

Toronto (City) Zoning By-law No. 603-1999 (Re)

Gykan Enterprises Inc. has appealed to the Ontario Municipal Board under subsection 34(19) of the Planning Act, R.S.O. 1990, c. P.13, as amended, against Zoning By-law 603-1999 of the City of Toronto (Toronto) OMB File Number: R990259 and

Aragon (Logan) Development (Ontario) Corporation has appealed to the Ontario Municipal Board under subsection 51(34) of the Planning Act, R.S.O. 1990, c. P.13, as amended, from the failure of the City of Toronto (Toronto) to make a decision respecting a proposed plan of subdivision on lands composed of 40 and 64 Colgate Avenue and 309 and 355 Logan Avenue, in the City of Toronto OMB File Number: S000002

[2000] O.M.B.D. No. 310  
File Nos. PL991089, R990259, S000002

Ontario Municipal Board  
R.G.M. Makuch  
Oral decision: February 15, 2000  
Filed: March 27, 2000  
(6 paras.)

COUNSEL:

S. Bradley and G.W. Leonard, for City of Toronto.  
R. Arblaster, for Aragon (Logan) Development Ontario Corporation.

MEMORANDUM OF ORAL DECISION DELIVERED BY  
R.G.M. MAKUCH  
AND ORDER OF THE BOARD:--

[para1] The owner/applicant applied for a rezoning and approval of a plan of subdivision on the subject lands in order to develop 78 semi-detached houses and 28 townhouses. The zoning amendment would provide relief from a number of design requirements as well as increased density. By-law 603-1999 provided this relief and was appealed by a neighbouring land owner. However, prior to the hearing the appellant withdrew its appeal after discussions with the applicant.

[para2] The owner/applicant brought its appeal under subsection 51(34) of the Planning Act, on the grounds that the City failed to make a decision respecting the proposal plan of subdivision. Subsequent to that appeal the City approved the plan of subdivision and issued draft conditions. It is noted that the community was quite supportive of this development.

[para3] The Board is satisfied from the uncontradicted evidence of Ms D. Graham, a senior planner for the City of Toronto, that the plan of subdivision of the subject lands

represents good land use planning and that all criteria under subsection 51(24) of the Planning Act have been met.

[para4] The Board notes that the owner will convey land for park purposes which is much needed in this area to serve the needs of the existing and future residents of the area.

[para5] The Board will therefore allow the appeal and approves the draft plan of subdivision entered as Exhibit No. 8, subject to the conditions attached hereto as Attachment "1".

[para6] The Board so Orders.

R.G.M. MAKUCH, Member

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ATTACHMENT "1"

Draft Plan of Subdivision 55T-98205

The Aragon (Logan) Development (Ontario) Corporation  
40 and 64 Colgate Avenue, 309 and 355 Logan Avenue

The Chief Planner approval applies to the plan, Drawing No. DP1 (Project No. F9810) prepared by Fliess Gates McGowan Easton, dated September 28, 1998, certified by B.K. Warren, Ontario Land Surveyor, May 3, 1999 and subject to the following conditions:

No. Conditions

1. City Council consents to the approval of the proposed draft plan of subdivision, such consent being subject to entering into a Subdivision Agreement in form and content satisfactory to the City Solicitor for the conditions listed below:
  - a) That the owner receive approval for the variances identified in the UPDS Buildings comments dated April 7, 1999, prior to the plan of subdivision being registered.
  - b) That the owner receive Site Plan approval under Section 41 of the Planning Act prior to a building permit being issued.
  - c) That the owner be required to:
    - (1) Provide space within the development for the construction of any transformer vaults, Hydro and Bell maintenance holes and sewer maintenance holes required in connection with the development;

- (2) Comply with the parking requirements of the Zoning By-law;
- (3) Provide minimum road allowance width as follows;
- (i) Street A: 15m; and
  - (ii) Public lanes; 5 m;
- (4) In connection with the new public streets/lanes and the municipal services and facilities:
- (i) Engage the services of a qualified Municipal Consulting Engineer satisfactory to the Commissioner of Works and Emergency Services for the design and field supervision of all underground and surface public works services and facilities;
  - (ii) Prepare and submit for the approval of the Commissioner of Works and Emergency Services detailed design drawings in accordance with the City's design policies and specifications for all underground and surface public works services and facilities including a site grading plan, and construct all such services and facilities in accordance with the approved drawings and specifications;
  - (iii) Provide, upon completion of the work, "as constructed" drawings of all underground and surface public works services and facilities, certified by the Municipal Consulting Engineer that such services and facilities have been constructed in accordance with the approved drawings and specifications;
  - (iv) Provide letters of credit in the amount of 120% of the estimated cost for all municipal infrastructure for the development (sewers, waterworks, streets including intersections with existing City streets/lanes, sidewalks, lanes, street lighting, street furniture, etc.) or such lesser amount as the Commissioner of Works and Emergency Services may approve, as determined by the Municipal Consulting Engineer and approved by the Commissioner of the Works and Emergency Services, prior to the earlier of issuance of a building permit or commencement of construction of the infrastructure for the development until completion of the work;
- (v) Provide letters of credit in an amount equal to 25% of the value of completed municipal infrastructure as a maintenance guarantee for a period of two years from the date of completion of the work as certified by the Municipal Consulting Engineer and acceptance by the Commissioner of Works and Emergency Services;
  - (vi) Construct all utilities underground;
- (5) Submit suggestions for a suitable name for the new streets in accordance with the guidelines set out in Clause 4 in Executive Committee Report No. 22, adopted by the former City of Toronto Council at its meeting of July 11, 1988;
- (6) Remonument the street limits and proposed lot/block corners after completion of construction if necessary;
- (7) Submit to and have approved by the Commissioner of Works and Emergency Services information verifying that soil conditions within the proposed road allowances are acceptable for use for public highway purposes;
- (8) Agree to defer the installation of the final coat of asphalt on the new street until the substantial completion of construction of buildings on the street, or at such earlier timing as may be required by the Commissioner of Works and Emergency Services, acting reasonably;
- (9) Deposit the final plan of subdivision, in the appropriate Land Registry Office, such plan to be in metric units with all lot/block corners integrated with the Ontario Co-ordinate System, such plan to provide for the strata conveyance of the southerly portion of "Lane C" to a minimum depth of 0.8m below existing grade;
- (10) In the event that after construction of the southerly portion of "Lane C" the depth of the land to be assumed as "Lane C" in the conjunction with the Plan of Subdivision is less than 0.8m below the finished grade of the lane, convey to the City, at nominal cost, for public lane purposes, the residual land located between the lands already defined as

part of the subdivision as "Lane C" and a plane lying 0.8m below the finished surface of the lane, such lands to be conveyed to the City free and clear of all encumbrances;

- (11) In the event that additional lands are to be conveyed, pursuant to (10) above, provide a strata Reference Plan of Survey, indicating as a separate PART, the additional lands to be conveyed for public lane purposes;
- (12) Provide a digital copy of the final plan of subdivision to the City;
- (13) Apply for revised municipal numbering to the Commissioner of Works and Emergency Services prior to filing a formal application for a building permit;
- (14) The following warning clause shall be included in the Subdivision Agreement and inserted in all Agreements and Purchase and Sale or Lease for each dwelling unit. Provisions must be included in the Subdivision Agreement to ensure that the warning clause survives the release of the owner's obligations under the Subdivision Agreement and remain on title.

"Warning: Canadian National Railway Company or its assigns or successors in interest has or have a right-of-way within 300 metres from the land the subject hereof. There may be alterations to or expansions of the rail facilities on such right-of-way in the future including the possibility that the railway or its assigns or successors as aforesaid may expand its operations, which expansions affect the living environment of the residents in the vicinity, notwithstanding the inclusion of any noise and vibration attenuating measures in the design of the development and individual dwelling(s). CNR will not be responsible for any complaints or claims arising from use of such facilities and/or operations on, over or under the aforesaid right-of-way."

- (15) That the owner engage a consultant to undertake an analysis of noise and vibration and to recommend abatement measures necessary to achieve the maximum level limits set by the Ministry of Environment and Canadian National Railway to the satisfaction of the Municipality, Canadian National Railway and the Ministry of the Environment.
2. That the following broad terms and conditions respecting parks matters be secured as provisions of the Subdivision Agreement:

- (a) the Preliminary Design Plan will be as shown on the Colgate landscape plan denoted as P-1 prepared by Insite Landscape Architects, date stamped March 17, 1999, and on file with the Commissioner of Planning and Urban Development Services;
  - (b) the final area of the Parkland will be a minimum of 1272 square meters;
  - (c) the conveyance of the Parkland will occur prior to issuance of the first above-grade building permit for any portion of the project subject to the Subdivision Agreement, the site will be available to the applicant for use as a construction staging area, the Parks Improvement must be installed to the satisfaction of the Commissioner of Economic Development, Culture & Tourism, the owner will post a Letter of Credit equal to 120% of the value of the Park Improvements as agreed to by the Owner and the Commissioner of Economic Development, Culture & Tourism as security for the installation of the Park Improvements; and
  - (d) the owner has agreed to submit funds in the amount of \$20,000 for the City to install playground apparatus in the park.
3. That subject to execution of the Subdivision Agreement, and in view of the conveyance of parkland, contributions to improvements and other payments, that City Council will authorize an amendment to exempt the Owner's Lands from Toronto Municipal Code, Chapter 165, Article 1, Conveyance of Lands for Parks Purposes enacted pursuant to Section 42 of the Planning Act to exempt therefrom such development as is permitted and only to the extent permitted by the Zoning By-law Amendment. Should the owner apply for and receive permission to develop residential or commercial densities in excess of those presently permitted in the Zoning By-law Amendment, then the Owner may, respecting those increased densities and as a condition of receiving such increased densities, be required to transfer further lands for parks purposes or pay monies in lieu thereof in accordance with the City's aforementioned Municipal Code provisions enacted pursuant to Section 42 of the Planning Act which are then applicable.
  4. That the owner be advised of the need to receive the approval of the Commissioner of Works and Emergency Services for any work to be carried out within the abutting road allowances.
  5. That the owner be advised that the storm water runoff originating from the site should be disposed of through infiltration into the ground and that storm connections

to the sewer system will only be permitted subject to the review and approval by the Commissioner of Works and Emergency Services of an engineering report detailing that site or soil conditions are unsuitable, the soil is contaminated or that processes associated with the development on the site may contaminate the storm runoff.

6. That the Commissioner of Urban Planning and Development Services be requested to ensure that Parks staff maintain the continuation of the "Street A" sidewalk through the park, including winter maintenance.
7. That the owner be advised of the need to convey the new street and lanes to the City, free and clear of all encumbrances, including rights-of-way, to the satisfaction of the City Solicitor.
8. That in connection with the proposed strata conveyance of the southerly portion of "Lane C" the owner be required to convey to the City an easement of support rights in the lands located below the proposed lane.
9. That the owner be advised that, in the event the owner elects to construct the subject parking garage beneath a portion of "Lane C", on lands to be retained by the owner for this purpose, it will be necessary for the owner to:
  - (i) execute an indemnity agreement with the City, terms for which will be set out as conditions of approval of the apartment building to be constructed on the east side of the lane; and
  - (ii) design and construct the structure to the requirements of the Ontario Highway Bridge Design Code, (latest edition).
10. That the owner be advised of the need to convey the new street and lanes to the City, free and clear of all encumbrances, including rights-of-way, to the satisfaction of the City Solicitor.
11. That the owner, prior to the issuance of an above-grade building permit for any portion of the semi-detached or townhouse portion of the development, convey to the City, at nominal cost, the lands shown on Map 1 (hereinafter referred to as the Parkland Dedication Lands) and that the owner pay for the costs of such conveyance, including any Land Transfer Tax and the preparation and registration of all relevant documents.
12. That prior to the conveyance of the Parkland Dedication Lands, the owner provide to the satisfaction of the City Solicitor, in consultation with the Commissioner of Economic Development, Culture & Tourism all legal description and applicable reference plans of survey for the Parkland Dedication Lands.

13. That not more than 30 days before the conveyance of the Parkland dedication Lands, the owner provide to the City Solicitor a title opinion, that the City would, upon registration of the conveyance of the Parkland Dedication Lands, acquire fee simple title to the land forming the Parkland Dedication Lands, free of encumbrances and that such opinion shall, if requested by the City Solicitor, be accompanied by all material relied upon in reaching such opinion, including copies of all applicable abstracts of title and copies of all registered documents relevant to the title and the proposed conveyance.

June 22, 1999