



WITNESS STATEMENT

of

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relating to

ONTARIO MUNICIPAL BOARD HEARING

in the matter of

application to demolish rental housing

Goldlist Properties Inc.
310 & 320 Tweedsmuir Avenue
City of Toronto

OMB Case File No. PL957383 & PL990391

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1. QUALIFICATIONS

I am a tenured full professor at the University of Toronto, cross-appointed with the graduate programs in social work and urban planning. I teach graduate courses and supervise dissertation research in housing policy and programs, comparative international housing systems, social planning, and community development. I am a full member of the Canadian Institute of Planners (MCIP) and a Registered Professional Planner in the Province of Ontario (RPP). My teaching and research focus on rental housing, social housing programs, homelessness, discrimination in housing markets and human rights issues in relation to social welfare and land use planning. In 1997, I was appointed to the University's endowed chair in housing studies, the Dr. Chow Yei Ching Chair in Housing.

I earned my masters (M.Sc.(Pl.) in 1974) and Ph.D. (1981) degrees in urban planning at the University of Toronto. In the mid-1990s I served a term on the Board of Directors of the Ontario Housing Corporation. I was appointed to the Housing Stakeholders Panel by the Metropolitan Toronto Council, which commissioned studies into the lack of rental housing supply. I am currently a member of the City of Toronto's Advisory Committee on Homeless and Socially Isolated Persons.

My publications on the rental housing sector include a study for the Ontario Commission of Inquiry into Residential Tenancies: *Market Imperfections and the Role of Rent Regulations in the Residential Rental Market*, (Research Study No. 6, 1984). In addition to this report, the following are of particular relevance to the content of this witness statement:

- "The Concept of Housing Affordability: Six Contemporary Uses of the Housing Expenditure-to-Income Ratio," *Housing Studies*, Vol. 10(4), 1995, 471-491.
- "The Evolution of Property Rights and Housing Tenure in Post-war Canada: Implications for Housing Policy," *Urban Law and Policy*, 9(2), 1988, 135-156.
- *The Evolution of Land Use Planning in Ontario, 1900 to 1946*, Doctoral Dissertation, University of Toronto, 1981.
- *Discrimination in Ontario's Rental Housing Market: The Role of Income Criteria*, a report prepared for the Ontario Human Rights Commission, March 1994.
- *The Human Right to Adequate Housing in Canada: A Comment on Canada's Compliance with the International Covenant on Economic, Social and Cultural Rights, with a Focus on Homelessness*. A report submitted to the United Nations Committee of Economic, Social and Cultural Rights, Geneva, October 1998.

A curriculum vita is attached.

2. EVIDENCE: Issues Addressed

My evidence is focussed on the meaning of ‘rental’ housing and ‘affordable’ housing, together with relevant trends. My statement is organized into two main sections.

Section 3 address rental housing, clarifies the meaning of tenure, and discusses trends in the ‘non-conventional’ rental sector.

Section 4 addresses the issue of defining ‘affordable’ housing for policy purposes.

3. What is ‘Rental’ Housing?

In my review of the witness statements of Mr. Clayton and Mr. Dunning on behalf of Goldlist Properties Inc. I note the following about the category ‘rental housing.’

Mr. Clayton and Mr. Dunning offer the opinion that the 100 furnished rental apartments “are not part of the rental housing stock” (Clayton, p.3) while Mr. Dunning also offers the opinion that at least some condominiums are part of the rental housing stock. He states: “they are acting as an alternative to conventional rental apartments.” (Dunning, p.3)

3.1 *The 100 Furnished Rental Apartments*

Residential ‘tenure’ defines the terms and conditions by which housing is owned and occupied. No matter what extra words are used to describe the 100 furnished rental apartments (‘executive suites,’ ‘short term rentals,’ apartments with ‘significant non-housing elements,’ or housing for ‘occupants ... in transition’), the apartments are used or intended to be used as *rented* residential accommodation. They meet a specialized segment of rental housing demand. The rental housing sector consists of many specialized segments (or sub-sectors), based on size, design, amenities, location, occupancy regulations and rent).

Whether or not these rental apartments are covered by the Tenant Protection Act (Clayton, p.3; Dunning, p.11) or are included in various government statistical data collection definitions (Clayton, p.3; Dunning p.11-12) does not *alter* the fact that they are *rented residential accommodation*. They are part of Toronto’s rental housing stock. If higher rents could be achieved if the apartments were unfurnished, the furniture would be removed. If there was an

over supply of such units in this sub-market of the rental sector, the furniture would be removed and the units rented as part of a broader rental sub-market (i.e., like the adjacent rental units). Democratic politics determines what laws and regulations govern different sub-markets within the rental housing sector. Administrative and technical data collection decisions determine which statistical data banks the rental units in different sub-markets of the rental housing sector belong to. *Neither of these activities changes the actual tenure of the housing.*

Mr. Dunning's dictionary definitions of 'reside' and his references to 'primary residence' as a 'concept' are illogical. This seems to be an attempt to define housing tenure using sociological criteria such as the life style of the occupant. I understand that people (who are not owner-occupants) pay *rent* and live in most of the 100 rental apartments in question. There are, we can safely assume, some conventional purpose-built rental apartments in Toronto that house people with a life style similar to that described by Mr. Dunning. Should we cease calling these units rental housing based on this sociological assessment of the life style of these tenants? These renters contribute to rental housing demand; they occupy rental housing units; and they indeed pay residential rent. If these rental units were to be lost due to demolition, and if rental demand in this sub-market was strong enough, we can anticipate they would be replaced elsewhere in rental market.

3.2 What tenure are condominiums?

The above point can be made clearer if we pause to consider what we mean by housing 'tenure.'

All housing has two key functions:

- (1) for the occupant, it serves a useful purpose as a habitat for sustaining human life, and
- (2) for the owner, it serves as an economic investment.

Owner-occupied housing combines in the same 'person(s)' both these functions. The owner is both the occupant and the investor. In rented housing, the two functions are held separately: one party occupies the rental unit, another party owns it. This is the essential difference between ownership tenure and rental tenure. Tenure defines the terms and conditions under which housing is owned and occupied. The precise meaning of each of the two tenures, owning and renting, varies in different provinces and countries, based on laws, regulations, and customary and cultural practices. Owning the place you call home, and renting the place you call home, are very different.

Condominium ownership is not a new tenure, but a variation on ownership tenure. Prior to the advent of condominium ownership in Canada in the late-1960s and early 1970s, owning a

dwelling unit also meant owning the land it was built upon. There was no conventional legal way to own a unit of housing while sharing in the ownership of the site and the common areas within the structure. Condominiums are purpose built housing units for the ownership sector.

3.3 What is new about 'non-conventional' rental housing?

From time-to-time I hear the mention of the fact that some condominiums are owned by investors who, as least for awhile, rent them. The fact is, there has *always* been a great deal of 'non-conventional' rental housing. Some houses in the ownership sector (detached, semi-detached and row) have *always* been rented out by their owners. Some house owners have *always* created accessory apartments and rented out part of their house as rental accommodation. Some residential accommodation has *always* been carved out of retail, commercial or industrial buildings. I have attached two pages from the 1996 Metro Toronto Planning Department report titled: *Housing Patterns and Prospects in Metro* (pages 10-11). These outline the extent of the non-conventional rental housing stock – as of 1991. There is nothing new about non-conventional rental housing. Only half of all rental housing units in Metro Toronto in 1991, for example, were in the conventional purpose built private rental sector.

The condominium form of ownership tenure has not produced anything new in terms of non-conventional rental housing trends. Some of the units in the ownership sector were always offered for rent. Some condominiums are also offered for rent.

All the very interesting information on the likely number of condominium units that are rented out by their investor-owners in Toronto is immaterial to the broad issue involved in this case for two reasons. First, because it *presents an incomplete picture* of trends in the non-conventional rental sector (see section 4.4 below) and, second, because it *ignores the essential difference* between conventional and non-conventional rental housing (section 4.5).

3.4 What is the net gain or loss in the non-conventional rental stock?

The focus on the condominiums for rent implies that something *new* and perhaps significant is happening. A focus on estimates of the number of condominiums for rent may lead some to even believe there is no great rental housing shortage. All that has happened, some might argue, is that there has been a shift from conventional to non-conventional rental housing. As I have noted already, some owners have always rented out their residential property. It would only be a surprise if we found that few condominium owners were investors who rented out their units. But this is not the case as Mr. Dunning demonstrates.

What is new over the past three decades, however, is the *loss* of a great deal of lower-rent conventional and non-conventional rental housing. A complete picture would present an accounting of the net gain or loss of all forms of conventional and non-conventional rental units. Residential gentrification has meant that many owner-occupied houses with accessory apartment(s) have been converted to owner-occupancy. Many rooming houses have been demolished or converted to single owner-occupancy. (The number of licensed rooming houses has fallen from 603 in 1986 to 393 in 1998.) Many conventional rental apartment buildings have been converted to condominiums or demolished. Rising real incomes among house owners has meant that fewer have an economic incentive to create an accessory apartment (a ‘mortgage helper’).

In summary, the people who drafted and the municipal councillors who adopted the official plans and other relevant policy texts relating to these issues did so within the context of these trends. Even when some social housing and more conventional private sector rental units were being built (the period before 1995), there was a great deal of public policy concern over the loss of rental housing units in the lower rent and lowest rent sub-markets. The ‘homelessness crisis’ emerged in the early 1980s and has since become much worse, in part due to the loss of rental housing options for many households in our community. The condominiums for rent, unlike much of the lost rental units, generally serve a much higher income group (that is, a different rental sub-market from the units that have been lost).

3.5 *What is the essential difference between non-conventional and conventional rental housing? Security of tenure.*

The essential difference between conventional and non-conventional rental housing relates to the security of tenure provided. When a rented condominium is put up for sale, if it is not sold to another investor, the new owner will take possession of the unit for their own occupancy. The tenant must move. The condominium for rent form of non-conventional rental housing, therefore, does not allow for the type of security of tenure provided by conventional rental housing.

Why should this be of concern to public policy? If we as a society want rental housing to be an inferior and secondary housing tenure, then it probably does not matter. The importance of conventional rental housing over non-conventional rental is related to the issue of the housing unit becoming a ‘home’ in the full social and psychological sense. All Canadians ought to have the opportunity to become ‘rooted’ in a home and community. The possibility of a forced move, being up-rooted from one’s home and community, should be minimized.

Owner-occupiers have the benefit of being both the occupant and the investor and, short of expropriation or failure to pay the mortgage and or property taxes, have very secure tenure.

Given that the occupant and the owner are different parties in rental housing, landlord/tenant legislation and regulations have been enacted to reflect this fact and help ensure reasonably secure tenure. Condominiums for rent do not provide the same security of tenure.

4. What is ‘affordable’ housing?

All who engage in housing research and housing policy analysis have had to face the question of what ‘housing affordability’ means. In 1995, I published a research paper on the subject, providing a typology of the six typical ways in which the term is being used.

- “The Concept of Housing Affordability: Six Contemporary Uses of the Housing Expenditure-to-Income Ratio,” *Housing Studies*, Vol. 10(4), 1995, 471-491.

Most assessments of ‘affordability’ are based on the use of a rather crude unscientific ‘rule of thumb’ ratio of household income and rent. It is an attempt to define and use a simple quantitative measure. As my paper demonstrates, the use of such a ratio can be either a valid or invalid indicator, depending on the way it is being used.

4.1 Quantitative cut-off points do not define ‘affordability’, but they can indicate trends and relationships

One of the invalid uses of the rent-to-income ratio involves the definition of housing need, that is, a definition of ‘housing affordability’ for public policy purposes (use #4 in my typology, Figure 1, page 476).

To arbitrarily select some particular ratio and then claim that all households spending more have an affordability problem or that all rental units below a certain rent level are affordable, is simply invalid (for an explanation, see pages 482-483). Such a quantitative cut-off point, however, *can* be used as an indicator of trends and can be used to compare different groups of households (renters/owners, young/old, rich/poor, etc.) for research purposes. This is use #2 in the typology (discussed on pages 477-479).

I have attached Table 2.3.22g from the appendix of the 1996 Metro housing study. It provides a helpful picture of what households in the City of York were paying for their housing during the period 1981-91. It is an example of use #2 in my typology. It tells us what percent of income different groups (organized by income quintiles) paid for their housing.

Examining the data in this Table provides some helpful insights into relationships among groups of owners and renters. It does not claim to pass judgement as to whether a certain rent-to-income ratio is ‘affordable’ or not. We can gain a *qualitative* understanding of which income quintiles may, on average, be having an ‘affordability’ problem, and those which may not. This is due to the huge variation that exists between what high and low income households pay for their housing.

4.2 Mr. Clayton’s Affordability Analysis

We can contrast the above with Mr. Clayton’s analysis of affordability (pages 5 and 6 in his Witness Statement). He provides us with an example of an attempt to define a very precise *quantitative* affordability cut-off point for the City of York [though, oddly, a GTA rather than York ‘target affordable rent’ was used in the calculation]. This is an example of use #4 in my typology.

The York Official Plan does not provide a definition of ‘affordable’ housing. If the municipal council had something like Mr. Clayton’s quantitative formula in mind, why did they not specify it? Is there some background document relating to the Official Plan that has anything remotely similar to this very convoluted calculation? Is there any body of literature on the subject that uses this kind of calculation to define the meaning of housing affordability in a policy document like an official plan? I do not know of any.

Think about the relevant policy statements in the York and Metro official plans in relation to Mr. Clayton’s (or anyone’s) “target affordable rent.” Just because an information bulletin in 1995 presented a range of data on household incomes by income percentile for a huge area like the GTA, how is the arbitrary selection of one of these numbers (the \$1,000 at the 60th percentile) in anyway a valid starting point for assessing ‘affordable’ housing in the City of York? What is the rationale for selecting this number and not another one? What is the rationale for applying it to the City of York. Where in the York and Metro official plans do we find policy relating to this number or any such quantitative cut-off point? Is it not the job of elected officials to define specific quantitative cut-off points, if they want to?

4.3 The meaning of affordability is different for ‘policy’ and for ‘programs’

This confusion is cleared up in the following manner.

The York and Metro official plans are indeed very clear about what they mean in general *policy* terms. Mr. Clayton has mixed together two distinct categories that cannot be mixed. There is a big difference between *policy* and *programs*. Policies are general courses of action. Programs are

specific actions that implement a policy. York and Metro provide us with affordable housing *policies*. They do not provide us with an affordable housing *program(s)*.

We need to recognize that the term ‘affordable housing,’ left undefined in a *policy* document, is using the term in its rich *qualitative* sense as a statement which guides future specific decisions (like the one at hand). The qualitative guide captures the rich details of the housing situation prevailing at the time of the decision. We know, for example, from many sources, including the data on poverty and housing problems compiled by the Mayor’s Homelessness Action Task Force (including the many background papers), that the income levels and housing options for many renters is much worse now than in the recent past. The policy objective of preserving and adding to the stock of ‘affordable’ housing is easy to understand in the rich qualitative sense obtained by examining a full range of information about housing and household trends. The relevant questions include: Are we making progress or not in a broad and general way, in relation to the spirit and intent of the policy? Is a specific redevelopment proposal in keeping with our affordable housing policy?

The term ‘affordable housing’ used in a *program* designed to implement a policy requires that a specific cut-off point be defined. This is use #3 in my typology, which I call ‘administration’ (meaning program administration) (see pages 479-482).

Here are two examples of defining affordability for program administration purposes. A non-market social housing program must pick some income level as the cut-off point for those who qualify for this ‘affordable’ housing. A program that mandates that all new residential construction contain a certain percentage of ‘affordable housing’ *must* define what is meant by ‘affordable.’ This quantitative and usually fixed point need not relate in any manner to anything contextual in terms of trends and so forth (policies do this). It must tell developers *exactly* what their obligations are in order to comply with the program.

Mr. Clayton takes a *program* number (the \$1,000) from the 1995 Land Use Planning for Housing program of the Provincial government, a program intended to implement a Provincial Policy Statement on the need for more lower end of market rental and ownership housing starts throughout the province. (It is my understanding that not only was the program discontinued, it was simply a guideline, it was never mandatory.) He then applies this number to a *policy* statement in the York Official Plan. Since the York municipal council did not define affordable housing, and since Mr. Clayton seems to assume that a specific number is required, he does it for them. He seems to know *precisely* what they intended, and even inflation adjusts the arbitrary number for them (up to \$1,175). Then this specific number is used to offer an opinion that the policy intent of the York and Metro official plans has been achieved and that the rental units in question in this hearing are no longer required. These are huge methodological leaps. They simply make no sense and the very precise scientific sounding numerical ‘findings’ are totally nonsensical and meaningless.

In the meantime, as we all know, the democratically elected municipal council which replaced the York municipal council, in its consideration of the matter, interpreting the spirit and intent of the Official Plan and other relevant *policy* documents in an appropriate *qualitative* manner, arrives at a different conclusion. Who is right? The elected policy making body engaged in interpreting its own planning *policy* statements in its official plans, or someone selecting an arbitrary program number and building an impressive edifice on it?

4.4 Affordable housing POLICY: It's not rocket science

Policy statements about 'affordable' housing can only be interpreted in a *qualitative* manner. A range of information can help the appropriate decision making body arrive at an interpretative judgement.

The reason municipal plans began referring in general policy terms to the need to encourage the maintenance of existing and the supply of additional 'affordable' rental and ownership housing options is precisely due to the loss of both conventional and non-conventional rental units over the two recent decades. The focus of the concern is particularly on lower-income households and lower-rent units.

This is an example of the public planning process seeking to define policies that are inclusive, that recognize different people have different needs and that some recent trends, if left unattended to, will harm certain groups in the community.

It is totally inappropriate to 'split hairs' over the meaning of lower rent or 'affordable' in *policy* statements. The context and intent of the policy is what matters.

About half to two-thirds of Toronto's approximately half million renter households will never be able to buy even a modest house or condo. Yet the housing market is only supplying housing for ownership tenure, together with some non-conventional rental units, most of which have rents that are often at the higher end of the market.

The policy intent in the York and Metro plans is clearly focussed, in part, on the prevention of the loss of purpose built conventional rental apartments, such as those at 310 and 320 Tweedsmuir Avenue.

Once vacancy rates rise, once more rental housing is provided in the lower end of the market, and once the homelessness 'emergency' is addressed, a qualitative assessment of the policy statement – within this *changed* context – may very well conclude that it is now no special concern to public policy whether some existing rental buildings are demolished.

5. Conclusion

There are plenty of opportunities to build condominiums throughout Toronto. There are, at the moment, and perhaps for some time to come, very few opportunities to build ‘affordable’ rental housing. The fastest growing segment among the 4,000+ homeless in the City’s shelters are families – they were once housed, mainly in the rental sector, and they are now unhoused. They are remaining unhoused for longer periods of time now than in the past. The very few rental vacancies are mainly at the higher end of the market. Their search for a ‘home’ they can ‘afford’ in today’s housing market is extremely difficult.

In my opinion as a professional planner and a housing analyst, the intent of the text relating to affordable housing policy in the York and Metro Official Plans is very clear. The proposed redevelopment does not comply with this municipal planning policy.
