

Ontario Municipal Board
Commission des affaires municipales
de l'Ontario



ISSUE DATE: September 12, 2017

CASE NO(S): PL140860

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

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

Heard: August 10, 2017 in Toronto, Ontario

APPEARANCES:

Parties

Counsel*/Representative

See Attachment 1

**MEMORANDUM OF ORAL DECISION DELIVERED BY R. G. M. MAKUCH ON
AUGUST 10, 2017 AND ORDER OF THE BOARD**

INTRODUCTION

[1] This is the eighth Pre-hearing Conference (“PHC”) respecting appeals against Official Plan Amendment No. 231 “Employment Areas Lands” adopted by City of Toronto Council.

[2] There were a number of matters before the Board for adjudication.

Jacinto's Car Wash Ltd. and Portugese Village Investments Limited (Jacinto)
Motion for Party Status

[3] Jacinto owns the lands known municipally as 2006 – 2010 Dundas Street West located north of Dundas Street West, east of Silver Avenue and south of Golden Avenue. Prior to OPA 231, the majority of the site was subject to Site and Area Specific Policy 154 (SASP 154) and Jacinto is seeking party status sheltering under Appeal No. 121 as it recently became aware of OPA 231/SASP 154 after entering into an agreement of purchase and sale with a prospective purchaser when it was discovered that the extent of the lands covered by SASP 154 had been modified so as to exclude the subject site in its entirety.

[4] The Board finds that it would be reasonable under the circumstances to add Jacinto as a party to this proceeding with respect to an existing appeal with existing issues.

[5] The matters of concern to Jacinto are already the subject of an existing appeal (Appeal No. 121) and as such adding Jacinto as a party will not significantly increase the hearing time. The request for party status is being made prior to the finalization of procedural orders, issue lists, witness statements or hearing dates and will not cause any delays or result in prejudice to other parties. Jacinto has also agreed to be bound by all existing procedural obligations.

[6] No one was opposed to the motion including the City.

[7] The Board is satisfied that it would be reasonable under the circumstances to add Jacinto as a party to this proceeding.

[8] Accordingly, Jacinto is hereby granted party status sheltering under Appeal No. 121.

Motion for Party Status by Topana Investments Limited (Topana)

[9] Topana brings a motion for an order of the Board granting it party status with respect to its property known municipally as 450 Dufferin Street, pursuant to s. 17(44.1) and (44.2) of the *Planning Act*. The subject property is located on the west side of Dufferin Street north of Queen Street and has an area of approximately 1500 square metres (“m²”), which contains a small office building.

[10] The materials before the Board on this Motion consist of:

- 1) Topana Motion Record dated March 24, 2017 including the Affidavit of Robert A. Dragicevic sworn on March 24, 2017; and
- 2) City’s Responding Motion Record dated August 4, 2017 including the Affidavit of Steven Dixon sworn August 4, 2017.

[11] Topana maintains that it had made a written request in June 2012 to the City to have the property reviewed by the City in the context of its employment lands review. In November 2013, however, City staff issued a report recommending that 440 and 450 Dufferin Street (Topana lands) be retained for employment land uses and designated as Core Employment Areas.

[12] The evidence shows that in December of 2011, the owner of the lands to the south of the Subject Lands, known municipally as 440 Dufferin Street, submitted an application requesting non-employment uses on the 440 Dufferin lands, effectively seeking a conversion of the Employment Areas designation to a Mixed-Use designation. On March 22, 2012, the Planning and Growth Management Committee of the City directed that staff review the proposed application in the context of the ongoing Municipal Comprehensive Review (“MCR”) process. On December 16, 2013, Council adopted staff’s recommendation that the 440 Dufferin lands be retained for employment uses. Prior to Council’s decision, in November of 2013, the owner of 440 Dufferin submitted a revised application. Council did not make a decision on the revised

application, and the owner of 440 Dufferin appealed the non-decision to this Board. City Council at the time authorized the City Solicitor to attend at the first PHC of that appeal (PL140271) to register its opposition to the applications by the owner of 440 Dufferin.

[13] It is noted that ongoing notice in that case was given throughout the appeal proceedings to the 440 Dufferin appeal. Board assisted mediation between the parties took place in February 2015 subsequent to the first PHC in October 2014 and a settlement was later approved by the Board in June of 2016 to allow for Mixed-Use Areas on the lands, subject to a s. 37 agreement.

[14] Topana maintains that in January 2017, it became aware that OPA 231 continued to be adjudicated by this Board and that given the disposition of the 440 Dufferin appeal before this Board as well as the context of the surrounding neighbourhood, it argues that it has a significant interest in determining the appropriate land use designation and permitted uses with respect to its property at 450 Dufferin Street.

[15] The City vigorously opposes the motion on the grounds that:

- 1) The City adopted OPA 231 as part of the City's five-year official plan review and MCR of its employment lands and that through this process held, and gave notice of, approximately eleven public houses with respect to the broader Official Plan Five Year Review and for the review of the City's draft policies and land use designations.

During the MCR process, Topana submitted a conversion request to City staff on June 13, 2012, to have its lands located at 450 Dufferin Street assessed. The City assessed the subject lands and recommended that City Council retain the subject lands as Employment Areas and designate these as Core Employment Areas. City Council adopted City staff's recommendation which was subsequently approved by the Minister.

Despite being fully engaged in the MCR process, Topana either refused, failed or neglected to appeal Council's decision and the Minister's approval to retain and designate the Subject Lands as Core Employment Areas. Topana effectively "sat" on its rights.

- 2) As an adjacent landowner to 440 Dufferin, Topana would have received full notice of 440 Dufferin's ongoing appeal and that OPA 231 was being adjudicated before the Board. It was only after learning of the term of the settlement of the 440 Dufferin lands that the Applicant is choosing to seek party status to the proceedings respecting the appeals to OPA 231.
- 3) Following the Minister's decision of July 9, 2014 to approve OPA 231, the City received 178 appeals. Topana's property at 450 Dufferin Street was never identified in any of the appeal letters.

Proceedings before the Board have taken place since March of 2015. To-date the Board has held, and the parties to OPA 231 have participated in, seven PHCs, two Hearings, and ongoing mediations. At no point during these proceedings did Topana seek party status or participate therein.

The City undertook an exercise during the appeal process to determine which lands were not under appeal and by way of a motion served upon all parties, brought the portions of OPA 231 that were not subject to appeal into full force and effect on those lands by way of a Board Order on June 22, 2015.

Further, on December 20, 2016, the Board approved mapping submitted on behalf of the City and all interested appellants to OPA 231, which brought the designations of *Core and General Employment Areas* into full force and effect on all lands that have not been appealed.

As such, the Board has approved the Subject Lands as being designated *Core Employment Areas*. To obtain party status on a site-specific basis, at this stage in

the proceedings, would be solely for the purpose of allowing the Applicant to reverse, in part, a Board Decision with respect to the Subject Lands. To allow this to occur would set a precedent that would severely undermine the hearing process.

- 4) The City, as well as all parties to OPA 231, must be able to rely on the fact that once an approval has been brought into effect on a site, that it will stay in force unless there is good reason to change it and there is consent of all parties to seek such a change.
- 5) To the City's knowledge, the Applicant first expressed interest to the City to be added as a party to OPA 231 in or around late February of 2017. This was the first instance in which the City had become aware of this Applicant and its interest in OPA 231.

As noted, OPA 231 policies and land designations were already approved on the Subject Lands at the time Topana's counsel first contacted counsel for the City about Topana's request for party status.

- 6) The granting of party status to Topana will effectively create a site-specific appeal that was never properly filed with this Board. The Applicant engaged in the planning process prior to Council's adoption of OPA 231 but never took steps to appeal the City's recommendation and the Minister's approval. To allow an appeal at this stage would be an abuse of process.

Topana never attended any of the PHCs to seek to shelter under a specific appeal or be added as a party despite approval by the Minister on July 9, 2014 and the first PHC held on March 12 and 13, 2015 when many interested parties came forward and sought party status.

The City argues that it would be just to deny party status to Topana at this late stage in the proceedings. On the other hand, it would be prejudicial to the City to

grant Topana party status given the process that has taken place to date and the wish of other parties to move forward to a conclusion.

- 7) It is in the public interest to now deny requests for party status in order to maintain a fair and coherent adjudication of the ongoing appeals.

[16] The Board has considered the evidence before it on this motion as well as the submissions of counsel and finds that the motion should be denied for the reasons that follow.

[17] Section 17(44.1) and (44.2) of the *Planning Act* provide that the Board may only add as a party to the hearing of an appeal under s. 17(24) or (36) a person who has before the plan was adopted, made oral submissions at a public meeting or written submissions to the council and where the Board is of the opinion that there are reasonable grounds to add the person as a party.

[18] In this case, it is undisputed that Topana made a written submission to City of Toronto Council prior to it adopting OPA 231 and that therefore the first part of the test has been met.

[19] The Board must now turn its mind to whether or not the Board is of the opinion that there are reasonable grounds to add Topana as a party.

[20] The Board agrees with the arguments put forth by counsel for the City on this issue.

[21] Firstly, Topana is a sophisticated landowner, who knew enough about the planning process to request that City Council consider removing its lands from the employment designation under the official plan during the OPA 231 review process but neglected to file an appeal despite being fully aware of its rights under the *Planning Act* and failed to take any steps to protect those rights until very late in the proceeding. Topana would have been given proper notice of these proceedings before the Board

and could have informed itself at any time of the status of the proceedings.

[22] The first PHC in this proceeding took place on March 12 and 13, 2015, when the City advised the Board and all present that the City wished to proceed with a partial approval of OPA 231 and that this could only be realized if those appellants who appealed the entirety of OPA 231 on a City-wide basis were prepared to scope their appeals to the extent possible. The OMB at that time ordered appellants who had filed City-wide appeals of the entirety of OPA 231 to scope their appeals by April 13, 2015 and specifically identify which parts of OPA 231 they wished to maintain under appeal. Numerous parties submitted letters to counsel for the City to scope their appeals in accordance with the Board's order. City Planning staff relied on the information provided and reviewed each appeal letter originally filed with the Minister, undertook an exercise to determine which parts of OPA 231 remained under appeal, and which parts were not subject to a City-wide appeal.

[23] Following this process and after determining which parts of OPA 231 were no longer subject to a City-wide appeal, the City brought forward a motion for partial approval at the second PHC, held on June 22, 2015, to obtain an Order approving and bringing into full force and effect those parts of OPA 231 that were not subject to an appeal on a City-wide basis. The Board issued an Order on that date bringing into full force and effect those parts of OPA 231 that were not subject to an appeal on a City-wide basis.

[24] At the third PHC for the appeals of OPA 231 held on October 22, 2015, a number of additional parties sought and obtained party or participant status to the OPA 231 proceedings and certain site-specific policies of OPA 231 were also brought into full force and effect.

[25] At that time, the Board also scheduled 15 days commencing on June 20, 2016 for the hearing of Phase 1A pertaining to the Core Employment Areas and General Employment Areas land use designation mapping and certain policies related thereto. The Board further directed that the parties involved produce an agreed upon issues list

as well as a procedural order to be submitted to the Board at the next PHC scheduled for February 9, 2016.

[26] At the hearing held on June 20, 2016, the City, with the consent of the appellants to Phase 1A to the proceedings, sought the Board's approval of mapping and policies to bring into force the Core Employment Areas and General Employment Areas land use designations on all lands which were not subject to an appeal.

[27] The Board issued its Order on December 20, 2016 approving the OPA 231 mapping and certain policy and non-policy text pertaining to the Core Employment Areas and General Employment Areas land use designations. Given the disposition of this Order, Topana's lands have been approved as being designated Core Employment Areas and as such, that land use designation is currently in effect for those lands.

[28] Clearly, the Board has already made a determination as to the appropriate land use designation and permitted uses within the Topana lands have by virtue of the Board's Order issued on December 20, 2016 approving the Core Employment Areas land use designation. What Topana is attempting to do by this motion is to obtain party status in order to dispute a land use designation previously approved by the Board earlier in this proceeding.

[29] Approval of Topana's request for party status would not be reasonable under the circumstances as it would greatly prejudice both the City and all parties to OPA 231 as well as undermine the validity of the proceedings to date and in the future.

[30] Accordingly, Topana's motion for party status in this proceeding is hereby dismissed.

Office Replacement Policies

[31] Counsel for the City had requested that the Board schedule a hearing as soon as practicable to adjudicate but also expressed interest along with the other parties in

taking part in Board assisted mediation. The Board will set a hearing date for this phase at the next PHC to be held on January 5, 2018.

[32] **Two days have been set aside for Board assisted mediation on January 29 and 30, 2018 at 10 a.m.**

[33] **The mediation will take place at:**

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

Daycares/Educational Facilities Policies

[34] The hearing of this phase is scheduled to commence on **February 5, 2018, at 10 a.m.** **Ten days** have been set aside.

[35] **The hearing will take place at:**

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

Site Specific Chinese Baptist Church Appeal

[36] This site specific matter is scheduled to commence on **Monday, March 5, 2018 at 10 a.m.** **Five days** have been set aside.

[37] **The hearing will take place at:**

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

Remaining “Sensitive Uses”

[38] This phase of the hearing is scheduled to be heard commencing on **Monday, July 9, 2018 at 10 a.m. Five days have been set aside.**

[39] **The hearing will take place at:**

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

“Compatibility and Mitigation” Issues

[40] This phase of the hearing is scheduled to be heard commencing on **Wednesday May 23, 2018 at 10 a.m. Fifteen days have been set aside.** The Board will not sit on June 6-8, 2018.

[41] **The hearing will take place at:**

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

**Nova-Depot Corporation, Royal Nova Corporation and Silver Steeles Corporation
(Nova) Motion for Party Status**

[42] This matter will be heard at the next PHC to be held on **Friday, January 5, 2018, 10 a.m.**

Sina Majidi Motion for Party Status

[43] This matter will be heard at the next PHC to be held on **January 5, 2018.**

Next Pre-Hearing Conference

[44] The next PHC will take place commencing at **10 am on Friday, January 5, 2017.**

[45] **The hearing will take place at:**

**Ontario Municipal Board
655 Bay Street
Toronto, Ontario**

[46] There will not be any further notice.

"R. G. M. Makuch"

R. G. M. Makuch
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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ATTACHMENT 1

Sign-In Sheet Re City of Toronto OPA 231 PL140860
 PHC August 10, 2017

PAGE 1 of

COUNSEL / REPRESENTATIVE	PARTY / APPEAL NO.
Al Burton	Topama Investments Limited
Bruce Engell	Jacinto's Car Wash Ltd + ^{Portuguese Village Junction} Limited
J. Shapira	Revenue Properties Company, Merquard Investments Limited
J. Shapira (for D. Wood)	2129152 ontario Inc.
Adam Brown Naomi Mares	Menkes et al.
A. Fornistal	Appeal Nos 78, 56, 74, 5, 57, 125, 19100
J. Cheng (for C. Lentz)	<ol style="list-style-type: none"> 1. Adelaide Street Lofts 2. Atlantic Packaging Properties Ltd 3. Campbell Company of Canada 4. Canadian Paper Association 5. 55 Eglinton East Ltd 6. The International Group Inc 7. Irving Tissue Corporation 8. Krugman Corporation 9. Redpath Sugar Ltd.
J. Pauk (for Katarzyna Sliwa)	<ol style="list-style-type: none"> 1. Build Toronto Inc. 2. Queen Elizabeth QEW Inc. <div style="border: 1px solid black; padding: 2px; display: inline-block;"> <ol style="list-style-type: none"> 10. Toronto Industry Network 11. SEICA </div>
Mary Bull	Mondelez Canada Inc.
ADRIAN FRANK (for Jason Park & Patrick Devine)	<ul style="list-style-type: none"> • Agellan Capital Partners • H&R REIT (App. No. 2) • Belgians • GNLRA (Party)
Christie Gibson (for Signe Leisk & Raiwo Luukkivi)	University of Toronto (Appeal # 90) May Flower (Appeal # 123)

COUNSEL / REPRESENTATIVE	PARTY / APPEAL NO.
DAVID NELSON	108 - Kiggsett Capital Inc. 110 - Lamb Development Corp. 111 - Lanterra 234 Simcoe Realty Ltd. 132 - One Eglinton East Inc.
	39 - 481 Uni Investments Inc. 77 - Designer's Walk Inc. 97 - Great Gulf (Power) Ltd. #87-1, 87-2 - First Capital Holdings Trust Ltd.
	72 - CP Reit Ontario Properties Ltd. 119 - Lablaw Properties Ltd. 115 - Leslie - Lakeshore Developments Inc. 120 - Nova - Depot Corp et al.
Codie Mitchell on behalf of Jody Johnston	Planet Fitness
Kelly Oksenberg	23 - 205378 S Ontario Inc. 79 - Dream Asset Management Corporati. 101 - The Independent Order of Foresters
Douglas Allen	
KATE FARBRORER .	SCARBOROUGH CHINESE BAPTIST CHURCH.
Claire Young Janice Page	minister of municipal Affairs
Patricia SINCLAIR	Milliken Empl Sensitive Land.