

ISSUE DATE:

December 28, 2011



PL101201

Ontario
Ontario Municipal Board
Commission des affaires municipales de l'Ontario

Kingston Road Development Corporation has appealed to the Ontario Municipal Board under subsection 22(7) of the *Planning Act*, R.S.O. 1990, c. P. 13, as amended, from Council's refusal or neglect to enact a proposed amendment to the Official Plan for the former City of Toronto to redesignate lands municipally known as 580, 590 and 592 Kingston Road to permit a six-storey, 47-unit apartment building

Approval Authority File No. 09 192003 STE OZ

O.M.B. File No. PL101201

Kingston Road Development Corporation has appealed to the Ontario Municipal Board under subsection 34(11) of the *Planning Act*, R.S.O. 1990, c. P. 13, as amended, from Council's refusal or neglect to enact a proposed amendment to Zoning By-law 438-86, as amended, of the former City of Toronto to rezone lands respecting 580, 590 and 592 Kingston Road to permit the infill residential redevelopment comprising a 47-unit apartment building

O.M.B. File No. PL101285

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

Referred by:	Kingston Road Development Corporation
Subject:	Site Plan
Property Address/Description:	580, 590 and 592 Kingston Road
Municipality:	City of Toronto
OMB Case No.:	PL101201
OMB File No.:	PL101163

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

Referred by:	
Subject:	Site Plan
Property Address/Description:	580, 590 & 592 Kingston Rd.
Municipality:	City of Toronto
OMB Case No.:	PL101201
OMB File No.:	PL101201

APPEARANCES:

Parties

Kingston Road Development Corporation
("KRD")

City of Toronto ("City")

Friends of Glen Davis Ravine

Counsel

Amber Stewart

Phong Phan

Eric Gillespie and Neil Sinclair

DECISION DELIVERED BY STEVEN STEFANKO

Background

[1] KRD is the owner of approximately .53 acres of land fronting along Kingston Road and having dimensions of 38.04 metres (124.8 feet) of frontage by irregular depths of 46.09 metres (151.21 feet) and 45.35 metres (148.78 feet) respectively. The 3 existing single family and the existing converted rooming house buildings are to be demolished and replaced with a 6 storey building with 47 condominium units.

[2] The lands slope from front (south) to rear (north) and are within an area known as the Glen Davis Ravine. To the north, or near the base of the ravine, is single family residential development along a street known as Glen Davis Crescent. There is an informal trail at the bottom of the slope that allows the residents of Glen Davis Crescent to access their properties from their backyards through the gates in the chain link fencing which exists. Most of the trail is not on the subject property. Certain residents ("Residents") in the area formed the organization known as the Friends of Glen Davis Ravine and oppose the contemplated development.

[3] Immediately to the east of the site, at 600 Kingston Road is an 8 storey building with 68 apartment units; to the south and east, are semi detached homes and 3 to 7 storey apartments and multiplex buildings; and to the west, semi detached houses and 3 to 7 storey apartment and multiplex buildings.

[4] What is being proposed is subject to the City's Ravine and Natural Feature Protection By-law ("Ravine By-law"). This By-law does not preclude development on the site but does require that a permit be obtained to carry out the activities required to complete the development including the removal of vegetation.

Circulation History

[5] After extensive pre-consultation with the City Planning Department, applications were filed on behalf of KRD for an amendment ("OPA") to the City's Official Plan ("OP"), an amendment to the City's Zoning By-law No. 438-86 ("ZBL Amendment") and an application for site plan approval to permit the 6 storey building. The City OP

only allows a 4 storey building and the height restriction in By-law 438-86 is 14 metres (45.9 feet). In relation to driveway access to the proposed development, provisional consent for an easement/right of way was obtained by KRD from the Committee of Adjustment. That approval has been appealed ("C of A Appeal") by the Residents and is also before me. The OPA and ZBL Amendment are set out at Tabs 22 and 23 of Exhibit 2 in this proceeding.

[6] A community consultation meeting was held on March 29, 2010. The majority of those in attendance were opposed to the proposal; however, several members of the public expressed their support and viewed it as a positive contribution to the neighbourhood. Subsequent to the March meeting, an additional meeting was held with local residents and the former Ward Councillor.

[7] On or about October 27, 2010, KRD appealed the OPA and ZBL Amendment applications to the Ontario Municipal Board ("Board") as a result of a non decision ("KRD Appeal").

[8] Following the KRD Appeal, City staff completed a further report ("January 2011 Report") to the Toronto and East York Community Council ("TEYCC"), dated January 26, 2011. Staff recommended that City Council authorize the City Solicitor and necessary City staff to attend the Board hearing to support the applications, provided KRD satisfies the 43 conditions ("43 Conditions") outlined in the report.

[9] On February 16, 2011, TEYCC adopted the staff recommendations and subsequently, City Council did as well.

[10] At the commencement of this hearing, I was advised by the City that KRD has met the 43 Conditions set out in the January 2011 Report.

The Proposal

[11] Subsequent to the original proposal made by KRD, some modifications were made based on concerns raised and consultation with City staff.

[12] The current iteration of the development contemplated includes the following components:

- (i) A six storey building with 47 condominium units will be sited with minimal setback from Kingston Road to minimize the amount of the footprint that is located in the Glen Davis Ravine. The location of the building has moved 1.5 metres (5 feet) closer to Kingston Road than originally proposed;
- (ii) In view of the 5-foot movement above referred to, the rear yard setback has been increased to approximately 22.3 meters (73 feet);
- (iii) The loading space for the building has now been removed from the ravine area so as to increase the area of ravine to be naturalized;
- (iv) Further step backs have been imposed to the upper 2 storeys along the east elevation;
- (v) Based on the definitions of the ZBL Amendment, the proposed building height is 19.5 metres (approximately 64 feet);
- (vi) A total of 51 parking spaces will be provided in 2 levels of underground parking;
- (vii) Access to the site will be by way of a shared driveway at 600 Kingston Road. A new access for the site will not be required on Kingston Road; and
- (viii) Private garbage collection will be employed.

[13] In this hearing I am being asked by KRD to approve the OPA and ZBL Amendment and to dismiss the C of A Appeal.

Issue

[14] The Parties have acknowledged that there is no dispute as to the proposal's consistency with the 2005 Provincial Policy Statement and conformity with the Growth Plan for the Greater Golden Horseshoe, 2006. The fundamental issue to be determined therefore, is whether the proposal conforms with the intent and purpose of the OP? In that regard, my analysis will focus on 4 distinct areas:

- (a) Shadowing and light;
- (b) Stormwater and groundwater;

(c) Compatibility with the area, and

(d) Natural features.

Analysis and Discussion

a) Shadowing and Light

[15] Policies 3.1.2.3 (d) and (e) of the OP read as follows:

3. New development will be massed and its exterior façade will be designed to fit harmoniously into its existing and/or planned context, and will limit its impact on neighbouring streets, parks, open spaces and properties by:

(d) providing for adequate light and privacy;

(e) adequately limiting any resulting shadowing of...neighbouring streets, properties and open spaces, having regard for the varied nature of such areas;

[16] The Residents argue, through various witnesses who gave evidence in this proceeding, that the proposed development will exacerbate an existing problem with sunlight along Glen Davis Crescent. Even though some residents along this street see very little sun during the winter because of the street's location in relation to the higher land elevations and buildings along Kingston Road, the Residents suggest that the amount of sunlight will become even less with a 6 storey building. They are also concerned that privacy will become an issue when the occupants of the 6 storey building look out from their balconies to the north.

[17] Mr. Hunter, a civil engineer who gave evidence in relation to shadowing, suggested that the shadow studies presented by KRD were incomplete as they did not incorporate the key winter season. Mr. Hunter also argued that, based on his own solar altitude calculations, certain residents along Glen Davis Crescent would see morning sun far later than what they currently experience.

[18] It is indeed unfortunate that some of the Residents, based on the location of their homes in relation to the geography and vegetation of the immediate area, currently have shadow and light issues. However, I am not persuaded that the proposal changes

the current situation in such a way as to run afoul of the policy considerations set out in 3.1.2.3 (d) and (e) of the OP.

[19] The shadow studies contained in Exhibit 4 in this proceeding were prepared in accordance with City of Toronto Terms of Reference (“Terms of Reference”). These Terms of Reference do not require that impacts be determined for the month of December.

[20] Moreover, when I review the shadow study which has been completed, it is readily apparent that the proposed 6 storey building makes only an extremely modest impact on the rear yards of only a few homes along Glen Davis Crescent. Even Mr. Rendl, the planner who provided expert land use testimony on behalf of the Residents, conceded in cross-examination, that based on the shadow study filed in evidence, the impact was acceptable along Glen Davis Crescent. I would also add that in addition to any incremental shadows being non-existent by 3:18 p.m. as shown in Exhibit 4, the policies of s.3.1.2.3 (d) and (e) do not require that shadow impacts be eliminated; only that they be limited.

[21] In terms of Mr. Hunter’s solar altitude calculations, I note that they are calculated from only one point and his diagram does not include “neighbouring streets, open spaces and properties” as the language of s.3.1.2.3 and the Terms of Reference require.

[22] Mr. Hunter also pointed out Photo 8 of Tab 10 in Exhibit 9 as being an accurate representation of the modest sunlight shining onto Glen Davis Crescent in the month of January. This photo shows a clear blue sky with the sun rising just barely above a 2 storey building on Kingston Road. If a 4 storey as of right building replaced the 2 storey in the photo, sunlight would continue to be a problem. In other words, the proposed 6 storey addition does not cause nor does it exacerbate a lack of sunlight problem, in my estimation.

[23] As for privacy, KRD will construct balcony railing along the north side of the building with an opaque material to diminish overlook impacts. The fifth and sixth storeys will also be set back to decrease the mass of the building from the Glen Davis Crescent properties. These 2 factors coupled with the retention of larger, Black Locust

trees and the planting of other trees to reinforce the vegetation buffer, in my view, appropriately “limits” any arguable impact in relation to privacy.

b) Stormwater and Groundwater

[24] Even though Mr. Hunter finds the proposed disposal of roof water into the Kingston Road combined sewer acceptable, he nonetheless believes that an appropriate water retention safety factor is lacking. He also maintains that the predevelopment runoff coefficient of .25 is too high. In his view, this runoff coefficient should have been .15.

[25] The Residents point out the natural high water table immediately below Glen Davis Crescent and the problems they have encountered in the past with stormwater running down the ravine and into their subdivision. They are concerned that the development will make a problematic situation worse.

[26] In relation to groundwater, Mr. Hunter takes exception with the fact that only one test hole drilled intersects the water table. In his view, it is impossible to determine the water table gradients on the subject site and adjacent properties based on a single water table observation point.

[27] Policy 3.4.1 (a) (iii) of the OP states that changes to the built environment will be environmentally friendly based on managing the quantity and improving the quality of stormwater and groundwater infiltration and flows.

[28] The stormwater management plan prepared in connection with the proposed development met the City’s Wet Water Flow Guidelines. As Mr. Tersigni pointed out, the post development runoff rate leaving the property at the rear will comply with the extremely stringent City requirement that such runoff will be equal to or less than the allowable 2 year predevelopment flow rate. This, in my estimation, is significant and effectively creates the safety feature alluded to by Mr. Hunter.

[29] In this case, KRD is adhering to strict City requirements with respect to water runoff. It is difficult, if not impossible therefore, to find fault with the techniques being proposed. KRD has done that which has been required of it by City officials.

[30] I am also satisfied that the runoff coefficient employed was correct. For one thing, the City requires a .25 coefficient for pervious areas. For another, it is accepted that the greater the slope, the greater the coefficient. According to Mr. Tersigni, he would have used a factor of .31 when taking into account ground cover, soil and slope, but resisted doing this because, in his view, a more conservative factor of .25 was more appropriate. I agree with this approach.

[31] There were 3 boreholes drilled with respect to the proposal: BH101 was drilled just north of the property and BH102 and BH103 on the property itself. When viewing these boreholes from a cross sectional depiction of the site, two details are immediately evident: first, the sloping nature of the rear of the site is readily apparent and second, BH101 is much lower than BH102 or BH103.

[32] BH102 and BH103 went 2.2 and 2.6 metres below the expected foundation but did not intersect the water table; only BH101 did. In view of the relatively significant difference in grade between BH101 on the one hand and BH102 and BH103 on the other, I am satisfied with the statement that water is between 9 to 10 metres below BH102 and BH103 and that, according to Mr. O'Brien, the geoscientist who gave expert hydro-geological evidence in support of KRD, no foundational problems are anticipated in relation to groundwater or soil conditions at the site. Since no groundwater was found where the footings were to be located, there was no need to drill more holes.

[33] In summary, I am satisfied that because of the runoff and retention techniques to be employed by KRD, the proposal will not exacerbate existing water runoff problems raised by the Residents. I am equally satisfied that groundwater matters have also properly been addressed.

c) Compatibility with the Area

[34] The OP designates the vast majority of the subject property as Neighbourhoods, with a relatively small portion of the site in its rear yard designated as Natural Areas.

[35] Policy 4.1.5 of the OP deals with development in established Neighbourhoods and states that such development will respect and reinforce the

existing character of the neighbourhood. This policy, in this case, gives rise to the following question:

(i) What is the appropriate area to be considered when applying the Neighbourhoods policies of s.4.1.5 of the OP?

[36] KRD argues that the relevant neighbourhood or study area for this proposal is the land fronting onto Kingston Road, between Brookside Drive/Waverly to the west, and Malvern Drive/Glen Manor Drive to the east. This study area contains, *inter alia*, a number of apartment buildings ranging in height from 3 storeys to 8 storeys. When applying 4.1.5 to this study area, KRD submits that the proposed development is indeed compatible with the study area.

[37] The Residents, on the other hand, argue that the appropriate study area should include the homes on Glen Davis Crescent which are at the bottom of the ravine. In their view, the study area should run in a north-south direction and when the policies of 4.1.5 are applied to this area, the proposal is not in keeping with the physical character of the neighbourhood.

[38] There are a number of reasons why I disagree with the position advanced by the Residents.

[39] First, although the properties fronting on Kingston Road and those located on the interior roads share the same Neighbourhoods designation in the OP, their zoning is distinctively different. For example, the lots facing the north side of Kingston Road have a permitted density at 1.0 x the area of the lot. However, the lots behind are only 0.6 x the area of the lot and, around Glen Davis Crescent, are 0.35 x lot area. In relation to height, the lots facing Kingston Road have a height limit of 14 metres, while lots north and south of Kingston Road have a height limit of 10 metres (other than the rear half of lots on the north side of Kingston Road, which have a height limit of 12 metres). These differences do indeed reaffirm, in my estimation, the distinction between built form anticipated and found on Kingston Road and built form found interior to the Kingston Road area. Kingston Road has a decided "main street" character to it while the interior roads do not.

[40] Second, Glen Davis Crescent is physically separated, both from an elevation and access point of view, from Kingston Road.

[41] Third, Glen Davis Crescent is comprised of single family, low rise homes, with no apartments. Kingston Road, on the other hand is a major street, with traffic lights and apartment buildings ranging in height from 3 to 8 storeys. These buildings are interspersed and there are a number of them.

[42] And lastly, Kingston Road functions as an arterial road, collecting traffic from the surrounding neighbourhoods and directing that traffic, for the most part, goes westerly towards the downtown or easterly, towards Scarborough.

[43] As acknowledged by Mr. Rendl, Kingston Road has a different character than Glen Davis Crescent. Although the Residents want me to take into account topography when establishing the appropriate study area for the application of the physical character policies of s.4.1.5, I believe that the correct approach should take into account the other factors which I have just mentioned. When I consider these other factors, I am left with the inescapable conclusion that the proper study area for 580-592 Kingston Road is in an east-west direction as suggested by KRD.

d) Natural Features

[44] The Residents argue that since the proposed development is near the natural heritage system, an impact study, as referred to in policy 3.4.12 of the OP should have been completed. They further suggest that neither s.3.4.8 nor s.3.4.9 of the OP is being complied with in that the development is not appropriately set back from the top-of-bank and land below the top-of-bank is used to calculate permissible density. For these reasons, they again submit that the proposal is not in conformity with the OP and should not be approved.

[45] Kevin Butt, a licensed Certified Arborist and Terra Bobbie, an Urban Forestry Planner with the City, both gave evidence in support of the proposal. Mr. Butt had prepared, as required by the City, a highly detailed Ravine Stewardship Plan ("RSP") for the site. He testified that the existing onsite ravine slope resembles a typical urban yard with mowed ground layer vegetation. Any extensive tree cover is dominated by poorly structured Manitoba Maple and Black Locust. Although the vast majority of onsite trees

are to be removed (15 of 17), 27 new trees are to be replanted along with 208 shrubs. All are tolerant of partial shade conditions and are non invasive in nature. It is anticipated that these trees, at maturity in approximately 20 years, will be 18 to 25 metres in height and will crowd each other as trees do in a natural environment. In Mr. Butt's view, the RSP will attract beneficial wildlife (i.e. songbirds and pollinators) and dissuade loitering and the dumping of garbage. The retention of certain onsite and offsite mature tree cover will provide screening for the residents along Glen Davis Crescent.

[46] As to whether an impact study should have been completed, as suggested by the Residents, I am satisfied that such a study was not required for three reasons. First, 3.4.12 of the OP reads that "an impact study may be required." This language is discretionary, not mandatory. Second, the City requested and received the RSP. It contains a number of items that would be included in an impact study. The City reviewed the RSP and determined that a further impact study was not required. I am satisfied that the RSP provides appropriate action to mitigate or eliminate any potential impacts to the ravine. And third, this development is subject to the Ravine By-law. This by-law requires a permit for KRD to complete the development including any removal of vegetation. In my view, this is another way for the City to ensure that development occurs in an orderly fashion and in a manner satisfactory to the City.

[47] The relevant portion of policy 3.4.8 of the OP reads as follows:

Development will be set back from the following locations by at least 10 metres, or more if warranted by the severity of existing or potential hazards:

- a) the top-of-bank of valleys, ravines and bluffs;

[48] When reading the first two lines of this policy it is certainly arguable that the policy intends to protect development on hazard lands. Hazard lands is a term described in the sidebar of page 3-25 of the OP. It states:

Hazard lands are areas because of their susceptibility to flooding or unstable slopes or soils, will be hazardous to life and property if developed.

Since the subject property is neither hazardous to life nor property due to flooding or slope instability, it is clear that the site does not fall within this definition. As a result, and assuming the basic premise above referred to is correct, i.e. the policy intends to protect development on hazard lands, the 10 metre restriction would not apply to the proposal. However, the language of this policy could be clearer and more definite. Therefore, in the circumstances and recognizing that the proposal, in my view, conforms to all other OP policies previously addressed in these reasons, the best way to deal with this policy, out of an abundance of caution, is to make the OPA an exception to policy 3.4.8.

[49] In relation to policy 3.4.9, it is true that land below the top-of-bank was used to calculate density. However, this policy is not implemented in By-law 438-86 which predates the OP. Moreover, and perhaps more importantly, the language of the policy focuses on hazard lands. In the first line it reads “Land below the top-of-bank, or other hazard lands...”(Board emphasis added). In my view hazard lands are indeed the focal point of this policy and, since I have already concluded that the subject lands are not hazard lands, policy 3.4.9 would not apply to the proposed development.

[50] In my opinion, there is no compelling argument which would prevent me from approving the proposal, when I assess it in the context of policies 3.4.8, 3.4.9 and 3.4.12.

Disposition

[51] Based on all of the foregoing, I am satisfied that the contemplated development conforms with the intent and purpose of the OP. This conclusion is, further reinforced when I take into account the degree of scrutiny which has been and will be applied to the proposal. The 43 Conditions, the RSP, the MOE certificate required in relation to stormwater, the Ravine By-law and the site plan process yet to be finalized, are all factors which safeguard the appropriate development of the site.

[52] Accordingly, the OPA is approved and the City’s comprehensive by-law is amended in accordance with the ZBL Amendment, on condition that the development proceeds substantially in accordance with the plans and elevations filed as Exhibit 7 in this proceeding. The Board’s Order shall be withheld pending confirmation from the City that the exact wording of the OPA and the ZBL Amendment has been agreed upon and

the site plan process has been finalized. It is also understood that the OPA shall state that it is a specific exception to policy 3.4.8. of the OP.

[53] The appeal of KRD is therefore allowed and the C of A appeal is dismissed.

“Steven. Stefanko”

STEVEN STEFANKO
VICE CHAIR