

**Ontario Municipal Board**  
Commission des affaires municipales  
de l'Ontario



**ISSUE DATE:** June 09, 2017

**CASE NO(S):** PL160771

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

Appellant: 100 Broadway Developments Inc.  
Appellant: 100 Ranleigh Inc.  
Appellant: 117 Broadway Holdings Inc.  
Appellant: 1330192 Ontario Inc.; and others  
Subject: Proposed Official Plan Amendment No. OPA 320

Municipality: City of Toronto  
OMB Case No.: PL160771  
OMB File No.: PL160771  
OMB Case Name: Akbari v. Toronto (City)

**Heard:** May 11, 2017 in Toronto, Ontario

**APPEARANCES:**

**Parties**

City of Toronto

20 Stonehill Inc.,  
25 St. Dennis Inc.  
90 Eastdale Inc.  
2 Secord Inc.  
H-M Apartment Moccasin Inc.  
Parkset Developments Inc.

100 Broadway Developments Inc.  
100 Ranleigh Inc.  
117 Broadway Holdings Inc.  
1330192 Ontario Inc.

**Counsel**

Kelly Matsumoto  
Nathan Muscat

Mark Flowers

Joe Hoffman

Bhushan and Rekha Taneja  
 Bathurst and Glencairn Square Limited  
 Nyx Capital Corp.  
 200 Keewatin Developments Ltd.  
 Spadina Towers Inc.  
 Heathwood Homes (Altamont) Limited  
 Salford Investments Ltd.  
 Nyx Capital Corp.  
 Pabs Corporation  
 Roehampton Apartments Limited  
 Pabs Limited Partnership  
 Worsley Dream Roncesvalles Limited  
 Partnership  
 Yonge Lawrence Dev. LP

2397623 Ontario Ltd.  
 2426684 Ontario Ltd.  
 Graywood Developments Ltd.,  
 2419732 Ontario Inc. and 2418832  
 Ontario Inc.  
 I2 Developments Inc.

Kelly Oksenberg

Adriano Molinari  
 245456 Ontario Inc.  
 Bernard Casser  
 Daniel Fabrizi  
 HGH Design Build  
 Vince Staltari

Russell D. Cheeseman

Babak Sarshar  
 2462529 Ontario Inc.

Ira Kagan

bcIMC Realty Corporation

Michael Foderick

Bentall Kennedy (Canada) LP

Not Present

BHI Group

Not Present

Building Industry and Land  
 Development Association  
 Minto Communities Canada Inc.  
 Minto Properties Inc.  
 Toronto District School Board  
 ("TDSB")

John Dawson

Canadian Propane Association

Jonathan Cheng

RioCan Real Estate Investment trust,  
RioCan Holdings Inc., RioCan  
Management Inc., and related entities  
Toronto Industry Network

CAPREIT Limited Partnership	Johanna Shapira
Confederation of Resident and Ratepayer Associations in Toronto ("CORRA")	Eileen Denny
Dunpar Developments Holdings Inc.	Annik Forristal
Edithvale-Yonge Community Association	George Belza
Emanuel Leca	Not present
Toma Group Limited	Not present
Fred Dominelli	Councillor Frank Di Giorgio
Greater Toronto Apartments Association	Christie Gibson
Leslie Mews Inc.	David Donnelly
Reza Akbari	Not present
Trans County Development Corporation, Conben Holdings Inc. ("Trans County")	Michael Connell
Ministry of Municipal Affairs	Janice Page Eric Hon
Swansea Area Ratepayers Group	Veronica Wynne

**MEMORANDUM OF ORAL DECISION DELIVERED BY H. JACKSON ON  
MAY 11, 2017 AND ORDER OF THE BOARD**

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[1] This was the first Prehearing Conference ("PHC") held for appeals of Official Plan Amendment ("OPA") 320. The purpose of OPA 320 is to update the "Healthy Neighbourhoods, Apartment Neighbourhoods, and Neighbourhood" policies as part of

the City of Toronto (“City”) five year Official Plan review. The City Council adopted OPA 320 on December 9 and 10, 2015. The Minister of Municipal Affairs approved OPA 320 with one modification on July 4, 2016. There were 57 appeals of this decision.

[2] At the commencement of this PHC there were requests for party and participant status, as discussed further below. There were three requests for participant status; David Matoc, Erin Lustic with respect of Appeal #5 by Fred Dominelli, and The Federation of North Toronto Residents Association, an unincorporated group, represented by Geoff Kettel. The Board granted participant status to the two individuals and the Federation of North Toronto Residents Association.

[3] The City, represented by Kelly Matsumoto and Nathan Muscat, agreed to keep an attendance record for the PHC, and also agreed to maintain an email list and to be the point of contact for the parties and participants for this matter as it unfolds.

### **CITY’S MOTION TO DISMISS**

[4] The City served a motion for an Order from the Board dismissing the appeals of numerous Appellants due to the failure of these persons or corporations to meet the statutory requirement to commence an appeal under s. 17(36) of the *Planning Act*.

[5] Section 17(36) states:

(36) Any of the following may, not later than 20 days after the day that the giving of notice under subsection (35) is completed, appeal all or part of the decision of the approval authority to the Municipal Board by filling a notice of appeal with the approval authority:

1. A person or public body who, before the plan was adopted, made oral submissions at a public meeting or written submissions to the council.
2. The Minister.
3. In the case of a request to amend the plan, the person or public body that made the request.

[6] Ms. Matsumoto indicated that following a file review there was no indication of these persons or corporations having made any submissions to City Council prior to the adoption of OPA 320, and there have been no claims that the City is mistaken in this assessment.

[7] The following are those Appellants subject to this motion:

- i. Adriano Molinari, Appeal #20
- ii. Ailing Wang, Appeal #50
- iii. 24254565 Ontario Inc., Appeal #13
- iv. Ali Aryana, Appeal #52
- v. Bernard Cassar, Appeal #12
- vi. BHI Group / Bijan Hedayatei, Appeal #54
- vii. Daniel Fabrizi, Appeal #18
- viii. Emanuel Leca, Appeal #8
- ix. Toma Group Limited, Appeal #55
- x. Mohanjit / Amrit Dhoot, Appeal #10
- xi. Nikolaos Kolinas, Appeal #19
- xii. HGH Design Build, Appeal #9
- xiii. Reza Akbari, Appeal #53
- xiv. Shahin Fard Saberi, Appeal #51
- xv. Vince Staltari, Appeal #7
- xvi. Pabs Limited Partnership, Appeal #22

- xvii. Salford Investments Ltd., Appeal #35
- xviii. CAPREIT Ltd. Partnership, Appeal #11
- xix. Spadina Towers Inc., Appeal #31

[8] The Board was previously advised that Appeal #10 by Mohanjit /Amrit Dhoot has been withdrawn. Mr. Hoffman, representing 100 Ranleigh Inc., appeal #29, indicated that this client was withdrawing his appeal. Mr. Hoffman advised that he would send a letter to the Board to that effect.

[9] There were responses to the City's motion requesting party status to the proceeding. These are dealt with in the sections below, where each entity did not oppose the motion, but requested party status in the alternative.

[10] The statutory requirement to be an appellant requires that previous submissions had been made. The persons/corporations subject to this motion are either not present or do not contest that no submissions were made. On the basis of a failure to meet the statutory requirement to commence an appeal under s. 17(36) of the *Planning Act*, the Board grants the motion by the City and orders the appeals of those persons/corporations as listed in paragraph 7 above are dismissed.

## **REQUESTS FOR PARTY STATUS**

### **1. CAPREIT Ltd. Partnership ("CAPREIT") Appeal #11**

[11] CAPREIT responded to the City's motion and filed a cross motion requesting party status to these appeals. CAPREIT is a large residential landlord, with ownership of 47 residential properties in the City. CAPREIT states that up until 2016, CAPREIT was not actively monitoring any planning initiatives in the City. However, since that time CAPREIT has started to develop a formal program to identify infill opportunities on its properties. CAPREIT filed a notice of appeal on July 21, 2016, which included, according to CAPREIT, "apparent land use planning grounds upon which the Board could refuse or approve part of OPA 320."

[12] CAPREIT pointed to s. 17(44.1) of the *Planning Act* for the circumstances in which the Board may add a person/public body as a party to a proceeding. The subsection indicates that “only the following may be added as parties”:

1. A person or public body who satisfies one of the conditions set out in subsection (44.2).
2. The Minister.
3. The appropriate approval authority.

[13] The conditions in s. (44.2) are as follows:

1. Before the plan was adopted, the person or public body made oral submissions at a public meeting or written submissions to the Council.
2. The Municipal Board is of the opinion that there are reasonable grounds to add the person or public body as a party.

[14] CAPREIT’s position is that there are reasonable grounds to be added as a party to this proceeding, as outlined in their response to the City’s motion; and in summary, CAPREIT’S position is that OPA 320 has policies that will affect their plans for infill on their properties.

**2. Spadina Towers Inc. (Appeal #31), Salford Investments Ltd. (Appeal #35), and Pabs Ltd. Partnership (Appeal #22)**

[15] These three entities, represented by Mr. Hoffman, filed a response to the City’s motion requesting party status in these appeals. These three entities indicate that they have reasonable grounds to be granted party status, and referenced the ‘six factors’ noted by Vice-Chair Stefanko (PL100058 issued on September 2, 2010) when assessing a request for party status. These are:

- a) Has an appeal already been filed in relation to the policy which is sought to be challenged?
- b) To what extent is the public interest advanced if party status is granted?
- c) What prejudice, if any, would be suffered by the municipality or another party to the proceeding?
- d) Does the person seeking party status have a direct interest in the policy?
- e) Will granting party status avoid a multiplicity of proceedings?
- f) What is the historical background of the policy sought to be challenged?

Mr. Hoffman submits that the consideration of these factors with respect to these three entities, as provided for in their response to the City's motion, supports his submission that these entities have a legitimate interest in the proceeding and should be granted party status.

### **3. Swansea Area Ratepayers Group ("SARG")**

[16] Veronica Wynne, Vice-president of SARG, filed a motion requesting party status in this matter. As provided by their submissions and motion material, SARG have been involved in the process which led to the approval of OPA 320, and are supportive of the City's position. Should there be mediation, SARG indicated that they would like to be involved as there are some areas where they would like improvements to be made.

### **4. Adriano Molinari (Appeal #20), 24254565 Ontario Inc. (Appeal #13), Bernard Cassar (Appeal #12), Daniel Fabrizi (Appeal #18), HGH Design Build (Appeal #9), Vince Staltari (Appeal #7)**

[17] The entities who filed the above appeals are clients of Mr. Cheeseman. These entities did not file a response to the City's motion but provided an oral response at this



PHC. Mr. Cheeseman acknowledged that none of these entities had made any prior submissions, but now request party status to these proceedings. His clients are small builders throughout the City and are concerned that some of the neighbourhood policies will make intensification difficult. Mr. Cheeseman also requested party status for Tony Calvano, who did not file an appeal, but is part of this group. Mr. Cheeseman stated that his clients wish to speak with one voice and intend to call a land use planner at an eventual hearing.

## 5. Others

[18] Ms. Oksenberg addressed the Board to indicate that she was representing four clients who were considering requesting party status to these proceedings, but had not yet determined if they wished to do so. These entities are as provided in Exhibit 8. Ms. Oksenberg was directed to file a motion in accordance with the Board's *Rules of Practice and Procedure* ("Rules") should these entities wish to have party status.

## ADDED PARTIES

[19] The City does not object to the request for party status from CAPREIT, Mr. Hoffman's clients, and SARG, however, the City requested that those entities that are granted party status agree to shelter under one of the existing appeals, and that in the scoping of their issues, they identify which policies of OPA that they are concerned with. The City states that these parties must agree to 'live or die' by the policies that they identify as issues, meaning that should those policies be settled, they would have no issue to shelter under at an eventual hearing.

[20] The City objects at the moment to the request for party status for Mr. Cheeseman's clients without the benefit of a written submission detailing the reasons upon which these entities are requesting status. The City indicated that this request could be dealt with at a future proceeding, possibly a telephone conference call ("TCC").

[21] CORRA, represented by Ms. Denny, indicated that CORRA does not support the

requests made for party status. She indicated that these entities did not make submissions in relation to the OPA prior to its adoption, and therefore, these entities are not eligible for status. She relies on s. 17(44) as referenced earlier, and also s. 17(50) and (50.1) of the *Planning Act*, for her position. Subsection 17(50) is provided below:

(50) Powers of O.M.B.—On an appeal or a transfer, the Municipal Board may approve all or part of the plan as all or part of an official plan, make modifications to all or part of the plan and approve all or part of the plan as modified as an official plan or refuse to approve all or part of the plan.

(50.1) Same— For greater certainty, subsection (50) does not give the Municipal Board power to approve or modify any part of the plan that,

a) is in effect; and

b) was not dealt with in the decision of council to which the notice of appeal relates.

[22] Ms. Denny objected to holding a future proceeding by TCC and indicated that it is her preference to have all proceedings in person for transparency.

[23] Ms. Denny filed a response to the City's motion for dismissal (Exhibit 9) and indicated that it is CORRA's position that additional notices of appeal should be dismissed.

[24] The Board directed that if CORRA wishes to have additional appeals dismissed, Ms. Denny must bring a motion to that effect in accordance with the Board's Rules, no later than May 26, 2017. Upon receipt of the motion the Board will determine the date and method for hearing the motion.

[25] The Board has jurisdiction to add parties to a proceeding if the Board is satisfied that there are reasonable grounds to add these entities as parties, pursuant to s. 17(44.2) of the *Planning Act*. The assessment of 'reasonable grounds', as provided by past decisions, is achieved by reviewing the 'six factors' as elucidated by Vice-Chair Stefanko and described above.

[26] The Board has considered the requests for party status, and upon review of each request in light of the 'six factors', the Board was satisfied that CAPREIT, Mr. Hoffman's clients, and SARG have a legitimate interest in the matter, and granted party status to these entities, subject to the caveats requested by the City. The Board deferred the request by Mr. Cheeseman's clients to a TCC to be held to deal only with that request. The Board expects a motion record to be served in accordance with the Board's *Rules and Practise and Procedure*.

## **SCOPING**

[27] Ms. Matsumoto indicated that the appeals that have been filed cover a wide range of locations and policies. She indicated that some appeals are site-specific but for the entirety of the OPA; and some are City-wide but only for sections of the OPA. She indicated that the City wishes to clarify what issues the various Appellants have, both to focus the hearing and to identify whether there are portions of the OPA that can be brought into force. Ideally, the scoping would specifically identify which policies and which properties are subject to the appeal notwithstanding the fact that many of the policies refer to each other and reinforce each other.

[28] The City requested that the Appellants provide to the City a letter that indicating the scope of their respective appeals by July 13, 2017. To assist in understanding the basis for the various appeals, the City committed to setting up a central drop box file that will contain all of the appeal letters so that the basis for each appeal can be determined by all.

## **CONCLUSION**

[29] The City requested a PHC in September at which time a draft Procedural Order could be provided. At this time, it is anticipated that the various parties with a like interest would be identified, and motions for partial approval could be made.

[30] The City also requested that hearing time be scheduled in about one year's time

from now, with the understanding that this would provide sufficient time for the parties to identify their respective issues, and for mediation of some of the issues to occur, if possible. There were concerns expressed by other counsel that setting a hearing date prior to the determination of the scope of the issues would be premature. The Board declined to set hearing dates at this proceeding.

[31] The Board scheduled a TCC to address the request for party status by Mr. Cheeseman's clients. This will be at **9 a.m. on Tuesday, June 13, 2017**. The call-in numbers are **416-212-8012 or 1-866-633-0848; code 4779874#**.

[32] The Board scheduled a further PHC on **Monday, September 18, 2017 at 10 a.m.** The PHC will be held at:

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

[33] I am seized of the TCC, but not of the PHC.

[34] The parties are directed to speak with Sandra Chan, Case Coordinator for this file, if they wish to pursue mediation.

[35] No further notice will be given.

*"H. Jackson"*

H. JACKSON  
MEMBER

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.

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