

Ontario Municipal Board
Commission des affaires municipales
de l'Ontario



ISSUE DATE: December 14, 2016

CASE NO(S): PL160613

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

Applicant and Appellant:	2090416 Ontario Inc.
Subject:	Application to amend Zoning By-law No. 439-36- Refusal or neglect of City of Toronto to make a decision
Existing Zoning:	Industrial 1 Density 3
Proposed Zoning:	Residential Mixed Use Site Specific (To be determined)
Purpose:	To permit a hotel and accessory uses in the podium level, a residential component above and street related commercial and a restaurant
Property Address/Description:	99 Sudbury St.
Municipality:	City of Toronto
Municipality File No.:	14 135661 STE 18 OZ
OMB Case No.:	PL160613
OMB File No.:	PL160613
OMB Case Name:	2090416 Ontario Inc. v. Toronto (City)

Board Rule 107 states:

107. Effective Date of Board Decision A Board decision is effective on the date that the decision or order is issued in hard copy, unless it states otherwise.

Pursuant to Board Rule 107, this decision takes effect on the date that it is e-mailed by Board administrative staff to the clerk of the municipality where the property is located.

Heard: October 24, 2016 in Toronto, Ontario

APPEARANCES:**Parties****Counsel**

2090416 Ontario Inc.

K. Kovar and L. Dean

City of Toronto

J. Braun

2029769 Ontario Inc.

D. Bronskill

**MEMORANDUM OF ORAL DECISION OF THE BOARD DELIVERED BY
JAMES R. McKENZIE ON OCTOBER 24, 2016 AND ORDER OF THE BOARD**

INTRODUCTION

[1] This Prehearing Conference is the first proceeding convened with respect to the appeal filed by 2090416 Ontario Inc. (“Applicant/Appellant”) with respect to a property it owns known municipally as 99 Sudbury Street (“subject property”). The Applicant/Appellant submitted a rezoning application, described below, to facilitate the redevelopment of the subject property. The Council of the City of Toronto (“City”) failed or neglected to make a decision on that application within a statutory time period, leading to the appeal.

BACKGROUND AND CONTEXT

[2] The subject property is generally located south and west of Queen Street West and Dovercourt Road, bounded by Sudbury Street on the north and the Lower Galt Subdivision Rail Line on the south. Its surroundings are commonly referred to as the West Queen West Triangle. It is designated “Regeneration Area” in the City’s Official Plan, a designation that represents, first, the evolving nature of the physical context within which the subject property is situated and, second, an opportunity for growth with a mix of commercial, residential, live/work, institutional, and light industrial land uses. It is also within the Garrison Common North Secondary Plan Area.

[3] The subject property is currently improved with a one- and two-storey commercial building.

[4] The Applicant/Appellant applied to amend the City's comprehensive zoning by-law to permit a mixed-use building consisting of 209 residential units, a 157-room hotel, and commercial uses. Its proposed height was 26-storeys (at 90 metres) and its proposed gross floor area was 27,974 square metres. Since that original submission, the Applicant/Appellant and the City have come to terms on a revised application, the details of which have been included in the required notice provided for the Prehearing Conference. Revisions to the original application include, among other things, a reduced building height (63.8 metres), a reduced gross floor area (21,970 square metres), and limits on the size of hotel event space and size of restaurants. The revised application will be the subject of the hearing on the merits of the appeal.

[5] 2029769 Ontario Inc. is the owner of 55 Sudbury Street, the property abutting the subject property to the east, on which is located a heritage designated building. Even with the revisions to the original application, it remains concerned about the proposed development. It seeks party status to address its concerns.

[6] Libby Groff is a resident in a nearby building. She seeks participant status to address the Board about the proposed development.

[7] No other interest appeared at the Prehearing Conference seeking status.

ORDER

[8] On consent, 2029769 Ontario Inc. is granted party status on the appealed matter.

[9] Also on consent, Libby Groff is granted participant status on the appealed matter.

[10] Finally, a hearing on the appealed matter is scheduled for: **May 15, 16, and 17, 2017**, commencing at **10 a.m. on May 15, 2017, at:**

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

[11] The hearing will proceed in accordance with the Procedural Order and Issues List appended to this decision as Attachment 1.

[12] No further notice is required.

[13] This panel is not seized.

“James R. McKenzie”

JAMES R. McKENZIE
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
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

ATTACHMENT 1

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:	2090416 Ontario Inc.
Subject:	Application to amend Zoning By-law No. 438-86 - Refusal or neglect of City of Toronto to make a decision
Existing Zoning:	Industrial 1 Density 3
Proposed Zoning:	Residential Mixed Use Site Specific (To be determined)
Purpose:	To permit a hotel and accessory uses in the podium level, a residential component above and street related commercial and a restaurant
Property Address/Description:	99 Sudbury Street
Municipality:	City of Toronto
Municipality File No.:	14 135661 STE 18 OZ
OMB Case No.:	PL160613
OMB File No.:	PL160613
OMB Case Name:	2090416 Ontario Inc. v. 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 May 15, 2017 at 10:00 a.m. at:

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

3. The length of the hearing will be **3 days**. The length of the hearing may be shortened as issues are resolved or settlement is achieved.
4. The parties and participants (see **Attachment 1** for the meaning of these terms) identified at the prehearing conference are listed in **Attachment 2** to this Order.
5. The Issues are set out in the Issues List attached as **Attachment 3**. 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 listed in **Attachment 4** to this Order.

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 and the other parties a list of the witnesses and the order in which they will be called. This list must be delivered **60 days** prior to the commencement of 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. 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 section 12. 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.
10. A participant must provide to the Board and the parties a participant statement by **30 days** prior to the commencement of the hearing or the witness or participant may not give oral evidence at the hearing.
11. 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 section 12.
12. On or before **30 days** prior to the commencement of the hearing the parties shall provide copies of their expert witness statements to the other parties. The parties shall prepare a Joint Document Book to be filed with the Board on the first day of the hearing. A paper copy of any document proposed to be entered into evidence or relied upon shall be provided at the hearing unless ordered otherwise by the presiding Member.
13. On or before **7 days** prior to the commencement of the hearing, the parties 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.
14. Parties may provide to all other parties a written response to any written evidence within **7 days** after the evidence is received.
15. 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.
16. A party who provides the 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 **7 days** before the hearing that the written evidence is not part of their record.
17. Documents may be delivered in person, by courier, by facsimile or registered or certified mail, 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 to 31 on this subject. Material delivered by mail shall be deemed to have been received **5 business days** after the date of registration or certification.

18. 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

Purpose of the Procedural Order and Meaning of Terms

Prehearing conferences usually take place only where the hearing is expected to be long and complicated. If you are not familiar with the hearing process you should prepare by obtaining the Guide to the Ontario Municipal Board, and the Board's Rules, from the Board Information Office, 15th Floor, 655 Bay Street, Toronto, M5G 1E5, 416-212-6349, or from the Board website at www.omb.gov.on.ca.

The parties should discuss the draft Procedural Order before the prehearing conference and identify the issues and the process they propose the Board order following the prehearing. The Board will hear submissions about the content of the Procedural Order at the prehearing.

Meaning of terms used 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 authorisation 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 may 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 2

LIST OF PARTIES AND PARTICIPANTS

PARTIES:

1. 2090416 Ontario Inc.

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Barristers and Solicitors
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2. City of Toronto

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3. 2029769 Ontario Inc.

David Bronskill
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Fax: 416.979.1234

PARTICIPANTS:

1. Libby Groff

12 Sudbury Street, Unit 1002
Toronto, ON M5J-3W7
E-mail: libby.groff@yahoot.ca
Tel: 416-456-9904

Attachment 3

ISSUES LIST FOR 2029769 Ontario Inc.

1. Does the proposal have appropriate regard to the matters of provincial interest set forth in section 2 of the Planning Act, including in particular, subsection (d)?
2. Is the proposal consistent with the Provincial Policy Statement (2014) and, in particular, policies 1.1.3.3, 2.6.1 and 2.6.3?
3. Does the proposal conform with the Growth Plan for the Greater Golden Horseshoe and, in particular, policies 2.2.3.6, 2.2.3.7 and 4.2.4?
4. Does the proposal conform with the City of Toronto Official Plan and, in particular, policies 3.1.1, 3.1.2, 3.1.3, 3.1.5, 4.7 and the policies of the Garrison Common Secondary Plan?
5. Does the proposal maintain the intent of the City of Toronto Tall Building Design Guidelines?
6. Does the proposal represent good planning in regard to:
 - a. the provincial and municipal policy framework identified in this issues list;
 - b. the height of the proposed tower as it relates to fit the existing and planned context, including the adjacent property;
 - c. the height, massing and scale of the proposed podium as it relates to fit with the existing and planned context, including the adjacent property;
 - d. built form transition in relation to the scale and character of the surrounding area, including the adjacent property; and,
 - e. contribution to an improved public realm on Sudbury Street?
7. Does the proposal appropriately conserve the listed heritage property located at 55 Sudbury Street and does it respect the scale, character and form of the listed heritage building?
8. Has the proposed development been satisfactorily evaluated to demonstrate that the heritage attributes of the listed heritage property located at 55 Sudbury Street will be conserved?
9. Is the proposed location of the vehicular access appropriate, having specific regard to the adjacent listed heritage property and the existing driveway access? In particular, and without limiting the foregoing, should it be designed to enable coordinated access as suggested by Policy 3.1.2.2 of the City of Toronto Official Plan?

10. If approved by the Board, are the form and content of the proposed Zoning By-law Amendment appropriate?

Attachment 4

ORDER OF EVIDENCE

1. 2090416 Ontario Inc.
2. City of Toronto
3. 2029769 Ontario Inc.
4. Participants
5. 2090416 Ontario Inc. (Reply)