

ISSUE DATE:

**November 7, 2007**

DECISION/ORDER NO:

**2909**



PL051314

Ontario Municipal Board  
Commission des affaires municipales de l'Ontario

Smart Centres Inc. (Toronto Film Studios 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 City of Toronto to redesignate land at 629, 633 and 675 Eastern Avenue from the Restricted Industrial Area to permit construction of a mixed use development.

(Approval Authority File No. 04168616 STE, 30 OZ)

OMB File No: O060018

Smart Centres Inc. (Toronto Film Studios 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 of the City of Toronto to rezone lands respecting 629, 633 and 975 Eastern Avenue from I2 D5 to Employment Regeneration Area to permit construction of a mixed use development.

OMB File No: Z050208

**APPEARANCES:**

**Parties**

**Counsel\*/Agent**

Smart Centres Inc. (Toronto Film Studios Inc.)

Dennis Wood\* and Johanna Myers\*

City of Toronto

Dawne Jubb\*

2006199 Ontario Inc. and 109744 Ontario Ltd.

(Mark Flowers\*) and Nupur Malaviya\*

Canada Post Corporation

(Andrew Jeanrie\*) and Katarzyna Sliwa\*

Loblaw Properties Ltd.

Tom Halinski\* and Matthew Napier\*

Talisker (Sunlight) G.P. Inc ("Talisker")

(Mary Flynn-Guglietti\*) and Scott Oldewening\*

Toronto Association of Business Improvement Areas (TABIA)

John Kiru

East Toronto Community Coalition

Randy Buck and Kelly Carmichael

**DECISION DELIVERED BY R. ROSSI AND ORDER OF THE BOARD**

At the request of C. Braive on behalf of his client "Friends of the Studio District", and at the request of R. Hall on behalf of his client "IATSE Local 873 Motion Picture Technicians" and on consent, the Board changes their status from party to participant.

This is the sixth Pre-hearing Conference in a series of meetings with the Board and all Parties in respect of these matters. Today, the City of Toronto has brought forward the following motions for the Board's consideration and determination:

1. to abridge the time for service of the Motion Record;
2. to defer the hearing and the finalization of the procedural order of this matter until the City of Toronto has completed and considered the recommendations from the Part II study currently underway of the lands known as the South of Eastern Employment District, which incorporate the subject lands, and have considered any recommendations flowing from the study to amend Part II of the Official Plan (anticipated City of Toronto Secondary Plan for the South of Eastern Employment District) as required by Section 9.18 of the Official Plan;
3. to schedule a further pre-hearing conference of this matter for March 24, 2008 or shortly thereafter for the purposes of considering a motion to consolidate the appeals of 629 and 633 Eastern Avenue (PL0501314) with the appeals to the City of Toronto Official Plan Amendment No. 5 (PL061112) and any appeals which arise from the anticipated City of Toronto Secondary Plan for the South of Eastern Employment District (PL file pending) for a consolidated hearing of all three matters to be scheduled September 2008 or shortly thereafter; and
4. to direct the Moving Party to provide notice of a pre-hearing conference for the appeals of City of Toronto Official Plan Amendment No. 5 (PL061112) for March 24, 2008 or shortly thereafter for the purposes of considering a motion to consolidate these appeals with the appeals of 629 and 633 Eastern Avenue (PL0501314) and any appeals which arise from the anticipated City of Toronto Secondary Plan for the South of Eastern Employment District (PL file pending) for a consolidated hearing of all the matters to be scheduled September 2008 or shortly thereafter.

5. That the Appellant's motion for costs on this matter be deferred to another date following the release of the Board's decision on these matters.

## **Background**

On 24 June 2004, Toronto Film Studios Inc. ("TFS") filed an application with the City of Toronto to amend the City of Toronto Part I Official Plan and City of Toronto Zoning By-law 438-86, as amended, to permit a mixed-use development of the subject lands located at 629, 633 Eastern Avenue. The application also seeks to add a site-specific Section 18 exception policy to the Official Plan and to amend the Zoning By-law in order to permit a variety of uses on the property such as office, service, retail, limited residential, hotel, restaurant, light industrial and limited industrial uses. The lands are designated Restricted Industrial Area in the Official Plan.

Policy 9.18 of the Official Plan requires Council to consider a study of the subject area before it considers a redesignation of industrially-designated lands to permit non-industrial uses. City staff commenced the South Eastern Planning Study in 2004 just after the TFS application was received. On 30 December 2005, prior to the City's completion of this Study, TFS appealed its application to the Board. In February 2006, the Toronto & East York Community Council (TEYCC) refused the application and City Council adopted the TEYCC's recommendations. In June 2006, the TEYCC again refused the application and adopted other City staff recommendations relating to the application and arising from the Study. In July 2006, City Council further adopted the TEYCC's second refusal of TFS's revised plan for its lands.

## **Submissions of the City**

Dawne Jubb submitted to the Board that as the City has yet to complete its requisite study of the subject area in accordance with Policy 9.18 of the older City of Toronto Official Plan, the Board does not have jurisdiction to hear the TFS applications before it. She added that if the Board were to determine that it does have jurisdiction, then the City seeks to defer the hearing until it has had an opportunity to consider the results and recommendations arising from the subject study and further, that a postponement of the forthcoming May 2008 hearing to a date in September 2008 would be in the public interest.

The South of Eastern Planning Study (Exhibit 1, Tab G), also known as the Part II Study, was reviewed in concert with its chronological details (Tab J) as well as with the chronology of the applications of the Toronto Film Studios (Tab B). This study began in response to the City's receipt of the TFS applications.

The City's "Final Report" on Official Plan Amendment 5 (Exhibit 3, Tab 17) recommends approval of an amendment to the Official Plan to remove the permission for the consideration of "power centres" in the South of Eastern Employment District. The same exhibit contains the draft of this OPA which TFS is appealing (an appeal not before this panel but which the City would like to consolidate with this matter at a future date in addition to Talisker's appeal and potentially any other appeals of OPA 5 that might arise).

The Board-order Parties' consolidated issues list (Exhibit 3, Tab 12) does not contain the issues of the City, who did not comply with two Board orders to submit its issues within the body of a comprehensive consolidated issues list. The Board accepted Ms Jubb's explanation for the City's failure to comply with the two orders; however, the Board also warned the City's counsel that the Board will tolerate no further failure on the City's part to comply with Board orders in the subsequent administration of this case. Ms Jubb was directed to communicate with the Board directly and promptly in advance of any future appearances before the Board if the City was having difficulties meeting the requirements arising from the Board's orders.

In respect of the other Parties' consolidated issues list, the City takes exception to issue 15 put forward by the Parties 2006199 Ontario Inc. and 109744 Ontario Ltd. which states:

If the Board approves an Official Plan Amendment for the site, would it be appropriate for the Board to extend all or a portion of the Official Plan Amendment to include the adjacent property at 721 Eastern Avenue in order to address comprehensive planning and block-related considerations?

Ms Jubb advised the Board that were the Board to grant its motion, this and other issues on the list could potentially be resolved. Like the other Parties to these matters today, Mr. Flower's co-counsel Ms Malaviya advised the Board that the numbered companies were not taking a position on this motion.

Ms Jubb made the following references in her submissions in an attempt to demonstrate how the Official Plan policy requires a study for the subject lands as well as to show that the subject area study is not yet complete. She reviewed the former City of Toronto Official Plan (1994) (Exhibit 3, Tab 7, p. 300) and Policy 9.18 – “Discouraging Loss of City Industry” which states:

Council will not consider redesignation of Industrially designated land so as to permit any non-industrial use in areas designated in this Plan as Restricted Industrial Area, General Industrial Area, or Heavy Industrial Area without first having considered a study of the area undertaken for the purposes of recommending policies for adoption in Part II of this Plan. Council will not effect such redesignation except where it is appropriate in light of the Part II study. Amongst other things, such study shall have regard for:

- (a) the number and types of industrial firms and employees in the areas that would be adversely affected;
- (b) the impact on any surrounding industrial lands that would not be redesignated; and
- (c) the environmental condition of the lands and the need for soil decommissioning.

She also reviewed several general policies from this section of the Official Plan and made specific reference to Policy 9.16. She also reviewed the general provisions of “Implementation” of the Official Plan and made specific reference to Policy 16.4. Of note: “Council will not make any amendments to the Zoning By-law to permit [large scale] development without first adopting such policies as may appear in light of the study, in Part II of the Plan.” Lastly, she referred to Section 24(1) of the *Planning Act* that states in part “...no public work shall be undertaken that does not conform therewith.”

The City contends that the Appellant has ignored the requirements of Policy 9.18 and instead has put forward its proposed Official Plan Amendment (Exhibit 2, Tab 2B) as a Section 18 exception (as it reads: “Notwithstanding any of the provisions of this Plan...”). Ms Jubb noted that the 2005 Provincial Policy Statement also recognizes that “Planning authorities may permit conversion of lands within employment areas to non-employment uses through a comprehensive review...” (Policy 1.3.2).

The City contends that the Board has no jurisdiction to proceed without the City's fulfilment of the requirements of Policy 9.18 and that some form of waiver of this policy, as TFS suggests, is possible. Ms Jubb has asked that if the Board were to find that the study had been completed and Policy 9.18 had been satisfied, the Board should consider the City's request for a deferral of the hearing to consider the recommendations resulting from this study so that the City can bring forward its comprehensive planning rationale for the lands affecting the TFS and the Board can know better the Council's direction and vision for the subject site. Additionally, the City would also be able to clarify its position and overall vision for other areas in this region. Ms Jubb added that there is much disagreement between the Parties over what constitutes a complete Part II study and she submitted that the chronology of actions related to that study (Exhibit 1, Tab J) as supplied by City Planner Denise Graham indicates that the City desires further refinements to the study.

Ms Jubb acknowledged that there was community consultation during the preparation of the South Eastern Planning Study but she told the Board that the lack of any substantive planning materials from the Appellant on its proposed vision for the site, followed by its own substantive revisions and even a change of site ownership and the submission of a revised plan, meant that the City had little to go on in terms of information related to the Appellant's plan and how it relates into the City's broader plans for the subject area.

The City has asked the Board to consider whether there is any prejudice to the Parties in delaying the proceedings from May 2008 to September 2008. Ms Jubb took the Board through the lengthy cross-examination affidavit of Peter Smith (Exhibit 4) regarding the matter of prejudice. Ms Jubb noted that there are other issues evolving; specifically, the matter of Official Plan Amendment No. 5 coming before the Board and the recommending policies for the Part II Plan coming to City Council in January 2008 as well as issues relating to uses of the surrounding study area.

### **Submissions of Toronto Film Studios Inc.**

Mr. Wood argued that the City has filed a motion asking for relief focused solely on the issue of whether the study that Policy 9.18 of the Official Plan requires is complete and whether there is a jurisdictional issue that would preclude the Board from

proceeding to hear the appeals. In her argument, she has expanded the relief sought so that however the Board decides, the City needs an adjournment in order for planning staff to provide further planning advice. He submitted that that is not a claim for relief.

He argued that there is no valid reason for the City to suggest it needs another three months for further consideration of the Part II Study. He noted that the materials were furnished to the City in August 2007 as the Board directed. The City has already had two months to review his client's materials and they should be ready to proceed to file a consolidated issues list with their issues included, which, he argued, is an entirely different matter than asking for a three month delay of the hearing from May to September next year. As he told the Board, the City's review of the August 2007 materials in a timely manner does not in any way affect the schedule embodied in the draft procedural order that takes this process to a hearing in May 2008. He added that if this were truly a genuine concern of the City, why has it taken the City two months to make such a request. He noted that in May 2007, Ms Jubb agreed to provide the Board with a consolidated issues list.

Mr. Wood reiterated that the City Council has twice refused the TFS applications; once in February 2006 and again following the June 2007 staff report. In reviewing this report with the Board (Exhibit 2, Tab T), he noted the City staff's specific references to what has been occurring at the Board since September 2006. He argued that the report indicates in the third full paragraph on page 292 that:

A fifth prehearing conference will be held on September 20, 2007 to consider a consolidated issues list and draft procedural order for a possible full hearing in 2008. City staff will have approximately 14 days to distribute and read the material in order to produce the consolidated issues list.

As Mr. Wood submitted, both City staff and City Council were "fully cognizant" of the time they would have to review the materials filed and to produce a consolidated issues list. The Board also extended the date from 20 September to 4 October in order to provide the City with an additional two weeks' time to complete its review. Mr. Wood submitted that this highlights the fact that the events that precipitated the City's motion to request a further three months to review materials did not materialize at the last moment. He noted that it was the City in May 2007 who specified before the Board what materials the Appellant should file by late-August 2007. On page 294 of the June

report, City staff in fact list all 19 items that it requires in order to review "...an OPA and ZBA of this magnitude on this 7.5 hectare site...." Mr. Wood noted further that at that time, Ms Jubb did not indicate 14 days was not enough time to review this material for the upcoming September 2007 (changed to 4 October) pre-hearing conference; nor did she make such a statement at the 4 October meeting with the Board.

Mr. Wood submitted that this matter starts and ends with the consideration of Official Plan Policy 9.18 and whether the South Eastern Planning Study was complete. Mr. Wood further submitted that City Council in fact reviewed a completed study. At no point does that document or any planning instrument indicate that Council cannot reconsider a redesignation of these lands until it obtains the "best possible" study, thereby giving it free rein to continue to ask for refinements and modifications and additional information ad infinitum – something Mr. Wood argues has occurred in the case of the study of the subject lands. He noted that Ms Jubb's language in her motion asked the Board to defer the hearing until Council has considered and completed recommendations as well as consider any recommendations flowing from the study to amend the Part II Official Plan. He submitted that this is not consistent behaviour with the actual language of Policy 9.18 (already cited). Thus, the relief requested is not consistent with the policy on which Ms Jubb purports to rely, and within the context of Policy 9.18 properly construed, City Council has had and in fact been able to consider a study of the area.

He offered that the City's problem is that it did not wait for completion of the study before it refused the TFS application because at the time of February 2006, when Council accepted City staff's recommendation to refuse the application, the study had not yet been completed. In this regard, Mr. Wood submitted to the Board that the City's position vis-à-vis this motion is both academic and ultimately, unreasonable.

Mr. Wood added that Council did have a completed report before it a few months later in June 2006. Then, on 11 July 2006, Council once again refused the application. He submitted that Council had thus refused the application in the absence of a report in February 2006 and it refused the application with the benefit of a study in June 2006. He was quick to point out that this appeal is not a case where the Appellant simply filed an appeal in December 2005 on the basis of the City's failure to make a decision.

Rather, the basis for the appeal was “intercepted” by the City in February 2006 when they said they refused this application and said it again in July 2006.

Mr. Wood pointed out that the City sought and received an order from the Board on 22 May 2007 for TFS to submit a number of studies. He noted that without waiting for those materials, the City again refused the application on 11 June when City staff recommended its refusal. He contended that City Council adopted the City staff’s recommendations in July 2007 without the benefit of the reports it had requested that the Board order the Appellant to produce by the end of August.

He noted that while Policy 9.18 requires Council, before considering a redesign, to have a study, Ms Jubb had submitted that “the City Council needs recommendations from the study “currently underway” and they need these in order to amend Part II of the Official Plan before making a decision. Mr. Wood argued that that is well beyond what is specified in Policy 9.18.

Mr. Wood further submitted that what started in 2004 as a study under the old Official Plan of the subject lands and area under the old Official Plan has morphed into a secondary plan under the newer Official Plan. He suggested a reason for this change. All of the lands in this area except the Appellant’s parcel are subject to the new Official Plan while the Appellant’s lands, by virtue of Exhibit 7, have been held back from that approval of the new Official Plan. He argued that while Policy 9.18 has relevance but for everyone else, who falls under the new Official Plan, City staff wants a secondary plan for the TFS lands, requiring a secondary plan study and it will have to be justified within the context of the employment district policies of the new Official Plan. He added that the series of policies in the new Official Plan detail how a secondary planning process is to occur (Exhibit 11, pp.5-8). These do not apply to the TFS lands but they do apply to everyone else in the subject area.

He noted further that the land use regime that applies to the other lands in the employment district is new; the policies the new Plan that apply to an employment district did not exist when the Appellant made its application. He noted that the TFS lands were designated Industrial and other lands were designated.

Mr. Wood submitted that the City cannot say that the Board does not have jurisdiction to make a decision on the Appellant’s appeal when the City has in fact made

a decision twice on the TFS application – once without the benefit of a study and again with a complete study but without detailed materials from the Appellant that the City had requested the Board order.

Mr. Wood submitted that the Board has independent jurisdiction that flows from the relevant provisions of the *Planning Act* and such jurisdiction does not flow from City Council or is rooted in the City's jurisdiction.

Mr. Wood then provided his best evidence in response to the City's motion regarding whether the South of Eastern Planning Study constituted a complete study in the form of a highly detailed document entitled: "Chronology: TFS Application, South of Eastern Planning Study, OMB Process" (Exhibit 13). The Board has appended this exhibit to this decision as Attachment 1 (removing Mr. Wood's personal observations). The document provides a date by date account of the Appellant's, the City's and the Board's steps as well as an account of the City-initiated study deriving from the Policy 9.18 requirement since the Appellant's 24 June 2004 application. As this chronology demonstrates, the "trail" of the TFS application and the study diverged in February 2006.

This document is important for a number of reasons. First, it reveals that fulsome involvement of the community had occurred on numerous occasions in 2005 (page 2), culminating in a status report "South of Eastern Study and Review Process of Applications." In June 2005, the area of study was defined as "...the lands bounded by Eastern Avenue, Lake Shore Boulevard East, between Don River and Leslie Street". On page 3, the study confirms that "This area does not function as a discreet Employment Area therefore, to properly assess the characteristics of this area, the original boundaries have been expanded south to Lake Ontario and east to Coxwell Avenue for the purposes of understanding the larger employment picture..."

Second, the document stands in contradiction to Ms Jubb's assertion that the Appellant had introduced the concept of a large amount of retail uses for the subject lands much later in the process. However, page 4 of this exhibit shows that as early as 22 December 2005, even before the Appellant's appeal to the Board, "Study identified 'large format retail uses' was one of the options to redevelop the subject site and

discussed potential implications of such an option.” The City’s planner, Ms Graham, also conceded this point.

Third, the document provides a detailed examination of what constituted the original study in the mind of City staff and how it was presented to Council and Council’s direction flowing there from. In February 2006, as mentioned, the staff recommended refusal of the application (page 5) and it noted: “The appeal of the applicant has prompted a separate report requesting Council direction on the...appeal. Staff will report on the [South Eastern Planning] study and related recommendations in the 2<sup>nd</sup> quarter of the year.” It is noteworthy that despite the refusal, two further evening meetings be held (May and June 2006) to discuss the study’s findings prior to reporting out to Community Council (page 6). By 27 June 2006, the report has been prepared and states: “This report outlines the findings of the South of Eastern Study and recommends consideration of amendments to the former City of Toronto Official Plan, the new Official Plan and changes to the existing zoning for the lands...” (page 7). Mr. Wood argued that this is the completed study. Mr. Wood further argued that this constitutes completion of the study requirement as indicated in Policy 9.18; that is, to report out the study and report on the recommendations regarding the relevant Official Plan and Zoning matters.

Mr. Wood provided a copy of that report in his responding record (Exhibit 2, Tab Q, page 236): “Attachment 9: Land Use Changes to Consider” wherein there is clear identification of the specific types of considerations that Council would be turning its mind to with the release of this study in June 2006. As Mr. Wood submitted, this is what happens at the end of a study; it has been completed and now they must review the findings and recommendations. On page 8 of the chronology exhibit, the staff report states the following: “In the meantime, staff have [*sic*] completed the South of Eastern Study, held two evening meetings to discuss the preliminary findings with the community and are reporting on the findings.”

Mr. Wood then reviewed the statements contained on page 9: “The report contains a fulsome discussion of employment related issues under the title “Employment in the south of Eastern Study Area”. Then under the title “Next Steps”, the report has shifted toward focusing on the “Employment District” which moves the discussion beyond the old Official Plan to the new Official Plan.

Mr. Wood reviewed portions of Ms Graham's affidavit and he noted that by this time, City staff had moved beyond Policy 9.18 and it had moved beyond discussions of solely the South of Eastern Employment District. Mr. Wood submitted that Ms Graham's statements (pages 8-9) from this point on have their origins in the subsequent deliberations of Community Council and City Council on various aspects of this matter.

Returning to Exhibit 13 again, Mr. Wood notes on page 13 that by early-May 2007..."The [City's] Economic Development Committee requested that The Chief Planner and Executive Director, City Planning, in consultation with the Toronto Waterfront Revitalization Corporation, to further review the South of Eastern Employment District." Mr. Wood pointed out that at this point, the City was no longer simply "carrying on a review" of the South of Eastern Planning Study"; rather, it had expanded its intentions to cover the new "South of Eastern Employment District." He argued that this process cannot be seen as a continuation of the South of Eastern Study. Instead, this process would now engage a multiplicity of lands in a multiplicity of planning districts far beyond the ambit of the South of East Employment District and add further complex issues. He argued that there is no direct connection in this resolution to the Appellant's appeals and is instead, an omnibus planning study. Further, the fact that it is to be carried out with the Toronto Waterfront Revitalization Committee – a multi-jurisdictional body with a special relationship with the City in respect of to land use matters and in terms of when results things would come out of that study – creates serious concerns.

Mr. Wood submitted that there has been abundant time for the City and its planning staff to move forward with its consideration of Official Plan and Zoning matters for the South of Eastern Employment District; this has not occurred and the City has given no reason in its materials as to why that has not been done.

Mr. Wood dismissed Ms Jubb's assertion that TFS has made changes to the project. He countered that City Council made its decision without regard for the June 2006 study, and there is no connection anywhere between it and the City's allegation that TFS had so changed the nature of its proposal that City staff would therefore have to go back and redo the South of Eastern Planning Study. He added that even if there were such a connection, it would be irrelevant in that Council has made its decision to refuse the application on two prior occasions. Thus, the City has no persuasive reason

for extending the time to review the materials, other than they have not made good use of its time but certainly, he argued, TFS has not prevented them from such a review.

On page 18 of the chronology, Councillor Fletcher's motion seeks to ensure: "...that the land use planning and urban design guidelines for the South of Eastern incorporate a good relationship amongst the three parcels of land being the West Don lands, the Portlands and the lands defined as the South of Eastern and such recommendation will be included in the further Staff Report...in the winter of 2007." By this point, argued Mr. Wood, there is a further linkage of a broader study area with different parameters (referenced as a "Supplementary Report" on page 19) and beyond the completed South of Eastern Planning Study. He submitted that the City was now seeking an opportunity to complete a study that embodies recommendations from various bodies from March 2007 through and up until October 2007 which, in his opinion, is neither fair nor reasonable conduct nor reasonably related to the report completed in June 2006 by City staff's own words and involving lands beyond the Industrial designation as set out in Policy 9.18.

In his closing arguments, Mr. Wood submitted that Section 16.4 of the former City of Toronto Official Plan was not contained in the City's materials – nor was it identified as a ground for the City's motion. Reference to Section 24(1) of the *Planning Act* is curious in that there is nothing in that section of the *Act* that precludes the Board from looking at an official plan or official plan amendment and especially where the amendment would except the lands from all other provisions of an official plan. Finally, he noted that the City's Provincial Policy Statement reference is even farther removed since it is the 1997 Provincial Policy Statement that applies to the TFS lands and not the 2005 version that Ms Jubb cited.

### **Findings of the Board**

The Board has carefully considered the submissions of both Parties and all of the documentary evidence presented. The Board finds that the Appellant has presented persuasive evidence that the South of Eastern Planning Study constitutes a complete study in accordance with the requirement established in Policy 9.18 of the former City of Toronto Official Plan. That evidence overshadows Ms Graham's characterization of the two studies as one and the same (in the cross examination affidavit of this planner at

Exhibit 6, page 206). While that planner's opinion would suggest that the study is an ongoing one for the City, for the purposes of this Appellant and the actions that have transpired in respect of the City's planning staff's work, their submission of the aforementioned study to Council in the summer of 2006 constitutes, in the Board's determination, the completed study. The Board prefers the Appellant's arguments to that of the City's affidavit. The Board accepts and appreciates that the City is entitled to broaden its area of study as it has done in order to develop a uniform approach to this area. In this case, that effort was made after a review of the completed study. Further, a change to nomenclature for the study area ("Employment District"); expansion of the area of study that requires consideration of newer planning instruments to which the Appellant is not bound; the addition of other entities (such as the Toronto Waterfront Revitalization Committee); and the inclusion of other non-Industrial designated lands in a revamped area of study goes beyond the scope of the original completed study that is, in the Board's view, unfair to the Appellant who has complied with the Board's order and whose application has been refused twice by the City – once in the absence of a complete study in February 2006 and again following adoption of the completed June 2006 report.

The Board finds the Appellant's attached chronology and the information contained therein to be an accurate and persuasive representation of the planning study as well as supportive of the Board's determination that a fulsome study of the subject area has been completed in accordance with Policy 9.18 of the Official Plan.

The Board finds that there is no public interest served in delaying these matters from May 2008 until September 2008, particularly where the City completed its South of Eastern Planning Study well over one year ago and the Appellant has been ordered to provide to the City (and it has complied on time) all of its supporting reports and materials for its application. The Board determines that the Appellant has not created the timeliness issue for the City; rather, the Board finds that it is a problem of the City's making. Having said that, the Board determines that there is no harm to the public interest by keeping the City on track with the May 2008 hearing as the 2006 study is deemed to be a completed one and the City can reasonably be expected to contribute its issues to the consolidated issue list.

The Board grants the City's motion in part by abridging the time for filing of the motion record and materials. The motion record and exhibits were used in the course of this motion hearing.

The Board denies the City's motion as it relates to the Board's jurisdiction to hear the TFS appeals. The Board determines it has the jurisdiction to hear the appeals by virtue of the City's completion of the South of Eastern Planning Study. As such, the policy requirements of the former City of Toronto Official Plan Policy 9.18 are deemed to have been fulfilled. That study was completed in 2006 and constitutes a full and complete study for the purposes of this appeal, despite its morphing into a larger study with changed boundaries and matters of review. The Board determines it is not in the public interest to defer a hearing of these matters for the reasons given. The Board reaffirms its intention to commence the full hearing of these appeals on 5 May 2008.

The Board also denies the City's motion to defer the hearing and finalization of the procedural order of this matter until a proposed City Council review of recommendations in January 2008. Rather, the Board orders a peremptory hearing for all parties to attend at the Toronto offices of the Ontario Municipal Board on Monday, 19 November 2007 at 1:00 p.m. to finalize the Procedural Order for the May 2008 hearing. The Board further orders the City to now comply with this issuing order by virtue of its failure to comply with the previous two orders that required it to contribute to a consolidated issues list of all Parties. The Board expects the City to be in attendance and have prepared its issues list to be consolidated with the other Parties' issues.

The Board will grant the City's motion to schedule a further two-day pre-hearing conference for 25 and 26 March 2008 at the Board's offices in Toronto for the purposes of considering a motion to consolidate the appeals of 629, 633 Eastern Avenue (PL051314) with the appeals to the City of Toronto Official Plan Amendment No. 5 (PL061112) and any appeals that arise from the anticipated City of Toronto Secondary Plan for the South of Eastern Employment District (PL pending) for a consolidated hearing of all three matters during the already established May 2008 dates.

The Board directs the City to provide notice of a pre-hearing conference for the appeals of City of Toronto Official Plan Amendment No. 5 (PL061112) for 25 and 26 March 2008 for the purposes of considering a motion to consolidate its appeal with the

appeals of 629,633 Eastern Avenue (PL051314) and any appeals which arise from the anticipated City of Toronto Secondary Plan for the South of Eastern Employment District (PL pending) for a consolidated hearing of all three matters to be scheduled in May 2008.

The Board will entertain a motion for costs following a release of the Board's decision after completion of the May 2008 hearing.

The Member continues to be seized of the administrative management of these matters. No further notice will be given of the 19 November 2007 peremptory hearing.

So Orders the Board.

"R. Rossi"

R. ROSSI  
MEMBER

**CHRONOLOGY:  
TFS APPLICATION, SOUTH OF EASTERN PLANNING STUDY, OMB PROCESS**

Date	TFS Application Process	Study under Policy 9.18	Ontario Municipal Board Process
24 June 2004	<p>Toronto Film Studios Inc. (“TFS”) filed an application to amend the City of Toronto Part I Official Plan (the “Official Plan”) and City of Toronto Zoning By-law 438-86, as amended, to permit a mixed-use development on the subject property (the “Application”).</p> <p><b>Smith Affidavit, para 9, Ex “B”</b> <b>Graham Affidavit, para 4, Ex “J”</b></p>		
21 October 2004	<p>Preliminary staff report regarding Application.</p> <p>Staff recommended that:</p> <ol style="list-style-type: none"> <li>1. staff be directed to schedule a community consultation meeting together with the Ward Councillor.</li> <li>2. notice for the community consultation meeting be given to landowners and residents ...</li> <li>3. notice for the Public Meeting under the Planning Act be given according to the regulations under the Planning Act.</li> </ol> <p><b>Smith Affidavit, Ex “E”</b> <b>Graham Affidavit, para 12, Ex “D”</b></p>	<p>Preliminary staff report regarding Application.</p> <p>Staff recommended that:</p> <ol style="list-style-type: none"> <li>4. planning staff undertake a review of the planning strategy for the area bounded by <a href="#">Lake Shore Boulevard</a>, <a href="#">Don Valley</a>, <a href="#">Leslie Street</a> and <a href="#">Eastern Avenue ...</a></li> </ol> <p><b>Smith Affidavit, Ex “E”</b> <b>Graham Affidavit, para 12, Ex “D”</b></p>	

16 November 2004		Community Council adopts staff recommendation.  <b>Smith Affidavit, para 17, Ex “F” Graham Affidavit, para 12, Ex “D” &amp; “J”</b>	
30 November, 1, 2 December 2004		City Council adopts Community Council recommendation.  <b>Smith Affidavit, para 18, Ex “G” Graham Affidavit, para 12, Ex “D”</b>	
9 February 2005 2 March 2005 6 March 2005 29 March 2005 4 April 2005 26 April 2005 19 May 2005 30 May 2005 6 June 2005	<u>Councillor working groups to discuss the application and the South of Eastern Planning Study.</u>  <b>Graham Affidavit, paras 9 &amp; 13, Ex “B” &amp; “J”</b>	<u>Councillor working groups to discuss the application and the South of Eastern Planning Study.</u>  <b>Graham Affidavit, para 13, Ex “J”</b>	
21 June 2005	Status Report: South of Eastern Study - and Review Process of Applications  <u>Staff report to submit the preliminary findings and results of a land use planning study undertaken for the lands bounded by Eastern Avenue, Lake Shore Boulevard East, between Don River and Leslie Street. The report also provides a summary of the review process to date for the Official Plan and Zoning By-law amendment applications submitted for 629, 633,</u>	Status Report: South of Eastern Study - and Review Process of Applications  <u>Staff report to submit the preliminary findings and results of a land use planning study undertaken for the lands bounded by Eastern Avenue, Lake Shore Boulevard East, between Don River and Leslie Street. The report also provides a summary of the review process to date for the Official Plan and Zoning By-law amendment applications submitted for 629, 633,</u>	

	<p><u>675 Eastern Avenue.</u></p> <p><b>Smith Affidavit, para 23, Ex “H”</b>  <b>Graham Affidavit, para 14, Ex “E”</b></p>	<p>675 Eastern Avenue.</p> <p>On page 3, confirms that the study authorized on November 16, 2004 was a “<u>review of the planning strategy for the area bounded by Eastern Avenue, Lake Shore Boulevard East, between Don River and Leslie Street</u>”</p> <p>On page 5 - “This area does not function as a discreet Employment Area therefore, to properly assess the characteristics of this area, <u>the original boundaries have been expanded south to Lake Ontario and east to Coxwell Avenue</u> for the purposes of understanding the larger employment picture and to prevent the disclosure of private information by using employment numbers on a smaller basis.”</p> <p>On pp. 9-11, the report discusses outstanding issues related to the area study.</p> <p><b>Smith Affidavit, para 23, Ex “H”</b>  <b>Graham Affidavit, para 14, Ex “E”</b></p> <p>“expanded the study boundaries to include entire <u>Employment District</u>”</p> <p><b>Graham Affidavit, Ex “J”</b></p>	
July 5, 2005	Community Council adopts staff recommendation with numerous	Community Council adopts staff recommendation with numerous	

	<p>additional requests for further work</p> <p><b>Smith Affidavit, para 17, Ex “I”</b> <b>Graham Affidavit, Ex. “E”</b></p>	<p>additional requests for further work</p> <p><b>Smith Affidavit, para 17, Ex “I”</b> <b>Graham Affidavit, Ex. “E”</b></p>	
<p>July 19, 20, 21 and 26, 2005</p>	<p>City Council adopts Community Council recommendation.</p> <p><b>Smith Affidavit, para 18, Ex “J”</b> <b>Graham Affidavit, Ex. “E”</b></p>	<p>City Council adopts Community Council recommendation.</p> <p><b>Smith Affidavit, para 18, Ex “J”</b> <b>Graham Affidavit, Ex. “E”</b></p>	
<p>22 December 2005</p>	<p>Applicant submitted “Economic Study: South of Eastern Study Area Final Report”, dated 31 August 2005</p> <p>Study area defined as Lake Shore Boulevard, Eastern Avenue, Don Valley Parkway and Leslie Street.</p> <p><b>Smith Affidavit, para 26, Ex “K”</b> <b>Graham Affidavit, para 15</b></p> <p>Study identified “large format retail uses” was one of the options to redevelop the subject site and discussed potential implications of such an option. (Introduction and p.13))</p> <p><b>Smith Affidavit, Ex. “K”</b></p>		
<p>30 December 2005</p>	<p>TFS appeals Application to the OMB for lack of decision on them (the “Appeal”)</p> <p><b>Smith Affidavit, para 28, Ex “L”</b></p>		<p>TFS appeals Application to the OMB for lack of decision on them (the “Appeal”)</p> <p><b>Smith Affidavit, para 28, Ex “L”</b></p>

	<b>Graham Affidavit, para 15</b>		<b>Graham Affidavit, para 15</b>
1 February 2006	<p>Staff Directions Report regarding TFS Appeals</p> <p>Staff recommended that City Council:</p> <ol style="list-style-type: none"> <li>1. refuse the application in its current form and authorize the City Solicitor .... To attend the OMB hearing to oppose the subject application</li> <li>2. authorize staff to enter into discussions with the applicants to work towards a settlement position and direct staff to bring forward any proposed settlement to City Council</li> </ol> <p><b>Smith Affidavit, paras 29-35, Ex “L” Graham Affidavit, para 17, Ex “F” &amp; “J”</b></p>	<p>Staff Directions Report regarding TFS Appeals</p> <p>Staff recommended that City Council:</p> <ol style="list-style-type: none"> <li>3. authorize staff to establish in consultation with the Ward Councillor, a working committee to provide input on the South of Eastern study.</li> </ol> <p><b>Smith Affidavit, paras 29-35, Ex “L” Graham Affidavit, Ex “F” &amp; “J”</b></p> <p>“It had been staff’s intention to report on the South of Eastern Study, and related Council recommendations, with this application. The appeal of the applicant has prompted a separate report requesting Council direction on the Ontario Municipal Board appeal. Staff will report on the study and related recommendations in the 2<sup>nd</sup> quarter of the year.” (p.4)</p> <p><b>Graham Affidavit , Ex. “F”</b></p> <p>Graham confirmed that the 2<sup>nd</sup> quarter of the year meant in June 2006.</p> <p><b>Graham Cross examination , p. 73, lines 7-11</b></p> <p>“With the applicant’s appeal to the Ontario Municipal Board, consideration of the South of Eastern</p>	

		<p>Study has become a two step process.”</p> <p>Graham confirmed this meant the appeal and the study will run on two tracks.</p> <p><b>Smith Affidavit, Ex “M”</b>  <b>Graham Affidavit, Ex “F”</b>  <b>Graham Cross-Ex, p. 75, lines 14-25</b>  <b>(see also Graham Cross-Ex, p. 34, lines 2-10)</b></p>	
7 February 2006	<p>Community Council adopts staff recommendations.</p> <p><b>Smith Affidavit, para 36, Ex “N”</b>  <b>Graham Affidavit, Ex “F” &amp; “J”</b></p>	<p>Community Council adopts staff recommendation.</p> <p><b>Smith Affidavit, para 36, Ex “N”</b>  <b>Graham Affidavit, Ex “F” &amp; “J”</b></p>	
13 February 2006		<p>Staff report recommending that the Director of Community Planning, Toronto and East York District set up a community consultation process that will include up to two evening meetings to discuss preliminary findings of the South of Eastern study prior to reporting out to Community Council.</p> <p><b>Smith Affidavit, para 37, Ex “O”</b></p>	
14 February 2006	<p>City Council adopts Community Council recommendations.</p> <p><b>Smith Affidavit, para 38, Ex “P”</b>  <b>Graham Affidavit, Ex “F” &amp; “J”</b></p>	<p>City Council adopts Community Council recommendations.</p> <p><b>Smith Affidavit, para 38, Ex “P”</b>  <b>Graham Affidavit, Ex “F” &amp; “J”</b></p>	

29 May 2006		<p>Evening meeting regarding the South of Eastern Planning Study in Ward 30</p> <p><b>Smith Affidavit, para 39</b> <b>Graham Affidavit, Ex “J”</b></p>	
14 June 2006		<p>Evening meeting regarding the South of Eastern Planning Study in Ward 32</p> <p><b>Smith Affidavit, para 39</b> <b>Graham Affidavit, Ex “J”</b></p>	
27 June 2006		<p>Staff report entitled “South of Eastern Planning Study- Eastern Avenue to Lake Shore Boulevard, the Don Valley to Coxwell Avenue...”</p> <p>“This report outlines the findings of the South of Eastern Study and recommends consideration of amendments to the former City of Toronto Official Plan, the <b>new Official Plan</b> and changes to the existing zoning for the lands located <b>south of Eastern Avenue between the Don River and Coxwell Avenue, north of Lake Shore Boulevard East.</b>” (p.1-2)</p> <p>Staff report recommends that City Council:</p> <p>1. Endorse expanding the range of employment uses, developing development standards and producing guidelines to enhance the <b>South of Eastern Employment District.</b> (See attachment 9 to report (Smith</p>	

		<p>Affidavit, Ex. "Q", p.236, Motion Record)</p> <p>2. authorize staff to schedule a Public Meeting under the Planning Act targeting the final Community Council meeting of 2006 or a meeting in the first quarter of 2007 to consider the final Official Plan and Zoning By-law Amendments for the <b>South of Eastern Employment District....</b></p> <p>along with 3 other recommendations related to <b>the Employment District.</b> (p.2)</p> <p>Under the title "Purpose of the Study" staff note: "This report outlines the findings of the required study" (p.3)</p> <p>Later the staff report states that "In the meantime, <u>staff have completed the South of Eastern Study</u>, held two evening meetings to discuss the preliminary findings with the community and are reporting on the findings." (p.4)</p> <p>Under the title "Community Consultation" the report notes:</p> <p>"City Council on February 14, 2006 recommended "that the Director, Community Planning Toronto and East York District set up a community consultation process what will include up to two evening meetings to discuss</p>	
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		<p>the preliminary findings of the South of Eastern Study prior to reporting out to Toronto and East York Community Council”. Two evening meetings were held on May 29, 2006 in Ward 30 and on June 14, 2006 in Ward 32.”</p> <p>The report notes the number of written briefs and submissions and the issues and concerns raised in this consultative process. (p.21)</p> <p>The report contains a fulsome discussion of employment related issues under the title “Employment in the South of Eastern Study Area’ (a discussion of the <b>South of Eastern Employment District</b> and the area south of Lakeshore Blvd. (the Port Lands).(pp.11-18)</p> <p>The report ends with a discussion under the title “Future of the <b>South of Eastern Employment District</b>” (pp.23-25)</p> <p>Under the title, “Next Steps”, the report “recommends amending the Official Plan and Zoning By-law to expand the range of employment uses permitted in the <b>Employment District</b>. Also to be considered is the introduction of development standards and various guidelines to set the framework for new development in order to enhance the <b>Employment District</b>. The Public Meeting under the</p>	
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		<p>Planning Act is targeted for the final Toronto East York Community Council meeting of 2006 or the first quarter of 2007.” (p.25)</p> <p>Under the title, “Conclusions”, after noting that the TFS applications “triggered a planning study for the surrounding industrial area” the report goes on to note “ This report outlines the findings of the study” and that “Staff from Economic Development, Legal, Transportation, Technical Services and the Toronto Film Commission have been consulted in the preparation of this report” (p.25)</p> <p><b>Smith Affidavit, para 46, Ex “Q”</b>  <b>Graham Affidavit, Ex “G”</b></p>	
6 July 2006	<p>OMB approves the new City of Toronto Official Plan (the “New Official Plan” by Order 1928 in large part, except as the New Official Plan relates to, amongst others, those properties that remain the subject of appeals before the OMB under the former municipal official plan, including the Property.</p> <p><b>Graham Affidavit, para 6</b>  <b>Graham Cross-Ex, Ex “1”</b></p>		
11 July 2006	<p>Community Council requested that Director, Community Planning, Toronto and East York Community Council to report to City Council on</p>	<p>Community Council adopts staff recommendation.</p> <p><b>Smith Affidavit, para 47, Ex “R”</b></p>	

	<p>July 25, 2006 on the mechanisms to amend the <b>Official Plan</b> to remove and/or restrict “power centres” from the <b>South of Eastern Employment District</b>.</p> <p><b>Graham Affidavit, para 18, Ex “G”</b> <b>Graham Affidavit, Ex “J”</b></p>	<b>Graham Affidavit, para 18, Ex “G” &amp; “J”</b>	
18 July 2006	<p>Supplementary staff report regarding “power centres”</p> <p><b>Graham Affidavit, Ex “J”</b></p>		
25, 26 and 27 July 2006	<p>City Council adopts Community Council recommendation.</p> <p><b>Graham Affidavit, Ex “J”</b></p>	<p>City Council adopts Community Council recommendation.</p> <p><b>Smith Affidavit, para 47, Ex “S”</b> <b>Graham Affidavit, para 18, Ex “G”</b></p> <p>City scheduled a Public Meeting to consider an Official Plan Amendment deleting consideration of Power Centres in the South of Eastern Employment District.</p> <p><b>Graham Affidavit, Ex “J”</b></p>	
25 August 2006	<p>Staff report recommends that City Council amend the <b>Official Plan</b> for the <b>South of Eastern Employment District</b> as follows:</p> <p>“Lands bounded by <b>Eastern Avenue</b>, east of <b>Woodfield Road</b>, <b>Lake Shore Boulevard East</b> and the <b>Don Valley</b></p>		

	<p>Parkway.</p> <p>“Power centres” are not permitted.” (OPA 5)</p> <p><b>Graham Affidavit, para 19</b> <b>Graham Cross-Ex, Ex “4”</b></p>		
13 September 2006	<p>Community Council adopted staff recommendation.</p> <p><b>Graham Cross-Ex, Ex “4”</b> <b>Graham Affidavit, Ex “J”</b></p>		
25, 26 & 27 September 2006	<p>City Council adopted Community Council.</p> <p><b>Graham Cross-Ex, Ex “4”</b> <b>Graham Affidavit, Ex “J”</b></p>		
29 September 2006			<p>First Prehearing Conference</p> <p><b>Smith Affidavit, para 73</b> <b>Graham Affidavit, para 21</b></p> <p>Adjourned until February 20, 2007.</p> <p>[Wood: City does not suggest that hearing cannot proceed until South of Eastern Study is completed and Secondary Plan is adopted. See <b>Graham Affidavit para 47</b>]</p>
20 February 2007			<p>Second Prehearing Conference</p> <p>City seeks order from Board requiring</p>

			<p>the filing of plans etc. by May 1, 2007.</p> <p>Board sets September 22 prehearing conference to set hearing dates and make procedural order.</p> <p><b>Smith Affidavit, para 73</b> <b>Graham Affidavit, para 24</b></p>
17 April 2007			<p>Third Prehearing Conference</p> <p><b>Smith Affidavit, para 73</b></p>
9 May 2007		<p>The Economic Development Committee requested that</p> <p>The Chief Planner and Executive Director, City Planning, in consultation with the Toronto Waterfront Revitalization Corporation, to further review the <b>South of Eastern Employment District</b> based on the emerging and future waterfront development on <b>West Don Lands (across the River)</b>, <b>East Bayfront</b>, <b>Lower Don Lands (directly south)</b>, the <b>regeneration of the Port Lands (directly south)</b>, and the size and shape of the <b>Employment District</b>, and report on:</p> <ol style="list-style-type: none"> <li>1. the best fit for land uses on these lands in their relationship to the developing waterfront, including traffic and transportation considerations;</li> <li>2. planning measures and incentives to</li> </ol>	

		<p>achieve best land use application; and</p> <p>3. any official plan amendments related to <b>South of Eastern Employment District</b>.</p> <p><b>Smith Affidavit, paras 57-58, Ex “W”</b>  <b>Graham Affidavit, Ex “J”</b></p>	
22 May 2007			<p>Fourth Prehearing Conference</p> <p><b>Smith Affidavit, para 73</b></p> <p>City seeks order from Board requiring the filing of reports re TFS appeals by August 31, 2007 which is ordered on consent.</p>
11 June 2007	<p>Request for Direction Report</p> <p><u>The purpose of this report is to inform Council of a revised proposal recently submitted; seek direction for the continuing Ontario Municipal Board hearing; provide an update on the South of Eastern Planning Study and provide relevant background material”</u> (p.1)</p> <p>Staff recommended that City Council:</p> <p>1. refuse the application in its current form and authorize the City Solicitor and appropriate City staff to attend the Ontario Municipal Board hearing to oppose the subject application</p>	<p>Request for Direction Report</p> <p>Staff report to inform Council of a revised proposal recently submitted; seek direction for the continuing Ontario Municipal Board hearing; <u>provide an update on the South of Eastern Planning Study</u> and provide relevant background material” (p.1)</p> <p>On pp. 8-11 - “staff undertook the required study and the Findings Report was considered by the Toronto and East York Community Council on July 13, 2006. The original study boundaries were Eastern Avenue to Lake Shore Boulevard East, between the Don river and Leslie Street. The</p>	

	<p>oppose the subject application</p> <p>2. authorize staff to continue to meet with the applicant and enter into discussions to work towards a settlement position and direct staff to bring forward any proposed settlement to City Council subject to resolution of all outstanding issues</p> <p>3....authorize the City Solicitor and necessary staff to take such necessary steps to implement the foregoing”</p> <p><b>Smith Affidavit, para 50-54, Ex “T”</b></p>	<p>study boundaries were expanded eastwards to include lands over to the east side of Woodfield Road (the <b>Employment District shown on the Urban Structure Map</b>).</p> <p>This area does not function as a discreet Employment Area and to properly assess the characteristics of this area the original boundaries were expanded south of Lake Ontario for the purposes of understanding the larger employment picture and to prevent the disclosure of private information by using employment numbers on a smaller basis. This larger area reflects both the historic linkages to the Port Lands, as well as the reality of the removal of the portion of the Gardiner Expressway ...</p> <p>Some key highlights of the study: ...</p> <p>Two evening meetings were held ...</p> <p>The study concluded that the <b>South of Eastern Employment District</b> needs to be maintained and enhanced. ...</p> <p>Staff recommended amending the Official Plan and Zoning By-law to expand the range of employment uses permitted in the <b>Employment District</b>. <u>Staff will be reporting on this matter in the fall.</u> (emphasis added)</p> <p>Staff concluded that the Employment</p>	
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		District functions well and will continue to do so if it is protected and promoted for economic activity ...”  <b>Smith Affidavit, paras 50-54 and Ex “T”</b>	
19 June 2007	Request of Direction : Supplementary Report  Clarifies that residential use is not supportable in the South of Eastern District and specifically on the TFS property and recommends a change to Recommendation no. 2 of the report..  <b>Smith Affidavit, Ex “U”</b>		
26 June 2007	Community Council adopts recommendation 1. in staff report.  Community Council makes recommendation (on motion by Fletcher) that City Council authorize the Director Community Planning Toronto and East York District to continue to meet with the applicant on the basis of the site plan application for the purposes of having discussions to narrow or resolve outstanding issues with respect to the Official Plan Amendment and the Zoning By-law appeals currently before the Ontario Municipal, including but not limited to: ...  <b>Smith Affidavit, para 55, Ex “U”</b>	Community Council makes recommendation (on motion by Fletcher) that City Council authorize the Director of Technical Services to report to Toronto and East York Community Council in conjunction with the status report of the South of Eastern Planning Study, regarding any issues and proposed recommendation regarding the condition of the soil and Record of Site Condition site  <b>Smith Affidavit, para 55, Ex “U”</b>	

	<b>Graham Affidavit, Ex “J”</b>		
16, 17, 18 and 19 July 2007	City Council adopts Community Council recommendations.  <b>Smith Affidavit, para 56, Ex “V”</b> <b>Graham Affidavit, Ex “J”</b>	City Council adopts Community Council recommendations.  <b>Smith Affidavit, para 56, Ex “V”</b>	
28 August 2007		Staff report recommended that  1. The Chief Planner and Executive Director, City Planning, forward a copy of the South of Eastern Avenue Planning Study, when completed, to the Economic Development Committee for information.  On pp.1-2: “Issue Background: At it meeting on May 9, 2007, Economic Development Committee requested: [see above].”  <b>Smith Affidavit, para 56, Ex “V”</b>	
2 October 2007		Motion by Councillor Fletcher at Community Council:  “Council request Staff to analyze and consider incorporating recommendations to ensure that the land use planning and urban design guidelines for the South of Eastern incorporate a good relationship amongst <a href="#">three parcels of land being the West Donlands, the Portlands and the lands defined as the South of Eastern</a> and such recommendation will be	

		<p>included in the further Staff Report from City Planning Staff in the winter of 2007.”</p> <p>In the Motion, under the title SUMMARY:</p> <p>“City Council at its meeting on November, 2004 recommended that planning staff undertake a review of the planning strategy for the area bounded by <a href="#">Lake Shore Boulevard</a>, <a href="#">Don Valley</a>, <a href="#">Leslie Street</a> and <a href="#">Eastern Avenue</a> in consultation with the Ward Councillor and the community as appropriate as required by Policy 9.18 of the Official Plan of the former City of Toronto.</p> <p>Since this time staff have undertaken the study and reported back to Council on several issues. It is expected that a <u>Supplementary Report</u> with recommendations will be submitted by City Planning in the Winter 2007.”</p> <p><b>Smith Affidavit, paras 64-65, Ex “Z”</b></p> <p>No notice of this Motion was given to SmartCentres et al.</p> <p><b>Smith Affidavit, para 67</b></p>	
4 October 2007			<p>Fifth Prehearing Conference</p> <p>OMB schedules hearing to commence</p>

			<p>on 5 May 2008; City does not object.</p> <p><b>Smith Affidavit, para 74, Ex “CC”</b></p> <p>City does not mention Community Council Motion at the Prehearing Conference</p> <p><b>Smith Affidavit, para 68</b></p>
17 October 2007		<p>Letter from City advising that it wished to bring a motion regarding the Board’s jurisdiction to proceed with the appeals.</p> <p><b>Smith Affidavit, para 80, Ex “DD”</b></p>	
22, 23 October 2007		<p>City Council adopted Fletcher motion.</p> <p><b>Smith Affidavit, para 66, Ex “BB”</b></p>	
24 October 2007			<p>City serves Notice of Motion seeking adjournment related to Policy 9.18 study.</p> <p><b>Smith Affidavit, para 80, Ex “FF”</b></p>