

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



ISSUE DATE: February 12, 2020

CASE NO(S): PL190124

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:	C Squared Properties
Subject:	Application to amend Zoning By-law No.438-86 - Refusal or neglect of the City of Toronto to make a decision
Existing Zoning:	Reinvestment Area (RA)
Proposed Zoning:	Site Specific (To be determined)
Purpose:	To permit the redevelopment of a 15-storey office building with commercial uses
Property Address/Description:	578-580 King Street West
Municipality:	City of Toronto
Municipality File No.:	18 225642 STE 20 OZ
LPAT Case No.:	PL190124
LPAT File No.:	PL190124
LPAT Case Name.:	C Squared Properties v. Toronto (City)

Heard: February 4, 2020 in Toronto, Ontario

APPEARANCES:

Parties

C Squared Properties

City of Toronto

TSCC 2376 Fashion House

Counsel

M. Laskin

M. Crawford

D. Donnelly and M. Fletcher (student-at-law)

738489 Ontario Limited

M. Bassini

**MEMORANDUM OF ORAL DECISION DELIVERED BY C.J. BRYSON ON
FEBRUARY 4, 2020 AND ORDER OF THE TRIBUNAL**

[1] This hearing event was the second Case Management Conference (“CMC”) in the appeal of C Squared Properties (“Appellant”) from the City of Toronto’s (“City”) failure to decide upon its zoning by-law amendment application for 578-580 King Street West to facilitate the development of a 15-storey office and commercial building.

[2] The purpose of this CMC was to finalize a Procedural Order (“PO”) and to review a draft Work Plan for the hearing on the merits.

[3] The parties provided the Tribunal with a draft PO on consent in advance of this CMC, which was modified upon discussion amongst the Tribunal and parties. The final PO resulting from those discussions is approved and appended to this Decision as Attachment 1. This PO will govern the hearing of the appeal subject to any amendments as approved by the Tribunal.

[4] A discussion took place regarding the potential value of an advance meeting of the expert witnesses for the parties. All parties agreed that while the Appellant and the City may have further meetings with expert witnesses in attendance as issues evolve and potential resolution of some or all issues arises, that there was no value in having a meeting of all experts ordered in the PO. At this time, the relative positions of the experts on the issues are firm. Accordingly, a meeting of the experts was not ordered as part of the PO.

[5] The parties also provided the Tribunal with a draft Work Plan on consent, which was reviewed and has been placed on the file. The parties may make adjustments to the draft Work Plan on consent until the commencement of the hearing.

[6] This appeal hearing will commence on **Tuesday, November 24, 2020** at **10 a.m.** at:

**Local Planning Appeal Tribunal
655 Bay Street, 16th Floor
Toronto, Ontario**

[7] Nine days have been set aside for the hearing of the appeal.

[8] All directions in this Decision are so ordered.

[9] There will be no further notice.

[10] This Member is not seized.

“C.J. Bryson”

C.J. BRYSON
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

ATTACHMENT 1

Case No. PL190124

LOCAL PLANNING APPEAL TRIBUNAL

PROCEEDING COMMENCED UNDER subsection 34(11) of the *Planning Act*, R.S.O. 1990, c. P. 13, as amended

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PROCEDURAL ORDER

1. The Tribunal may vary or add to these rules at any time, either on request of a party or as it sees fit. It may alter this Order by an oral ruling or by written Order.

Organization of the Hearing

2. The hearing will begin on November 24, 2020 at 10:00 a.m. at the offices of the Local Planning Appeal Tribunal (655 Bay Street, 16th Floor, M5G 1E5).
3. The length of the hearing will be 9 days, ending on December 4, 2020. The length of the hearing may be shortened as issues are resolved or settlement is achieved. The parties and participants identified at the Case Management Conference are listed in Attachment 1 to this Order. The order of evidence is set out in Attachment 2.
4. The issues are set out in the Issues List attached as Attachment 3. There will be no changes to this list unless the Tribunal permits, and a party who asks for changes may have costs awarded against it, except if the Issues List is modified through mediation or pursuant to a settlement between any of the parties.

Requirements Before the Hearing

5. All parties and participants (or their representatives) shall provide an email address and telephone number to the Tribunal. Any such person who retains a representative (legal

counsel or agent) must advise the other parties and the Tribunal of the representative's name, email address and phone number.

6. If the applicant intends to seek approval of a revised proposal at the Hearing, the applicant shall provide copies of the revised plans and drawings to the other Parties on or before July 27, 2020. Any further revisions to the plans after that date may be grounds for an adjournment of the Hearing.
7. A party who intends to call witnesses, whether by summons or not, shall provide to the Tribunal and the other parties a list of the witnesses and the order in which they will be called. This list must be delivered on or before August 26, 2020. For expert witnesses, a party is to include the area of expertise in which the witness is proposed to be qualified and a copy of their curriculum vitae.
8. An expert witness shall prepare an expert witness statement that shall include: an acknowledgement of expert's duty form, the area(s) of expertise and any reports prepared by the expert to be relied on at the hearing. Copies of the expert witness statement must be provided to the Tribunal and the other parties on or before September 25, 2020. 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 Tribunal may refuse to hear the expert's testimony.
9. A lay witness must provide to the Tribunal and to the parties a witness statement on or before September 25, 2020 or the witness may not give oral evidence at the hearing.
10. On or before September 25, 2020, a participant shall provide copies of their written participant statement to the Tribunal and the other parties. A participant cannot present oral submissions at the hearing on the content of their written statement, unless ordered by the Tribunal.
11. 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 provide to the Tribunal and the other parties a brief outline of this expert's evidence and his or her area of expertise on or before September 25, 2020.
12. On or before October 13, 2020, the parties may provide to the Tribunal and the other parties a written reply to any expert witness statement (or expert report).
13. On or before October 26, 2020, the parties shall provide copies of their visual evidence upon which they will rely to the Tribunal and the other parties. If delivered by e-mail or facsimile, hard copies of such evidence shall be provided on the request of any party. If a model is to be used, the Tribunal must be notified before the hearing. All parties must have a reasonable opportunity to view it before the hearing.
14. A party wishing to change written evidence, including witness statements, must make a motion to the Tribunal in accordance with the Tribunal's Rules.

15. A party who provides the written evidence of a witness to the other parties must have that witness attend the hearing to give oral evidence, unless the Tribunal and the parties are notified at least 7 days before the hearing that the written evidence is not part of their record.
16. Documents may be delivered by personal delivery, email, courier or registered or certified mail, or otherwise as the Tribunal may direct. The delivery of documents by email shall be governed by the Tribunal's Rules on this subject. Material delivered by mail shall be deemed to have been received five business days after the date of registration or certification.
17. No adjournments or delays will be granted before or during the hearing except for serious hardship or illness. The Tribunal's Rules apply to such requests.

This Member is not seized.

So orders the Tribunal.

SUMMARY OF DATES

DATE	EVENT
July 27, 2020	Revised plans to be provided, if any
August 26, 2020	Parties to exchange list of witnesses (names, disciplines and order to be called)
September 25, 2020	Witness Statements, Expert Reports and Participant Statements to be exchanged
October 13, 2020	Reply Witness Statements (if any) to be exchanged
October 26, 2020	Parties to exchange copies of visual evidence
November 24, 2020	Hearing commences

ATTACHMENT 1 – LIST OF PARTIES/PARTICIPANTS

PARTIES

C Squared Properties Inc.

Representative:

David Bronskill, Goodmans LLP
(416) 597-4299 dbronskill@goodmans.ca

City of Toronto

Representative:

Mark Crawford, City of Toronto Legal Division
(416) 392-8864 mark.crawford@toronto.ca

TSCC 2376 Fashion House

Representative:

Alexandra Whyte
Donnelly Law Barristers & Solicitors
(416) 572-0464 alexandra@donnellylaw.ca

738489 Ontario Limited

Representatives:

Jane Pepino, Kim Kovar and Maggie Bassani, Aird & Berlis LLP
(416) 865-7727 jpepino@airdberlis.com
(416) 865-7769 kkovar@airdberlis.com
(416) 865-3401 mbassani@airdberlis.com

ATTACHMENT 2 – ORDER OF EVIDENCE

1. C Squared Properties Inc.
2. 738489 Ontario Limited
3. City of Toronto
4. TSCC 2376 Fashion House
5. C Squared Properties Inc. (reply, if any)

ATTACHMENT 3 – ISSUES LIST

NOTE: The identification of an issue 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 Tribunal at the hearing. The extent to which these issues are appropriate or relevant to the determination of the Tribunal at the hearing will be a matter of evidence and argument at the hearing.

CITY OF TORONTO

1. Does the Proposal have regard to matters of provincial interest set forth in subsections (d), (f) and (r) of section 2 of the Planning Act?
2. Is the proposal consistent with the following policies of the Provincial Policy Statement, 2014:
 - a. Building Strong and Healthy Communities (1.0)
 - i. Policies 1.1.1(g) and 1.1.3.2(a)(2),
 - b. Employment
 - i. 1.3.1(d)
 - c. Long-term Economic Prosperity (1.7)
 - i. Policy 1.7.1(d)
 - d. Cultural Heritage and Archeology (2.6)
 - i. Policy 2.6.1, 2.6.2, 2.6.3 and 2.6.4
 - e. Implementation and Interpretation (4.0)
 - i. Policy 4.7
3. Does the proposal conform with the following policies of the Growth Plan for the Greater Golden Horseshoe (2019):
 - a. Guiding Principles (1.2.1)
 - b. Where and How to Grow (2.2)
 - i. Policy 2.2.1.4,
 - c. Cultural Heritage Resources (4.2.7)
 - i. Policy 4.2.7.1
4. Does the Proposal conform to the following principles of the City of Toronto Official Plan:
 - a. Downtown: The Heart of Toronto (2.2.1);
 - b. The Public Realm (3.1.1)
 - c. Built Form (3.1.2);
 - d. Heritage Conservation (3.1.5);
 - e. Parks and Open Spaces (3.2.3)
 - f. Regeneration Areas (4.7);
 - g. Height and/or Density Incentives (5.1.1);
 - h. Secondary Plans: Policies for Local Growth Opportunities (5.2.1);
 - i. Implementation Plans and Strategies for City-Building (5.3.2);
 - j. Interpretation (5.6); and

5. King-Spadina Secondary Plan (6.16), including the following policies:
 - a. Major Objectives (2.5);
 - b. Urban Structure and Built Form (3.1, 3.3, 3.5,3.6);
 - c. Heritage (4.1, 4.2, 4.3); and,
 - d. Pedestrian Environment (6.1)
 - e. Urban Structure Plan (Map 16-1)
 - f. Areas of Special Identity (Map 16-2)

6. Does the Proposal meet the intent of the King-Spadina Urban Design Guidelines (2004)?

7. Does the Proposal meet the intent of the following sections of the King-Spadina Urban Design Guidelines (2006), including:
 - a. Context (2.3, 2.5);
 - b. The Role of Historic Buildings (3);
 - c. The Structure Plan (4.3, 4.4, 4.5); and,
 - d. King Spadina Built Form Guidelines (5.1, 5.2, 5.3, 5.4)

8. Does the Proposal meet the intent of the following provisions of the King-Spadina Official Plan Amendment 2 (implemented by By-law 921-2006), currently under appeal:
 - a. Major Objectives (2.2);
 - b. Heritage (4.3); and
 - c. Urban Structure Plan (Map 16-1)

9. Does the Proposal meet the intent of Official Plan Amendment 486, amending the King Spadina Secondary Plan adopted by the Toronto and East York Community Council at its meeting on January 8, 2020, including the following policies:
 - a. Interpretation (1)
 - b. Vision (2)
 - c. Objectives (3.1);
 - d. Parks and Public Realm (4)
 - e. Built Form (6)
 - f. Monitoring, Implementation and Development Approvals (8)
 - g. Secondary Plan Area and Precincts Map (16-1)
 - h. Land Use Map (16-2)

10. Does the Proposal meet the intent of the King-Spadina Heritage Conservation District Plan (June 2017), which was adopted by City Council on October 2, 2017 and is under appeal?

11. Does the Proposal meet the intent of the policy direction of the TOCore Downtown Plan Official Plan Amendment 406, as amended, approved by the Minister of Municipal Affairs on June 5, 2019?

12. Does the Proposal meet the intent of Official Plan Amendment 352, Downtown Tall Building Stepback Area, adopted by the City Council on October 5-7, 2016?

13. Does the proposal meet the intent of the Tall Building Design Guidelines (May 2013), including the following:
 - a. Fit and Transition in Scale (1.3);
 - b. Sunlight and sky view;
 - c. Heritage Properties and Heritage Conservation Districts (1.6)
 - d. Base Building (3.1.1); and,
 - e. Middle (3.2)
14. Does the Proposal establish a relationship with the existing and planned context which is in the interest of the public in terms of heritage conservation, streetwall height, density, mass, stepbacks, setbacks and public realm, which limits undue adverse impacts related to overlook, privacy and loss of skyview and establishes an appropriate relationship with abutting properties?
15. Does the Proposal establish an appropriate relationship to the public realm and to abutting properties?
16. Has the Proposal been designed to conserve the cultural heritage values, attributes, and character of the heritage properties at 578-580 King Street West, 473 Adelaide Street West and the contributing heritage property at 471 Adelaide Street West and to mitigate visual and physical impacts on them?
17. Has the Proposal been designed to conserve the cultural heritage values, attributes and character of the adjacent heritage properties at 570-572 and 580 King Street West and to mitigate visual and physical impacts on them?
18. Does the Proposal provide adequate loading?
19. Does the Proposal provide for appropriate vehicular and pedestrian access to the site (including in relation to adjacent streets and neighboring properties)?
20. Would the approval of the proposed Zoning By-law Amendments set an inappropriate precedent?
21. In light of the foregoing issues, does the Proposal represent good heritage conservation, planning and urban design?
22. In the event that the Tribunal allows the appeal in whole or in part, is the provision of facilities, matters and services in return for the increase in height and density pursuant to Section 37 of the Planning Act appropriate and, if so, what should they be?
23. In the event the City and the Applicant do not reach agreement in advance of the hearing on appropriate section 37 Planning Act benefits, should such matters be left to be determined at a second phase of the hearing following a decision of the Tribunal on the remainder of the issues?

24. Is the form and content, including regulatory standards, of the proposed draft Zoning By-law Amendments to both the former City of Toronto Zoning By-law 438-86, as amended, and the City-wide Zoning By-law No. 569-2013, appropriate?
25. If the Proposal is approved by the Tribunal in whole or in part, should the Tribunal's final Order on the Zoning By-law Amendment be withheld until the Tribunal has been advised by the City Solicitor:
- a. that the proposed Zoning By-law Amendments are in a form satisfactory to the City;
 - b. a Section 37 Agreement has been executed to the satisfaction of the City Solicitor;
 - c. the property at 578-580 King Street West is designated pursuant to Section 29 of the Ontario Heritage Act;
 - d. that the owner obtains approval by City Council and consideration by the Toronto Preservation Board to alter the property at 578-580 King Street West under Section 33 of the Ontario Heritage Act;
 - e. the owner has entered into a Heritage Easement Agreement with the City for the property at 578-580 to the satisfaction of the Senior Manager, Heritage Preservation Services, including execution and registration of such agreement to the satisfaction of the City Solicitor;
 - f. the owner has provided a Conservation Plan prepared by a qualified heritage consultant for the property at 578-580 to the satisfaction of the Senior Manager, Heritage Preservation Services;
 - g. the owner has withdrawn their appeal(s) of the King-Spadina Heritage Conservation District Plan upon the Tribunal order allowing the appeal in part of the Zoning Amendments, bringing such Bylaws into force, and if not an appellant, but rather a party to such appeals, the owner shall withdraw as a party and not seek any party or participant status on the appeals;
 - h. the owner has addressed all transportation, site access and site servicing related matters as identified in the Engineering and Construction Services Memorandum, dated December 20, 2018, to the satisfaction of the Chief Engineer and Executive Director, Engineering & Construction Services; and
 - i. the owner has agreed to pay for and construct any improvements to the municipal infrastructure in connection with the site servicing assessment, should it be determined that upgrades are required to the infrastructure to support this development.

TSCC 2376 FASHION HOUSE

1. Does the Proposal have regard to matters of provincial interest set forth in section 2 of the Planning Act, including in particular subsections (d), (f) and (r)?

2. Is the proposal consistent with the policies of the Provincial Policy Statement, 2014, including but not limited to the following:
 - a. Building Strong and Healthy Communities - 1.1.1(g), 1.1.3.2(a)(2)
 - b. Employment - 1.3.1 (c)
 - c. Long-term Economic Prosperity - 1.7.1 (d)
 - d. Cultural Heritage and Archaeology - 2.6.1
 - e. Implementation and Interpretation - 4.7

3. Does the proposal conform with the policies of the Growth Plan for the Greater Golden Horseshoe (2019), including but not limited to the following:
 - a. Guiding Principles - 1.2.1
 - b. Where and How to Grow - 2.2.1.4 a), 2.2.1.4 e), 2.2.3.1 c)
 - c. Cultural Heritage Resources - 4.2.7

4. Does the Proposal conform to the City of Toronto Official Plan, including but not limited to the following sections:
 - a. Structuring Growth in the City (2.2);
 - b. Downtown: The Heart of Toronto (2.2.1);
 - c. Built Form (3.1.2);
 - d. Built Form – Tall Buildings (3.1.3);
 - e. Heritage Conservations (3.1.5);
 - f. Housing (3.2.1);
 - g. Community Services and Facilities (3.2.2);
 - h. Regeneration Areas (4.7);
 - i. Height and/or Density Incentives (5.1.1);
 - j. Secondary Plans: Policies for Local Growth Opportunities (5.2.1);
 - k. Implementation Plans and Strategies for City-Building (5.3.2);
 - l. Interpretation (5.6); and
 - m. King-Spadina Secondary Plan (6.16), including, but not limited to the following policies:
 - i. Major Objectives (2.3, 2.5);
 - ii. Urban Structure and Built Form (3.2 (b), 3.6);
 - iii. Heritage (4.1, 4.3)

5. Does the Proposal meet the intent of the King-Spadina Urban Design Guidelines (2006), including, but not limited to the following:
 - a. Guidelines (2.5);
 - b. West Precinct (4.3);
 - c. Street Hierarchy (4.4);
 - d. Streetwall Scale Design Considerations (5.2);
 - e. Design and Architectural Quality (5.3); and
 - f. Urban Scale Characteristics (5.4).

6. Does the Proposal meet the intent of the Tall Building Design Guidelines (May 2013), including, but not limited to the following:
 - a. Fit and transition in scale (1.3);
 - b. Sunlight and sky view (1.4);
 - c. Base Building (3.1.1); and
 - d. Middle (3.2.1, 3.2.2, 3.2.3, 3.2.4, 3.2.5).
7. Does the Proposal respond to the King-Spadina Official Plan Amendment 2, currently under appeal, including, but not limited to, the following sections:
 - a. Major Objectives (2.2);
 - b. Heritage (4.3); and
 - c. Urban Structure Plan (Map 16-1).
8. Does the Proposal respond to the policy direction in the City Planning staff report entitled "King-Spadina Secondary Plan Update – Draft Policy Direction Report" dated August 21, 2017 and adopted by Toronto and East York Community Council on October 4, 2017, outlining emerging policies to be included in the updated King Spadina Secondary Plan, including the following emerging policies:
 - a. limiting the scale of development in the West Precinct in comparison to the East Precinct;
 - b. requiring a maximum height limit in the West Precinct of 45 metres inclusive of mechanical elements; and
 - c. requiring compliance with OPA 352 regarding minimum setback requirements for buildings taller than 45 metres?
9. Does the Proposal respond to Official Plan Amendment 352, adopted by City Council on October 5, 2016 and currently under appeal?
10. Does the Proposal respond to the objective of the King-Spadina Heritage Conservation District Plan (June 2017), which was adopted by City Council on October 2, 2017 and is under appeal?
11. Does the Proposal respond to the policy direction of the TOCore Downtown Plan Official Plan Amendment 406, as amended, which was adopted by City Council on May 22, 2018?
12. Does the Proposal represent good planning and urban design and is it in the public interest?
13. Are the height, density, mass, and built form of the Proposal (including the location, massing, and height of the tower and podium, tower separation distances, step backs, and setbacks) appropriate?
14. Does the Proposal adequately limit impacts from overlook, privacy, and loss of skyview?
15. Does the Proposal establish an appropriate built form relationship to its existing and planned context?

16. Does the Proposal establish an appropriate relationship to the public realm and to abutting properties?
17. Has the Proposal been designed to conserve the cultural heritage values, attributes, and character of the site and to mitigate visual and physical impacts?
18. Does the Proposal provide an adequate loading area that will not conflict with the existing pedestrian environment?
19. Does the Proposal incorporate appropriate zoning standards, including height, setbacks, step backs, and separation distances from existing or potential development on adjacent lands?
20. In the event that the Tribunal allows the appeal in whole or in part, are appropriate benefits under Section 37 of the Planning Act secured as part of the Zoning Bylaw Amendment?

738489 ONTARIO LIMITED

None