

ISSUE DATE:

APR. 20, 2007

DECISION/ORDER NO:

1097



PL060973

Ontario Municipal Board
Commission des affaires municipales de l'Ontario

Toronto College Park Limited ("TCPL") and Canderel Stoneridge Equity Group ("Canderel") have appealed to the Ontario Municipal Board under subsection 22(7) of the *Planning Act*, R.S.O. 1990, c.P. 13, as amended, from Council's refusal or neglect to enact a proposed amendment to the Official Plan for the City of Toronto to redesignate lands municipally known as 444 Yonge Street (College Park Block), specifically the Yonge-Gerrard lands on the northwest corner of Yonge Street and Gerrard Street West to allow for the mixed residential and commercial development consists of a 75-storey residential tower and 17,000 square metres of commercial/retail space
(Approval Authority File No. 04 130483 STE 27 OZ)
O.M.B. File No. O060190

Toronto College Park Limited ("TCPL") and Canderel Stoneridge Equity Group ("Canderel") have appealed to the Ontario Municipal Board under subsection 34(11) of the *Planning Act*, R.S.O. 1990, c.P. 13, as amended, from Council's refusal or neglect to enact a proposed amendment to Zoning By-law 438-86 of the City of Toronto to rezone lands municipally known as 444 Yonge Street (College Park Block), specifically the Yonge-Gerrard lands on the northwest corner of Yonge Street and Gerrard Street West to allow for the mixed residential and commercial development consists of a 75-storey residential tower and 17,000 square metres of commercial/retail space
O.M.B. File No. Z060128

APPEARANCES:

Parties

Counsel

City of Toronto

S. Bradley

Canderel Stoneridge Equity Group

B. Onyschuk

Toronto College Park Limited

T. Bermingham

**AMENDING DECISION DELIVERED BY S. W. LEE AND C. HEFFERON
AND PROCEDURAL ORDER OF THE BOARD**

The Board amends Decision/Order No. 0673 issued on March 15, 2007 ("Decision"), to replace Schedule "A" with a correct Schedule "A" appended to this Amending Decision. The purpose of the Amending Decision is to correct errors in Paragraphs 9 and 11 on page No. 4 of the Procedural Order attached to the Decision by replacing references to "section 0" with "section 12".

In all other respects, the Board's Decision remains unchanged.

The Board so Orders.

"S. W. Lee"

S. W. LEE
EXECUTIVE VICE-CHAIR

"C. Hefferon"

C. HEFFERON
MEMBER

SCHEDULE "A"

Toronto College Park Limited ("TCPL") and Canderel Stoneridge Equity Group (Canderel") have appealed to the Ontario Municipal Board under subsection 22(7) of the *Planning Act*, R.S.O. 1990, c. P.13, as amended, from Council's refusal or neglect to enact a proposed amendment to the Official Plan for the City of Toronto, to redesignate lands known municipally as 444 Yonge Street (College Park Block), specifically the Yonge-Gerrard lands on the northwest corner of Yonge Street and Gerrard Street West to allow for the mixed residential and commercial development consisting of a 75-storey residential tower and 17,000 square metres of commercial/retail space.

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OMB File No. Z060064

PROCEDURAL ORDER

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

Organization of the Hearing

2. The hearing will begin on August 20, 2007 at 10:00 a.m. at the Ontario Municipal Board offices at 655 Bay Street, in the municipality of Toronto. A further prehearing conference will be held on May 29, 2007 at 10:00 a.m. at the same location. At the outset of the hearing, the Board will schedule an evening session to hear from interested members of the public.

3. The length of the hearing will be about 20 days (4 weeks).

4. The parties and participants identified at the prehearing conference (see *Attachment 1 for the meaning of these terms*) are listed in Attachment 2 to this Order. The order of evidence at the hearing is set forth in Attachment 3 to this Order.

5. The Issues are set out in the Issues List attached as Attachment 4. At this point in time this is to be considered a tentative Issues List, with the final form of the Issues List to be settled by the parties no later than the prehearing scheduled for May 29, 2007. Once finalized, there will be no changes to the list unless the Board permits, and a party who asks for changes may have costs awarded against it.

Any person intending to participate in the hearing should provide a telephone number to the Board as soon as possible (*preferably before the prehearing conference*). Any such person who will be retaining a representative should advise the other parties and the Board of the representative's name, address and phone number as soon as possible.

Requirements Before the Hearing

7. The parties agree that their expert witnesses in the same field shall have a meeting, on a without prejudice basis, before the written evidence exchange to try to resolve or reduce the issues for the hearing. The experts are encouraged to 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 municipal clerk.

8. A party who intends to call witnesses, whether by summons or not, shall provide to the Board, the other parties and to the Clerk a list of the witnesses and the order in which they will be called. This list must be delivered at least **thirty (30)** calendar days before the hearing.

9. 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. Copies of this must be provided as in section 12. 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 Board may refuse to hear the expert's testimony.

10. A participant or non-expert witness must provide to the Board and the parties a witness or participant statement at least **sixty (60)** calendar days before the hearing, or the witness or participant may not give oral evidence at the hearing.

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 file a brief outline of the expert's evidence, as in section 12.

12. On or before **thirty (30)** calendar days before the hearing date, the parties shall provide copies of their witness and expert witness statements to the other parties and to the Clerk.

13. On or before **fifteen (15)** calendar days before the hearing date, the parties shall provide copies of their visual evidence to all of the other parties. If a model will be used, all parties must have a reasonable opportunity to view it before the hearing.

14. Parties may provide to all other parties and file with the Clerk a written response to any written evidence within **fifteen (15)** days after the evidence is received.

15. A person wishing to change written evidence, including witness statements, must make a written motion to the Board.

(see Rules 34 and 35 of the Board's Rules, which require that the moving party provide copies of the motion to all other parties 10 days before the Board hears the motion.)

16. 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 Board at least 7 days before the hearing that the written evidence is not part of their record.

17. Documents may be delivered by personal delivery, electronic mail, facsimile or registered or certified mail, or otherwise as the Board may direct. The delivery of documents by fax shall be governed by the Board's Rules 26 — 31 on this subject. Material delivered by mail shall be deemed to have been received five business days after the date of registration or certification.

18. No adjournments or delays will be granted before or during the hearing except for serious hardship or illness. The Board's Rules 61 to 65 apply to such requests.

These Members are not seized.

So orders the Board.

ATTACHMENT 1

Meaning of Terms

Meaning of terms used in the Procedural Order:

Party is an individual or corporation permitted by the Board 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. If an unincorporated group wishes to become a party, 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 authorization 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 prehearing conference, must ask the Board to permit this.

Participant is an individual, group or corporation, whether represented by a lawyer or not, who may attend only part of the proceeding but who makes a statement to the Board on all or some of the issues in the hearing. Such persons may also be identified at the start of the hearing. The Board will set the time for hearing this statements.

NOTE that such persons will likely not receive a Notice of Mediation or conference calls on procedural issues. They also cannot ask for costs, or review of a decision as parties can. If a participant does not attend the hearing and only files a written statement, the Board will not give it the same attention or weight as submissions made orally. The reason is that parties cannot ask further questions of a person if they merely file material and do not attend.

Written and Visual Evidence:

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.

Witness Statements:

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 the witness' opinions on those issues; and a list of reports 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 for the opinions and (5) a list of reports that the witness will rely on at the hearing.

A **participant statement** is a short written outline of the person's or group's background, experience and interest in the matter; a list of the issues which the participant will address and a short outline of the evidence on those issues; and a list of reports, if any, which the participant will refer to at the hearing.

Additional Information

Summons: A party must ask a Board Member or the senior staff of the Board to issue a summons. This request must be made before the time that the list of witnesses is provided to the Board and the parties (see Rules 41 and 42 on the summons procedure.) If the Board requests it, an affidavit must be provided indicating how the witness' evidence is relevant to the hearing. If the Board is not satisfied from the affidavit, it will require that a motion be heard to decide whether the witness should be summoned.

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 Board;
- 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 Board.

ATTACHMENT 2

Parties

- Toronto College Park Limited (“TCPL”)
- Canderel Stoneridge Equity Group (“Canderel”)
- City of Toronto

Participants

- James Robinson, Downtown Yonge Business Improvement Area
- Ian Hamilton, Ryerson University, Campus Planning & Facilities
- Dianne Tyers, Liberties Residents and Owners
- William Foss, Property Manager of Liberties Condominium MTCC 901 & 907
- Ian Gemmell, President, McGill Granby Village Residence Association
- Kathy Holden, Bay Corridor Community Association

ATTACHMENT 3

Order of Evidence

1. Toronto College Park Limited ("TCPL")
2. Canderel Stoneridge Equity Group (Canderel)
3. Participant Supporting
4. City of Toronto
5. Participant Opposing
6. Reply by "TCPL" and "Canderel"

ATTACHMENT 4

Issues List

Applicant's Issues:

1. Is the proposed rezoning and allocation of residential and non residential development potential to the various ownerships within the College Park Block, appropriate, and does it represent good planning?
2. With specific regard for the proposed development on the Yonge Gerrard Lands, does the development before the Board represent good and proper planning, having regard for (1) the PPS, (2) the Provincial Growth Plan, and (3) the newly approved Official Plan for Toronto?
3. Is the height, gross floor area, mix of uses and design of the proposed development on the Yonge Gerrard Lands appropriate having regard to the location of the project and the redevelopment potential of the site within the College Park Block?

City's Issues:

1. Are the height, mass and built form (including such matters as: the height and location of the tower, the tower floor plate dimensions and orientation, and the podium dimensions, location and orientation), of the proposed building (the "Proposed Development") appropriate, given,
 - a) principles of good planning and urban design, and
 - b) the issues set out below?
2. Is the Proposed Development appropriate having regard to:
 - a) the *Planning Act*,
 - b) the Provincial Policy Statement,
 - c) the applicable Official Plan,
 - d) the Urban Design Handbook – September 1977 of the (former) City of Toronto,
 - e) the Design Criteria for Review of Tall Building Proposal – June 2006 of the City of Toronto,

- f) the McGill / Granby Study – May 1980,
 - g) On Building Downtown – September 1974,
 - h) CityPlan '91– 25 Sun, Wind and Pedestrian Comfort, December 1990 and CityPlan 91– 29, City Patterns, October 1992,
 - i) the Downtown Yonge Street Community Improvement Plan, and
 - j) Zoning By-law No. 438-86 and site specific Zoning By-law No. 840-78?
3. Does the Proposed Development adequately address such matters as: its context within the City; transition; setbacks; stepbacks; weather protection; wind impacts; shadowing; views; skyviews; streetscape design; pedestrian environment; impact on the park, other open space, and the public realm?
4. Would the approval of the Proposed Development set an inappropriate and/or premature precedent?
5. Is it inappropriate and/or premature to introduce or establish a higher scale of built form, (which is identified in the Refusal and Directions Report as being currently associated with Bay Street), onto Yonge Street in the absence of a policy review of this issue by City Council?
6. Would approval of the Proposed Development be inappropriate and/or premature during the one-year period for testing the Tall Building Design Guidelines authorized by City Council at its meeting on July 25, 26 and 27, 2006?
7. With respect to site specific zoning By-law No. 840-78, as amended;
- a) what were the original site specific planning objectives and zoning controls (the “1978 Planning Objectives & Controls”) for the development site,
 - b) does the Proposed Development adequately respect the 1978 Planning Objectives & Controls, and
 - c) what relevance, if any, do the 1978 Planning Objectives & Controls have to the determination of the appeals before the Board?

8. Are the mix of uses, mix of housing-units, heights and non-residential and residential gross floor area limits permitted by the appellants' draft by-law on Parcels A through E (as defined in that draft by-law),
 - a) an appropriate expression in current zoning terms of By-law No. 840-78, as amended, and/or
 - b) do they represent good planning?
9. In the event the Board approves additional heights and/or densities beyond those currently permitted by site specific By-law No. 840-78, as amended,
 - a) is it appropriate to secure facilities, services and matters pursuant to Section 37 of the *Planning Act*, as a condition of any additional height or density, and
 - b) if so, what facilities, services and matters should be secured?
10. The appropriate form for the appellant's draft official plan amendment and draft zoning by-law amendment, if approved by the Board.
11. The location of the main building entrances, the location of the proposed automobile drop-off, the establishment and protection of below-grade pedestrian connections, the establishment of green building standards, heritage protection and any further site plan matters that may arise following the review of the associated site plan application.
12. Traffic, parking, site ingress/egress.