

Ontario Land Tribunal
Tribunal ontarien de l'aménagement
du territoire



ISSUE DATE: September 27, 2021

CASE NO(S): PL210037

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

Appellant: Peel Condominium Corporation 395
Subject: Proposed Official Plan Amendment No. OPA 70
Municipality: City of Mississauga
OLT Case No.: PL210037
OLT File No.: PL210037
OLT Case Name: Peel Condominium Corporation 395 v.
Mississauga (City)

PROCEEDING COMMENCED UNDER subsection 34(19) of the *Planning Act*, R.S.O. 1990, c. P.13, as amended

Appellant: Peel Condominium Corporation 395
Subject: By-law No. 0303-2020
Municipality: City of Mississauga
OLT Case No.: PL210037
OLT File No.: PL210038

Heard: June 9, 2021 by Video Hearing

APPEARANCES:

Parties

Counsel/Representative*

Peel Condominium Corporation 395 Mary Khan*

City of Mississauga Graham Walsh

45 Agnes GP Corporation Aaron Platt
Alex Lusty

MEMORANDUM OF ORAL DECISION DELIVERED BY STEVEN COOKE ON JUNE 9, 2021 AND ORDER OF THE TRIBUNAL

[1] Peel Condominium Corporation 395 (“PCC 395”) has appealed, under s. 17(24) and s. 34(19) of the *Planning Act* (“Act”), the decision of the City of Mississauga (“City”) for Council’s passage of an Official Plan Amendment (“OPA”) and Zoning By-law Amendment (“ZBA”) applications by 45 Agnes GP Corporation (“Agnes Corp.”).

[2] Agnes Corp. proposes to construct a 28-storey building that would contain 282 dwelling units and 520 square metres (“sq m”) of commercial floor space. The proposed development is located on a vacant lot municipally known as 45 Agnes Street (“Subject Site”). PCC 395 is located immediately adjacent at 25 Agnes Street.

[3] Both properties are located in the Downtown Cooksville Character Area in the City Official Plan (“OP”) and are designated Residential High Density that allows for a height of 25-storeys. The Subject Site is also designated as Special Site 3 Policy in the OP that permits 121 apartment units at a height of 13-storeys. In December 2020, City Council adopted the OPA and ZBA, which altered the Downtown Cooksville Character Area, Special Site 3 Policy to allow for the development of a 28-storey building on the Subject Site.

[4] The Subject Site is located within 500 metres (“m”) of the Cooksville GO Transit Station and will be approximately 100 m to the future Hurontario Light Rail Transit Line.

MOTION TO DISMISS

[5] Agnes Corp. filed a Motion Record (“Exhibit 1”) on May 21, 2021, for the Tribunal’s consideration. The Motion asks the Tribunal to consider:

- a) whether or not PCC 395 is a valid statutory appellant pursuant to s. 17(24)(1) or s. 34(19)(2) of the Act; or,

- b) dismissing the appeals of PCC 395 in its entirety, without hearing, pursuant to s. 17(45) and s. 34(35) of the Act.

[6] The City responded to the Motion by Agnes Corp. on May 31, 2021, in support of dismissing the appeal without hearing. The City indicated that they had no position on whether PCC 395 are a valid statutory appellant.

[7] PCC 395 did not respond to the Motion before the commencement of the hearing.

DOES PCC 395 HAVE STATUTORY STATUS?

[8] In both s. 17(24)(1) and s. 34(19)(2) of the Act, it is a requirement that in order to make an appeal, a person or public body must make written or oral submissions to the City Council before the passage of the OPA and ZBA.

[9] Mr. Platt, Counsel for Agnes Corp., submits to the Tribunal that while individuals that are residents of 25 Agnes Street may have made depositions to the City Council during the process, at no time over the six years that this application was going through the municipal process did PCC 395 make any written or oral submissions.

[10] The only correspondence during the municipal process was from Ms. Khan, an email dated April 10, 2017 that simply states:

Good Morning,

As requested in your letter distributed to the residents of 25 Agnes Street, please see attached from owners of 25 Agnes who may not be able to attend the meeting tonight.

Thank You

Mary Khan
Property Manager

[11] The Tribunal asked Ms. Khan whether or not there was any minutes or formal correspondence that has given her authorization to make an appeal on behalf of PCC 395. Ms. Khan informed the Tribunal that the appeal had been authorized and discussed at a PCC 395 Board of Directors meeting but could not provide the Tribunal with the date of said meeting or any documentation to support the claim.

DOES PCC 395 HAVE GROUNDS FOR APPEAL?

[12] It is the submission of Agnes Corp., supported by the City, that appeals of PCC 395 be dismissed in its entirety, without hearing, as it fails to meet the criteria pursuant to s. 17(45) and s. 34(25) of the Act.

[13] Both s. 17(45) and s. 34(25) state that the Tribunal may, on its own initiative or on the motion of any party, dismiss all or part of an appeal without holding a hearing if any of the following apply:

Dismissal without a hearing 17(45)

1. The Tribunal is of the opinion that,
 - i. the reasons set out in the notice of appeal do not disclose any apparent land use planning ground upon which the plan or part of the plan that is the subject of the appeal could be approved or refused by the Tribunal,
 - ii. the appeal is not made in good faith or is frivolous or vexatious,
 - iii. the appeal is made only for the purpose of delay, or
 - iv. the appellant has persistently and without reasonable grounds commenced before the Tribunal proceedings that constitute an abuse of process.
2. The appellant has not provided written reasons with respect to an appeal

[14] PCC 395 did not submit their Issues List to the Parties until after 5 p.m. the evening before these proceedings. The Issues List provided by PCC 395 include the following:

- 1) 28-storeys is too high as it does not conform with the immediate neighbourhood.
- 2) Exceed sun blockage requirements.

- 3) Increase traffic beyond capability of Cook Street and Agnes Street.
- 4) Will create/increase security issues with homeless people. The condo already has a massive problem with theft and assault from homeless people.
- 5) Fire regulations are not met.
- 6) Crane and property encroachment.
- 7) Overload hydro system.

[15] The Tribunal reviewed the Issues List with Ms. Khan and informed her that Issues 4 through 7 are not planning matters and could not be considered Issues within the jurisdiction that the Tribunal could adjudicate on.

[16] While the remaining Issues of building height, shadows, and traffic are considered matters of planning, the Tribunal found them to be vague. The Tribunal enquired with Ms. Khan whether or not PCC 395 has retained or have spoken to any planning, shadow, or wind experts. Ms. Khan informed the Tribunal that the PCC 395 has not retained or started the process to retain any expert witnesses at the time of the CMC.

[17] In the submissions of Agnes Corp. that are supported by the City, the appeals by PCC 395 are not grounds of land use planning. It is their opinion that it is not simply enough to cite general planning matters without giving identifying specific issues.

FINDINGS OF THE TRIBUNAL

[18] The Tribunal is not satisfied that PCC 395 has met either the standards to be a Statutory Party in the proceedings or has a valid appeal before the Tribunal.

[19] PCC 395 had the obligation to submit oral or written submissions to the City Council as part of the municipal process in order to be eligible to make an appeal. The Tribunal is

not satisfied that PCC 395 has been able to demonstrate that they qualify to be a statutory party.

[20] As an appellant, it is the duty and obligation of PCC 395 to be prepared at the time of the hearing. In *Zellers Inc. v. Royal Cobourg Centres Ltd.*, 2001 CarswellOnt 3362, [2001] O.J. No. 3792, (*Ont. Div. Ct.*), which states that:

...in neither the appeals themselves, nor in materials responding to this Motion, do the appellants discharge the onus on them "to demonstrate through their conduct in pursuing the appeal, including their gathering of evidence to make their case, that issues raised in their Notice of Appeal justify a hearing.

[21] The Tribunal is not satisfied that PCC 395 has met their duties and obligations. The PCC 395 have not sought expert witnesses, submitted late to the Parties an Issues List that was not defined, and failed to respond to the motion to dismiss.

ORDER

[22] **THE TRIBUNAL ORDERS** that the appeals by PCC 395 are dismissed without a hearing.

"Steven Cooke"

STEVEN COOKE
MEMBER

Ontario Land Tribunal

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