keeping with their statutory obligations of OP review and would like to have the present policy platform finally settled.

[16] In order to be sensitive to the timing request, the Tribunal advised Mr. Biggart that a hearing could be scheduled commencing in September of 2019 but that the block of hearing time would be limited to three weeks. The Tribunal's resources are sorely

pressed and this was the Tribunal's attempt to be responsive under the circumstances that currently prevail. The Tribunal is optimistic that, as has been the case with the phases that have preceded this one, the City will experience success in working with the Appellants to settle some or all of the issues for this coming phase and thereby reduce the necessary hearing time for those issues which require arbitration. The Tribunal commends all of the parties to this proceeding to endeavour to find solutions to the outstanding issues to facilitate the conclusion of the appeals.

[17] The Tribunal fixes **Monday, March 4, 2019 at 10 a.m.** at:

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Toronto, ON M5G 1E5**

for a **status PHC** regarding the hearing to commence in September and to accommodate such motions as may be associated with that hearing or with settlement of any appeals presently pending, which settlements should be brought before the Tribunal by way of notice of motion in accordance with the Tribunal's *Rules of Practice and Procedures*.

[18] The Phase 3 hearing regarding Conversion/Forecasting, which will have an approximate duration of three weeks, will commence on **Monday, September 16, 2019 at 10 a.m.** at:

**Local Planning Appeal Tribunal
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Toronto, ON M5G 1E5**

[19] There will be no further notice of these hearing events.

[20] This Member will remain seized of case management matters.

“Gerald S. Swinkin”

GERALD S. SWINKIN
MEMBER

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please visit www.elto.gov.on.ca to view the attachment in PDF format.

Local Planning Appeal Tribunal

A constituent tribunal of Environment and Land Tribunals Ontario

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