

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



**ISSUE DATE:** May 03, 2018

**CASE NO(S):** PL170820  
PL160685

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

Applicant and Appellant:	Portland Property Spadina Inc.
Subject:	Application to amend Zoning By-law Nos. 438-86 - Neglect of the City of Toronto to make a decision
Existing Zoning:	Reinvestment Area
Proposed Zoning:	Site specific to permit proposed development
Purpose:	To permit the application to construct a 20-storey, commercial office development with ground floor retail on the eastern portion of the site and retain the existing heritage building in its entirety on the western portion
Property Address/Description:	49 Spadina Avenue
Municipality:	City of Toronto
Municipality File No.:	17 122573 STE 20 OZ
OMB Case No.:	PL170820
OMB File No.:	PL170820
OMB Case Name:	Portland Property Spadina Inc. v. Toronto (City)

**PROCEEDING COMMENCED UNDER** subsection 37 of the *Ontario Municipal Board Act*, R.S.O. 1990, c. O. 28, as amended, and Rule 33 of the Board’s Rules of Practice and Procedure

Requested by:	Portland Property Spadina Inc.
Request for:	Request for Directions

**Heard:** February 27, 2018 in Toronto, Ontario

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

Portland Property Spadina Inc.

E. Costello

City of Toronto

S. Haniford, M. Longo, P. Etemadi

City Front Developments Inc.

D. Bronskill

**MEMORANDUM OF ORAL DECISION DELIVERED BY C. CONTI ON  
FEBRUARY 27, 2018 AND ORDER OF THE TRIBUNAL**

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**INTRODUCTION**

[1] This is the decision resulting from a pre-hearing conference (“PHC”) before the Ontario Municipal Board (“Board”), now the Local Planning Appeal Tribunal (“Tribunal”), for an appeal by Portland Property Spadina Inc. (“Appellant”) against the failure of the City of Toronto (“City”) to make a decision regarding a proposed Zoning By-law amendment to permit the construction of a 20-storey office/commercial building at 49 Spadina Avenue, Toronto.

[2] Through a decision issued by Tribunal Member Sills on January 25, 2018; Re: *Developments Inc. v. Toronto (City)* 2018 Canlii 3071 (ON OMB) (Tribunal Case No. PL160685), regarding an appeal by City Front Developments Inc. related to an adjacent property, a motion for consolidation of this appeal with that by City Front Developments Inc. was scheduled to be heard at this PHC. Prior to the PHC, the Appellant filed motion materials according to the Board’s *Rules of Practice and Procedure* that the appeal be heard together with the appeal by the City Front Developments Inc., which is scheduled to begin on June 11, 2018.

[3] The motion was not opposed, but the City identified a number of terms upon which its consent was based (Exhibit 4). These include: that plans identifying an acceptable parkland configuration on the Appellant’s site be submitted by March 5, 2018, that any revised plans be provided by April 6, 2018, that 20 days be sufficient

time to hear both appeals, that the appeals are to be heard consecutively, that s. 37 of the *Planning Act* matters are not to form part of the hearing, and that the Issues List and the Procedural Order are to be finalized by March 29, 2018.

[4] Sharon Haniford stressed the need for the Procedural Order to be finalized by March 29, 2018 and referred to Member Sills' decision which indicated that based upon receipt of the finalized Procedural Order by March 29, 2018, it would be determined if the hearing on the merits could proceed on June 11, 2018. Member Sills was seized with the finalization and approval of the Procedural Order.

[5] The Appellant agreed with the conditions identified by the City and raised no concerns about meeting the identified dates for filing materials and finalizing the Issues List and Procedural Order.

[6] After hearing the submissions, the Tribunal allowed the motion and directed that the appeals are to be heard together. The Tribunal's Order directing that the appeals be heard together was conditional upon the dates identified in the City's terms being met by the Appellant.

[7] David Bronskill requested party status on behalf of City Front Developments Inc. in the appeal by Portland Property Spadina Inc. The request was granted by the Tribunal on consent.

[8] Subsequent to the PHC, the Tribunal received separate Procedural Orders for the Appellant's appeal PL170820 and for the appeal of City Front Developments Inc. PL160685, both of which have the consent of the parties. The Procedural Order for the City Front Developments Inc. was filed according to the required timelines and has been approved by Member Sills. It will be issued under separate cover.

[9] The Tribunal has reviewed the Procedural Order for the appeal by Portland Property Spadina Inc. and understands that the City's conditions for filings were met. The Tribunal adopts the Procedural Order which is included with this decision as

Attachment 1.

[10] The appeal by Portland Property Spadina Inc. will be heard together with the appeal by City Front developments Inc. **commencing on June 11, 2018 at 10 a.m. at:**

**Local Planning Appeal Tribunal  
655 Bay Street, 16th Floor  
Toronto, ON**

[11] The above is the direction and Order of the Tribunal.

*“C. Conti”*

C. CONTI  
VICE-CHAIR

If there is an attachment referred to in this document,  
please visit [www.elto.gov.on.ca](http://www.elto.gov.on.ca) to view the attachment in PDF format.

**Local Planning Appeal Tribunal**  
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Website: [www.elto.gov.on.ca](http://www.elto.gov.on.ca) Telephone: 416-212-6349 Toll Free: 1-866-448-2248

**ATTACHMENT 1****LOCAL PLANNING APPEAL TRIBUNAL**

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

OMB Case Name:	Portland Property Spadina Inc. v. Toronto (City)
Applicant and Appellant:	Portland Property Spadina Inc.
Subject:	Application to amend Zoning By-law No. 569-2013 and Zoning By-law 438-86 – Neglect of City of Toronto to make a decision
Existing Zoning:	Reinvestment Area
Proposed Zoning:	Site specific to permit proposed development
Purpose:	To construct a 20-storey, commercial office development with ground floor retail on the eastern portion of the subject property and retain the existing heritage building in its entirety on the western portion
Property Address/Description:	49 Spadina Avenue
Municipality:	City of Toronto
Municipality File No.:	17122573 STE 20 OZ
OMB Case No.:	PL170820
OMB File No.:	PL170820

**PROCEDURAL ORDER**

The Tribunal orders that:

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

**Organization of the Hearing**

2. The hearing will begin on June 11, 2018 at 10 am at the offices of the Local Planning Appeal Tribunal at 655 Bay Street (16<sup>th</sup> Floor) in Toronto.
3. This appeal will be heard together, through consecutive hearings, with the appeal of City Front Developments Inc. (PL160685) regarding 400 Front Street West. The hearing will begin with contextual fact evidence pertaining to both appeals, followed by the hearing of the appeal of City Front Developments Inc. regarding 400 Front Street West, and then the hearing of the appeal of Portland Property Spadina Inc. regarding 49 Spadina Avenue.
4. The length of the hearing of the two appeals will be twenty (20) days. The length of the hearing may be shortened as issues are resolved or settlement is achieved.
5. The parties and participants identified at the prehearing conferences are listed in Attachment B to this Order. The order of evidence is set out in Attachment C to this Order.
6. The issues are set out in the Issues List attached as Attachment D. There will be no changes to this list unless the Tribunal permits. A party that asks for changes to the Issues List in a manner other than permitted in this Order may have costs awarded against it,

except if the Issues List is modified through mediation or pursuant to a settlement between any of the parties.

7. A summary of key pre-hearing matters is included as Attachment A to this Order.

### **Requirements Before the Hearing**

8. All parties and participants (or their representatives) shall provide a mailing address, email address, and telephone number to the Tribunal. Any such person who retains a representative (legal counsel or agent) subsequent to the prehearing conference must advise the other parties and the Tribunal of the representative's name, mailing address, e-mail address and phone number.
9. The parties acknowledge that any further revisions to the plans for 49 Spadina Avenue may be grounds for a request to adjourn the hearing.
10. A party who intends to call witnesses, whether by summons or not, shall provide to the Tribunal, 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 on or before April 16, 2018. 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.
11. 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 to the other parties on or before May 4, 2018. 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 Tribunal may refuse to hear the expert's testimony.
12. Participants must provide a witness statement or a participant statement. It must be filed with the Tribunal and provided to the other parties and participants on or before May 4, 2018.
13. 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 on or before May 4, 2018.
14. On or before May 14, 2018, the parties may provide to the other parties a written reply to any expert witness statement (or expert report).
15. On or before May 23, 2018, the parties shall provide copies of their visual evidence upon which they will rely to all of the other parties. If a model is proposed to be used, the Tribunal must be notified before the hearing and all parties must have a reasonable opportunity to view it before the hearing.
16. The Parties shall prepare a Joint Document Book to be filed with the Tribunal on or before June 1, 2018 (7 days before the hearing commences). Two (2) paper copies must be filed with the Tribunal. All parties must be served with the Joint Document Book in paper or an accessible electronic format.
17. A person wishing to change written evidence, including witness statements, must make a written motion to the Tribunal in accordance with the Tribunal's Rules.

18. 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 Tribunal and the parties are notified at least 7 days before the hearing that the written evidence is not part of their record.
19. Documents may be delivered in person, by courier, by facsimile or registered or certified mail, by e-mail or otherwise as the Tribunal may direct. The delivery of documents by fax and email shall be governed by the Tribunal's Rules [7.10-7.13] on this subject. Material delivered by mail shall be deemed to have been received five business days after the date of registration or certification.
20. No adjournments or delays will be granted before or during the hearing except for serious hardship or illness. The Tribunal's Rules 17.01 to 17.05 apply to such requests.

**This Member is not seized.**

**So orders the Tribunal.**

**ATTACHMENT A**  
**SUMMARY OF DATES**

<b>DATE</b>	<b>EVENT</b>
April 16, 2018	Parties to exchange lists of witnesses (names, disciplines and order to be called)
May 4, 2018	Witness statements, Experts Reports, Participants Statements to be exchanged
May 14, 2018	Reply Witness Statements to be exchanged
May 23, 2018	Visual Evidence to be exchanged
June 1, 2018	Joint Document Book to be served
June 11, 2018	Hearing commences



**ATTACHMENT B**

**LIST OF PARTIES AND PARTICIPANTS**

**PARTIES**

1. **Portland Property Spadina Inc.**  
Eileen P.K. Costello & Laura Dean  
Aird & Berlis LLP  
Barristers and Solicitors  
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2. **City of Toronto**  
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City of Toronto  
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3. **City Front Developments Inc.**  
David Bronskill & Max Laskin  
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Email: [dbronskill@goodmans.ca](mailto:dbronskill@goodmans.ca)  
Tel: 416.597.4299  
Fax: 416.979.1234

**PARTICIPANTS**

None

**ATTACHMENT C**  
**ORDER OF EVIDENCE**

1. Contextual Fact Evidence Pertaining to 400 Front Street West and 49 Spadina Avenue  
[proceedings related to 400 Front Street West]
2. Portland Property Spadina Inc.
3. City Front Developments Inc.
4. City of Toronto
5. Portland Property Spadina Inc.(reply, if any)

## ATTACHMENT D

### ISSUES LISTS

#### City of Toronto

1. Is the Proposal consistent with the purposes of the *Planning Act* as set forth in Section 1.1, including subsections (b), (c) and (f)?
2. Does the Proposal have regard to matters of provincial interest set forth in section 2 of the *Planning Act*, including in particular subsections (d), (f), (h), (q) and (r)?
3. Does the Proposal conform with, and not conflict with, the Growth Plan for the Greater Golden Horseshoe (2017), including policies: 1.2.1, 2.2.2.4, 4.2.7 and 5.2.5.6?
4. Is the Proposal consistent with the Provincial Policy Statement (2014) including policies: 1.0, 1.1.1, 1.1.3.2, 1.1.3.3, 1.3.1, 1.5.1, 1.6.1, 1.6.6.1, 1.7.1, 2.0, 2.6 and 4.7?
5. Would approval of the Proposal have regarding to the information and material that the City Council received in relation to this matter?
6. Does the Proposal conform with and maintain the intent of:
  - a. the relevant Official Plan policies and provisions, including 2.2, 2.2.1, 2.2.1.3, 2.2.1.5, 2.2.1.6, 2.2.1.11, 2.4.14, 3.1.1, 3.1.2, 3.1.3, 3.1.5.3, 3.1.5.4, 3.1.5.5, 3.1.5.6, 3.1.5.21, 3.1.5.26, 3.1.5.32, 3.1.5.33, 3.2.2, 3.2.3, 4.7.2, 5.1.1, 5.2.1, 5.3.2, 5.6?
  - b. Secondary Plan policies (King-Spadina Secondary Plan – Chapter 6.16 of the Official Plan), including: 2.5, 3.3, 3.6, 4.1, 4.2, 4.3, 6.1, 7.1?
7. Does the Proposal meet the intent of:
  - a. the Tall Buildings Design Guidelines (May 2013), including, but not limited to : 1.3, 1.4, 1.6, 3.0, 3.1, 3.2, 4.1, 4.2?
  - b. the King-Spadina Urban Design Guidelines (2006), including, but not limited to: 2.4, 2.5, 3.0, 4.1, 4.1.1, 4.1.2, 4.1.3, 4.2.2, 4.2.3, 4.4, 4.5, 5.1, 5.2, 5.4?
  - c. the policy directions outlined in the City Planning staff reports entitled “King-Spadina East Precinct Built Form Study – Status Update” dated August 5, 2014 (endorsed by Council on August 25, 2014) and May 29, 2015 (endorsed by Council on July 7, 2015)?
  - d. Official Plan Amendment 352 (under appeal) and its implementing zoning standards (enacted by Council on October 5, 2016)?
  - e. the Draft Public Realm Strategy (August 5, 2014) as endorsed by Council on August 25, 2014?

- f. the June, 2017 King-Spadina Heritage Conservation District Plan (under appeal), as enacted by the City Council October 2, 2017?
  - g. the emerging policy direction as outlined in the TOcore Proposed Downtown Plan policies, in Attachment 1 to the report (August 18, 2017) from the Chief Planner and Executive Director, City Planning, requested by the City Council (October 2, 2017) to be considered during the evaluation of current and future development applications in the proposed Downtown Secondary Plan area?
8. Do the height and mass of the Proposal represent overdevelopment of the site, including that the Proposal does not establish an appropriate built form relationship to its existing and planned context, and its relationship to the public realm, the proposed Section 42 Parkland, and to abutting properties?
  9. Do the height and mass of the Proposal represent a standard of intensification that is inappropriate for the King-Spadina area, including facilitating a population density that is not conducive to the livability of the area for its existing and future residents?
  10. Do the height and mass of the Proposal cause undue adverse impact on considerations such as overlook and privacy, wind effects and loss of skyview?
  11. Does the Proposal have unacceptable shadow impacts on Clarence Square Park (25 Clarence Square)?
  12. Does the Proposal establish appropriate relationships at grade, including provision of an appropriate pedestrian realm, relationship to the proposed Section 42 Parkland, and contributions to public space?
  13. Does the Proposal establish an appropriate relationship to the proposed Section 42 Parkland?
  14. Does the Proposal incorporate appropriate zoning standards, including height, floorplate size, setbacks, step backs and separation distances as such separation distances relate to existing or potential development on adjacent lands?
  15. Are the height, density, mass and built form (including such matters as: the location, massing and height of the tower, location, massing and height of the podium, tower separation distances, floorplate size, setbacks, and location) of the Proposal appropriate?
  16. Does the proposed 20-storey tower conserve the listed heritage property on the west portion of the site (Steele Briggs Seed Building)?
  17. Does the Proposal respond appropriately to the June, 2017 King-Spadina Heritage Conservation District Plan (under appeal), as enacted by the City Council October 2, 2017?
  18. Does the Proposal provide for appropriate pedestrian access, pedestrian movement through the site, relationships to adjacent streets and neighbouring properties, and appropriate urban design?

19. Has the applicant demonstrated that adequate municipal services are in place to support the Proposal? Without limiting the generality of the foregoing, such considerations may include adequate sanitary sewage capacity, stormwater management measures and analysis of groundwater management measures?
- a. If the Proposal is allowed in whole or in part, should the Tribunal's Order be withheld until the applicant has
    - i. provided a Functional Servicing Report, Stormwater Management Report and Hydrogeological Report satisfactory to the Chief Engineer and Executive Director, Engineering and Construction Services in consultation with the General Manager, Transportation Services; and
    - ii. designed and provided financial securities for, any upgrades or required improvements to the existing municipal infrastructure identified in the accepted Functional Servicing Report, Groundwater Report, Stormwater Management Report, and Hydrogeological Report to support the development, all to the satisfaction of the Chief Engineer and Executive Director, Engineering and Construction Services in consultation with General Manager, Transportation Services, should it be determined that improvements or upgrades are required to support the development, according to the Functional Servicing Report, Groundwater Report, Stormwater Management Report, and Hydrogeological Study, accepted by the Chief Engineer and Executive Director, Engineering and Construction Services in consultation with General Manager, Transportation Services; and
    - iii. the Tribunal receives confirmation from the City Solicitor that the implementation of the Functional Servicing Report, Groundwater Report, Stormwater Management Report and Hydrogeological Report accepted by the Chief Engineer and Executive Director, Engineering and Construction Services in consultation with the General Manager, Transportation Services either does not require changes to the proposed amending by-laws or any such required changes have been made to the proposed amending by-laws to the satisfaction of the Chief Planner and Executive Director, City Planning, the City Solicitor and the Chief Engineer and Executive Director, Engineering and Construction Services, including amongst other matters;
  - b. Should the Tribunal not receive confirmation from the City Solicitor, should the Tribunal be spoken to as to what, if any, conditions are required to ensure adequate municipal services to support the Proposal, including provisions in any Zoning By-law Amendments and should the owner be required to enter into and register a financially secured agreement satisfactory to the City to construct, provide, make operational and warrant any such new and/or upgraded services and facilities?
20. In the event that the Tribunal allows the appeal in whole or in part, is the provision of facilities, matters and services in return for the increase in height and density pursuant to Section 37 of the Planning Act appropriate and, if so, what should they be?

21. In the event the City and the Applicant do not reach agreement in advance of the hearing on appropriate Section 37 Planning Act benefits, should such matters be left to be determined at a second phase of the hearing following a decision of the Tribunal on the remainder of the issues?
22. Are the form and content of the proposed Zoning By-law Amendment(s) appropriate? If the Appeal is allowed, in whole or in part, should the Tribunal's Order be withheld until such time as the City Solicitor confirms that the final form of the proposed Zoning By-law Amendments are acceptable, including the requirement for appropriate matters, services and facilities to be provided by the owner at its expense pursuant to section 37 of the *Planning Act* and any other matters necessary to support the development, to the satisfaction of the Chief Planner and Executive Director, City Planning Division and the City Solicitor, including repeal of any previous site-specific zoning for the lands?
23. Do the proposed Zoning By-law Amendment(s) represent good planning?

**City Front Developments Inc.**

1. Are the proposed setbacks at the southern, southeastern and eastern property lines appropriate?
2. Are the proposed setbacks at the southern, southeastern and eastern property lines appropriate?
3. Does the proposal provide for adequate separation distance from the buildings proposed for 400 Front Street West?