

Ontario Municipal Board
Commission des affaires municipales
de l'Ontario



ISSUE DATE: October 25, 2017

CASE NO(S): MM160029

PROCEEDING COMMENCED UNDER subsection 114(15) of the *City of Toronto Act*, 2006, S.O. 2006, c. 11, Sched. A

Subject: Site Plan
Referred by: Brimley Progress Developments Inc.
Property Address/Description: 1680 Brimley Road
Municipality: City of Toronto
OMB Case No.: MM160029
OMB File No.: MM160029
OMB Case Name: Brimley Progress Developments 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: Brimley Progress Developments Inc.
Subject: Application to amend Zoning By-law No. 456-2005- Refusal or neglect of City of Toronto to make a decision
Existing Zoning: City Centre Commercial and City Centre Residential
Proposed Zoning: Site Specific (To be determined)
Purpose: To permit a four tower mixed-use development containing 1,591 residential units
Property Address: 1680 Brimley Road
Municipality: City of Toronto
Municipal File No.: 06 200146 ESC 37 OZ
OMB Case No.: MM160029
OMB File No.: PL160388

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

Applicant and Appellant: Brimley Progress Developments Inc.

Subject: Request to amend the Official Plan - Failure of City of Toronto to adopt the requested amendment
Existing Designation: Mixed Use Areas Site Specific
Proposed Designation: Site Specific (To be determined)
Purpose: To permit a four tower mixed-use development containing 1,591 residential units
Property Address: 1680 Brimley Road
Municipality: City of Toronto
Approval Authority File No.: 06 200146 ESC 37 OZ
OMB Case No.: MM160029
OMB File No.: PL160387

Heard: October 5, 2017 in Toronto, Ontario

APPEARANCES:

Parties

Counsel

City of Toronto	Robert Robinson
Brimley Progress Developments Inc.	Max Laskin and David Bronskill
TCI Realty Holdings Inc. & Mondelez Canada Inc.	Peter Gross
Atlantic Packaging Products Ltd.	Ira Kagan
New Forest Paper Mills LLP	Ira Kagan

DECISION DELIVERED BY GERALD S. SWINKIN

[1] The development proposal before the Ontario Municipal Board (“the Board”) in this proceeding had a gestation period of almost 11 years, and if one considers the fact that there was a prior approval for a mixed use project of not quite the same magnitude, a minimum of another five years can be added to that figure.

[2] Time and much discussion and negotiation has now brought forward a new mixed use proposal which comes with the support of the City of Toronto (“the City”) and three proximate industrial owner/operators.

[3] The matter came before the Board as a settlement. The Board heard comprehensive evidence on the proposal from the land use planning consultant for Brimley Progress Developments Inc. (“the Appellant”). Andrew Ferancik, whose credentials involve both public and private sector experience, was qualified to proffer expert opinion evidence in the proceeding. On the strength of that evidence and submissions from counsel for all Parties, the Board has accepted that evidence and will allow the appeal in part as to the requested zoning amendment and approve the zoning amendment in principle at this stage. The Parties will be submitting to the Board in due course a form of zoning amendment by-law which will implement the project as it was presented in the evidence, which will be the subject matter of a formal Order of the Board. In fact, two forms of by-law amendment are to be presented as the former Scarborough Zoning By-law remains in effect for the time being and, although presently exempt from the new City Comprehensive Zoning By-law No. 569-2013, the City now wishes to bring these lands under that by-law as well.

[4] At the request of the Parties, since it continues to be a work in progress upon which all Parties are presently collaborating, the site plan appeal disposition is being held in abeyance, subject to disposition upon advice to the Board that the site plan and its conditions have been settled and are ready for approval or require some intervention by the Board to come to that state.

[5] The title of proceedings makes reference to an appeal related to City Council’s failure to deal with a requested official plan amendment. That appeal is no longer before the Board as it was earlier withdrawn by the Appellant upon confirmation by the City that no such official plan amendment was required to accommodate the proposed development and its necessary zoning. That matter will be discussed below in connection with official plan policy.

General Context

[6] The lands are municipally known as 1680 Brimley Road (the “Property”), located at the southwest corner of Brimley Road and Progress Avenue in what is identified in the City Official Plan (“OP”) as the “Scarborough Centre”.

[7] The Property is located at the western edge of Scarborough Centre, which is one of four identified Centres in the City. Scarborough Centre is the easternmost Centre in the City, and is a significant employment, shopping, residential and transit node for the eastern portion of the City. The Centre is focused around the Scarborough Town Centre Mall and the Scarborough Civic Centre, and is served by the Scarborough Rapid Transit Line (“SRT”), which traverses the Centre from east to west, and includes two stations within the Centre: one at Scarborough Town Centre Mall, 400 metres (“m”) to the east of the Property, and the other further east at McCowan Road.

[8] Local transit serving the Property includes two TTC bus routes, 21B and C (Brimley) and 43B (Kennedy), both providing service to Scarborough Centre and the Kennedy subway station.

[9] The future Sheppard Subway extension right-of-way is located underneath a portion of the southwest corner of the Property, and is planned to terminate at Scarborough Town Centre. Should a future Sheppard Subway extension be built, the area is intended be the terminus of two major rapid transit corridors providing access to both the Downtown and North York Centre. The SRT is also proposed to be replaced by an extension of the Bloor-Danforth subway line over the medium term.

[10] The lands around Scarborough Town Centre Mall have been gradually developed over the years for a variety of higher-intensity mixed-use projects, including a number of high-rise residential condominium towers, and some major office towers. This development trend is ongoing, with a number of high-rise projects completed within

the last 10 years near the Scarborough Civic Centre. Other pending developments in the area include the Transmetro Properties Ltd. lands to the north, along Schick Court, where 1,797 residential units are permitted in buildings up to 30 storeys.

[11] The western boundary of the Scarborough Centre is located just west of the Property, cutting through a part of the lands of another party to this proceeding, Atlantic Packaging Products Ltd. ("Atlantic"). Beyond this boundary and to the west, the area gives way to a post-war, low density industrial district, geared toward manufacturing and related uses. Further to the north, Highway 401 represents a significant barrier separating the industrial and Centre uses on the south side of the highway from the primarily low density residential uses to the north of the highway. To the south, the SRT elevated right-of-way is a significant land use feature at the southern gateway to Scarborough Centre from Ellesmere Road.

Property Description

[12] The Property is a generally square shaped corner lot located on the southwest corner of Brimley Road and Progress Avenue, known municipally as 1680 Brimley Road. The Property has an area of 17,940 square metres ("sq m") with a frontage of 127 m along Brimley Road and a flankage of 110 m along Progress Avenue. Progress Avenue is improved with sidewalks.

[13] The Property is generally flat, except for a rise in elevation along the west and south lot lines as it abuts Atlantic. The Property is currently vacant.

Adjacent Uses

[14] The adjacent uses to the Property include the following:

- North: Progress Avenue, then industrial uses to the north, including the Mondelez Canada Inc. facility, and the approved Transmetro high-rise development adjacent to Highway 401;
- South: A parking area associated with an industrial use (Atlantic) within the Centre and Mixed Use Areas designation, then the elevated SRT corridor;
- East: Brimley Road, then the Scarborough Town Centre property; and
- West: An industrial use (Atlantic), the eastern portion of which is within the Centre and Mixed Use Areas designation.

The Proposal

[15] As it was explained in detail by Mr. Ferancik, the proposed development consists of four residential towers with heights of 39 storeys ("Tower 1"), 36 storeys ("Tower 2"), 41 storeys ("Tower 3"), and 47 storeys ("Tower 4") inclusive of the respective podium elements. The towers are oriented around an L-shaped internal driveway that provides access from Progress Avenue and Brimley Road.

[16] A total of 1,591 residential units are proposed which includes 150 bachelor suites, 637 one-bedroom suites, 729 two-bedroom suites, and 75 three-bedroom suites.

[17] The total proposed residential gross floor area is 134,293 sq m. The overall floor space index is 7.49 times the area of the lot.

[18] A non-residential component comprising 4,075 sq m is also proposed, which would consist of 3,273 sq m of retail space located within the first floor of Towers 1 and 3, and the first to fifth floors of Tower 4, as well as an 784 sq m daycare centre consisting of indoor and outdoor areas within Tower 2.

[19] Towers 1 and 2 share a 5-storey podium containing parking along its western side where the property abuts Atlantic. A retail space is proposed at street level fronting

onto Progress Avenue, as well as the lobby entrance to the residential units. A setback of approximately 3 m on Progress Avenue will be provided to facilitate a wider clearway for pedestrians. A second lobby entrance is located at the midpoint of the podium which would provide access to both Tower 1 and 2, and a third entrance for Tower 2 is located at the southernmost end of the podium near the daycare centre. Between the residential lobbies, 12 grade related townhouse-style units are proposed with separate entrances fronting onto the internal roadway.

[20] Tower 3 has its own three-storey podium providing for residential, retail, and functional/mechanical uses. The tower connects to the podium of Tower 2 and Tower 4 via bridges containing amenity space. A small retail space is proposed at the northeast corner of the tower, and the residential lobby entrance is accessed from the landscaped open area located between Towers 3 and 4, eight grade related townhouse-style units with separate entrances are proposed fronting onto Brimley Road and the internal driveway to the south of the building. The podium is set back approximately 4 m on Brimley Road to facilitate a wider clearway for pedestrians as well as attractive landscaping in front of the townhouse units.

[21] The podium of Tower 4 is five-storeys tall and highly articulated to provide an interesting feature at the intersection of Brimley Road and Progress Avenue. The majority of the ground floor fronting onto the street is proposed to be used for a two-storey tall retail space which would connect to additional retail floor area on the third to fifth floors within the articulated portion of the podium fronting onto Progress Avenue. The residential lobby entrance is accessed from the landscaped open area located between Towers 3 and 4. The podium is set back approximately 5 m on Brimley Road and at least 3.6 m on Progress Avenue to provide an urban plaza environment comprised of decorative paving, landscaped planters, and street furniture.

[22] The podia of each building will provide an appropriately scaled relationship to the surrounding streets, and the use of glazing will help to connect the podium level retail

and residential units to the street and create a sense of visual permeability and openness which will animate the street and provide a sense of safety.

[23] Each tower will have maximum typical floor plates of 780 sq m. Separation between the towers on the Property will include a 27.1 m separation between east-west facing towers and 42.1-46.3 m separation distances between north-south facing towers. Each of the towers features a step-back from the edge of the podium in order to create a visual distinction between the tower and the podium. Tower setbacks of 25.8-26.1 m are proposed from the west property line and 27.6-39.9 m from the south property line. Use of extensive glazing and a variety of balcony sizes and arrangements will provide articulation along the length of each tower that will add to its visual interest.

[24] Architectural elements will screen mechanical rooftop equipment while providing for an attractive skyline presence.

[25] Two new internal driveways are proposed to provide access to the Property, one which runs north-south through the middle of the Property, and one running east-west along the southern edge of the Property.

[26] A total of 1,205 vehicle parking spaces are proposed in two underground and three above-ground parking levels, comprised of 1,037 residential spaces, 159 visitor spaces, and 9 non-residential (daycare spaces). Six additional parking spaces are proposed for car share vehicles and two daycare drop-off spaces. A total of 1,193 bicycle parking spaces are proposed.

[27] Three Type G loading areas are proposed for the Property, including associated storage and staging areas.

[28] A total of 2,546 sq m of indoor amenity space and 3,023 sq m of contiguous outdoor amenity space is proposed for the Property, consisting of a variety of facilities

and services such as fitness facilities, pet grooming areas, meeting rooms, and terraces. Additionally, private balconies are proposed for the majority of units.

[29] A 1,208 sq m landscaped open space is proposed between Towers 3 and 4 which will provide for a publicly accessible urban plaza containing trees, water features, street furniture, and the opportunity for spill-out retail or other outdoor programming. This space will be secured in the Section 37 Agreement as a Privately Owned Publicly-accessible Space (POPS).

Planning Policy – Provincial

[30] Mr. Ferancik provided an overview of the relevant provisions and policies from the Provincial Policy Statement (“PPS”) and the Growth Plan for the Greater Golden Horseshoe (“the Growth Plan”).

[31] Condensing his testimony for the purpose of this Decision, he was of the opinion that the Property is in a settlement area, in an area specifically identified for intensification and not within a sensitive area.

[32] The proposed development represents redevelopment and intensification which will expand and improve the range of housing, providing more choice and potentially more affordable and accessible housing (Sections 1.1.2., 1.1.3 and 1.4.3 of PPS).

[33] The proposed development will more efficiently utilize existing and planned infrastructure and will encourage greater use of transit and non-automobile choices (Sections 1.6.2 and 1.6.5.4 of PPS).

[34] It was Mr. Ferancik’s opinion that the proposed development has been appropriately designed, buffered and separated from the nearby industries in order to avoid adverse effects from odour, noise and other contaminants (Section 1.7.1 of PPS).

[35] He concluded, based upon this review, that the proposed development and proposed zoning amendment were consistent with the policies of the PPS. He asserted that this opinion held true for both the 2005 and 2014 versions of the PPS.

[36] With respect to the Growth Plan, Mr. Ferancik advised that the Property is located within what is shown on Schedule 2 to the Growth Plan as the Scarborough Urban Growth Centre and Major Transit Station Area. Furthermore, Schedule 2 shows the Property as being located at the terminus of a priority transit corridor. These features and the concepts of intensification, the provision of a range of housing, providing a mix of residential and employment opportunities, efficient use of services, expanding access to publicly accessible open spaces and ensuring the development of high quality built form, amongst other matters, are set forth in Sections 2.2.2, 2.2.3 and 2.2.4. Mr. Ferancik addressed these policies as well as the more detailed provisions relating to the function of an urban growth centre and a major transit station area. In these areas, the nature of development is to support greater residential and employment densities and thereby further support higher order transit.

[37] It was Mr. Ferancik's opinion that the proposed development and the proposed zoning amendment were precisely what the Growth Plan meant to encourage for what have been identified in the City OP as *Centres*, and therefore the proposal and zoning amendment before the Board conforms with the policies and intent of the Growth Plan.

Planning Policy – Scarborough Centre Secondary Plan

[38] The Property is part of the Scarborough Centre Secondary Plan ("SCSP"), which forms part of the Toronto OP. The SCSP contains both general and specific policies relating to development of the Scarborough Centre.

[39] The Property is located within the Brimley Precinct, which is described as being "a focus for residential and employment growth together with uses such as parks and open spaces, and community services and facilities, concentrated along the Brimley

Corridor." Furthermore, "Street-related commercial and service uses serving the residential or employment uses will be permitted within the base element of buildings and will have entrances onto the street."

[40] The SCSP recognizes opportunities for improved pedestrian access within the Centre and identifies Future Pedestrian/Bicycle Links or Improvements on Brimley Road and Progress Avenue abutting the Property, as well as improved connections to the community services and retail areas located within the Centre. A Potential Rapid Transit Station is conceptually shown to be located on Brimley Road to the south of the Property, which would further improve transit access for residents and visitors.

[41] It was the opinion of Mr. Ferancik that the proposed development would support and conform with the general policies of the SCSP, including the following:

[42] Section 1.1 provides that:

The Centre will be an urban focal point for eastern Toronto where employment, housing, institutional, cultural, recreational, commercial and community services and transit will be concentrated in a dynamic mixed-use location.

[43] Section 1.2 provides that:

The Centre will accommodate a mix of uses to create an attractive and comfortable environment for residents, workers and visitors to the Centre.

[44] In Mr. Ferancik's view, the proposed development would add to the diverse mix of uses in the Centre and create an attractive and comfortable environment. It will help the Centre become a greater urban focal point for eastern Toronto.

[45] Section 1.4 provides that:

Adjacent employment areas and residential neighbourhoods will be protected by:

- (a) establishing a defined boundary for the Centre;
- (b) permitting the continuation of existing industrial uses;
- (c) ensuring an appropriate transition in the scale and intensity of uses...

[46] The new resident population will add to the local labour pool, and help to facilitate increased employment growth in the Centre.

[47] Section 1.9 provides that:

A compact, high density, transit-oriented development pattern, based upon a high standard of urban design, will be encouraged.

[48] Section 1.13 provides that:

Planning for new development will be undertaken in the context of reducing auto dependency and the transportation demands and impacts of new development while promoting a pedestrian friendly environment.

[49] Section 3.1.1(a) provides that:

The general scale of development within the Centre will promote an urban character... Some buildings will be required to be located close to the street line and/or incorporate a podium into the building design to achieve an appropriate pedestrian scale and building-to-street relationship.

[50] Section 3.1.1(d) provides that:

Development will be required to provide safe, secure, comfortable areas design to meet the demand for pedestrian movement and private and/or public use.

[51] Section 3.1.1(g) provides that:

Development of buildings and other structures located along major approaches to the Centre will provide a sense of a 'gateway' or 'entry'.

[52] Mr. Ferancik offered the view that the proposed development will frame the street, providing an attractive, safe urban edge along Brimley Road and Progress Avenue, and the heights will help to establish a "gateway" to the Scarborough Centre from Highway 401 to the north, and from the employment area to the west. The range of heights proposed for the towers will contribute positively to the Centre's emerging skyline. The density and mix of uses will support walking, cycling and transit use and less auto use.

[53] Section 3.1.2(b) provides that:

Taller buildings will generally be located in close proximity to the rapid transit stations, major arterial roads and Highway 401.

[54] Mr. Ferancik pointed out that the proposed development is within approximately 400 m of rapid transit, and in close proximity to Highway 401.

[55] Section 3.1.2(c) provides that:

Development proposals for tall building must demonstrate how the proposed building and Site design will contribute to and reinforce the overall Centre structure

[56] Based upon the considerations noted above, Mr. Ferancik indicated that in his opinion the proposed development will relate well to, and reinforce, the existing tall building character of the Centre, and will appropriately demarcate the edge of the Centre.

[57] Section 4.6(c) provides that:

To protect existing residential neighbourhoods to the south of Ellesmere Road and existing employment areas outside of the Scarborough Centre, but adjacent to the Brimley and McCowan Precincts, new development will seek to minimize adverse impacts on adjacent neighbourhoods and employment areas.

[58] Section 4.8(f) provides that:

Where new sensitive uses such as residential, mixed use or community facilities are proposed in close proximity to existing industrial uses, proponents will be required to submit studies and analyses... in accordance with all Provincial guidelines. Buffering, screening, berming and/or other attenuate/mitigation measures will be required...

[59] Mr. Ferancik advises that the Property is ideally situated away from sensitive *Neighbourhood* designated areas south of Ellesmere Road, therefore no *Neighbourhood* impacts will occur.

[60] With respect to the surrounding industrial uses, appropriate mitigation measures have been incorporated into the design of the development and the applicant has submitted noise and air quality studies demonstrating that the proposed development will be compatible with the industrial uses. The City has undertaken an extensive peer review process of these reports and has confirmed that the proposed development is appropriately designed to mitigate potential land use compatibility issues.

[61] In this regard, the industrial owner parties also engaged professionals to review the noise impact and air quality assessment work and based upon physical modifications which have been made to the design and layout of space within the proposal, the concerns of those parties appear to have been addressed. The Board was provided with two sets of Minutes of Settlement, the first between the Appellant and Atlantic Packaging Products Ltd. and New Forest Paper Mills LLP, and the second between the Appellant and Mondelez Canada Inc. and TCI Realty Holdings Inc. These Minutes stipulate commitments between the parties as to certain physical features to be employed in the development and the transmission of warnings to future purchasers/lessees regarding the presence of the nearby industrial uses. The Board will further address this issue below.

[62] Section 5.16 provides that:

The supply of parking will be balanced with the desire to increase the use of non-automobile modes of transportation...

[63] Mr. Ferancik opined that parking supply for the development will be adequate to serve the needs of the Property, based upon the conclusions in the Transportation Study prepared for the Appellant by WSP Canada Inc., and will also encourage alternative modes of transportation, including transit usage.

[64] In summary, it was his opinion that the proposed development conforms to the City OP and the policies of the SCSP.

[65] In 2005, Official Plan Amendment No. 1079 ("OPA 1079") to the OP for the former City of Scarborough was approved by the Board which added the following Site-specific policy to the Site:

City Centre Residential Uses shall not exceed a density of 426 dwelling units per hectare.

Amendments to the Zoning By-law to permit increased density or heights of development may require the provision of facilities, services or matters to improve the landscaping, pedestrian, transportation, and/or community facilities available to City Centre and area residents and employees, pursuant to Section 37 of the *Planning Act*, R.S.O. 1990, c. P. 13, as amended.

[66] The Toronto OP and the SCSP have replaced the Scarborough OP and the City Centre Secondary Plan, and the current official plan policies do not carry forward the Site-specific standards of OPA 1079. It was noted at the outset of this decision that there had been an appeal from Council's failure to deal with the Appellant's official plan amendment application but that this appeal had been withdrawn. Apparently, at the time of application, there was some uncertainty as to whether the previous policy continued to have application and the official plan amendment application was filed out of an abundance of caution. Subsequently, City staff apparently advised that no official

plan amendment was necessary and that the proposal could be accommodated by way of a conforming zoning by-law amendment application alone.

Tall Building Design Guidelines

[67] Mr. Ferancik spoke to the city-wide Tall Building Design Guidelines, which he described as a guideline document that contains design principles that are meant to assist City staff in reviewing development applications proposing tall buildings. The Tall Building Design Guidelines recommend that buildings create an elegant rather than bulky form and make a positive contribution to the City's public realm, urban form and skyline.

[68] The guidelines outline the preferred design for tall buildings which consists of, among other things:

- A base building (podium) which is oriented toward the street line and has a height which is consistent with the existing street wall, historical context and/or proportional to the right-of-way width;
- A middle (tower) which is set back a minimum of 3 m from the building face along the streetline, setback 12.5 m from the side and rear property lines to allow for a 25 m separation distance between neighbouring towers, and has a maximum floor plate area of 750 sq m; and,
- A tower top which contributes to the City's skyline by providing visual interest.

[69] With respect to this proposal Mr. Ferancik advised that each tower consists of a base building which is oriented toward the street or internal driveway and ranges in height from third to fifth storeys. The tower elements have maximum tower floorplates of 780 sq m and are stepped back from the podium edge to reinforce the visual prominence of the base building. Tower setbacks of 25.8-26.1 m are proposed from the west property line and 27.6-39.9 m from the south property line. Ample separation will

be provided between the towers on the Property, including a 27.1 m separation between east-west facing towers and 42.1-46.3 m separation distances between north-south facing towers.

[70] Attractively designed tower tops will screen mechanical rooftop equipment while providing for an attractive skyline presence.

[71] The guidelines note that tall building proposals should fit within the existing or planned context and provide a transition in scale between surrounding buildings as well as access to sunlight and skyview from surrounding streets.

[72] With building heights ranging from 36-47 storeys, it was Mr. Ferancik's view that the proposed development will fit into the surrounding tall building context within Scarborough Centre.

[73] The guidelines note that tall buildings should frame the edge of streets and provide universal public access from the sidewalk. Sidewalk widths of 6 m are encouraged as well as the inclusion of streetscape elements such as trees, street furniture and pedestrian weather protection. Activities such as parking and loading should be located away from the public realm at the side or rear of the site.

[74] Mr. Ferancik confirmed that the proposed development will orient vehicular functions to the interior and underground parking and loading areas. A well-landscaped public realm is proposed along Brimley Road and Progress Avenue with 1.7 m sidewalks as set out in the comments from City staff, as well as additional hard landscaping to provide for an ample pedestrian clearway.

[75] In summary, it was the opinion of Mr. Ferancik that the proposed development responds appropriately to the recommendations of the Tall Building Guidelines.

Class 4 Area Designation under NPC-300: Environmental Noise Guideline

[76] As adverted to above, due to the presence of the industrial uses immediately adjacent to the Property, the industrial owners/users had concerns about potential impacts on the proposed introduction of sensitive uses, the residential units and daycare specifically. In addition to the physical changes and building requirements which have been settled between the Parties, there was also a resolve to have the Property designated as a Class 4 area under the provisions in the document issued by the Ontario Ministry of the Environment and Climate Change known as NPC-300: Environmental Noise Guideline. This document deals with noise and provides guidance for acceptable noise levels in different urban and rural settings.

[77] The NPC-300 document recognizes that conflicts may result in infill or redevelopment circumstances and creates a mechanism to provide some relief to existing uses, which create noise on the basis of setting the acceptable noise threshold somewhat higher. This proceeds on the presumption of an informed occupant of the new use being made aware of this higher threshold. The mechanism involves a formal decision of the Municipal Council in designating the specifically affected area of the new development as Class 4 area for the purposes of NPC-300. In this instance, at the request of the parties to this proceeding, Toronto City Council passed a resolution to that effect.

[78] This was outlined to the Board by counsel for the Parties, and counsel for the City indicated his expectation that the fact of this designation would be reflected in the site plan agreement for the project. Customarily, notice of a site plan agreement is registered on title. This panel of the Board is of the view that persons who are considering occupancy in areas where there may be a relaxation of standards or where there is a variance from otherwise generally prevailing standards should have a reasonable means of appreciating that fact.

[79] The Board has suggested to the parties that as there is a prior agreement associated with this matter which will necessarily be registered on title, being the s. 37 agreement, that this agreement should also contain provisions which advise of this designation and oblige the owner of the Property to include an advisory clause regarding it in any agreement of purchase and sale or lease of residential units within the Property.

[80] The Board also conveyed to counsel for the City the view that since the designation of Class 4 areas is fully under the control of the City and occurs simply by way of a resolution of Council, that the City should endeavour to create a registry of such areas which is readily accessible to the public. One would think that such an initiative as that could be accommodated by way of the City's web page or a link therein. The designation of Class 4 areas is relatively new and not the matter of considerable experience at this stage, so the Board here simply highlights what it believes to be in the public interest and will leave it to the City to determine an appropriate method to respond to the issue.

THE DISPOSITION

[81] Based upon the uncontroverted evidence of Mr. Ferancik and at the request of all parties to the proceeding arising from the settlement amongst those parties, the Board will allow the appeal in part and approve the zoning amendments in principle.

[82] It was the submission of counsel that the parties are currently crafting the details of the zoning amendment by-laws (one being an amendment to the former Scarborough Zoning By-law and the other being an amendment to the City Comprehensive Zoning By-law No. 569-2014 in order to bring the Property under that by-law and create site specific provisions for it).

[83] Counsel for the parties requested that the Board withhold the final Order in this matter until advised by the City that a s. 37 Agreement in accordance with the City Council resolutions concerning the application has been executed and that the final form of the zoning amendment by-laws has been settled and submitted to the Board.

[84] The Board presumes that the parties will attend to those matters on a reasonably diligent basis. If any difficulties are encountered which may require the intervention of the Board to resolve, the parties shall contact the Case Co-ordinator of this case at the Board in order to determine how that should be addressed.

[85] As adverted to at the outset of the Decision, there is also a site plan appeal before the Board. The Board heard no evidence anchored to that appeal. On the presumption that the parties will be able to settle the site plan and bring it into final form, the parties should so advise the Board so that the Board may close its file on this matter. In the event that any difficulties do arise which may require the intervention of the Board, the same protocol as above noted for the zoning amendments shall apply.

[86] The Board wishes to thank counsel for their cooperation and courtesy in the presentation of the settlement and the necessary evidence to dispose of this matter.

“Gerald S. Swinkin”

GERALD S. SWINKIN
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.

Ontario Municipal Board

A constituent tribunal of Environment and Land Tribunals Ontario
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