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Does the Official Plan Amendment 403 replace rather than merely enhance or clarify the "considerations" outlined in s. 15.4.5 of London's Official Plan?

[2] No one argues against the use of "guidelines" *per se*. The concern is that in this particular case, the amendment utilizes the guidelines only in determining "significance" before applying or considering factors i) through v) in the set Official Plan.

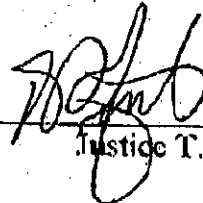
[3] "Significance" appears to have already been determined before applying the considerations outlined in s. 15.4.5 of the Official Plan.

[4] As a result, there is reason to doubt that the guidelines, in this case, are used merely to assist in the implementation of the Official Plan (see s. 19.2.2 ii)).

[5] There is therefore good reason to doubt the O.M.B. decision. The issue as to whether or not guidelines can replace or pre-empt the Official Plan itself is a legal one of such import as to merit the attention of the Divisional Court.

[6] Leave is hereby granted.

[7] Costs, if any, should follow the cause.



Justice T. D. Little

Released: December 1<sup>st</sup>, 2008