

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



ISSUE DATE: April 13, 2018

CASE NO(S): PL170886

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 17(24) of the *Planning Act*, R.S.O. 1990, c. P.13, as amended

Appellant:	Morguard Investment Limited
Subject:	Mississauga Downtown Community Improvement Plan (CIP)
Municipality:	City of Mississauga
OMB Case No.:	PL170886
OMB File No.:	PL170886
OMB Case Name:	Morguard Investments Limited v. Mississauga (City)

Heard: February 1, 2018 in Mississauga, Ontario

APPEARANCES:

Parties

Counsel

City of Mississauga

Michal Minkowski

Morguard Investment Limited, and as a representative of
Workers Compensation Board

Dennis Wood

OMERS Realty Management Corporation,
Square One Property Corporation,
ARI SQI GP Inc. and
Oxford Properties Group (OPGI Management Limited Partnership),
(collectively, “Square One Owners”)

Max Laskin

DECISION DELIVERED BY K. J. HUSSEY AND ORDER OF THE TRIBUNAL

[1] Morguard Investment Limited (“Morguard”) has appealed the decision of the City of Mississauga to adopt the Downtown Community Improvement Plan for the Downtown Core Character Area (the “Downtown CIP”), through the enactment of By-law No. 0135-2017. The Downtown CIP is intended to promote new office development. Morguard, together with the Workers Compensation Board, own properties municipally known as 35, 55, 77 and 201 City Center Drive, located in the downtown core of the City of Mississauga.

[2] This PHC was convened and conducted by the Ontario Municipal Board (the “Board”) and an oral decision was given by the Board during the PHC. However, on April 3, 2018, the *Local Planning Appeal Tribunal Act, 2017* (“LPATA”) was proclaimed, which provides that that the Board will be continued as the Local Planning Appeal Tribunal (the “Tribunal”). Because this memorandum of decision has been issued subsequent to the proclamation of LPATA, it is a decision issued by the Tribunal that documents an oral decision of the Board. Any reference to the Board in this decision is therefore deemed to be a reference to the Tribunal.

[3] The following entities, owners and manager of approximately 130 acres of land in the heart of downtown Mississauga including the Square One Shopping Centre, sought and on consent, were granted party status:

- OMERS Realty Management Corporation,
- Square One Property Corporation,
- ARI SQI GP Inc., and
- Oxford Properties Group (OPGI Management Limited Partnership)

[4] The Tribunal has fixed on its calendar **nine days** for the hearing of this appeal which will begin on **Monday, August 27, 2018 at 10 a.m., to be held at:**

**The Municipal Hearing Room
2nd floor, 300 Centre Drive,
Mississauga Ontario,**

- [5] The Procedural Order attached hereto will govern the proceedings.
- [6] There will be no further notice.
- [7] This panel is not seized.

"K.J. Hussey"

K.J. HUSSEY
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.

Local Planning Appeal Tribunal

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

ONTARIO MUNICIPAL BOARD

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PROCEDURAL ORDER

- [1] The Board may vary or add to these rules 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 August 27, 2018 at 10:00 a.m. at City of Mississauga City Hall, 300 City Centre Drive, Mississauga, Ontario, L5B 3C1, 2nd Floor, in the Municipal Hearing Room.
- [3] The length of the hearing will be nine (9) days. The length of the hearing may be shortened as issues are resolved or settlement is achieved.
- [4] The parties and participants identified at the prehearing conference are listed in Attachment 1 to this Order.
- [5] The Issues are set out in the Issues List attached as Attachment 2. There will be no changes to this list unless the Board permits, and a party who asks for changes may have costs awarded against it.
- [6] Any person intending to participate in the hearing should provide a telephone number to the Board as soon as possible. Any such person who will be retaining a representative should advise the other parties and the Board of the representative's name, address and phone number as soon as possible.
- [7] The order of evidence is listed in Attachment 3 to this Order. The Board may limit the amount of time allocated for opening statements, evidence in chief (including the qualification of witnesses), cross-examination, evidence in reply and final argument. The length of written argument, if any, may be limited either on consent or by Order of the Board.

Requirements Before the Hearing

- [8] A party who intends to call witnesses, whether by summons or not, shall provide to the Board and the other parties the names of the witnesses, and the order in which they will be called. This list must be delivered on or before May 29, 2018 [*a minimum of 90 calendar days before the hearing date*]. 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, which shall list any reports prepared by the expert, or any other reports or documents to be relied on at the hearing. Copies of this must be provided as in sections 10 and 11. 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] On or before June 28, 2018 [*60 calendar days before the hearing date*], the appellant shall provide copies of its witness and expert witness statements to the other parties.
- [11] On or before July 27, 2018 [*30 calendar days before the hearing date*], the other parties shall provide copies of their witness and expert witness statements to the appellant and the other parties.
- [12] The appellant may provide to all other parties a written response to any written evidence and any supplementary evidence on or before August 10, 2018 [*15 days before the hearing*].
- [13] A person wishing to change written evidence, including witness statements, must make a written motion to the Board.
- [14] A party who provides a witness' written evidence to the other parties must have the witness attend the hearing to give oral evidence, unless the party notifies the Board by August 20, 2018 [*7 days before the hearing*] that the written evidence is not part of their record.
- [15] A participant must provide to the Board and the parties a participant statement on or before July 27, 2018 [*30 days before the hearing*], or the participant may not give oral evidence at the hearing.
- [16] 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 expected evidence and his or her area of expertise, as in sections 10 and 11.
- [17] The parties shall prepare and complete a Joint Document Book for documents which are common to their respective witnesses from the same discipline on or before August 20, 2018 [*one week before the hearing*] 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.

- [18] The parties shall provide to each of the other parties and file with the Board on the first of the hearing a document book prepared by their expert witnesses which contains documents intended to be relied upon that are not identified as common among expert witnesses from the same discipline. 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.
- [19] On or before August 10, 2018 [*15 days before the hearing*], the parties shall provide copies of their visual evidence to each of the other parties. If a model is proposed to be used, the Board must be notified before the hearing and all parties must have a reasonable opportunity to view it before the hearing and all parties must have a reasonable opportunity to view it before the hearing.
- [20] Documents may be delivered by personal delivery, facsimile or registered or certified mail, by email or otherwise as the Board may direct. The delivery of documents by fax shall be governed by the Board's Rules [26 – 31] on this subject. Material delivered by mail shall be deemed to have been received five business days after the date of registration or certification.
- [21] 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

LIST OF PARTIES AND PARTICIPANTS

PARTIES:

Corporation of the City of Mississauga
4th Floor
300 City Centre Drive
Mississauga, Ontario, L5B 3C1

Attention: Michal E. Minkowski, Legal Counsel
Tel: 905-615-3200 ext. 3280
Email: Michal.Minkowski@mississauga.ca

Morguard Investments Limited, on its own behalf and
as representative of Workers Compensation Board
c/o Wood Bull LLP
65 Queen Street West
Suite 1400
Toronto, Ontario, M5H 2M5

Attention: Dennis H. Wood
Tel: 416-203-7718
Email: dwood@woodbull.ca

OMERS Realty Management Corporation, Square One Property
Corporation, ARI SQ1 GP Inc. and Oxford Properties Group
(OPGI Management Limited Partnership) {collectively referred to
as the "Square One Owners"}
c/o Goodmans LLP
Bay Adelaide Centre – West Tower
333 Bay Street
Suite 3400
Toronto, Ontario, M5H 2S7

Attention: Ian Andres and Max Laskin
Tel: 416-597-5160; 416-849-6938
Email: iandres@goodmans.ca; mlaskin@goodmans.ca

PARTICIPANTS:

None

NOTE: The identification of an issue on the Issues List does not mean that all parties agree that such issue, or the manner in which the issue is expressed, is appropriate or relevant to the determination of the Board at the hearing. The extent to which these issues are appropriate or relevant to the determination of the Board at the hearing will be a matter of evidence and argument at the hearing.

ATTACHMENT 2

ISSUES LIST

Which Party's Issue:	Issue:
City	1. Under the Council approved Downtown CIP, would existing office buildings be eligible for incentives under the following scenarios: <ul style="list-style-type: none"> (a) If additional gross floor area is added to an existing building (e.g. a floor or two)? (b) If a new building was infilled on a site with an existing building? (c) If an existing building was demolished and a new building constructed? (d) If there is an adaptive reuse of an existing office building which results in an increase in the payment of property taxes? What does the term "adaptive reuse" mean and should it be defined in the Downtown CIP? (e) If no additional office gross floor area is added to an existing office building or site?
City	2. Are financial incentives to owners of existing office buildings where there is no addition in gross floor area to those existing office buildings a cost effective use of public funds?
Morguard	3. Should incentives be available to existing office development: <ul style="list-style-type: none"> (a) Within the expanded Community Improvement Project Area, or (b) Only on the Morguard properties?
Morguard	4. Is it fair and reasonable to provide incentives only to new office development within the expanded Community Improvement Project Area?
City	5. Does the CIP conform to the goals, objectives and policies of the Mississauga Official Plan?
The Square One Owners	6. Would providing financial incentives to owners of existing office buildings impair the CIP's ability to achieve its objective of stimulating investment in new office development?

ATTACHMENT 3
ORDER OF EVIDENCE

1. **In Chief:** Corporation of the City of Mississauga
The Square One Owners

2. **In Response:** Morguard Investments Limited

3. **In Reply:** Corporation of the City of Mississauga

ATTACHMENT 4

Purpose of the Procedural Order and Meaning of Terms

The Board recommends that the parties **meet to discuss this sample Order before the prehearing conference** to try to identify the issues and the process that they want the Board to order following the conference. The Board will hear the parties' comments about the contents of the Order at the conference.

Prehearing conferences usually take place only where the hearing is expected to be long and complicated. If you are not represented by a lawyer, 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, 416-326-6800, or from the Board website at www.omb.gov.on.ca.

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 must accept the other responsibilities of a party as set out in the 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.

NOTE that a person who wishes to become a party before or at the hearing, and who did not request this at the prehearing conference, must ask the Board to permit this.

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. Such persons may also be identified at the start of the hearing. The Board will set the time for hearing this statement. **NOTE** that such persons will likely not receive notice of a mediation or conference calls on procedural issues. They also cannot ask for costs, or review of a decision as parties can. If a participant does not attend the hearing and only files a written statement, the Board will 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 material and do not attend.

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.

Witness Statements: A **witness statement** is a short written outline of the person's background, experience and interest in the matter; a list of the issues which he or she will discuss and the witness' opinions on those issues; and a list of reports that the witness will rely on at the hearing. An **expert witness statement** should include his or her (1) name and address, (2) qualifications, (3) a list of the issues he or she will address, (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. 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 the participant will address and a short outline of the evidence on those issues; and a list of reports, if any, which the participant will refer to at the hearing.

Additional Information

Summons: A party must ask a Board Member or the senior staff of 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.) If the Board requests it, an affidavit must be provided 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.