

Ontario Municipal Board
Commission des affaires municipales
de l'Ontario



ISSUE DATE: January 28, 2016

CASE NO(S): PL140905

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

Appellant:	2401 Eglinton Avenue West Ltd.
Appellant:	346-350 Eglinton Avenue West Holdings Ltd.
Appellant:	352-356 Eglinton Avenue West Holdings Ltd.
Appellant:	90 Eglinton West Limited
Appellant:	Armel Corporation
Appellant:	Skypod View Inc.
Appellant:	Leaside Property Owners Association Incorporated
Appellant:	Upper Village Investments Ltd.
Appellant:	Solray Investments Limited
Appellant:	Hullmark (313 Eglinton) Ltd.
Appellant:	RioCan Holdings (Sunnybrook) Inc.
Appellant:	Confederation of Resident & Ratepayer Associations (CORRA)
Appellant:	White Bell Investments Limited
Appellant:	Duffmits Holdings Inc.
Appellant:	Gabriel Properties (2006) Inc.
Appellant:	Avenue Road Eglinton Community Association (ARECA)
Subject:	Proposed Official Plan Amendment No. OPA 253
Municipality:	City of Toronto
OMB Case No.:	PL140905
OMB File No.:	PL140905
OMB Case Name:	Armel Corporation v. Toronto (City)

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

Appellant:	2401 Eglinton Avenue West Ltd.
Appellant:	346-350 Eglinton Avenue West Holdings Ltd.
Appellant:	352-356 Eglinton Avenue West Holdings Ltd.

Appellant: Solray Investments Limited
 Appellant: Leaside Property Owners Association
 Incorporated
 Appellant: Hullmark (313 Eglinton) Ltd.
 Appellant: Armel Corporation
 Appellant: Skypod View Inc.
 Appellant: Gabriel Properties (2006) Inc.
 Appellant: Avenue Road Eglinton Community Association
 (ARECA)
 Appellant: Confederation of Resident & Ratepayer
 Associations (CORRA)
 Appellant: Upper Village Investments Ltd.
 Subject: By-law No. 1030-2014
 Municipality: City of Toronto
 OMB Case No.: PL140905
 OMB File No.: PL141112

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

Appellant: Confederation of Resident and Ratepayer
 Associations in Toronto (CORRA)
 Subject: By-law No. 1031-2014
 Municipality: City of Toronto
 OMB Case No.: PL140905
 OMB File No.: PL141113

Heard: January 22, 2016 in Toronto, Ontario

APPEARANCES:

Parties

Counsel*/Representative

2401 Eglinton Avenue West Ltd.	N. Smiley* (absent)
90 Eglinton West Limited and Solray Investments Ltd.	J. Smuskowitz* for A. Brown*
346-350 Eglinton Avenue West Holdings Ltd. and 352-356 Eglinton Avenue West Holdings Ltd.	D. Artenosi*
Armel Corporation	S. Zakem*

Skypod View Inc. and Gabriel Properties (2006) Inc.	B. Ketcheson*
White Bell Investments Limited and Duffmits Holdings Inc.	J. Dawson*
Bateg Investments Ltd. and Upper Village Investments Ltd.	A. Frank* for P. Devine*
Hullmark (313 Eglinton) Ltd.	C. Higgs*
RioCan Holdings (Sunnybrook) Inc.	A. Benedetti*
Confederation of Resident & Ratepayer Associations (CORRA) and Avenue Road Eglinton Community Association (ARECA)	E. Denny
Leaside Property Owners Association Incorporated	G. Kettel
City of Toronto	S. Bradley*

APPEARANCES FOR PL141112:

Parties

Counsel*/Representative

346-350 Eglinton Avenue West Holdings Ltd. and 352-356 Eglinton Avenue West Holdings Ltd.	Dan Artenosi*
Armel Corporation	S. Zakem*
Skypod View Inc. and Gabriel Properties (2006) Inc.	B. Ketcheson*
Bateg and Upper Village Investments Ltd.	A. Frank* for P. Devine*
Solray Investments Ltd.	J. Smuskowitz* for A. Brown*
Hullmark (313 Eglinton) Ltd.	C. Higgs*
Confederation of Resident & Ratepayer Associations (CORRA)	E. Denny

and Avenue Road Eglinton
Community Association (ARECA)

Leaside Property Owners Association G. Kettel
Incorporated

City of Toronto S. Bradley*

APPEARANCES FOR PL141113:

<u>Parties</u>	<u>Counsel*/Representative</u>
Confederation of Resident & Ratepayer Associations (CORRA)	E. Denny
City of Toronto	S. Bradley*

MEMORANDUM OF ORAL DECISION DELIVERED BY R. ROSSI ON JANUARY 22, 2016 AND ORDER OF THE BOARD

[1] This is one of a continuing series of pre-hearing event conferences (“PHC”) before the Ontario Municipal Board (“Board”) that involves various appeals of Official Plan Amendment No. 253 (“OPA”), a planning instrument initiated by the City of Toronto (“City”) that implements the Eglinton Connects Planning Study Area (“Study Area”). OPA 253 applies to a lengthy portion of Eglinton Avenue extending from two blocks west of Keele Street over to Laird Drive. Its purpose is to implement certain changes to land use designations within the Study Area as well as to encourage lot consolidation and redevelopment while recognizing those designations that should not change. There are two proposed Zoning By-laws: Zoning By-law No. 1030-2014 amends the zoning regulations for much of the Study Area to allow for the development of mid-rise buildings on certain properties and reduces parking requirements. Zoning By-law No. 1031-2014 facilitates the use of lands to be used for transit purposes only by exempting these from minimum height requirements, setback and landscaped open space requirements that would apply if they were used for non-transit purposes. This By-law applies primarily to any transit supplier (like Metrolinx) seeking to erect subway station-type buildings at various points within the Study Area.

[2] Those appellant parties who own lands affected by the proposed planning instruments are represented by counsels as listed. Appellant resident and ratepayer group parties are represented at these PHCs by their respective non-counsel resident representatives. The Board was unable to release its previous Order from the November 23, 2015 PHC as the parties were unable to finalize a consolidated issues list before today's PHC. The Board has provided the parties with additional time to finalize their issues list read from portions and determined that it would be useful to read from the unissued Order from the last PHC for the benefit of the parties, participants and public in attendance at today's PHC to remind all in attendance of what transpired. However, as the Board began reading from its Order, Counsel Steven Zakem stood and advised the Board for the record that the representative of the Confederation of Resident & Ratepayer Associations ("CORRA"), Eileen Denny, walked out of the PHC during the Board's reading of his Order without seeking leave from the Board to be excused and she did not return to the PHC. The presiding Member recorded the representative's departure, continued with the Board's reading of the Order and subsequently recessed to obtain dates for a late-2016 hearing.

[3] With the premature departure of CORRA's representative from the PHC without notice or explanation midway through this process, the Board was unable to question CORRA's representative on a number of outstanding items necessary to the Board's presiding over an efficient PHC process. It was unable to deal with all aspects of CORRA's matters in advance of the full hearing or to give instructions on the way forward and in all likelihood left unanswered some of the City counsel's questions for this appellant. All parties are required to attend these proceedings and to be present in order to remain active in the appeal process. This person's departure without explanation to the Board and the other appellants was a significant factor in the Board's determination that CORRA has now abandoned its appeals of OPA 253 and both ZBAs.

[4] The integrity of the Board's proceedings must be protected and persons having business before the Board shall comport themselves with respect for the institution, for those who adjudicate and those who participate in its proceedings. Part III of the

Ontario Municipal Board Act (“*Act*”) outlines the Board’s general jurisdiction and powers. Section 41 of the *Act* outlines states:

The Board may, of its own motion...inquire into, hear and determine any matter or thing that it may inquire into, hear and determine upon application or complaint, and with respect thereto has and may exercise the same powers as, upon any application or complaint, are vested in it.

[5] In its stewardship of its own adjudicative proceedings, the Board may determine that persons who do not appear at a hearing without providing reasons for their absence or who depart from proceedings without seeking leave and who fail to provide reasons for doing so may be deemed to have abandoned their appeals. As it is empowered to do, the Board may bring its own motion pursuant to s. 41 of the *Act* to declare that CORRA has abandoned its appeals of OPA 253 and the two ZBAs. By way of this Order and in accordance with s. 37.1 (2) of the same *Act*, the Board will provide CORRA with 10 days from the date of issue of this Order to provide information in writing as to why the Board should not dismiss its appeals without holding a hearing. Should CORRA fail to offer what the Board determines to be full and sufficient reasons that explain its refusal to participate in this PHC so as to facilitate the orderly disposition of its appeals, then the Board will dismiss the matter brought before in accordance with s. 37.1 (1) of the *Act*. The Board will issue its decision in writing shortly thereafter.

[6] For the benefit of the other parties, participants and members of the public who attended today’s PHC and who comported themselves with respect for the Board’s processes and procedures, the Board is obliged to make the following observations. By way of specific example, CORRA’s representative did not comport herself with respect for the Board’s processes. When the Board called upon the representative to answer proper questions from the City put to her in respect of CORRA’s appeals, she chose instead to commence reading from a binder. She also refused to accept the ruling of the Board that the matter of City notice had been resolved and she posed a question to the Board on this point that can only be characterized as disrespectful. She subsequently walked out of the PHC without explanation or notice while it was still in progress and while the Board was reading from an earlier Order to all in attendance.

The Board trusts that these observations concerning one representative's hearing room behavior will be of assistance to the other parties, participants and members of the public who were present and who all comported themselves with the customary respect provided for the Board and for those who adjudicate on its behalf.

[7] As for the balance of matters to be resolved during the Board's PHC, the Member noted that it granted participant status to a group of residents at the November 2015 PHC that supports the City's OPA and ZBAs (represented by Lindsay Lorimer). This as-yet unnamed group will be granted party status if sought and when it incorporates itself. Today, Counsel Stephen Bradley for the City advised the Board that although this group was not present, its support for the City's instruments continues and the group's representative will attend the July 2016 PHC.

[8] As some of the counsel-represented appellants are engaged in ongoing discussions with the City in efforts to resolve and/or settle their site-specific appeals (confirmed at the last PHC as confirmed by the respective parties' counsels), the Board determined that there was merit in adjourning some of these appeals *sine die* and without prejudice. Accordingly, the Board adjourned the site-specific appeals of RioCan Holdings (Sunnybrook) Inc., White Bell Investments Limited and Duffmits Holdings Inc., Bateg Investments Ltd. And Upper Village Investments Ltd. and 2401 Eglinton Avenue West Ltd. at the last PHC.

[9] At the last PHC, CORRA's representative expressed concern with a deficient City notice for the previous Board proceedings, which the City acknowledged occurred. The Board advised the parties that the matter of sufficient 'Notice' is the underpinning of the Board's proceedings. Accordingly, the Board determined that the City should give notice of today's PHC and the 2016 hearing dates. The Board provided time at the last PHC for CORRA's representative and the City's counsel to agree on a suggested way forward. As a result of their discussion and on consent, the Board ordered the City to once more give notice that includes the following items: the effect of the OPA and

ZBAs; an electronic link to the planning report; and the dates, times and locations of today's PHC as well as the May 2016 hearing.

[10] At today's PHC, the Board was pleased to receive from the City a photocopy of the City's public notice entitled "Eglinton Connects Planning Study Area: Amendments to City of Toronto Official Plan and Zoning Regulations – Notice of OMB Prehearing Conference on January 22, 2016" to show that the City had circulated its notice in mid-January. In response to that notice, several dozen residents attended today's Board-led PHC. The Board determined that while notice was sent only recently, the matter of 'notice' is settled for three reasons:

1. The City has complied with the Board's Order to serve notice;
2. A hearing of CORRA's appeal of Zoning By-law No. 1031-2014 (as the sole appellant) will not occur until May 2016 (and only if the Board determines that CORRA has not abandoned its appeals);
3. The balance of its appeals and those of the other parties will be moved back to late-November 2016 on consent; and
4. There is more than sufficient time for parties to pursue settlements, to scope planning issues and to prepare for future hearings.

[11] In any event, the matter of 'notice' is resolved and the Board will not permit CORRA or its representative to raise this settled matter of public notice and public consultation in any subsequent Board proceedings should this party be permitted to pursue its appeals following the Board's ruling on its motion.

[12] Also at the last PHC, Counsel Daniel Artensosi replaced an earlier counsel for 346-350 Eglinton Avenue West Holdings Ltd. and 352-356 Eglinton Avenue West Holdings Ltd. and he continues to represent these two appellants in their appeals. Mr. Artensosi explained that Terranata Developments Inc. is the developer of these two

properties, which are Holding Companies. Although appellants to the zoning matter (Board File PL141112), these two numbered companies filed a motion with the Board seeking party status in the OPA 253 appeals as well. The Board considered this motion and the arguments made on behalf of these appellants and the City and it ruled orally that it would grant consolidation of these appeals. The reasons for that ruling were made orally with more comprehensive reasons left on the Board's file should either Mr. Bradley or Mr. Artenosi wish to review these.

[13] The Board's decision to consolidate those appeals is reflective generally of the fluid and evolving nature of the previous PHCs as parties and participants continue identify themselves in advance of the future hearing into OPA 253 and the two ZBAs, such as the identification of a new residents' group in November 2015 that supports the instruments and RioCan's request at today's PHC to have a possible future appeal consolidated with these matters, to which the City does not object. As Mr. Bradley explained to the Board at today's PHC, the City has received a rezoning application for 660 Eglinton Avenue East, a property owned by RioCan. As RioCan is a party to these proceedings, the Board determined on consent that should RioCan refer its site-specific application to the Board, the Board will consolidate that matter in the months ahead just as it has consolidated the appeals of Mr. Artenosi's clients for the efficient use of the Board's processes and hearing time.

[14] Also at today's hearing, to enhance the availability of public information regarding notice of OPA 253 and Zoning By-laws Nos. 1030-2014 and 1031-2014 and to ensure the transparency of the Board's processes for those members of the public who were attending for the first time, the Board directed in advance of today's PHC that the City send one of its planners associated with the subject Study Area and the proposed planning instruments to the Board to present an information session at today's PHC. City Planner Brian Gallagher kindly presented his overview of OPA 253 and the facilitating By-laws to all parties, participants and residents in attendance. The presentation was followed by a question and answer session that the Board facilitated. Residents appreciated the information and overview and all were invited to provide their

contact information – and to furnish this information to Mr. Bradley – in order to receive current and future information from both the City and the Board related to these appeals.

[15] Next, Mr. Bradley explained that ongoing discussions are continuing between the City and the parties so that more time is required than the span of time leading to the May 2016 hearing permits. The Board is encouraged that settlement discussions are ongoing with the counsel-represented appellants in respect of these appeals and accordingly, the Board granted Mr. Bradley's two requests: 1) the Board will not require a consolidated issues list to be submitted by the parties at this time and 2) on consent, the Board also grants the parties' request – also made through the City – to move the May 2016 hearing dates for the appellants to a three-week hearing commencing in late-November 2016. The Board determines that to make the most efficient use of its hearing processes, the Board should retain five consecutive days from among the three assigned weeks in May 2016 to adjudicate CORRA's appeal of the City's transit-focused Zoning By-law No. 1031-2014 if these are permitted to proceed, especially since CORRA is the sole appellant to this ZBA as stated.

[16] If the Board determines that CORRA has not abandoned its appeals, the City and CORRA are directed to **notify the Board of their agreed upon dates for hearing on or before Friday, February 19, 2016**. CORRA is then directed to enumerate its planning issues related to this By-law as well as to identify how it intends to establish this evidence and through which witness or witnesses as a Procedural Order requires – and to furnish this information to the City's counsel Mr. Bradley so that the two parties might submit these materials including appropriate dates for the meeting of experts and the exchange of witness statements therein. Copies must be provided to the Board in advance. As always, the Board will make the final determination as to what issues will be adjudicated and the weight to be attributed to these at the full hearing into CORRA's appeal of Zoning By-law No. 1031-2014 in May 2016 (should it proceed). At this time and as requested by Mr. Bradley, the Board is also willing to retain several of the remaining May 2016 dates for the other parties should they elect to pursue mediation at

the Board. Formal notice of a request for mediation assessment must be made to the Board separately from today's PHC.

[17] CORRA's representative requested an amendment be made to text contained in the Board's Order that issued July 6, 2015. Page 5 paragraph [3] is amended to read as follows: "Ms. Denny advised the Board that she would relay this information to William Roberts, the Chair of CORRA. This was acceptable to the Board."

[18] The revised dates for a later 2016 hearing will provide more time for the City to continue its settlement discussions with the counsel-represented parties such that it might result in full or partial settlements or a reduction of planning issues. Mr. Bradley noted that there might be further zoning appeals arising in the coming months, which he suggested the Board might wish to consolidate with these current appeals, enabling the Board to schedule segmented hearing dates. Given that there will also be a City Council meeting in mid-July 2016, the Board agrees to schedule administratively a further one-day PHC during the last two weeks of July 2016. The Board's case coordinator will contact the parties with the available dates for a PHC to commence on the appointed date at 10 a.m. at the Board.

[19] At today's PHC, the Board established dates for the full hearing to commence on **Monday, November 21, 2016 at 10 a.m. and end on or before December 9, 2016** at:

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

[20] The Member remains seized for administrative carriage of the files.

"R. Rossi"

R. ROSSI
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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