

ISSUE DATE:

**August 16, 2007**

DECISION/ORDER NO:

**2316**



PL060678

Ontario Municipal Board

Commission des affaires municipales de l'Ontario

KPC 609 Avenue Road 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 site-specific amendment to the Official Plan for the City of Toronto at the 609 Avenue Road to permit the proposed residential apartment building containing a maximum of 58 dwelling units, 56 metres in height at a total density of 6.37 times the area of the lot (Approval Authority File No. 05 193926 STE 22 OZ)

O.M.B. File No. O060135

KPC 609 Avenue Road 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 site-specific amendment to Zoning By-law 438-86 of the City of Toronto to rezone lands respecting 609 Avenue Road to permit the proposed residential apartment building containing a maximum of 58 dwelling units, 56 metres in height at a total density of 6.37 times the area of the lot

O.M.B. File No. Z060094

KPC 609 Avenue Road Inc. has referred to the Ontario Municipal Board under subsection 41(12) of the *Planning Act*, R.S.O. 1990, c. P. 13, as amended, determination and settlement of details of a site plan for lands municipally known as 609 Avenue Road, City of Toronto

O.M.B. File No. M060072

## **APPEARANCES:**

### **Parties**

### **Counsel**

KPC 609 Avenue Road Inc.

A. Brown

City of Toronto

R. Kallio

Toronto Standard Condominium Corporation  
1516

C. Lax

Clifford Lax and Joan Lax

C. Lax

## **DECISION DELIVERED BY S. J. STEFANKO AND J. R. McKENZIE AND ORDER OF THE BOARD**

### **Background**

KPC 609 Avenue Road Inc. ("Applicant") is the owner of 609 Avenue Road, Toronto and wishes to construct a 16-storey apartment building on this site. The current configuration of the development is a slightly reduced version of what was originally

applied for in 2005. In order to proceed with the proposed development, the Applicant is asking that this panel approve the zoning by-law ("609 By-law"), which was marked as Exhibit 23 in this proceeding, the Site Plan Agreement ("Site Plan Agreement"), which was marked as Exhibit 24, and the s.37 Agreement ("s.37 Agreement"), which was marked as Exhibit 25.

The City of Toronto is not opposing the construction of an apartment building by the Applicant, but is taking the position that the building should not exceed 14-storeys in height. As Mr. Lax stated on more than one occasion, the Toronto Standard Condominium Corporation 1516, Clifford Lax and Joan Lax (collectively the "Area Owners") reluctantly support the City's position.

### **Site Description**

The property in question is located on the east side of Avenue Road between Lansdale Road and Heath Street West. The lot has a frontage of 38.6 metres, a depth of 52.9 metres and an area of 2,045.3 square metres. An existing six-storey apartment building on the site will be demolished to facilitate the proposal.

The site is within a corridor of high-rise apartment buildings along Avenue Road north of St. Clair Avenue West. The buildings along the east side of Avenue Road, in the general vicinity of the property have similar architectural character, having been built in the 1960's, and have a separation distance of approximately 10 metres between them. The uses in the immediate vicinity of 609 Avenue Road are as follows:

- North: one 17-storey and one 19-storey condominium tower
- South: a 3-storey rental apartment building;
- East: low-rise stable residential dwellings; and
- West: an 11-storey rental apartment building.

### **Issue**

Since no opposition is being taken by the City and Area Owners to the construction of a high-rise apartment building on the site, the narrow issue to be determined by this panel is whether the proposed building should be 16-storeys or 14-storeys in height.

## **The Evidence Presented**

Robert Glover and Robert Dragicevic gave expert urban design and planning evidence in support of the 16-storey proposal. According to Mr. Glover, the building contemplated fits within the character of buildings along Avenue Road, does not create any unacceptable shadow impact, and represents good urban design practise. Mr. Dragicevic, a well known planner, who is familiar with and experienced in a number of high density developments, testified that the proposal is consistent with the pattern of apartment building development along the Avenue Road corridor and complies with the Provincial Policy Statement (“PPS”), *Places to Grow* legislation, and the City’s Official Plan and the Yonge-St. Clair Secondary Plan (collectively the “Policy Documents”).

The City did not call any witnesses in opposition to the 16-storey proposal and Mr. Lax, representing the Area Owners, called only one, Cathie MacDonald. Although Ms MacDonald worked as a planner with the City for a number of years and has her Masters degree in Urban Design, she was not asked to be qualified as an expert witness. According to Ms MacDonald, the contemplated 16-storey building does not fit with existing buildings from a height and density perspective and, in her view, would create a dangerous precedent for the area.

Mr. Hugh Wild, a resident of 60 Oriole Road, was given participant status and also spoke against the development. Essentially, his evidence was that the proposed building is not compatible with the other high-rise buildings in the area and will create shadowing problems.

## **Analysis**

The common threads which ran through the testimony of Ms MacDonald and Mr. Wild were that the 16-storey proposal created unwanted shadowing and was not consistent with the pattern of high-rise development along Avenue Road. The evidence in this panel’s view, however, does not support these arguments.

Mr. Glover went through a detailed analysis concerning the shadow impacts on the Oriole Road properties to the east and pointed out that from a timing perspective, a 16-storey building casts a nominally longer shadow for an additional 15 minutes as compared to a 14-storey building. Mr. Dragicevic also gave evidence in relation to shadow impacts. In his opinion, an important consideration in any shadow analysis is

the duration of unaffected sunlight. The properties along Oriole Road, according to Mr. Dragicevic, will have 6 or 7 hours a day of unaffected sunlight even with a 16-storey building. This is, in his view, significant and should be recognized. No shadow analysis was prepared by either the City or the Area Owners. Both Mr. Glover and Mr. Dragicevic testified that in their opinion the contemplated development will not create unacceptable shadow impacts. The Board agrees.

When one moves from the issue of shadowing, and views the development from the perspective of Policy Documents, further support is found for the proposal. In this regard, a number of factors are telling and, in this panel's view, determinative:

- (a) The *Places to Grow* legislation also refers to intensification as well as significant new development. The site in question represents compact urban form in a built up area and is, in our view, consistent with the initiatives of this legislation;
- (b) The City's Official Plan encourages the optimization of development opportunities within existing built up areas. This proposal does just that;
- (c) The City's Official Plan encourages the optimization of development opportunities within existing built up areas. This proposal does just that;
- (d) Careful consideration has been given, and in fact changes were made, to building design so that the proposal responds to the objectives of the Official Plan in this regard;
- (e) Contemplated fencing and landscape screening address concerns in relation to separation of the site from Oriole Road properties; and
- (f) In its report dated May 22, 2007, the City's Planning Division supported the 16-storey proposal.

In the Board's view, the proposal does comply with the Policy Documents and the site can support the scale of development proposed without adverse impact.

**Disposition**

Based on all of the foregoing, the 609 By-law, Site Plan Agreement, and s.37 Agreement are hereby approved subject to any changes made to those documents as agreed upon by the City and the Applicant. The appeal by the Applicant is therefore allowed.

It is so Ordered.

“S. J. Stefanko”

S. J. STEFANKO  
MEMBER

“J. McKenzie”

J. R. McKENZIE  
VICE-CHAIR