

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



ISSUE DATE: March 26, 2020

CASE NO(S): PL171321

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:	S-K Sportswear Limited/Windsor Property Management
Subject:	Application to amend the Former City of Etobicoke Zoning Code- Refusal or neglect of the City of Toronto to make a decision
Existing Zoning:	R4 Fourth Density Residential Zone
Proposed Zoning:	Site Specific (To be determined)
Purpose:	To permit the infill development of two apartment buildings and a townhouse block
Property Address/Description:	240 Markland Dr.
Municipality:	City of Toronto
Municipality File No.:	11 209308 WET 03 OZ
OMB Case No.:	PL171321
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OMB Case Name:	S-K Sportswear Ltd./WPM v. Toronto (City)

Heard: September 17, 2019 in Toronto, Ontario

APPEARANCES:

Parties

S-K Sportswear Limited/Windsor
Property Management

City of Toronto

Counsel

Patrick Duffy
Kelly Oksenberg

Robert A. Robinson

Markland Wood Homeowners
Association

Kyle Gossen

**MEMORANDUM OF ORAL DECISION DELIVERED BY JOHN DOUGLAS ON
SEPTEMBER 17, 2019 AND ORDER OF THE TRIBUNAL**

INTRODUCTION

[1] This was a settlement hearing in the matter of an appeal to the Local Planning Appeal Tribunal (the “Tribunal”) by S-K Sportswear Limited/Windsor Property Management (the “Applicant/Appellant”) pursuant to s. 34(11) of the *Planning Act* (the “Act”), for the failure of the City of Toronto (“City”) to make a decision on an application to amend the former City of Etobicoke Zoning Code for lands known municipally as 240 Markland Drive (the “subject property”). The Tribunal was advised that the new City-wide Zoning By-law No. 569-2013, as amended, does not apply.

[2] The subject property is located at the southeast corner of the intersection of Bloor Street West and Markland Drive, near the City’s western boundary with the City of Mississauga. The subject property is situated within a post-war planned community known as the Markland Wood neighbourhood, which is bounded by Etobicoke Creek, Renforth Creek and related green spaces.

[3] The subject property, which has frontages of approximately 24.33 metres (“m”) along Bloor Street West, 26.60 m along Markland Drive, 46.97 m along Sunplains Crescent and 15.90 m along Broadfield Drive, is L-shaped with an area of 13,171 square metres (“sq m”).

[4] The subject property is currently developed with a 10-storey slab-style apartment building (the “existing building”) containing 113 rental apartment units (28 one bedroom, 57 two bedroom and 28 three bedroom units), with associated surface and underground parking facilities. The existing building, rectangular in shape and oriented in a north-south manner, is set back from Markham Drive by approximately 24 m.

[5] Parking for the existing building includes a surface parking area to the east of the existing building and an underground garage located beneath the surface parking area. Access to the existing parking facilities is provided by two driveways from Bloor Street West, with the easterly driveway access connected to the free-standing ramp to the underground garage.

[6] The neighbourhood surrounding the subject property includes: a two-storey townhouse development (designated Neighbourhoods in the City's Official Plan ("OP")) to the immediate east, and a little further east is Millwood Park (designated Parks); a neighbourhood comprised of single detached dwellings (designated Neighbourhoods) to the south; a 12-storey residential apartment building (designated Apartment Neighbourhoods) to the west and beyond that is the Markland Wood Golf and Country Club (designated Natural Areas and Other Open Space Areas); and, a 13-storey residential apartment building (designated Apartment Neighbourhoods) is located to the north across Bloor Street West.

[7] Patrick Duffy called one witness in support of the settlement reached by the parties. Following a review of his qualifications and upon the consent of the parties, Robert Glover was qualified by the Tribunal to provide expert opinion evidence in the field of land use planning.

[8] Four participants, Patricia Allen, Peter Scallion (past President of the Board of the Tyne Terrace Townhouse Association) and Georgena Engineer, Eugene Oleksiuk provided lay evidence in opposition to the proposed Zoning By-law Amendment ("ZBA").

[9] Mr. Glover provided the Tribunal with an overview of the evolution of the proposed development for the subject property. He advised that extensive consultation with public agencies and public has been undertaken, and numerous studies have been prepared over a number of years, resulting in the settlement proposal now before the Tribunal.

[10] As per Mr. Glover's evidence, the proposed ZBA is intended to permit, in addition

to the existing 10-storey building, the construction of two new infill apartment buildings on the subject property. The first building is proposed as a nine-storey residential condominium building fronting north onto Bloor Street West (the “Bloor Building”) which transitions to three-storey townhouse units backing onto Broadfield Drive (the “Broadfield Townhouses”). The second building is a proposed three-storey building fronting onto Sunplains Crescent between Markland Drive and Broadfield Drive (the “Sunplains Building”).

[11] Mr. Glover testified that the settlement proposes the addition of 164 new residential units to the subject property; 135 units within the Bloor Building (including 126 typical condo units plus 9 Broadfield townhouse units); and 29 townhouse units with the Sunplains Building.

[12] The total number of units proposed for the subject property, including the 113 rental apartment units in the existing building, is 277 units.

[13] The proposal would add 17,678 sq m of Gross Floor Area (“GFA”) to the existing 12,675 sq m of GFA in the existing building, resulting in a total GFA for the subject property of 30,353 sq m.

[14] A three-level underground parking garage is proposed beneath the Bloor Building.

[15] The service area will be provided inside or screened so that it will not be visible from the surrounding areas of the neighbourhood. Garbage and recycling areas will be located within the underground parking area.

[16] The Sunplains Building will have a separate single level underground parking garage. Servicing will be below grade with access from the lower end of the site on Markland Drive. Garbage will be collected and stored inside the building.

[17] A total of 362 parking spaces will be provided on-site, of which 155 are for the

units in the existing building and 207 are for the units in the proposed buildings.

[18] A total of 656 sq m of amenity space is proposed for the subject property of which 328 sq m will be indoor amenity space and 328 sq m will be outdoor amenity space.

[19] The Bloor Building is proposed to be constructed to the east of the existing building, replacing the existing surface parking area. It is proposed to have a height of 28.70 m to the main roof, plus a 5.5 m mechanical penthouse.

[20] Mr. Glover's testimony included information on the Settlement Proposal Features (filed and entered as Exhibit 3), which set out the following:

- Revisions to the South Elevation of the Bloor Building:
- Removing balconies on Floors 7 and 9
- Incorporating the following changes identified in the "South End Terracing" drawing:
 - Extending Floors 4, 5 and 6 by an additional 1.0 m to the south
 - Recessing Floors 7 and 8 by an additional 0.5 m to the north
 - Recessing Floor 9 by an additional 2.0 m to the north
 - Terracing Floors 7 and 9 by 1.5 metres from the south façade
- Bloor Building Height
 - The building will be sunk an additional 1.0 m, resulting in a top of roof slab Canadian Geodetic Datum height of 155.47 metres
- Sunplains Building Setback
 - The Sunplains Building will be setback an additional 1.5 m from the south property line, resulting in a setback of 8.7 m (with an additional 1.2 m projection for bay windows along the south façade)

[21] In his oral and written evidence, Mr. Glover provided an overview regarding the transitions from the proposed buildings on the subject property (designated Apartment Neighbourhoods in the City's OP) to the adjacent neighbourhood properties (designated Neighbourhoods in the City's OP) achieved through setbacks and stepbacks of various floors, particularly in the Bloor Building. As per City policy, because the subject property is adjacent to properties in the Neighbourhoods designation, the proposed buildings are

not to intrude into a 45-degree angular plane taken from the subject property line. Mr. Glover testified that, as a result of the combination of setbacks and stepbacks, the Bloor Building falls below the angular plane taken from the east property line, with the exception of a minor projection by the three-storey Broadfield Townhouses, and falls below the angular plane taken from the south property line along Broadfield Drive. In all other respects the proposed buildings fall under the 45 degree angular plane.

[22] When hearing an appeal of a Zoning By-law Amendment (ZBA) the Tribunal must consider whether the proposed ZBA has had regard for matters of provincial interest under the Act, is consistent with the Provincial Policy Statement, 2014 ("PPS 2014"), conforms with the Growth Plan of the Greater Golden Horseshoe, 2019 ("Growth Plan 2019"), and conforms with the City's OP and Zoning By-law ("ZBL").

[23] Mr. Glover opined that the proposal and the implementing ZBA has had appropriate regard for matters of Provincial Interest as set out in s. 2 of the Act, and in particular that the proposal provides for efficient use and conservation of energy and water, efficient use of infrastructure, additional housing choices, transit- and pedestrian supportive development, and well-designed built form and public spaces.

[24] Mr. Glover opined that the proposal and the implementing ZBA are consistent with the PPS 2014, and in particular that the proposal addresses the policies promoting the efficient use of land and infrastructure, the provision of a range of housing choices, cost-effective development patterns, and appropriate development standards.

[25] Mr. Glover stated that in his opinion the proposal and implementing ZBA conform with the policies of the Growth Plan 2019. In particular, Mr. Glover testified that the proposal conforms to the policies encouraging intensification throughout the built-up area, promoting transit supportive development, the optimization of land and infrastructure, and the achievement of complete communities, including a range of housing options.

[26] Mr. Glover testified that the subject property is designated as Apartment

Neighbourhoods in the City's OP and fronts onto a segment of Bloor Street West which has a planned right-of-way width of 27 m. Mr. Glover opined that the proposal and the implementing ZBA conforms with the policies of the City's OP, including: the growth management policies, the policies of the Apartment Neighbourhood designation, the Healthy Neighbourhoods policies, and the built form policies.

[27] Mr. Glover noted that as part of its five-year OP review, the City had made amendments to several sections of the City's OP which were adopted in December 2015 as Official Plan Amendment 320 ("OPA 320"). He advised that OPA 320 had not been approved by the Tribunal until decisions were rendered by the Tribunal in December 2017 and December 2018. He testified that while it does not apply to this application and appeal, OPA 320 is now otherwise in force and he considered the relevant policies, as being informative, but not determinative. Mr. Glover opined that the proposal and the ZBA conform with the OPA policies both pre- and post-OPA 320.

[28] Mr. Glover opines that the current zoning under the Etobicoke Zoning Code came into effect in 1983, and fails to implement the in-force provincial and municipal policy frameworks. It predated the approval of the PPS 2014, Growth Plan and current OP. The ZBA proposes to rezone the subject property to facilitate intensification of the site through infill development that is consistent with the PPS 2014, conforms with the Growth Plan 2019, and conforms with the City's OP. The proposed ZBA is required to establish site specific standards and regulations related to the built form and other elements of the proposal.

[29] Mr. Glover provided the Tribunal an overview of the City's Avenue and Mid-rise Guidelines as they apply to the subject property, and opined that the proposal has been appropriately informed by the Mid-rise Guidelines and associated Performance Standards.

[30] Mr. Glover testified that the setbacks, orientation and placement of the existing building and the associated parking area reflect the post-war area "Tower in the Park" planning principles, which today are recognized as providing excellent opportunity for

well-designed and sensitive residential infill intensification. Mr. Glover directed the Tribunal's attention to a Shadow study that had been completed for the subject property. He opined that there is no incremental shadow impact on the adjacent low-rise residential neighbourhood to the south and there is minimal incremental shadow impact on the Townhouses to the east of the subject property. Mr. Glover opined that the proposal and the ZBA constitute good urban design and land use planning in the public interest.

[31] At the request of the City and as part of the settlement, the parties have requested that the Tribunal withhold its Order approving the application until the Applicant/Appellant has fulfilled Conditions of Approval which are appended to this decision as Attachment 1. There was no objection from any of the parties.

[32] The participants, Ms. Allen, Ms. Engineer and Mr. Oleksiuk, raised a number of issues including:

- Loss of greenspace on the subject site. The pressure for infill and intensification is growing. The participants are concerned that this will set a precedent for redevelopment of other tower in the park sites in the area resulting in further loss of greenspace;
- Traffic and Parking - The participants noted that available street parking on Sunplains is often heavily utilized and this proposal will only make it worse. They are concerned that not enough parking has been provided on the subject property. The participants also raised concerns about increased traffic, particularly during peak hours when cars use side streets in an effort to by-pass delays on Bloor St. West;
- Impacts on Existing Infrastructure and Services – Concerns were raised that increased population may stress existing infrastructure, and the proposed development may lead to overcrowding in the schools;

- Increased possibility of flooding; and
- Decreased property values.

[33] The primary concern of the participants who reside on Sunplains Crescent is with the proposed Townhouses fronting on Sunplains. They preferred the early plans for the subject property which had proposed a taller tower on Bloor Street West and no development on Sunplains. Alternatively they noted, if part of the development is to front on Sunplains, they would like it to match the existing form and design of housing on Sunplains. Ms. Allen referenced several OP policies (2.3.1.2, 3.1.2.3 and 3.1.2.5) which in her opinion support the residents concerns that the setbacks should be the same as existing homes, and building heights should be comparable to the 1½-storey homes on Sunplains.

[34] Mr. Scallion raised concerns on behalf of Tyne Terrace Townhouses. He noted that to-date all infill development in the area has been four storeys. He feels that stacked townhouses at a maximum of four storeys would be preferable to the Bloor Building. Mr. Scallion expressed concerns about shadow impact. He also felt that the proposed buildings could be more aesthetically designed with appropriate stepbacks and set backs.

[35] In considering the concerns raised by the participants, the Tribunal notes that as per Mr. Glovers testimony, the issues related to greenspace, building design, height and massing of the buildings, impacts on traffic and parking, impacts on existing municipal infrastructure and services, and potential flooding have been (or in some cases will be) addressed through the reports prepared by the Applicant/Appellant, and have been (or will be) reviewed by municipal staff with expertise in the requisite areas. A shadow study has been done which demonstrates that no unacceptable shadow impacts will result from the proposed development. Based on consultations with City staff and public, the Applicant/Appellant has made a series of revisions to the height, massing, set backs and stepbacks of the proposal resulting in a proposal that the parties, including a large local ratepayer association, could agree on. Some concerns raised by the Participants

will be addressed at a later stage in the process. The City has, for example, requested submissions of a functional servicing report as one of the conditions which will address, among other things, the concerns regarding servicing and potential flooding.

[36] The participant concern that the proposed ZBA will somehow adversely affect their property values is not a valid ground for appeal to be considered by the Tribunal.

[37] Although the concerns raised by the participants are sincerely felt, these concerns were not supported by any objective expert evidence. The Tribunal prefers the uncontested and unchallenged expert evidence of Mr. Glover.

CONCLUSION

[38] Upon the findings made, Mr. Glover's uncontested land use planning evidence, and the whole of the evidence inclusive of the documentary record, the Tribunal finds that the proposed ZBA: has had appropriate regard for matters of provincial interest under the Act; is consistent with the PPS 2014; conforms with the Growth Plan 2019; conforms with the City's OP and represents good planning in the public interest. For these reasons, the Tribunal will allow the appeal in part and approve the amendment to the Zoning By-law in principle, subject to the fulfillment of the conditions as agreed to by the parties, as set out in Attachment 1.

[39] As requested by the parties, the Tribunal will withhold its final Order in this matter until advised by the City that the conditions in Attachment 1 have been fulfilled.

[40] At the time that the City advises the Tribunal that the conditions have been fulfilled, the parties are directed to provide the Tribunal with a copy (digital copy) of the final version of the Zoning By-law Amendment to be attached to the order.

ORDER

[41] The Tribunal orders that the appeal is allowed in part so the Tribunal can

approve in principle the application for an amendment to the former City of Etobicoke Zoning Code as amended through the settlement agreement reached by the parties.

[42] The Tribunal will withhold its final order until it has been advised by the City of Toronto that the conditions set out in Attachment 1 to this decision have been cleared.

[43] The Tribunal further orders that at the time that the City advises the Tribunal that the conditions have been cleared, the parties will provide the Tribunal with a digital copy of the final version of the Zoning By-law Amendment to be attached to the order.

“John Douglas”

JOHN DOUGLAS
MEMBER

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 Tribunals Ontario – Environment and Land Division
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ATTACHMENT 1

240 Markland – PL171321 City of Toronto Requested Conditions of Approval

In the event that the Local Planning Appeal Tribunal allows the appeal of the Zoning By-law Amendment application in whole or in part, the City of Toronto requests the Local Planning Appeal Tribunal to withhold its Order(s) approving the application until:

a. the owner enters into an Agreement pursuant to Section 37 of the Planning Act, satisfactory to the Chief Planner and Executive Director, City Planning and the City Solicitor, such Agreement to be registered on title to the lands at 240 Markland Drive, in a manner satisfactory to the City Solicitor to secure the following community benefits at the owners expense:

i. a cash contribution of \$185,000 to be paid to the City prior to the issuance of the first above-grade building permits, to be used towards local park improvements;

ii. the above noted cash contribution referred to in Part 3a.i. above shall be indexed upwardly in accordance with the Statistics Canada Non-Residential Construction Price Index for Toronto for the period from the date of the execution of the Section 37 Agreement to the date of payment;

iii. in the event the cash contribution referred to in Part 3a.i. above has not been used for the intended purpose within three (3) years of the By-law coming into full force and effect, the cash contribution may be redirected for another purpose, at the discretion of the Chief Planner and Executive Director, City Planning, in consultation with the Ward Councillor, provided that the purpose is identified in the Toronto Official Plan and will benefit the community in the vicinity of the lands; and

iv. the following matters are also recommended to be secured in the Section 37 Agreement as a legal convenience prior to the issuance of site plan approval to support development all to the satisfaction of the Chief Planner and Executive Director, City Planning, in consultation with the appropriate civic officials and the Ward Councillor:

A. as a condition of site plan approval and prior to the issuance of any permits for this development, the owner shall prepare a Construction Management Plan with the City of Toronto and to the satisfaction of the Director Community Planning, along with the Chief Engineer and Executive Director, Engineering and Construction Services; and

B. prior to final Site Plan Approval, the owner shall provide a Construction Mitigation Strategy which includes a communication strategy for adjacent

property owners and the neighbourhood association and an interim parking plan for existing tenants and tradespeople during the construction period, and a Tenant Communication Plan to the satisfaction of the Chief Planner and Executive Director, City Planning and thereafter the owner shall implement such strategies and plans;

b. the owner enters into an Agreement pursuant to Section 37 of the Planning Act, satisfactory to the Chief Planner and Executive Director, City Planning, and the City Solicitor, such Agreement to be registered on title to the lands at 240 Markland Drive, in a manner satisfactory to the City Solicitor to secure the following matters, facilities, amenities and building improvements for the existing residential rental units, with no pass-through of costs to the existing tenants all at the owners expense to the satisfaction of the Chief Planner and Executive Director, City Planning and the City Solicitor:

i. the owner shall provide and maintain the 113 existing residential rental units at 240 Markland Drive as rental housing for a period of at least 20 years, from the date of the Zoning By-Law coming into full force and effect and with no applications for demolition or conversion from residential rental use made during such 20 year period, to the satisfaction of the Chief Planner and Executive Director, City Planning and the City Solicitor;

ii. the owner shall provide a dog run for the use of residents of the site as well as the surrounding community, to be located adjacent to the entrance of the existing building fronting Markland Drive, and this space shall be designed and furnished to the satisfaction of the Chief Planner and Executive Director, City Planning, up to a maximum cost of \$30,000;

iii. improvements to the outdoor amenity space for use by the residents of the existing building and the new buildings on an equal basis in the form of:

- a children's play area, which shall be designed and furnished to the satisfaction of the Chief Planner and Executive Director, City Planning, up to a maximum cost of \$40,000;

- at least 15 benches up to a maximum cost of \$22,000; and

- at least 85 bicycle parking spaces/racks for tenants of the existing building, of which 77 will be long-term bicycle parking spaces located beneath the underpass of the existing building and 8 will be short-term bicycle parking spaces located close to the main entrance of the existing building; and

iv. improvements to the existing laundry room facilities in the form of two new dryers.

- c. submission of the final form of the draft Zoning By-law Amendment, in a form satisfactory to the City Solicitor and the Markland Wood Homeowners Association, that among other matters, provides for securing the approved modifications to the application, the existing rental housing and improvements to such housing together with appropriate Section 37 benefits;
- d. the City Solicitor confirms the execution and registration of a Section 37 Agreement satisfactory to the Chief Planner and Executive Director, City Planning to secure community benefits pursuant to Section 37 of the Planning Act; such Section 37 Agreement will include a further agreement to provide for the shared access of and maintenance and easements with respect to the shared driveway, underground parking/bike parking, walkway, loading areas, servicing areas or any other commonly accessed areas as illustrated on any approved drawing between the new development and the existing 10-storey rental apartment building to the satisfaction of the Chief Planner and Executive Director, City Planning and the City Solicitor; and
- e. the owner submits an acceptable Functional Servicing Report and Hydrogeological Report to the satisfaction of Chief Engineer and Executive Director of Engineering and Construction Services and that the owner be required to make satisfactory arrangements with the City for the design and construction of any improvements to the municipal infrastructure by the owner at no cost to the City should it be determined that the improvements to such infrastructure is required to support the development, to the satisfaction of Chief Engineer and Executive Director, Engineering and Construction Services.