

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



**ISSUE DATE:** October 04, 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:** September 18, 2017 in Toronto, Ontario

**APPEARANCES:**

**Parties**

**Counsel/Representative\***

City of Toronto

Kelly Matsumoto  
Nathan Muscat

The Toronto Industry Network  
Canadian Propane Association  
RioCan Real Estate Investment Trust  
et. al.

Calvin Lantz

CAPREIT Limited Partnership

Johanna Shapira

Starlight Group Property Holdings  
Inc.

Aaron Platt

Graywood Developments Ltd.  
 605 609 613 Lawrence Ave. West  
 Inc. et. al.  
 i2 Developments Inc.  
 2397623 Ontario Ltd./ 2426684  
 Ontario Ltd.

Brad Teichman (Christopher Tanzola & Kelly  
 Oksenberg)

100 Broadway Developments Inc.  
 100 Ranleigh Inc.  
 117 Broadway Holdings Inc.  
 1330192 Ontario Inc.  
 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.  
 Pabs Corporation  
 Roehampton Apartments Limited  
 Pabs Limited Partnership  
 Worsley Dream Roncesvalles Limited  
 Partnership  
 Yonge Lawrence Dev. LP

Joe Hoffman

Ministry of Municipal Affairs

Janice Page  
 Claire Young

Adriano Molinari  
 2425456 Ontario Inc.  
 Bernard Casser  
 Daniel Fabrizi  
 HGH Design Build  
 Vince Staltari  
 Daniel Molinari  
 Tony Calvano

Russell Cheeseman

Greater Toronto Apartments  
 Association

Christie Gibson

Babak Sarshar  
 2462529 Ontario Inc.

Alexandra DeGasperis (for Ira Kagan)

Dunpar Developments Holdings Inc.

Mary Flynn-Guglietti

20 Stonehill Inc. C/O Preston Group	Mark Flowers
25 St. Dennis Inc. C/O Preston Group	
90 Eastdale Inc. & 2 Secord Inc. C/O Preston Group	
H-M Apartment Moccasin Inc.	
Parkset Developments Inc.	
Building Industry and Land Development Association	John A. R. Dawson and Dawn Jubbe* for TDSB
Minto Communities Canada Inc.	
Minto Properties Inc.	
Toronto District School Board ("TDSB")	
bcIMC Realty Corporation	Michael Foderick
Confederation of Resident and Ratepayer Associations in Toronto ("CORRA")	Eileen Denny*
Leslie Mews Inc.	David Donnelly
Trans County Development Corporation et. al.	Paul Chronis* (for Barnett Kussner/Michael Connell)
Fred Dominelli	Self-represented
David Matoc	Self-represented
Swansea Area Ratepayers Group	Veronica Wynne

**MEMORANDUM OF ORAL DECISION DELIVERED BY GERALD S. SWINKIN ON SEPTEMBER 18, 2017**

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[1] This hearing event was the second Pre-hearing Conference ("PHC") regarding this case. As noted in the disposition from the first PHC held on May 11, 2017 (disposition issued June 9, 2017), City of Toronto ("the City") Official Plan Amendment No. 320 ("OPA 320" or "the Amendment") effects a significant alteration to the Healthy Neighbourhoods, Apartment Neighbourhoods and Neighbourhoods policies in the City Official Plan ("OP").

[2] The Ministry of Municipal Affairs issued a Notice of Decision approving OPA 320 on July 4, 2016, which effected one modification to the document. That Notice of Decision attracted 57 in-time appeals, which are now before the Ontario Municipal Board (“the Board”).

[3] There were various items on the agenda for this PHC, which will be addressed in turn below.

### **Mediation**

[4] Kelly Matsumoto, counsel for the City, signified that the City had apparently taken up the suggestion of Board-led mediation with various parties and received a positive response. She advised the Board that the City would be amenable to Board-led mediation and requested that this panel convey that expression of interest to the Associate Chair. That has been done and it now lies with the City to map out a mediation proposal for consideration by the Board in accordance with the Board’s current mediation assessment protocol.

### **City Motion for Partial Approval of OPA 320**

[5] The City served and filed a Notice of Motion seeking partial approval of OPA 320. This step was the result of an extensive exercise, whereby the City went through each of the 57 appeals and analyzed those provisions of OPA 320 which were identified as the subject of the appeal and categorized whether the appeal was site-specific or on a City-wide basis. The appellants were asked to scope their appeals. In the course of conducting the exercise, the City was in contact with several of the appellants in order to clarify the true scope of the appeal and to narrow appeals where possible.

[6] This exercise was addressed in detail in the filed Affidavit of Gerry Rogalski, Senior Planner in the Strategic Initiatives, Policy and Analysis section of the City Planning Division. That affidavit contained the various scoping letters received as well

as a table of what were described as site-specific appeals of the whole OPA, of which there were fourteen.

[7] A key part of the affidavit was a copy of OPA 320 with highlighting of the text, which was under appeal. This made for very yellow pages. What was left consisted of bits and pieces of text, most of which was non-statutory introductory language. However, there were two new policy provisions and three parcels of land which were to be the subject of site and area specific policy.

[8] In coming to the Board with the motion, Ms. Matsumoto advised that this had been circulated to all parties and that she was not aware of any opposition by any party to the motion. The one exception to this was the late emergence of a position by CORRA in opposition. However, CORRA did not serve and file a Notice of Response to that effect. In fact, no party served and filed a Notice of Response.

[9] Thus, Ms. Matsumoto presumed, as a matter of course, that the Board would find favour with the motion and allow it. To her surprise, this panel of the Board expressed considerable reservations about rendering the requested partial approval. The concern of the Board was that, for the most part, the Amendment appeared to be an integrated document with common policy threads throughout it. There were philosophic connections between the introductory language and the policy text which was under appeal. Even though the introductory language may be taken, and treated, as relatively innocuous, it appeared to the Board that there may be a relationship amongst all of this language and that there was thus some potential dependency on all of it to be in effect. As such, it was the Board's initial apprehension that it was premature to grant the request.

[10] In response, Ms. Matsumoto acknowledged the Board's perspective and conceded the point in part but suggested that the Board could gainfully proceed to approve certain provisions which were really discrete and essentially free-standing matters that were not likely to be affected one way or the other by the disposition of the balance of the Amendment under appeal.

[11] To wit, new Policies 10 and 12 under s. 2.3.1 of the Official Plan, implemented by s. 1 (j) of OPA 320, were characterized by her as addressing the “food desert” circumstance experienced in some neighbourhoods. Policy 10 addresses the encouragement of small scale commercial uses at grade in apartment buildings and on apartment building properties on major streets, particularly in areas where residents do not have convenient walking access to a wide range of goods, services and community facilities. Policy 12 encourages mobile vendors of fresh food within Apartment Neighbourhoods in areas where residents do not have convenient walking access to sources of fresh food.

[12] Additionally, s. 6 and s. 7 of OPA 320 add three Site and Area Specific Policies for three distinct identified sites, which sites are vestigial Neighbourhood designated sites in the midst of other designations. Again, this is effectively a free-standing aspect of OPA 320 and no objection to the approval of these sections was taken by any party.

[13] Having heard the City’s submissions, the Board opened the floor to submissions from the other parties.

[14] John Dawson, although acknowledging that he had no explicit instruction from his clients on this turn of events, advised that he supported the submissions put forward by Ms. Matsumoto.

[15] Mary Flynn-Guglietti, echoing the Board’s initial comments, indicated that the items sought to be approved were de minimus and didn’t amount to a hill of beans (although the Board doesn’t believe that the food metaphor was intended). She suggested that having bits and pieces of the Amendment approved would be confusing and would not add anything to the City’s policy at this stage.

[16] Eileen Denny rose to support the Board’s initial position that no approval be granted as it would be a piecemeal approval.

[17] Janice Page rose to support the City. Her comments seemed to reflect an appreciation of the sheer duration of the planning process and that honest efforts to advance the process should not be unnecessarily deterred.

[18] To be clear, the Board very much respects the efforts of parties to resolve planning matter conflicts and has a long and regular record of supporting and implementing settlements of planning disputes. However, the Board has an independent jurisdiction to exercise and is always mindful of the integrity of the process in which it is involved. Planning decisions should be made only after a full and fair consideration of the issues and those decisions should be cogent and as internally consistent as possible. In this instance, this panel of the Board viewed the immediate approval of the minor pieces of the Amendment left after screening out the appealed sections as of limited value to the administration of the City's policy planning process and potentially compromising any possible need to internally harmonize the provisions of OPA 320 that may manifest in the course of the hearing of the appeal.

[19] As Ms. Matsumoto was persuasive regarding the independent, free-standing character of Policy 10 and 12 within s. 1 (j) and of s. 6 and s. 7 in OPA 320, the Board will allow the motion to grant partial approval to those provisions only at this time.

[20] This disposition is not to be taken to pre-judge any future or further motions for partial approval should the circumstances warrant same. As noted at the outset, there may be a mediation exercise in this case and that may very well generate a basis for a further motion for partial approval.

[21] The formal Order of Partial Approval will be issued separately and the Board understands that Ms. Matsumoto will be providing a draft of same for the review and approval of the Board.

**Motion for Party Status by Starlight Group Property Holdings Inc.**

[22] Starlight Group Property Holdings Inc. (“Starlight”) brought a motion for party status in the proceeding. They are not an in-time appellant. The affidavits filed in support of the motion indicate that it had not been Starlight’s practice to monitor City planning initiatives and that they were unaware of the Ministry’s Notice of Decision in time to file a valid appeal.

[23] Starlight did learn of OPA 320 and the appeals, whereupon it hired a planner and a lawyer to review the Amendment and its potential impact on its properties. Starlight has a significant inventory of residential properties across Canada. In the City of Toronto, Starlight has 86 residential rental properties consisting of mid-rise and high-rise apartment buildings.

[24] Starlight’s concern with OPA 320 is that its policies may make residential infill and intensification unduly onerous and materially impact their properties.

[25] The position put to the Board by Aaron Platt is that they have a very significant stake by way of their property holding and can bring a distinct perspective to the proceeding by reason of the nature and magnitude of their operations.

[26] The City does not oppose the motion for party status but insists, as is the case with other non-appellant parties, that Starlight must shelter under other appellant parties. Mr. Platt has identified the sections of OPA 320 with which Starlight takes issue and their ability to proceed on those issues will depend upon there continuing to be an appellant party advancing a challenge to the respective section.

[27] Ms. Denny opposed the grant of party status to Starlight. The opposition was based in part on a question as to whether Starlight was a legal “person”. The Board found no merit in that submission. The other ground advanced was that there were not reasonable grounds to add them as a party to the proceeding, as required by s.



17(44.2) of the *Planning Act*. The Board is satisfied that there are reasonable grounds to add Starlight as a party.

[28] Starlight's motion is allowed and Starlight is granted party status in this proceeding but subject to the sheltering requirement as noted above.

### **Hearing and Third PHC Dates**

[29] On the premise that the issues are now coming to the fore (although not specifically articulated as yet) and making allowance for a possible mediation, the City and the other parties asked the Board to fix a hearing date approximately one year out. Associated with that, in order to address hearing management in terms of settling a Procedural Order and any other matters that may be germane to this hearing of multiple parties, a further PHC was also requested. In that regard, those dates were fixed.

[30] The hearing will commence on **Monday, September 24, 2018, at 10 a.m. at:**

**Municipal Board  
655 Bay St., 16<sup>th</sup> Floor  
Toronto, Ontario**

[31] The hearing will have a duration of approximately 18 days, to conclude on October 19, 2018. October 8 (Thanksgiving) and October 15 (Board Professional Development Day) will not be sitting days.

[32] A further PHC will take place on **Friday, March 2, 2018, at 10 a.m. at:**

**Municipal Board  
655 Bay St., 16<sup>th</sup> Floor  
Toronto, Ontario**

[33] There was some discussion about the organization of the hearing and there seemed to be a consensus view that a certain staging may be appropriate in the sense that a first phase may involve the determination of the City-wide policy on a general basis. Following on this, either within the allotted hearing block or in further scheduled time, the site-specific appeals may then be dealt with, much of those appeals perhaps disposed of by way of the general policy determinations. This will be the subject of discussion amongst the parties and will be addressed as part of the next PHC.

[34] Unless there are cogent reasons due to the progress of any mediation or for other good and sufficient reasons, the Board expects that a draft Procedural Order, complete with Issues List and Order of Proceeding, will be presented for issuance by the Board at the next PHC.

[35] This Member will be seized of the PHC but not necessarily of the hearing.

[36] There will be no further notice of the PHC or the hearing.

*“Gerald S. Swinkin”*

GERALD S. SWINKIN  
MEMBER

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**Ontario Municipal Board**

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