

Ontario Land Tribunal
Tribunal ontarien de l'aménagement
du territoire



ISSUE DATE: November 24, 2021

CASE NO(S): PL200541

PROCEEDING COMMENCED UNDER subsection 22(7) of the *Planning Act*, R.S.O. 1990, c. P.13, as amended

Applicant and Appellant:	1319283 Ontario Inc.
Subject:	Request to amend the Official Plan - Failure of the City of Toronto to adopt the requested amendment
Existing Designation:	Neighbourhoods
Proposed Designated:	Mixed Use Areas
Purpose:	To permit a 10-storey residential condominium
Property Address/Description:	4161-4169 Dundas Street West, 18-26 Earlington Avenue
Municipality:	City of Toronto
Approval Authority File No.:	20 119591 WET 03 OZ
OLT Case No.:	PL200541
OLT File No.:	PL200541
OLT Case Name:	1319283 Ontario Inc. v. Toronto (City)

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

Applicant and Appellant:	1319283 Ontario Inc.
Subject:	Application to amend Zoning By-law No. (569-2013) - Refusal or neglect of the City of Toronto to make a decision
Proposed Zoning:	Site Specific (To be determined)
Purpose:	To permit a 10-storey residential condominium
Property Address/Description:	4161-4169 Dundas Street West, 18-26 Earlington Avenue
Municipality:	City of Toronto
Municipality File No.:	20 119591 WET 03 OZ
OLT Case No.:	PL200541
OLT File No.:	PL200543

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

Applicant and Appellant:	1319283 Ontario Inc.
Subject:	Application to amend the Etobicoke Zoning Code - Refusal or neglect of the City of Toronto to make a decision
Proposed Zoning:	Site Specific (To be determined)
Purpose:	To permit a 10-storey residential condominium
Property Address/Description:	4161-4169 Dundas Street West, 18-26 Earlington Avenue
Municipality:	City of Toronto
Municipality File No.:	20 119591 WET 03 OZ
OLT Case No.:	PL200541
OLT File No.:	PL200542

Heard: September 24, 2021 by video hearing

APPEARANCES:

Parties

1319283 Ontario Inc. ("Dunpar")

City of Toronto

Counsel

Luke Johnston
Michael Nemanic

Kasia Czajkowski

MEMORANDUM OF ORAL DECISION DELIVERED BY T. PREVEDEL ON SEPTEMBER 24, 2021 AND ORDER OF THE TRIBUNAL

[1] This is the second Case Management Conference ("CMC") conducted in respect of an appeal from 1319283 Ontario Inc. ("Dunpar") pursuant to s. 22(7) and 34(11) of the *Planning Act* against the City of Toronto's refusal or neglect to make a decision within the statutory time frames regarding the Appellant's proposed Official Plan Amendment ("OPA") and Zoning By-law Amendment ("ZBA").

[2] Dunpar is proposing to re-develop the site located at 4161-4169 Dundas Street West and 18-26 Earlington Avenue, Etobicoke, with a 10-storey residential

condominium containing 134 units and four back-to-back, three-bedroom townhouse units.

[3] At the CMC held on June 9, 2021, counsel for Dunpar advised the Tribunal that his client had recently acquired additional lands adjacent to the original proposed development, and that these lands will form part of a revised development proposal. These revised plans have since been submitted to the Tribunal.

Procedural Order and Issues List

[4] Ms. Czajkowski provided the Tribunal with a draft Procedural Order and Issues List in advance of the CMC. She stated that City Council refused the application at the July 14-16, 2021 Council meeting. As a result of the refusal by Council, the Parties on consent have refined the Issues List, which is attached to the Procedural Order.

Tribunal Led Mediation

[5] The Parties have requested Tribunal assistance in mediation towards a potential settlement in advance of a Hearing of the Merits. Counsel are to contact the Tribunal's Strategic Resolution Advisor with a formal request.

The Hearing

[6] The Parties suggested that, if a settlement is not resolved through mediation, a 10-day hearing would be required, as each Party intends to call up to four expert witnesses each.

[7] The Hearing is scheduled to proceed by video hearing on **Monday, August 8, 2022 at 10 a.m.** for a total of ten (10) days.

[8] Statutory Parties and any witnesses providing evidence at the Hearing are asked to log into the video hearing at least **15 minutes** before the start of the event to test their video and audio connections:

<https://global.gotomeeting.com/join/338774157>

Access Code: 338-774-157

[9] Parties and participants are asked to access and set up the application well in advance of the event to avoid unnecessary delay. The desktop application can be downloaded at [GoToMeeting](https://gotomeeting.com) or a web application is available:

<https://app.gotomeeting.com/home.html>.

[10] Persons who experience technical difficulties accessing the GoToMeeting application or who only wish to listen to the event can connect to the event by calling into an audio-only telephone line: **Toll-Free 1-888-299-1889 or +1 (647) 497-9373**. The **Access Code** is as indicated above.

[11] Individuals are directed to connect to the event on the assigned date at the correct time. It is the responsibility of the persons participating in the video hearing to ensure that they are properly connected to the event at the correct time. Questions prior to the hearing event may be directed to the Tribunal's Case Coordinator having carriage of this case.

ORDER

[12] A Procedural Order was finalized and received by the Tribunal shortly after this CMC and is attached as Schedule 1. As such, it is in full force and effect.

[13] The Hearing is scheduled to proceed by video hearing on **Monday, August 8, 2022 at 10 a.m. for ten (10) days**.

[14] Should a settlement be reached through mediation, the Case Coordinator should be advised in advance of the Hearing.

[15] The Member is not seized and is available for case management, schedule permitting.

"T. Prevedel"

T. PREVEDEL
MEMBER

Ontario Land Tribunal

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

The Conservation Review Board, the Environmental Review Tribunal, the Local Planning Appeal Tribunal and the Mining and Lands Tribunal are amalgamated and continued as the Ontario Land Tribunal ("Tribunal"). Any reference to the preceding tribunals or the former Ontario Municipal Board is deemed to be a reference to the Tribunal.

PL200541 – Schedule 1

Ontario Land Tribunal
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PROCEEDING COMMENCED UNDER subsection 22(7) of the *Planning Act*, R.S.O. 1990, c. P.13, as amended

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

Applicant and Appellant:	1319283 Ontario Inc.
Subject:	Application to amend the Etobicoke Zoning Code - Refusal or neglect of the City of Toronto to make a decision
Proposed Zoning:	Site Specific (To be determined)
Purpose:	To permit a 10-storey residential condominium
Property Address/Description:	4161-4169 Dundas Street West, 18-26 Earlington Avenue
Municipality:	City of Toronto
Municipality File No.:	20 119591 WET 03 OZ
OLT Case No.:	PL200541
OLT File No.:	PL200542

PROCEDURAL ORDER

1. The Tribunal may vary or add to the directions in this procedural order at any time by an oral ruling or by another written order, either on the Parties' request or its own motion.

Organization of the Hearing

2. The hearing will begin on **August 8, 2022** at **10 a.m.** by using this link:

GoTo Meeting: <https://global.gotomeeting/join/338774157>

Audio-only telephone line: Toll-Free 1-888-299-1889 or +1 (647) 497-9373

Access Code: 338-774-157

All parties and participants shall attend the first day of the hearing.

3. The length of the hearing will be **10 days**. The Parties are expected to cooperate to reduce the length of the hearing by eliminating redundant evidence and attempting to reach settlements on issues, where possible. The procedural order deadlines are generally found in **Attachment 1**.

4. The Parties and Participants identified at the Case Management Conference are listed in **Attachment 2** to this Order.
5. The Issues are set out in the Issues List attached as **Attachment 3** to this Order. 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.
6. The order of evidence is set out in **Attachment 4** to this Order. The Tribunal 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, subject to the Tribunal's approval, or by Order of the Tribunal.
7. Any person intending to participate in the hearing shall provide a mailing address, email address and a telephone number to the Tribunal. Any such person who retains a representative must advise the other Parties and the Tribunal of the representative's name, address, email address and the phone number.
8. If the hearing is to proceed electronically, any person who intends to participate in the hearing, including Parties, counsel and witnesses, is expected to review the Tribunal's Video Hearing Guide, available on the Tribunal's website (<https://olt.gov.on.ca/appeals-process/video-hearing/>).

Requirements Before the Hearing

9. Expert witnesses in the same discipline(s) shall have at least one meeting before the hearing to try to resolve or reduce the issues for the hearing. The experts shall prepare a list of any agreed facts and the remaining issues to be addressed at the hearing, and provide this list to all of the Parties and the Tribunal at least **fifteen days (15) days prior to date for Expert Witness Statements as stated**

in Section 14 (on or before April 20, 2022), if this meeting takes place and if agreement is reached.

10. 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 at least **one hundred and twenty (120) calendar days before the hearing (on or before February 21, 2022)**. For expert witnesses, a Party is to identify the area of expertise in which the witness is proposed to be qualified. Any challenges to the witness, including qualifications of a witness to give opinion evidence in the area of expertise proposed shall be made by motion in accordance with the Tribunal's Rules and notice of same must be served on the other Parties **on or before March 21, 2022 (100 days before the hearing is scheduled to commence)**.
11. 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, the acknowledgement of expert's duty and curriculum vitae. Copies of this must be provided as in Section 14. 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. For greater certainty, each expert witness statement must comply with the minimum content requirements specified in Rule 7 of the Tribunal's *Rules of Practice and Procedure*. If the expert witness has prepared any report(s) that he/she intends to rely on at the hearing, and which did not form part of the submissions made to the City, such report(s) shall be provided to the other Parties at the same as the delivery of expert witness statements, as in Section 14.
12. A witness or participant must provide to the Tribunal and the Parties a witness statement or participant statement, respectively, **at least sixty-five (65) calendar days prior to the scheduled commencement of the hearing (on or**

before May 11, 2022), or the witness or participant may not give oral evidence at the hearing. Participants are only permitted to provide written evidence to the Tribunal, unless otherwise permitted by the Tribunal.

13. 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 evidence, as in Section 14.
14. **At least sixty-five (65) calendar days prior to the scheduled commencement of the hearing (on or before May 11, 2022)**, the Parties shall provide copies of their witness statements and expert witness statements (full disclosure including reports) to the other Parties.
15. At least **forty-five (45) calendar days prior to the scheduled commencement of the hearing (on or before June 9, 2022)**, the Parties may provide to all other Parties a written response to any written evidence.
16. At least **forty (40) calendar days prior to the scheduled commencement of the hearing (on or before June 16, 2022)**, the Parties shall advise the Tribunal of whether any hearings dates scheduled for this matter may be released from the Tribunal's calendar. This request may only be made on consent of all of the Parties. If no hearing dates are intended to be released from the Tribunal's calendar, no Party is required to advise the Tribunal anything further in that regard.
17. At least **thirty (30) calendar days prior to the scheduled commencement of the hearing (on or before June 30, 2022)**, the Parties shall provide copies of their visual evidence to all of the other Parties. The Tribunal and all Parties shall be notified if a model will be used, all Parties must have a reasonable opportunity to view it before the scheduled commencement of the hearing.

18. A person wishing to change written evidence, including witness statements, must make a written motion to the Tribunal. Such a motion shall be in accordance with the Tribunal's Rule 10, which requires that the moving Party provide copies of the motion to all other Parties **at least 15 days** before the Tribunal hears the motion.
19. 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 Tribunal **at least 7 days** before the hearing that the written evidence is not part of their record.
20. On or before **June 30, 2022 (thirty (30) days before the commencement of the hearing)**, the Parties shall prepare and file a detailed Work Plan that identifies the following, at a minimum: the identified Parties participating in the Hearing Event, preliminary matters (if any to be addressed), the date a witness is intended to attend the Tribunal, the identified witness name/expertise, and the approximate time allotted for Examination in Chief, Cross Examination and any re-examination (if any) (the "**Work Plan**"). The Work Plan should be adhered to guide the Hearing Event to the best ability of all the Parties, and any and all witnesses shall be available on the identified date(s), unless otherwise directed by the Tribunal. The Tribunal may, at its discretion, change or alter the Work Plan throughout the Hearing Event.
21. The Parties shall prepare a Joint Document Book **on or before July 11, 2022 (20 days before the hearing is scheduled to commence)**, and which one (1) hard copy will be filed with the Tribunal as soon as practicable in advance of the Hearing. All Parties must be served with the Joint Document Book in paper or an accessible electronic format in accordance with Section 23.
22. If the applicant intends to seek approval of a revised proposal at the hearing, the applicant shall provide copies of the revised proposal, including all revised plans, drawings, proposed instruments, updated supporting documents and reports, to

the other Parties **on or before February 14, 2022 (sixty (60) days before Expert Witness Statements as stated in Section 14)**. The applicant acknowledges that any revisions to the proposal after that date without the consent of the Parties may be grounds for a request to adjourn the hearing.

23. All filing of documents and materials shall be electronic to the Tribunal, the Parties and Participants (if any). The Tribunal will be provided a hard copy of documents and materials in advance of the hearing event as soon as practicable. Electronic copies may be filed by email, an electronic file sharing service for documents that exceed 10MB in size, or as otherwise directed by the Tribunal. The delivery of documents email shall be governed by the Rule 7. All documents to be filed with the Tribunal shall be organized, tabbed and digitally searchable and such materials will be filed in accordance with directions contained in the Tribunal's Video Hearing Guide, dated July 2, 2020, or as may be amended. Section 23 applies regardless if the hearing event is in-person or electronic.
24. No adjournments or delays will be granted before or during the hearing except for serious hardship or illness or as permitted by Section 22. The Tribunal's Rule 17 applies to such requests.
25. The Tribunal may conduct mediation on consent of all Parties, on consent of those Parties who wish to participate in mediation, or if the Tribunal sees fit.
26. The purpose of this Procedural Order and the meaning of the terms used in this Procedural Order are set out in **Attachment 5**.

This Member is not seized.

So orders the Tribunal.

ATTACHMENT 1
SUMMARY OF DATES

DATE	EVENT
February 14, 2022 (60 days before Witness Statement Date)	Last date to provide copies of revised proposal, including all revised plans and drawings (if any)
February 21, 2022 (120 days prior to hearing)	Exchange of witness lists (names, disciplines and order to be called)
March 21, 2022 (100 days prior to hearing)	Last date to challenge identification of expert witness
April 20, 2022 (80 days prior to hearing)	Experts meeting prior to this date
April 20, 2022 (80 days prior to hearing)	Agreed Statement of Facts
May 11, 2022 (65 days prior to hearing)	Exchange of Witness Statements, summoned witness outlines, Expert Reports and Participant Statements
June 9, 2022 (45 days prior to hearing)	Exchange of Reply Witness Statements (if any)
June 16, 2022 (40 days prior to hearing)	Parties to Advise Tribunal if any hearing dates are to be released from the hearing calendar (if any)
June 30, 2022 (30 days prior to hearing)	Exchange of visual evidence (if any)
June 30, 2022 (30 days prior to hearing)	Final Work Plan filed with the Tribunal
July 11, 2022 (20 days prior to hearing)	Finalize Joint Document Book
August 8, 2022	Hearing commences

ATTACHMENT 2

LIST OF PARTIES AND PARTICIPANTS

A. PARTIES

PARTIES		COUNSEL
1.	1319283 Ontario Inc.	Dunpar Developments 105 Six Point Road Etobicoke, ON M8Z 2X3 Luke Johnston Email: l.johnston@dunpar.ca Tel: (416) 236-9800 ext. 256 Michael Nemanic Email: m.nemanic@dunpar.ca Tel: (416) 236-9800 ext. 232 Fax: (416) 236-9080
2.	City of Toronto	Legal Services Metro Hall, 26th Floor 55 John Street Toronto, ON M5V 3C6 Kasia Czajkowski Email: Kasia.Czajkowski@toronto.ca Tel: (416) 338-5725 Fax: (416) 397-5624

B. PARTICIPANTS

1.	Carmen Colangelo ccdancelatin@hotmail.com
2.	Stephen Massiah s.w.massiah@gmail.com
3.	Brownstone Lane Task Group brownstonelanetaskgroup@gmail.com , juliaptaszyk@hotmail.com
4.	Vanessa Alsop vanessaalsop@gmail.com
5.	Gordon MacKay gmackay@mackaywong.com

ATTACHMENT 3

ISSUES LIST

NOTE: The identification of an issue on the Issues List does not constitute an acknowledgement by the Tribunal or any Party that the issue is either relevant or appropriate. The identification of an issue on this list by a Party indicates that Party's intent to lead evidence or argue that the issue is relevant to the proceeding, for the purpose of fairly identifying to the other Parties the case they need to meet and shall not be construed as the Tribunal have jurisdiction over such matters in each circumstance. Accordingly, no Party shall advance an issue not identified on the Issues List without leave of the Tribunal.

A. City of Toronto

Planning Act

1. Do the proposed development, Official Plan Amendment, and Zoning By-law Amendments have appropriate regard for the matters of provincial interest as set out in Section 2 of the *Planning Act*, in particular Section 2(h), 2(j), 2(p), and 2(r)?
2. Would approval of the proposed development by the Tribunal have regard to the decision of City Council and the information and material that City Council considered in making its decision as required by Section 2.1 of the *Planning Act*?

Provincial Policy Statement (2020)

3. Are the proposed development, Official Plan Amendment, and Zoning By-law Amendments consistent with the Provincial Policy Statement (2020) pursuant to Section 3(5) of the *Planning Act*, including Sections 1.1.1, 1.1.3, 1.3.1, 1.7.1, and 4.6?

A Place to Grow – Growth Plan for the Greater Golden Horseshoe (2020)

4. Do the proposed development, Official Plan Amendment, and Zoning By-law Amendments conform to and not conflict with the A Place to Grow: Growth Plan for the Greater Golden Horseshoe (2020) pursuant to Section 3(5) of the *Planning Act*, including Sections 2.2.1., 2.2.6 and 5.2.5.6?

City of Toronto Official Plan

5. Do the proposed development, Official Plan Amendment and Zoning By-law Amendments conform with the policies of the City of Toronto Official Plan with

respect to:

- a. Avenues (2.2.3)
- b. Healthy Neighbourhoods (2.3.1)
- c. The Public Realm (3.1.1)
- d. Built Form (3.1.2)
- e. Built Form – Building Types (3.1.3)
- f. The Natural Environment (3.4.1)
- g. Neighbourhoods (4.1)
- h. Mixed Use Areas (4.5)
- i. Height and/or Density Incentives (5.1.1)?

Site and Area Specific Policy No. 277

- 6. Does the proposed development conform with the policies of Site and Area Specific Policy 277?

Dundas Street West Urban Design Guidelines

- 7. Does the proposal meet the intent and purpose of the Dundas Street West Urban Design Guidelines?

City of Toronto Guidelines

- 8. Does the proposed development meet the intent and purpose of the City of Toronto Mid-rise Buildings Performance Standards?

Site Specific Issues

Land Use Planning and Urban Design

- 9. Is the proposed development appropriate, and does it represent good land use planning and urban design, based on the underlying land use designations, and in particular is it appropriate for the proposed 10-storey building and associated parking garage to extend into lands designated as *Neighbourhoods*?
- 10. Is the land use designation in the proposed Official Plan Amendment in a location identified as appropriate for growth and change, based on the existing and planned context?
- 11. Is the site organization and built form of the proposed development appropriate, including:

- i. Are the proposed building configuration/orientation, heights, setbacks and separation distances appropriate?
 - ii. Does the proposal provide an appropriate transition to surrounding land uses and built form?
 - iii. Are the shadow impacts from the proposed development acceptable?
 - iv. Are the wind impacts from the proposed development acceptable?
 - v. Are the proposed setbacks, step backs, and separation distances between the proposed buildings appropriate?
 - vi. Is the proposed vehicular parking, parking access, loading, waste management and circulation acceptable from the perspective of minimizing impact on the property and surrounding properties and the safety and attractiveness of the adjacent public realm?
 - vii. Does the proposed development represent principles of good planning and urban design?
12. Does the proposal adequately support the unit mix and size objectives of the Growing Up Guidelines?
13. Is the proposed parking supply appropriate for this site?
14. Does the proposal appropriately and adequately implement the recommendations of the Dundas Street West Avenue Study?
15. Are the Zoning By-law Amendments good planning and in the public interest?

Landscaping and Tree Preservation

16. Does the proposal provide an adequate setback and height along Dundas Street West to accommodate healthy and mature trees?
17. Is the extent of the proposed tree removal acceptable?
18. Is the underground parking garage in the proposal at a depth that will support soil volume for tree planting?

Community Benefits

19. In the event 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 and what is the appropriate quantum of the appropriate community benefits?

Implementation

20. If the proposed development is approved in whole or in part, should the Tribunal Order be withheld until the following conditions are satisfied and the Tribunal receives confirmation from the City Solicitor that:
 - a. The final form and content of the Official Plan and Zoning By-law Amendments are satisfactory to the Chief Planner and Executive Director, City Planning and the City Solicitor;
 - b. The owner has submitted a revised Functional Servicing Report to determine the stormwater run-off, sanitary flow and water supply demand resulting from the development and whether there is adequate capacity in the existing municipal infrastructure to accommodate the proposed development, to the satisfaction of the Chief Engineer and Executive Director, Engineering and Construction Services;
 - c. The owner has provided a revised Traffic Impact Study and a Transportation Demand Management Plan, which addresses parking and loading requirements, satisfactory to the General Manager, Transportation Services and the Chief Planner and Executive Director, City Planning;
 - d. The owner has made satisfactory arrangements with the City and has entered into the appropriate agreements for the design and construction of any improvements to the municipal infrastructure, should it be determined that upgrades are required to the infrastructure to support the development, according to the accepted Functional Servicing Report and Traffic Impact Study/Transportation Demand Management Plan accepted by the Chief Engineer and Executive Director, Engineering and Construction Services and the General Manager, Transportation Services;
 - e. The owner has provided parking spaces and accessible parking spaces, as well as drive aisles widths, in accordance with the supply and

dimensional requirements of City-wide Zoning By-law 569-2013 to the satisfaction of the General Manager of Transportation Services;

- f. The owner has provided a revised Pedestrian Level Wind Study, including wind tunnel test, to the satisfaction of the Chief Planner and Executive Director, City Planning;
- g. The owner has provided a revised Arborist Report, Tree Inventory and Preservation Plan and addressed all outstanding issues raised by Urban Forestry, Tree Protection and Plan Review as they relate to the Official Plan and Zoning By-law Amendment applications, to the satisfaction of the Supervisor, Tree Protection and Plan Review;
- h. The owner has satisfied the requirements of the Toronto District School Board and the Toronto Catholic District School Board regarding signage;
- i. The owner has provided information regarding the current number and type of rental units on the land and, if required, has addressed all rental replacement requirements in accordance with the Official Plan and City standards to the satisfaction of the Chief Planner and Executive Director, City Planning and the City Solicitor;
- j. The owner shall prepare all documents and convey, on terms set out in the Section 37 Agreement, a road widening along the frontage of the property on Dundas Street West to achieve a 2.1 metre wide sidewalk entirely within the City Right-of-Way, all to the satisfaction of the Chief Planner and Executive Director, City Planning, the General Manager, Transportation Services and the City Solicitor; and
- k. Community benefits and other matters in support of the development have been secured in a Section 37 Agreement executed by the owner, and registered on title, all to the satisfaction of the Chief Planner and Executive Director, City Planning and the City Solicitor?

ATTACHMENT 4
ORDER OF EVIDENCE

NOTE: Where Parties of like interest have issues in common, they shall make reasonable efforts to coordinate their examinations-in-chief and cross-examinations so as to minimize any duplication or overlap of evidence.

1. 1319283 Ontario Inc.
2. City of Toronto
3. 1319283 Ontario Inc., in Reply

ATTACHMENT 5

Purpose of the Procedural Order and Meaning of Terms

A **party** is an individual or corporation permitted by the Tribunal 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. An **unincorporated group** cannot be a party and 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 case management conference (CMC), must ask the Tribunal to permit this.

A **participant** is an individual or corporation, whether represented by a lawyer or not, who may make a written submission to the Tribunal. A participant cannot make an oral submission to the Tribunal or present oral evidence (testify in-person) at the hearing (only a party may do so). Section 17 of the Ontario Land Tribunal Act states that a person who is not a party to a proceeding may only make a submission to the Tribunal in writing. The Tribunal may direct a participant to attend a hearing to answer questions from the Tribunal on the content of their written submission, should that be found necessary by the Tribunal. A participant may also be asked questions by the parties should the Tribunal direct a participant to attend a hearing to answer questions on the content of their written submission.

A participant must be identified and be accorded participant status by the Tribunal at the CMC. A participant will not receive notice of conference calls on procedural issues that may be scheduled prior to the hearing, nor receive notice of mediation. A participant cannot ask for costs, or review of a decision, as a participant does not have the rights of a party to make such requests of the Tribunal.

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.

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 a list of reports or materials 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 supporting their opinions and conclusions and (5) a list of reports or materials that the witness will rely on at the hearing. An expert witness statement must be accompanied by an acknowledgement of expert's duty.

A **participant statement** is a short written outline of the person's or group's background, experience and interest in the matter; a statement of the participant's position on the appeal; a list of the issues which the participant wishes to address and the submissions of the participant on those issues; and a list of reports or materials, if any, which the participant wishes to refer to in their statement.

Additional Information

A **summons** may compel the appearance of a person before the Tribunal who has not agreed to appear as a witness. A party must ask a Tribunal Member or the senior staff of the Tribunal to issue a summons through a request. (See [Rule 13](#) on the summons procedure.) The request should indicate how the witness' evidence is relevant to the hearing. If the Tribunal is not satisfied from the information provided in the request that the evidence is relevant, necessary or admissible, the party requesting the summons may provide a further request with more detail or bring a motion in accordance with the Rules.

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 Tribunal;
- 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 Tribunal.