

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



ISSUE DATE: February 15, 2019

CASE NO(S): PL180689

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:	Dunpar Developments Inc.
Appellant:	Maple Valley Development Corporation Inc.
Subject:	Proposed Official Plan Amendment No. OPA 84
Municipality:	City of Mississauga
OMB Case No.:	PL180689
OMB File No.:	PL180689
OMB Case Name:	Dunpar Developments Inc. v. Mississauga (City)

Heard: February 8, 2019 in Mississauga, Ontario

APPEARANCES:

Parties

Counsel

Dunpar Developments Inc. and Maple Valley Development Corporation Inc. (“Appellants”)

Mary Flynn-Guglietti

City of Mississauga (“City”)

Michal Minkowski and Lia Magi

DECISION DELIVERED BY S. TOUSAW AND ORDER OF THE TRIBUNAL

INTRODUCTION

[1] This hearing event is the first Case Management Conference (“CMC”) in respect of appeals to a City-initiated Official Plan Amendment No. 84 (“OPA”) and Zoning By-law No. 0181-2018 (“ZBL”) intended to update the City’s planning documents related to townhouses.

[2] For the reasons outlined in this Decision, the appeal to the OPA is withdrawn, the appeal to the ZBL is scoped to four specific matters, and the remainder of the ZBL is declared in force. The ZBL appeal is adjourned at the request of the Parties, with a corresponding Notice of Postponement, until the next CMC on account of the Tribunal’s stated case to the Divisional Court.

SCOPED APPEAL

[3] A motion to dismiss the appeals brought by the City resulted in an agreement between the Parties. The Appellants withdraw their appeal to the OPA, and the ZBL appeal is scoped to those sections of the ZBL, applicable city-wide, relating to the following points.

- (i) The definition of “Amenity Area”;
- (ii) Line 15.4 of Table 4.14.1 for the RM9 and RM10 Permitted Uses and Zone Regulations regarding the word “contiguous”;
- (iii) Line 11.10 of Table 4.14.1 – RM9 and RM10 Permitted Uses and Zone Regulations regarding the reference to “12.0 m” for the distance from a front wall of a building to a front wall of another building on the same lot where the building is less than or equal to three storeys; and
- (iv) Line 11.11 of Table 4.14.1 – RM9 Permitted Uses and Zone regulations regarding the reference to “15.0 m” for the distance from a front wall of a

building to a front wall of another building on the same lot where the building is less than or equal to three storeys and contains a dwelling unit in the basement.

[4] With the ZBL appeal scoped as above, the City requests on consent that the Tribunal make an order under s. 34(31) of the *Planning Act* (“Act”) that the ZBL is deemed to have come into force on the day it was passed, except for the parts of the ZBL under appeal noted above. The Tribunal so orders below.

POSTPONEMENT

[5] Arising from *Canadian National Railway Company v Toronto (City)*, 2018 CanLII 102206 (ON LPAT) (“*Rail Deck*”), the Tribunal has stated a case to the Divisional Court related to procedural matters under the *Local Planning Appeal Tribunal Act, 2017* (“LPAT Act”) proclaimed on April 3, 2018. The Divisional Court is hearing the matter on April 25, 2019.

[6] The Applicant and the City in the present case jointly request that these proceedings be adjourned and a Notice of Postponement be issued. The Parties contend that matters pertaining to affidavits and cross-examination are central to this case and that the opinion of the Court on the correct process is required before a hearing is held. The Parties request that another CMC be scheduled at which time they hope to know the Divisional Court’s opinion and final arrangements can be made for the hearing of this case.

[7] Ontario Regulation 102/18, made under the LPAT Act, establishes time periods within which Decisions on appeals must be made. For an appeal to a ZBL passed by a municipality, the appeal must be disposed of within 10 months after the day the appeal is validated (O. Reg. 102/18, s. 1(1)1). Time shall be excluded from the calculation of months for the time during an adjournment if the Tribunal determines the adjournment necessary for a fair and just determination of the appeal (s. 1(2)1). In such instances,

the Registrar may issue a Notice of Postponement at the direction of a Member (Rule 3.02 of the Tribunal's *Rules of Practice and Procedure* ("Rules")).

[8] The Tribunal finds that the stated case arising from *Rail Deck* is fundamental to the procedures under the LPAT Act to be followed in the present case. The fair and just determination of this appeal relies on following the correct procedure in accordance with the Divisional Court's findings. The Tribunal will direct that a Notice of Postponement be issued commencing from the date of this CMC to the date of the next CMC, as set out in the order below. The adjournment may be extended if the opinion of the Divisional Court is not available at the next CMC.

OTHER CMC MATTERS

[9] In accordance with Rule 26.20, several other matters were reviewed.

[10] No requests for Party or Participant status were received.

[11] The Parties agree to develop an agreed statement of facts and issues list following receipt of the Court's opinion on the stated case.

[12] Whether the Tribunal will call the affiant Planners for examination at the hearing will be addressed at the next CMC.

[13] The Parties submit that the scoped appeal resulting from the motion amounts to a mediated solution to focus the hearing. The Parties contend that settlement is unlikely in the circumstances. The Tribunal encourages the Parties to remain open to seeking opportunities for settlement when addressing agreed facts and issues.

[14] The Appellants request an oral hearing and the City submits that details of the hearing format are dependent, in part, on the Court's opinion on the stated case.

[15] No issues were raised on all other CMC matters under Rule 26.20.

ORDER

[16] The Tribunal orders as follows.

[17] With the Appellants' withdrawal of the appeal to OPA 84, pursuant to s. 17(30) of the Act, OPA 84 is now in force and effect.

[18] The appeal to ZBL No. 0181-2018 is scoped to those sections of the ZBL, applicable city-wide, set out in paragraphs 3(i) through (iv) above.

[19] ZBL No. 0181-2018 is deemed to have come into force on the day it was passed, except for the parts of the ZBL remaining under appeal above, pursuant to s. 34(31) of the Act.

[20] A Notice of Postponement will be issued, to be in effect for the period from **February 8, 2019** to the date of the next CMC scheduled below.

[21] The next CMC will commence at **10 a.m. on Thursday, September 5, 2019** at:

**Municipal Hearing Room
Mississauga City Hall
300 City Centre Drive
Mississauga, Ontario**

[22] No further notice will be given.

[23] This Member is seized subject to the Tribunal's calendar.

“S. Tousaw”

S. TOUSAW
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
Website: www.elto.gov.on.ca Telephone: 416-212-6349 Toll Free: 1-866-448-2248