

ISSUE DATE:  
May 12, 2009



Ontario

PL081443

Ontario Municipal Board  
Commission des affaires municipales de l'Ontario

2107639 Ontario Inc. has 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 former City of Toronto to redesignate the lands municipally known as 2-4 Neville Park Boulevard and 438-440 Lakefront Lane to permit the development of a 4-storey residential building and one single detached house  
Approval Authority File No. 07 222719 STE 32 OZ  
O.M.B. File No. PL081443

2107639 Ontario Inc. has 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, as amended, of the former City of Toronto to rezone lands respecting 2-4 Neville Park Boulevard and 438-440 Lakefront Lane to permit the development of a 4-storey residential building and one single detached house  
O.M.B. File No. PL081444

IN THE MATTER OF subsection 41(12) of the *Planning Act*, R.S.O. 1990, c. P. 13, as amended

Subject	Site Plan
Referred by	2107639 Ontario Inc.
Property Address/Description	2-4 Neville Park Boulevard and 438-440 Lakefront Lane
Municipality	City of Toronto
OMB Case No.	PL081443
OMB File No.	PL081234

B E F O R E:

J. CHEE-HING	)	Thursday, the 7th day
MEMBER	)	
	)	of May, 2009

**THE BOARD ORDERS** that the Procedural Order, attached hereto as Attachment "1" shall be in force and effect for the purpose of governing the required procedures leading up to and including the hearing.

SECRETARY

# ATTACHMENT "1"

PL081443

## ONTARIO MUNICIPAL BOARD

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## 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 September 16, 2009 at 10:00 am at the Ontario Municipal Board Hearing Rooms, 655 Bay Street, in the municipality of Toronto.
3. The length of the hearing will be 11 days, scheduled to be completed by no later than October 2, with the hearing not proceeding on Friday September 18, 2009 or Monday September 28, 2009.
4. The parties and participants identified at the pre-hearing conference and the order of proceedings are listed in Attachment A to this Order.

5. The Issues are set out in the Issues List in Attachment B. There will be no changes to this list unless the Board permits, and a party who asks for changes may have costs awarded against it.
6. The City may bring a motion in respect of issue numbers 15, 16 and 17 at the commencement of the hearing, at which time the determination of how the motion will be ruled upon is at the sole discretion of the presiding Member at the hearing.
7. Any person intending to participate in the hearing should provide a telephone number to the Board as soon as possible. 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**

8. A party who intends to call witnesses, whether by summons or not, shall provide to the Board 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 July 2, 2009.
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 11. 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 witness or participant must provide to the Board and the parties a witness statement on or before August 17, 2009, 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 11.
12. On or before August 17, 2009, the parties shall provide copies of their witness and expert witness statements and reports to the other parties and to the Board.
13. On or before September 8, 2009, 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 to the Board a written response to any written evidence on or before September 8, 2009. The failure of a party to provide a written response shall not be considered by the Board as being an agreement by that party to the written evidence of another party.
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 electronic mail, personal delivery, courier, registered or certified mail, or otherwise as the Board may direct. 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.

This Member is not seized.

So orders the Board.

**ATTACHMENT A**

**Parties**

City of Toronto

Ms. Linda Schuyler

Beach Lakefront Neighbourhood Association Inc.

2107639 Ontario Inc.

**Participants**

Mr. Ian Heuckendorff

Mr. Phil Wake

Mr. Frans Blom

Ms. Yoette Navioz

Ms. Diane Lancashire

Mr. Robert Shapiro

Mr. Randy Christopher

**Representatives**

Ms. Jessica Braun and  
Mr. Thomas Wall  
*City of Toronto*

Mr. David Bronskill  
*Goodmans*

Mr. Dennis H. Wood  
*Wood Bull LLP*

Mr. Adam J. Brown  
*Sherman Brown Dryer Karol*

**ORDER OF PROCEEDINGS**

2107639 Ontario Inc.

City of Toronto

Ms. Linda Schuyler

Beach Lakefront Neighbourhood Association Inc.

Reply Evidence, if any, from 2107639 Ontario Inc.

**ATTACHMENT B****ISSUES LIST**

## PROVINCIAL POLICY

1. Is the proposed development consistent with, and does it have regard to, the matters of provincial interest set forth in Section 2 of the Planning Act, and in particular, subsection (p) dealing with the appropriate location of growth and development?
2. Would approval of the proposed development have regard to the decisions of Council as required by Section 2.1 of the Planning Act (City of Toronto Issue).
3. Is the proposed development consistent with the Provincial Policy Statement (2005), in particular, Policies 1.1.3.3 and 4.5?
4. Does the proposed development conform to the Growth Plan for the Greater Golden Horseshoe (2006), in particular: a) Policy 2.2.2.1, that population growth will be accommodated by focusing intensification in intensification areas; and b) Policy 2.2.3.6 (c), that Official Plans will identify intensification areas to support the achievement of the intensification target?

## CITY OF TORONTO OFFICIAL PLAN

5. Does the proposed development conform to the Policies of the City of Toronto Official Plan, in particular:
  - a) Section 2.2, Policy 2, that growth will be directed to Centres, Avenues, Employment Districts and Downtown in order to protect Neighbourhoods;
  - b) Section 2.3.1, Policy 1, that Neighbourhoods are considered physically stable areas, and development will be consistent with this objective and will respect and reinforce the existing physical character;
  - c) Section 3.1.2, Policy 3, that new development will fit harmoniously into its context and limit its impacts on neighbouring streets, parks and open spaces;
  - d) Section 4.1, Policy 1, that Neighbourhoods are physically stable areas;
  - e) Section 4.1, Policy 5, that development in neighbourhoods will respect and reinforce the existing physical character of a neighbourhood and that no changes will be made through rezoning or other public action that are out of keeping with the physical character of the neighbourhood;

- f) Section 4.1, Policy 8, that zoning by-laws will contain numerical site standards for matters such as building type and height, density, lot sizes, lot depths, lot frontages, parking, building set backs from lot lines, landscaped open space and any other performance standards to ensure that new development will be compatible with the physical character of established Neighbourhoods; and
  - g) Section 5.3.1, Policy 3, that amendments to the Official Plan not consistent with its general intent, will be discouraged?
6. Do the subject site and the proposed development constitute infill development as contemplated by Section 4.1 of the City of Toronto Official Plan?
7. Would the consolidation of individual lots into one large development parcel conform with the City of Toronto Official Plan, in particular:
- a) Section 4.1 requiring development to respect and reinforce the physical character of the neighbourhood; and
  - b) Section 2.3.1 identifying Neighbourhoods as physically stable areas?
8. Will the approval of the proposed development create an undesirable precedent for the Area that is contrary to the policy intent of the Official Plan for Neighbourhoods to be physically stable Areas?

#### CITY OF TORONTO ZONING BY-LAW 438-86

9. Is the proposed use and density of the lands appropriate for an R1 Z0.6 zoning category?
10. Given the existing R1 zoning of the site and the zoning of the surrounding Area, are the uses, height, density, built form and FSI for the proposed development compatible with the character of the surrounding Area, existing use in the Area and future uses and intended uses for the Area?

#### TREES

11. Is the proposed development consistent with, and does it have adequate regard to the City's goals and objectives with respect to the natural environment and trees as outlined in the City's Official Plan, in particular:
- a) Section 4, Policy 4;
  - b) Section 2.2, Policy 2(i);
  - c) Section 2.3.1, Policy 5;
  - d) Section 3.1.2, Policy 1; and
  - e) Section 3.4, Policy 1 (d)?



12. (a) Would the removal of healthy mature trees necessary to accommodate the proposed development be good planning; specifically with respect to the planning considerations in the City of Toronto Municipal Code, Chapter 813, Article III, 'Private Tree Protection' (the "City Private Tree By-law")? (Beach Lakefront Neighbourhood Association Issue)
- (b) Is Issue 12 (a) an appropriate way in which to address the issues of "good planning", in light of the manner in which the City Private Tree By-law is intended to be applied? (Applicant's Issue)

#### GENERAL ISSUES

13. (a) Is the proposed development appropriate having regard to the local context and surrounding neighbourhood, specifically the existing lot pattern, prevailing building type and adjacent homes?
14. (a) Is the proposed development appropriate for the site having regard to the findings regarding the character of the area identified in the Report titled *Munro Park/East Beach, City of Toronto, Heritage Conservation District Study and Plan* undertaken by the Beach Lakefront Association? (Beach Lakefront Neighbourhood Association's Issues)
- (b) Is it appropriate to have regard to a study prepared by an association, which study has not been formally authorized by either City Council or any Committee of Council, for an area and site that is not and has never been recommended as having significance from a heritage designation standpoint? (Applicant's Issues)
- (c) Is Issue 14 (a) even an issue that should be examined given the fact that no such heritage designation applies to the Site and /or surrounding area? (Applicant's Issue)

#### ISSUES RELATED TO CITY OF TORONTO MOTION

15. (a) Does the Board have jurisdiction to approve a Site Plan authorizing the removal of protected mature trees, in contravention of the City Private Tree By-law? (City of Toronto Issue)
- (b) Is this the proper way for the City to apply the City Private Tree By-law? (Applicant's Issue)
16. (a) Does the Board have jurisdiction to approve a Site Plan authorizing destruction of mature trees, if a permit to do so has not been issued under the City Private Tree By-law?
- (b) Is this the proper way for the City to apply the City Private Tree By-law? (Applicant's Issue)

17. (a) Does the Board have jurisdiction under Section 41 of the Planning Act to authorize the removal of mature trees protected under the City Private Tree By-law as a condition of Site Plan Approval?
- (b) Is this the proper way for the City to apply the City Private Tree By-law?  
(Applicant's Issue)

(Note: the issues listed above are joint issues of the City of Toronto and the Beach Lakefront Neighbourhood Association Inc., unless otherwise noted in brackets)