

Ontario Municipal Board
Commission des affaires municipales
de l'Ontario



ISSUE DATE: May 30, 2017

CASE NO(S): PL161056

PROCEEDING COMMENCED UNDER subsection 34(19) of the *Planning Act*, R.S.O. 1990, c. P.13, as amended

Appellant:	2095295 Ontario Inc. et al
Appellant:	Horst Albert Benoit
Appellant:	Maisa Hadid andd Issa Bulbul
Appellant:	Michael Kake and Dorothy Kake; and others
Subject:	By-law No. BL 0193-2016
Municipality:	City of Mississauga
OMB Case No.:	PL161056
OMB File No.:	PL161056
OMB Case Name:	Benoit v. Mississauga (City)

Heard: May 15, 2017 in Mississauga, Ontario

APPEARANCES:

Parties

Counsel*/Representative

Tibor Urac & Wanda Urac, Marcin Wroblewski & Cindy Wennerstrom & 2095295 Ontario Inc.

Denise Baker*

Horst Albert Benoit ("Benoit")

Denise Baker*

Maisa Hadid & Issa Bulbul

Anas Albulbul

City of Mississauga

Lia Magi*

**MEMORANDUM OF ORAL DECISION DELIVERED BY J. de P. SEABORN ON
MAY 15, 2017 AND ORDER OF THE BOARD**

INTRODUCTION

[1] These appeals were scheduled for a Pre-hearing Conference (“PHC”), notice of which was given as set out in the requisite affidavit of service (Exhibit 1). The Appellants include: Issa Bulbul and Maisa Hadid (“Hadid Appeal”); Tibor and Wanda Urac (“Urac Appeal”), 2095295 Ontario Inc. Marcin Wroblewski and Cindy Wennerstrom (“Wennerstrom Appeal”), and Horst Albert Benoit (“Benoit Appeal”). No other parties appeared other than Fiona Campbell, who was granted participant status with an option to seek party status at a later date if she determines her interests are different from the City of Mississauga (“City”) or that she wishes to call expert witnesses. Appellants Michael Kake and Dorothy Kake withdrew their appeal by letter, prior to the commencement of the PHC.

[2] Prior to the PHC, a motion (Exhibit 2) was served and filed by the City seeking several grounds of relief. Ms. Baker filed a response to the motion (Exhibit 3) on behalf of her clients and Mr. Albulbul, agent for the Hadid appeal, also filed a response (Exhibit 4). Reply material was filed by the City (Exhibit 5) which clarified several issues and formed the basis for settlement of the motion.

[3] Briefly, the City’s motion sought first, an order dismissing the Benoit Appeal for failure to make written or oral submissions prior to the passing by City Council of By-law No. 0193-2016 (“By-law”); and second, an Order scoping the Wennerstrom Appeal, the Urac Appeal and the Hadid Appeal on a site specific basis to their respective properties; and third, an Order bringing into full force and effect the remaining provisions of the By-law no longer at issue. The motion was supported by the affidavit evidence City planner David Ferro, qualified to give opinion evidence. Mr. Ferro filed detailed material, setting out the background associated with the By-law, its purpose and scope and the substance of the various appeals. The By-law, also referred to as the Sloped Roof By-law, affects about 5,000 properties in low-density residential zones of City (Ward 1). It was enacted following passage of an earlier By-law, known as the Flat Roof By-law. Because the appellant’s properties are only affected by certain provisions of the By-law, the City wishes to scope the appeals which is why the motion was made at the PHC seeking specific relief from the Board.

[4] At the outset of the PHC, Ms. Magi indicated that the City was able to resolve the motion, with several matters agreed to with Ms. Baker and Mr. Albulbul, respectively. First, the Board orders that the Benoit Appeal is dismissed. However, Benoit is afforded party status as he has an interest in the matters under appeal. Second, the remaining appeals are scoped in accordance with the agreements reached, as generally set out in the attachments to Mr. Ferro's affidavit and specifically in Attachment 1 to this disposition. Third, as requested by the City, the un-appealed portions of By-law are brought into full force and effect in accordance with the Board's Order set out as Attachment 1.

[5] At the request of the City, the appeals will be grouped into two separate hearings (essentially based on geography). The Hadid appeal will be a two-day hearing and commence at **10 a.m. on Thursday, September 21, 2017 at:**

**City Of Mississauga
Municipal Hearing Room
300 City Centre Drive
Mississauga, ON L5B 3C1**

There shall be no further notice.

[6] The remaining appeals (Ms. Baker is counsel) are set for a three-day hearing that will commence at **10 a.m. on Wednesday, November 1, 2017 at:**

**City of Mississauga
Municipal Hearing Room
300 City Centre Drive
Mississauga, ON L5B 3C1**

[7] Mr. Benoit is a party to this group of appeals. Ms. Campbell is a participant to this group of appeals; however, she reserved her right to bring a motion for party status prior to the hearing once she has had an opportunity to review the issues important to her with the City. Any motion for party status must be made on notice and material served at least 60 days prior to the commencement of the hearing. All Appellants, parties and

participants should be at the hearing when it commences on **Wednesday, November 1, 2017** to ensure an orderly conduct of the hearing.

[8] Ms. Magi, Ms. Baker and Mr. Albulbul indicated that they will agree on exchange dates of evidence and other necessary procedural matters leading up to the commencement of the respective hearings and on this basis no Procedural Order need be filed. However, if difficulties arise, the parties may contact the Case Coordinator and a telephone conference call may be arranged.

[9] I am not seized of either hearing.

"J. de P. Seaborn"

J. de P. SEABORN
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

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ATTACHMENT 1

THE BOARD ORDERS that the appeal of Horst Albert Benoit is dismissed for failure to make written or oral submissions prior to the passing of Zoning By-law Amendment 0193-2016, contrary to Subsection 34(19) of the *Planning Act*, R.S.O. 1990, c. P.13, as amended (the “*Act*”);

THE BOARD FURTHER ORDERS that Horst Albert Benoit is made a party to Wroblewski and Urac appeals and shall be limited to the issues raised by these appellants;

THE BOARD FURTHER ORDERS that, subject to below, the remaining appeals of Zoning By-law 0193-2016 (the “Appeals”) are scoped to Sections 12 and 19 of Zoning By-law 0193-2016 as follows:

- a) to the lands zoned R3-75 in the Lakeside Sub-Area of the Lakeview Local Area Plan as shown on Maps B-02 and B-03 of Zoning By-Law Amendment 0193-2016 for the Wroblewski and Urac appeals, attached as Exhibit “B” to David Ferro’s Supplementary Affidavit; and
- b) as site specific for Maisa Hadid and Issa Bulbul, having the municipal address 1450 Hurontario Street, in the City of Mississauga.

THE BOARD FURTHER ORDERS that any partial approval of Zoning By-law 0193-2016 shall be strictly without prejudice to, and shall not have the effect of limiting:

- a) the rights of any party to seek to modify, delete or add to the unapproved regulations, schedule, maps, figures, definitions, tables and associated text in Zoning By-law 0193-2016 on an area or site specific basis; or
- b) the jurisdiction of the Board to consider and approve modifications, deletions or additions to the unapproved regulations, schedules, maps, figures, definitions, tables and associated text in Zoning By-law 0193-2016 on an area or site-specific basis.

AND THE BOARD FURTHER ORDERS that neither the City nor any other party or participant will take the position at any hearing on the merits of Zoning By-law 0193-2016, that the Board ought not to approve any specific modifications to Zoning By-law 0193-2016 as it applies to the Appeals because such modifications deviate from or are inconsistent with any approved portion of Zoning By-law 0193-2016. However, this does not affect a party’s right to assert that Zoning By-law 0193-2016 should be applied to the Appeals without amendment on the basis that it constitutes good planning.

AND THE BOARD FURTHER ORDERS that, subject to the above, Zoning By-law Amendment 0193-2016 is partially approved, pursuant to subsection 34(31) of the *Act*.