

Ontario Municipal Board
Commission des affaires municipales
de l'Ontario



ISSUE DATE: February 13, 2017

CASE NO.:

PL151191

PROCEEDING COMMENCED UNDER subsection 34(11) of the *Planning Act*, R.S.O. 1990, c. P.13, as amended

Applicant and Appellant:	Widmer-Adelaide Corp. & Widmer Residences Corp.
Subject:	Application to amend Zoning By-law No. 438-86 – Neglect of the City of Toronto to make a decision
Existing Zoning:	Reinvestment Area (RA) – Zoning By-law No. 438-86 Commercial Residential Employment (CRE) – Zoning By-law No. 569-2013
Proposed Zoning:	Site Specific to permit proposed use
Purpose:	To permit a 51-story mixed-use building
Property Address/Description:	30 Widmer St. & 309-315 Adelaide St. W.
Municipality:	City of Toronto
Municipality File No.:	14 235297 STE 20 OZ
OMB Case No.:	PL151191
OMB File No.:	PL151191
OMB Case Name:	Widmer-Adelaide Corp. v. Toronto (City)

Heard: February 1, 2017 by telephone conference call

APPEARANCES:

Parties

Widmer-Adelaide Corp. (“Widmer”) and Widmer Residences Corp.

City of Toronto (“City”)

Counsel

C. MacDougall

R. Kallio

10 Widmer Street Limited
12 Widmer Street Limited
14 Widmer Street Limited
16 Widmer Street Limited
1579761 Ontario Inc.
Claireville Holdings Group
("Claireville")

M. Melling/K. Beckman

**MEMORANDUM OF ORAL DECISION DELIVERED BY BLAIR S. TAYLOR ON
FEBRUARY 1, 2017 AND ORDER OF THE BOARD**

INTRODUCTION

[1] On or about July 5, 2016, the Board set a 10 day hearing to commence on March 20, 2017 concerning the development application by Widmer for the lands located at the corner of Widmer Street and Adelaide Street West in the City.

[2] On or about January 24, 2017, the Board was requested to schedule a Pre-Hearing Conference ("PHC") by telephone conference call for the purpose of establishing a Procedural Order for the imminent hearing on the merits.

[3] The Board held the PHC on February 1, 2017 and heard submissions with regard to a revised draft Procedural Order (Exhibit 2 – the track changes version).

[4] The Board approved a revised version of Exhibit 2 for the reasons set out below.

DECISION

[5] The Board will approve a revised version of Exhibit 2 as the Procedural Order setting out the requirement that Widmer will deliver its revised set of drawings on or before February 13, 2017, and thereafter there will be a staggered exchange of witness statements.

[6] Exhibit 2 shall be revised such that the following phrase: "...that specifically identify any written evidence to be relied upon", in paragraphs 13 and 15 will be deleted as the phrase is not found within the standard template of the draft procedural order.

[7] Paragraph 13 will also be revised to delete the brackets around the provision requiring the preparation of a Joint Document Book.

[8] Counsel for Widmer will forthwith revise Exhibit 2 in accordance with the Board's decision and provide it to all parties and upon consent of the parties, provide same to the Board for issuance by the Board (now appended to this decision as Attachment 1).

[9] This is the Order of the Board.

"Blair S. Taylor"

BLAIR S. TAYLOR
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

A constituent tribunal of Environment and Land Tribunals Ontario
Website: www.elto.gov.on.ca Telephone: 416-212-6349 Toll Free: 1-866-448-2248

ONTARIO MUNICIPAL BOARD

PROCEDURAL ORDER

PROCEEDING COMMENCED UNDER subsection 34(11) of the *Planning Act*, R.S.O. 1990, c.P.13 as amended

Applicant and Appellant:	Widmer-Adelaide Corp. & Widmer Residences Corp.
Subject:	Application to amend Zoning By-law No. 438-86 – Neglect of the City of Toronto to make a decision
Existing Zoning:	Reinvestment Area (RA) – Zoning By-law No. 438-86 Commercial Residential Employment (CRE) – Zoning By-law No. 569-2013
Proposed Zoning:	Site-Specific to permit proposed use
Purpose:	To permit a 48-storey mixed-use building
Property Address/Description:	30 Widmer Street and 309-315 Adelaide Street West
Municipality:	City of Toronto
Municipality File No.:	14 235297 STE 20 OZ
OMB Case No.:	PL151191
OMB File No.:	PL151191
OMB Case Name:	Widmer-Adelaide Corp. vs. Toronto (City)

The Board orders that:

1. The Board may vary or add to this Order at any time either on request or as it sees fit. It may amend this Order by an oral ruling or by another written Order.

Organization of the Hearing

2. The hearing will begin on Monday, March 20, 2017 at 10:00 a.m. at the Ontario Municipal Board, 655 Bay Street, 16th Floor, in the City of Toronto. All parties and participants shall attend the first day of the hearing.
3. The length of the hearing will be about ten (10) days. The length of the hearing may be shortened as issues are resolved or settlement is achieved.

4. The parties and participants identified at the prehearing conference (see Attachment 3 for the meaning of these terms) are listed in Attachment 1 to this Order.
5. The Issues are set out in the Issues List attached as Attachment 2. There will be no changes to this list unless the Board permits it. A party who asks for changes may have costs awarded against it.
6. The order of evidence shall be as set out in Attachment 4 to this Order. The Board may limit the amount of time allocated for opening statements, evidence in chief (including the qualification of witnesses), cross-examination, evidence in reply and final argument. The length of written argument, if any, may be limited either on consent or by Order of the Board.

Requirements Before the Hearing

7. All parties and participants (or their representatives) shall provide a mailing address, email address, and telephone number to the Board. Any such person who retains a representative (legal counsel or agent) subsequent to the prehearing conference must advise the other parties and the Board of the representative's name, mailing address, email address and phone number.
8. A party who intends to call witnesses, whether by summons or not, shall provide to the Board, the other parties and to the municipal Clerk a list of the witnesses and the order in which they will be called. This list must be delivered no later than 45 calendar days (February 3, 2017) before the hearing. For expert witnesses, a party is to include a copy of the curriculum vitae and the area of expertise in which the witness is proposed to be qualified.
9. Widmer will deliver its revised set of architectural drawings to the Board and the parties on or before February 13, 2017.
10. An expert witness shall prepare an expert witness statement that shall include: an acknowledgement of expert's duty form, the area(s) of expertise, any reports prepared by the expert, and any other reports or documents to be relied on at the hearing. Copies of this must be provided as in sections 13 or 15, as applicable. 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.
11. A participant or witness must provide to the Board and the parties a participant or witness statement on or before Monday, February 27, 2017 or the participant may not give oral evidence at the hearing, subject to Section 15.
12. 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 and his or her area of expertise, as in sections 13 or 15, as applicable.
13. On or before Monday, February 27, 2017, the parties, other than Claireville *et al.*, shall provide copies of their expert witness statements to the other parties. The parties shall prepare a Joint Document Book by March 8, 2017, which Document Book will be filed with the Board on the first day of the hearing. A paper copy of any document proposed

to be entered into evidence relied upon shall be provided at the hearing unless ordered otherwise by the presiding Member.

14. On or before Monday, February 27, 2017, the parties, other than Claireville *et al.*, shall provide copies of their visual evidence to all of the other parties. If a model is proposed to be used the Board must be notified before the hearing. All parties must have a reasonable opportunity to view it before the hearing.
15. On or before Monday, March 6, 2017, Claireville *et al.* shall provide copies of its expert witness statements to the other parties.
16. On or before Monday, March 6, 2017, Claireville *et al.* shall provide copies of its visual evidence to the other parties. If a model is proposed to be used the Board must be notified before the hearing. All parties must have a reasonable opportunity to view it before the hearing.
17. Parties, not including Claireville *et al.*, may provide to all other parties a written response, including any additional visual evidence, to any written and/or visual evidence no later than March 13, 2017 after the evidence is received.
18. If any written evidence is specifically identified in a witness statement, but is not publicly available, it shall be provided forthwith to any party requesting same.
19. A person wishing to change written evidence, including witness statements, must make a written motion to the Board in accordance with the Board's Rules [34 to 38].
20. A party who provides written evidence of a witness to the other parties must have that witness attend the hearing to give oral evidence, unless the Board and the parties are notified at least seven (7) days before the hearing that the written evidence is not part of their record.
21. Documents may be delivered in person, by courier, by facsimile or registered or certified mail, or by email or otherwise as the Board may direct. The delivery of documents by fax and email 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.
22. 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
LIST OF PARTIES AND PARTICIPANTS

Parties:

1. Widmer Residences Corp. and Widmer-Adelaide Corp. ("Widmer")
2. City of Toronto
3. Claireville Holdings Limited
1579661 Ontario Inc.
16 Widmer Street Limited
14 Widmer Street Limited
12 Widmer Street Limited
10 Widmer Street Limited ("Claireville *et al.*")

Participants:

1. Max Allen, Urbanspace Property Group Ltd.

ATTACHMENT 2

LIST OF ISSUES

Widmer

1. Does the proposed development, as reflected in the April 5, 2016 ZBLA resubmission to the City, appropriately address the following:
 - (a) Provincial Policy Statement 2014 (PPS), in particular Policy 1;
 - (b) Growth Plan for the Greater Golden Horseshoe (2006, consolidated 2013), in particular Section 2.1, 2.2.2(1), and 2.2.3(6) and (7);
 - (c) City of Toronto Official Plan, in particular Sections 2.2, 2.3.1, 2.4, 3.1.2, 3.1.3, and 4.7;
 - (d) The King-Spadina Secondary Plan, as amended by Official Plan Amendment No. 2, under appeal, (the King-Spadina Secondary Plan Review) and the King-Spadina East Precinct Built Form Study; and
 - (e) The Tall Building Design Guidelines (2013) and the Downtown Tall Buildings: Visions and Supplementary Design Guidelines;

and otherwise represents good planning such that the proposed development is in the public interest.

City of Toronto

1. Does the proposed development conform to the policies of the City of Toronto Official Plan, particularly as they relate to Sections 2.2.1 – Downtown: The Heart of Toronto and 3.1 – The Built Environment, among others?
2. Does the proposed development conform to the policies of the King-Spadina Secondary Plan and respond appropriately to the emerging directions of the King-Spadina Secondary Plan Review and King-Spadina East Precinct Built Form Study, particularly as they relate to tower placement and built form?
3. Does the proposed development conform to Heritage policies within the Official Plan and King-Spadina Secondary Plan, particularly with regards to adjacency issues, and respond appropriately to the emerging directions of the King-Spadina Heritage Conservation District?
4. Does the proposed development respond appropriately to the intent of the City of Toronto Consolidated Tall Building Design Guidelines and the King-Spadina Urban Design Guidelines when read in concert with the Official Plan and Secondary Plan policies to further the city planning goals of the City of Toronto?

5. Does the proposed development represent good planning in regard to:
 - (a) is the site large enough to accommodate a tall building?
 - (b) is the height, massing, tower stepbacks and separation distances, scale and density of the proposed development appropriate for the site?
 - (c) whether the proposed development adequately limits impacts to light, view and privacy?
 - (d) whether the proposed development enhances the public realm, particularly given that there is a demand for open space in the King-Spadina East Precinct?
 - (e) is the amount of proposed outdoor amenity space sufficient?
 - (f) whether the proposed amount of non-residential gross floor area is sufficient to meet the intent of the King-Spadina Secondary Plan's major objective to promote employment uses within the area as a priority?
6. Is the proposed vehicular parking supply sufficient?
7. What are the appropriate Section 37 benefits to be secured in the Zoning By-law amendment application?

Claireville Holdings Inc. et al.

1. Does the application conform with the Built Form policies of the City's Official Plan?
2. Are the proposed height, massing and design appropriate and compatible with the surrounding block and area context; including existing, approved and potential developments?
3. Is the proposed height, massing and design appropriate and compatible with the site context, specifically including the properties at 10 – 20 Widmer Street that are Listed on the City of Toronto Inventory of Heritage Properties, and overall redevelopment potential of 10 – 20 Widmer Street?
4. Is the proposed tower separation adequate, specifically in considering the redevelopment potential of 8 – 20 Widmer Street?
5. Does the proposal provide appropriate setbacks, including with respect to the properties at 10 – 20 Widmer Street that are Listed on the City of Toronto Inventory of Heritage Properties, and the redevelopment potential of 10 – 20 Widmer Street?
6. What agreements, financial arrangements and design and technical features are required to ensure equitable, practical and compatible functionality with redevelopment of 8 – 20 Widmer Street?

General:

The identification of an issue on the Issues List is intended to provide notice to all parties that a party will lead evidence and/or argument on the matter. This identification does not serve as an acknowledgment of relevancy; merely notice that a party may seek to establish the issue's relevancy.

The identification of a change to the Issues List does not constitute an admission by the opposing party that the revised issue is relevant, it is only an indication that the identifying party will seek to demonstrate the relevance of the revised issue to the matters before the Board.

ATTACHMENT 3

MEANING OF TERMS 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 must 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.

ATTACHMENT 4

ORDER OF EVIDENCE:

In-Chief:

1. Widmer Residences Corp. and Widmer-Adelaide Corp. ("Widmer")

Cross-Examination:

- (a) City of Toronto
- (b) Claireville Holdings et. al. ("Claireville")

Re-examination:

- (c) Widmer

2. City of Toronto

Cross-Examination:

- (a) Claireville
- (b) Widmer

Re-examination:

- (c) City of Toronto

3. Claireville Holdings Inc. et. al.

Cross-Examination:

- (a) Widmer (which cross-examination shall be after the City if the City is in support of the Widmer proposal)
- (b) City of Toronto

Re-examination:

- (c) Claireville

4. Max Allen

Cross-Examination:

- (a) Widmer
- (b) City of Toronto

(c) Claireville

REPLY:

1. Widmer

Cross-Examination:

(a) City of Toronto

(b) Claireville

Re-examination:

(c) Widmer.