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EASTERN ON EDGE

CASH-POOR CITY NO MATCH FOR BIG-BOX LAWYERS AT OMB HEARING ON FATE OF FILM DISTRICT

By MIKE SMITH

Political commentator Howard Zinn once said you can't be neutral on a moving train. We might also say neutrality's attainability is inverse to the train's speed. Put another way, the faster you're going, the more bullshit's necessary to insist you're stationary.

Enter the lawyers.

Now, I'm not one to mock lawyers on principle. The real problem is legal standards that favour money but feign neutrality.

Enter the Ontario Municipal Board.

I thought it time to subject myself to an OMB process - specifically the matter of the proposed big-box project in south Leslieville. Council has rejected it, and the developer is now appealing through the board. Though the case is still at the pre-hearing stage, I must say that for a planning tribunal, the OMB's dealt with very little actual planning so far.

Instead, it's been a site for a contest of legal sophistry. Most recently at issue has been whether the OMB appellant, SmartCentres - co-owner, with Rose Corp (parent of Toronto Film Studios), of 629, 633 and 675 Eastern - should be required to suffer a three-month delay while the city completes a secondary plan for the area.

Secondary plans, or area plans, are the fine brush to the Official Plan's paint roller. The latter indicates which development should happen where - residential, commercial or industrial, for example.

Depending on who you ask, the new amalgamated OP either codifies or erases most area plans. Where they exist, they enact restrictions and incentives at the neighbourhood level, encouraging certain types of residence or commerce.

The process tends to be reactive. In this case, changes to land designated for employment (it's currently studio land) require planning study.

The city argues this means a fullfledged area plan; SmartCentres' attorney, Dennis Wood, contends that when the city outlined what needed to be studied last summer in a planning report, that was enough.

"The city rejected the application on staff's advice without a completed study," says Wood, offering his linchpin argument: if council could reject it (unanimously) without a study (and without any actual detailed planning documents from SmartCentres), the OMB can certainly approve it without a study.

Somehow, council's unanimous rejection of the development proposal became the main argument in favour of it. This, for the moment, is enough to convince OMB member Reid Rossi that the hearing should proceed without more time for secondary planning.

And here lies an apparent fault line in the OMB mission - there is no explicit admission that turning land to profit and building communities and local consensus are different tasks, taking place on different timelines.

"The city would like the whole area to be under consideration," planner Denise Graham, head of the area plan, tells me. The Official Plan designates the area for employment; an area plan would ensure employment is mixed, more locally based and higher paying.

"We're looking for uses in the new business environment," says Graham. "You want to have more than one opportunity." What if a big-box goes in instead? "It will take a different turn," she says. "You'll find [pure] retail is different. They have different schedules, and they have different uses."

A big-box store could influence not only surrounding employment, but residential neighbourhoods as well.

The OMB is supposed to objectively weigh community emotion over such things against property rights. But is that a scale that could ever balance?

A building is an object. A neighbourhood isn't. The desires of a developer concerned with a plot of land and those of a city concerned with a neighbourhood, a region and social responsibilities are not of equivalent value.

But even from this standpoint, it's hard to say if the board will acknowledge inequity. The planning department is overburdened, short-staffed and underfunded (thanks to the province), while SmartCentres can afford to have the very best bullshit artists devoted to their cause full-time.

There's been no argument made for the merits of the development. Not a one. At issue here isn't whether SmartCentres has anything to offer the community, but whether the city's nattering insistence on good planning and community consultation are sufficient to impinge on the sanctity of property rights.

"This is a problem of the city's own making," says Wood.

By this he doesn't mean that the city is repeatedly harming itself being reactive instead of proactive in consultative planning at the neighbourhood level. And he probably isn't pointing out that, while there may be few resources available for city planning, the resulting game of constant catch-up is draining – especially when folks like him have all the time in the world to pursue their client's interests.

He doesn't mean that at all. But if he did, he would have a point. @

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SmartCentres' dumb idea

Claim to shame

Pioneered the concept of "unenclosed" shopping centres in North America, i.e. big-box wastelands dominated by parking lots.

Wal-Mart effect

Surprise. The monstrosity Sam built is SmartCentres' most significant partner north of the 49th, contributing to the king of big-box stores' rapid expansion here – more than 70 stores since 1994. Leslieville, look out.

The Barrie experiment

SmartCentres' first Wal-Mart in Canada has unleashed a 32-acre explosion of retail hell, with 18 big-box stores on what was once farmland.

Roll of dishonour

SmartCentres' other Canadian clients include some of the biggest neighbourhood-killers in retail – Canadian Tire, Winners, Loblaws, Reitmans, Danier Leather, Roots and Chapters Indigo.

Number of Toronto locations

Eleven – with two of the locations anchored by Wal-Mart.

Compiled by NOW staff



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