

Local Planning Appeal Tribunal
Tribunal d'appel de l'aménagement
local



ISSUE DATE: March 21, 2019

CASE NO(S): PL180644

The Ontario Municipal Board (the “OMB”) is continued under the name Local Planning Appeal Tribunal (the “Tribunal”), and any reference to the Ontario Municipal Board or Board in any publication of the Tribunal is deemed to be a reference to the Tribunal.

PROCEEDING COMMENCED UNDER subsection 51(39) of the *Planning Act*, R.S.O. 1990, c. P.13, as amended

Subject: Proposed Plan of Subdivision
Property Address/Description: 2200 Islington Avenue
Municipality: City of Toronto
Municipal File No.: 17 207652 WET 02 SB
LPAT Case No.: PL180644
LPAT File No.: PL180644
LPAT Case Name: SmartCentres & Calloway Reit v. Toronto (City)

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

Appellant: SmartCentres REIT & Calloway Reit
Inc. et al
Subject: By-law No. BL 808-2018
Municipality: City of Toronto
LPAT Case No.: PL180644
LPAT File No.: PL180672

Heard: January 30, 2019 in Toronto, Ontario

APPEARANCES:

Parties

Counsel

City of Toronto

M. Longo

SmartCentres REIT, Calloway REIT
(Rexdale) Inc., Calloway REIT

S. Mahadevan

(Weston-401) Inc. and 401 Weston
Centre Limited

RCG Islington 401 GP Inc.

K. Jennings

**DECISION DELIVERED BY THOMAS HODGINS AND S. TOUSAW AND ORDER OF
THE TRIBUNAL**

INTRODUCTION

[1] This Decision and Order results from:

- A. the first mandatory Case Management Conference (“CMC”) conducted pursuant to s. 39(1) of the *Local Planning Appeal Tribunal Act, 2017* (“LPATA”) and Rules 26.17 to 26.26 of the Tribunal’s *Rules of Practice and Procedure* (“Tribunal Rules”) for an appeal (LPAT File No. PL180672) pursuant to s. 34(19) of the *Planning Act* (“Act”) by SmartCentres REIT, Calloway REIT (Rexdale) Inc., Calloway REIT (Weston-401) Inc. and 401 Weston Centre Limited (“SmartCentres”) of City of Toronto (“City”) Zoning By-law No. 808-2018 (“ZBL”); and
- B. the first discretionary CMC conducted pursuant to s. 33(1) of LPATA and Tribunal Rule 19 on a related appeal (LPAT File No. PL180644) pursuant to s. 51(39) of the Act by SmartCentres REIT and Calloway REIT (Rexdale) Inc. (also “SmartCentres”) of the City’s approval of draft plan of subdivision 17 207652 WET 02 SB (“Draft Plan”).

[2] The ZBL and Draft Plan were approved by the City in response to applications submitted by RCG Islington 401 GP Inc. (“Rice”) for 2200 Islington Avenue (“Site”). Rice owns the Site. The purpose and effect of the ZBL, as explained by the City, is to “... amend the former City of Etobicoke Zoning Code to permit additional uses including retail uses in addition to the existing industrial uses on the site to facilitate the redevelopment of the site. A Holding Provision, “H” is placed on the eastern portion of the site to accommodate the realignment of the Rexdale Boulevard/Islington Avenue

intersection.” The Draft Plan proposes to create a U-shaped public street and a number of blocks on the Site and the City’s final approval is conditional upon the satisfaction of a number of conditions.

[3] The two appeals, although related, are subject to different appeal and hearing processes and procedures. The ZBL appeal is subject to the procedures set out in the Planning Act Appeals portion of Part VI Practice and Procedure in the LPATA and Part II of the Tribunal Rules while the appeal of the Draft Plan is subject to the more traditional procedures set out in the General portion of Part VI Practice and Procedure in the LPATA and Part I of the Tribunal Rules.

[4] Notice of the CMC was undertaken by the City at the Tribunal’s direction and the requisite Affidavit of Service was provided and marked as Exhibit 1.

REQUESTS TO PARTICIPATE

[5] SmartCentres and the City are the statutory Parties to both appeals.

[6] Without challenge from SmartCentres or the City, Party status was granted to Rice for both appeals. Rice filed its request for status in the ZBL appeal in accordance with the requirements of the LPATA. The Tribunal finds that there are reasonable grounds for adding Rice as a Party to both appeals under s. 40(4) of the LPATA, s. 34(24.1 and 24.2) of the Act and s. 51(52.1 and 52.2) of the Act given its submission and direct interest in these matters as the Site owner and applicant.

[7] No other requests to participate were made.

FACTS AND ISSUES

[8] The Parties have not yet conducted sufficient work to identify to the Tribunal the facts or evidence that might be agreed upon, the issues to be addressed in the appeals or to propose ways to simplify the hearing. Additional work in this regard is directed by

the Order.

DISCLOSURE

[9] No requests were made by any Party for direction regarding the disclosure of documents/information relevant to the appeals.

ATTENDANCE AT A HEARING

[10] No direction was provided to any person to attend a hearing. This matter will be addressed at a subsequent CMC.

SETTLEMENT AND MEDIATION

[11] The Tribunal addressed with the Parties the opportunities for settlement and the possibility of mediation as a means to resolve or scope the appeals. The Tribunal was advised by Sharmini Mahadevan that SmartCentres is open to mediation and by the City that it would participate in mediation but would not drive the process given its confidence in the merits of the ZBL and Draft Plan. Kristie Jennings advised that Rice is not open to mediation.

[12] Notwithstanding the foregoing, the Order directs the Parties and their experienced Counsel to further consider a settlement or a scoping of the issues.

ORGANIZATION OF THE HEARING, ADJOURNMENT AND POSTPONEMENT

[13] It was agreed that the hearing on the ZBL appeal would proceed in advance of the hearing on the Draft Plan appeal and that it may be necessary for the Tribunal to issue its Decision on the ZBL appeal in advance of the hearing on the Draft Plan appeal given that the Tribunal must avoid being exposed during the Draft Plan appeal to evidence of a nature not permissible in the ZBL appeal.

[14] SmartCentres and the City agree that a hearing date and format for the ZBL appeal should not be established until the Divisional Court provides an opinion on certain procedural issues arising from a stated case set out in *Canadian National Railway Company v Toronto (City)*, 2018 CanLII 102206 (ON LPAT). The stated case requests an opinion from the Court on certain questions related to a party's rights to question a witness called by the Tribunal and persons providing an affidavit to the Tribunal pursuant to the LPATA and Ontario Regulation 102/18. SmartCentres and the City agree that it is appropriate to adjourn the ZBL proceeding pending the Court's opinion. SmartCentres and the City request that another CMC be scheduled after the expected timing of the opinion from the Court.

[15] Ms. Jennings recommended that the Tribunal immediately proceed with a written hearing on the ZBL appeal based on the records as submitted or a hearing with legal submissions and no witnesses and thereby avoid the need to wait for an opinion from the Divisional Court.

[16] Ontario Regulation 102/18, made under the LPATA, establishes regulatory time periods within which the Tribunal must dispose of *Planning Act* appeals. The subject ZBL and Draft Plan appeals must be disposed of, respectively, within 10 months and six months after the day the appeal is validated (O. Reg. 102/18, s. 1(1)1). Time during an adjournment is excluded from the calculation of the regulatory time period.

[17] The Tribunal is not prepared to establish a hearing date or format for the ZBL appeal at this time as the fair and just determination of the ZBL appeal relies on considering and following any applicable opinion from the Divisional Court in this regard. Accordingly, the Tribunal adjourns the ZBL appeal and directs that a Notice of Postponement ("NoP") be issued commencing from the date of this CMC to the date of the next CMC as set out in the Order below.

[18] The Draft Plan appeal is currently postponed by a NoP and will remain postponed given that it is to be heard after the ZBL appeal in order to secure a fair and just determination of it.

[19] Accordingly, “the clock is stopped” on both appeals.

[20] The format for the hearing on the ZBL appeal is to be determined at the next CMC and, in this regard, the Order directs the Parties to provide the Tribunal with a recommended hearing format in advance of the next CMC.

[21] The format for the hearing of the Draft Plan appeal is to be addressed in a draft Procedural Order (“PO”) that the Parties are directed in the Order to prepare and submit prior to the next CMC.

CONFIDENTIALITY

[22] No issues of confidentiality were raised by the Parties.

PRODUCTION AND COST SHARING OF JOINT DOCUMENT BOOKS

[23] It was premature to determine matters related to the production and cost sharing of joint document books for any hearings and the Order directs that the Parties make a submission in this regard to the Tribunal at the next CMC.

OTHER MATTERS

[24] No other matters of significance to assist with a fair, just and expeditious resolution of the issues or proceedings were raised.

ORDER

[25] The Tribunal orders as follows:

[26] The Parties to both the ZBL appeal and the Draft Plan appeal are: SmartCentres, the City and Rice.

[27] There are no Participants.

[28] A second CMC will commence at **10 a.m.** on **Friday, June 28, 2019** at:

**Local Planning Appeal Tribunal
655 Bay Street, 16th Floor
Toronto, Ontario**

[29] In preparation for the next CMC, the Parties are directed to work together, to the best of their abilities in this contested matter, to further consider opportunities for settlement, mediation and a scoping of the issues and to prepare and submit to the Tribunal not later than **Friday, June 14, 2019**:

1. An Agreed Statement of Facts for the ZBL appeal;
2. An Issues List (“IL”) for the ZBL appeal;
3. A proposed hearing format including any proposals for simplifying the hearing for the ZBL appeal;
4. A submission on the production and cost sharing of joint document books for the ZBL appeal; and
5. A draft PO, including IL, for the Draft Plan appeal.

[30] The ZBL appeal is adjourned in order to secure a fair and just determination of the appeal and a NoP will be issued effective from January 30, 2019 to the date of the next CMC on June 28, 2019.

[31] The Draft Plan appeal is adjourned and the previously issued NoP remains in effect.

[32] The Parties are to receive a copy of this Decision and Order and no further notice of the second CMC is required.

[33] This Panel is seized subject to the Tribunal's calendar.

"Thomas Hodgins"

THOMAS HODGINS
MEMBER

"S. Tousaw"

S. TOUSAW
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.

Local Planning Appeal Tribunal

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