

ISSUE DATE:

**Jun. 16, 2010**



PL040917

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

D.D.S. Investments Ltd. 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 composed of Part Lot 13, Concession 3 from the Bay, City of Toronto (formerly Borough of East York) designated as Parts 1 and 2 on Plan 66D-1035 and municipally known as 25 Esander Drive

OMB File No. M040088

OMB Case No. PL040917

**APPEARANCES:**

**Parties**

D.D.S. Investments Ltd.

City of Toronto

**Counsel**

R. G. Ackerman

B. O'Callaghan

**DECISION DELIVERED BY SUSAN de AVELLAR SCHILLER**

D.D.S. Investments Ltd. [DDS] intends to operate a waste management and recycling facility at 25 Esander Drive in the former Borough of East York, now the City of Toronto. DDS has referred its proposed site plans to this Board to settle certain matters in dispute with the City of Toronto.

The proposed site plans were before the Board previously, with Decision/Order 1648 issued June 7, 2006. That decision approved a site plan and settled certain related matters. Further discussions between the parties identified the desirability of making several changes to the site plans. Those changes came to the Board on consent at a hearing held December 11, 2008, with a request to the Board to consider and approve the proposed modifications to the site plans. The Board heard oral evidence on the proposed changes, but revised site plans reflecting all the proposed changes were not yet completed and before the Board at the time of the hearing.

The Board issued its Decisions in this matter on February 4, 2009 and February 27, 2009.

In its Decisions, the Board directed two things to be filed: final revised site plans and a site plan agreement with conditions of approval. The deadline for submission was March 2, 2009, and was extended at the request of the parties to March 30, 2009.

On March 30, the Board received revised site plans filed on behalf of DDS. No site plan agreement with conditions of approval was filed with the Board. The Board was advised that the City was reviewing the plans as filed and, since its review was not yet complete, the City was not prepared to agree that the revised plan reflected the settlement heard December 11, 2008. As a further consequence, the City had not completed its list of conditions of site plan approval.

Further discussions between the parties failed to achieve agreement. DDS sought a further appearance before the Board to resolve matters, and that appearance was scheduled for December 1, 2009.

At the December 1, 2009, appearance, the Board was advised that DDS wished to revise its site plans further. Specifically, the 2008 settlement called for the relocation of a water main to accommodate an office structure in its then preferred location. DDS now wishes to maintain the water main in its current location and move the office structure. The Board was advised that the revised site plan required certain field testing work that could not be completed within the time of the scheduled hearing.

Apart from the changes DDS wished to make to the site plans, the Board was advised that the parties were in dispute regarding certain conditions of site plan approval sought by the City. The Board was also advised that a further review of the revised site plan suggests that a minor variance may be necessary.

Given the further changes to the proposed site plans, and given the number of times this matter has been before the Board with proposed changes, the Board ordered in its Decision that:

1. this next set of final revised site plans are filed with sufficient time for the City to review the plans prior to the next appearance in this matter,

2. a site plan agreement containing conditions of site plan approval is also filed with sufficient time for DDS to review the City's requirements prior to the next appearance in this matter, and
3. both parties have sufficient time to engage in any further settlement and/or clarification discussions prior to the next appearance in this matter, the Board issues the following directions:
  - 1) seven sets of final, revised site plans are to be filed by DDS with the City not later than Thursday, February 25, 2010;
  - 2) these final, revised plans are to implement:
    - i. the December, 2008, settlement revisions heard by the Board on December 11, 2008, and which are the subject of the Board's Decisions of February 4 and February 27, 2009;
    - ii. the further revisions of the proposed relocation of the office to a position that is not above the water main and that, therefore, no longer requires the relocation of the water main;
  - 3) the City is to file its comments and proposed site plan agreement, with conditions of site plan approval, with DDS not later than Thursday, March 11, 2009; and
  - 4) the next appearance in this matter is set down for three days, commencing at 10:00 a.m. on Monday, May 17, 2010, at the Board's offices at which time the Board expects to have final, revised site plans before it along with a site plan agreement with conditions of site plan approval. The Board expects to be able to hear and settle any matters that remain in dispute at that time and the parties are expected to come prepared in that regard.

On May 17, the Board was advised that the City and DDS were now in agreement on the proposed site plans and that the City was appearing in support of the proposed site plans.

The minor variance the Board was advised in December, 2009, that might be required by the City continues to be a point of contention. DDS is proposing to locate a truck weigh scale on a cement pad within an area that may be part of a required setback. The issue appears to relate to whether the proposed truck weigh scale is

portable equipment or a permanent structure. The Parties agree that the location of the weigh scale ensures a desirable pattern of truck movements on site and the City has no objection to the location of the weigh scale in terms of its appropriateness for this proposed site plan. The Parties also agree that the City has suggested that DDS consult the appropriate official at the City to determine if the weigh scale and its proposed location meet the requirements of the zoning by-law or would require a minor variance. DDS has declined to do so and, instead, asks this Board to authorize any minor variance necessary to accommodate the proposed location of the weigh scale.

The Board has no original jurisdiction to authorize minor variances to zoning by-laws, and no appeal of a decision of the Committee of Adjustment on a minor variance application is before the Board. If a minor variance is required, DDS will have to make its application through the normal procedures. The Board repeats, however, that the City has appeared in this site plan matter in support of the DDS proposal and, in the context of the site plan, has no objection to the location of the weigh scale.

What remains at issue between the Parties is a proposed condition of draft plan approval that requires DDS to enter into the City's standard form of site plan agreement and register it on title, prior to final approval. The standard form of site plan agreement requires a letter of credit, or cash, to be posted with the City at the time the site plan agreement is executed. There is no dispute that the City has the authority to require appropriate securities, nor is there any dispute about the amount. DDS wishes to file its securities at the building permit stage and the City wishes to have them filed at the time the site plan agreement is signed.

DDS submits that requiring securities at the time the site plan agreement is signed would result in DDS having to incur financing charges for a longer period than if the securities are filed at the building permit stage. In addition, DDS notes that a 2005 draft of the proposed form of site plan agreement contemplated securities being posted at the building permit stage. That draft of the site plan agreement was not finalized and DDS did not sign that agreement.

The City submits that since the earlier draft was not signed, there is no reasonable reliance that DDS may place on the fact of a draft. In addition, the City submits that there is no practical difference to DDS in that the time of signing the site

plan agreement is entirely within the control of DDS. More importantly, the City cites subsection 8(2) of the *Building Code Act* which sharply restricts the grounds upon which the chief building official may refuse to issue a building permit. Subsection 8(2) of the *Building Code Act* states:

...The chief building official shall issue a permit referred to in subsection (1) unless,

(a) the proposed building, construction or demolition will contravene this Act, the building code or any other applicable law...

The City takes the position that this subsection would prevent a building permit from being withheld solely because a letter of credit was not filed if the letter of credit was not made a condition of draft plan approval that must be filed at the signing of the site plan agreement. DDS did not take issue with this interpretation of the *Building Code Act*.

The Board finds that requiring the securities at the time the site plan agreement is signed affords DDS appropriate flexibility and provides the City with prudent assurance that the securities will be filed.

The Board heard from Mr. Michael Gagnon, a full member of the Canadian Institute of Planners and Registered Professional Planner in Ontario, qualified to give the Board expert opinion evidence in land use planning matters. Mr. Gagnon reviewed the proposed site plans with the relocated office, weigh scale, landscape plan and details of the masonry wall, previously approved, that is to replace a chain link fence along part of Esander Drive.

On the evidence of Mr. Gagnon, the Board finds that the proposed site plan revisions conform to the City of Toronto Official Plan and to the Growth Plan for the Greater Golden Horseshoe, are consistent with the Provincial Policy Statement, and represent the principles of good community planning.

Having regard to Section 41 of the *Planning Act*, the Board approves the proposed revised site plans, filed as Exhibits 7, 8, 9, 10 and 11 in these proceedings, subject to the conditions of approval found at Tab 129 of Exhibit 12(b) as filed in these proceedings.

The Board's Order is withheld until counsel for the City advises the Board that a site plan agreement, substantially in the form found at Tab 130 of Exhibit 12(b) as filed in these proceedings, has been executed and registered on title.

If difficulties arise, the Board may be spoken to.

"Susan de Avellar Schiller"

SUSAN de AVELLAR SCHILLER  
MEMBER