

ISSUE DATE:  
**JAN. 10, 2008**



PL060944

Ontario Municipal Board  
Commission des affaires municipales de l'Ontario

3018-3020 Yonge Street Ltd. has appealed to the Ontario Municipal Board under subsection 22(7) of the *Planning Act*, R.S.O. 1990, c. P.13, as amended, from Council's refusal or neglect to enact a proposed amendment to the Official Plan for the City of Toronto by introducing a site-specific policy to the current "Low Density Mixed Commercial-Residential Areas" for the purpose of permitting the proposed development of a 16-storey building, including a 4-storey podium and associated parking facilities at the south of the intersection of Yonge Street and Lawrence Avenue, municipally known as 3018-3020 Yonge Street (Approval Authority File No. 04 150643 NNY 16 OZ) O.M.B. File No. O060181

3018-3020 Yonge Street Ltd. has appealed to the Ontario Municipal Board under subsection 34(11) of the *Planning Act*, R.S.O. 1990, c. P.13, as amended, from Council's refusal or neglect to enact a proposed amendment to Zoning By-law 438-86, as amended, of the former City of Toronto to permit, as an exception to the current MCRT3.0 C0.5 R3.0 Zone, the proposed development of a 16-storey building with a maximum residential gross floor area of 15,807 square metres and a maximum height of 52 metres on the lands municipality known as 3018-3020 Yonge Street O.M.B. File No. Z060124

**APPEARANCES:**

**Parties**

3018 - 3020 Yonge Street Ltd.

City of Toronto

**Counsel**

Adam Brown

Robert A. Robinson

**DECISION DELIVERED BY C. HEFFERON**

The Applicant/Appellant, 3018-3020 Yonge Street Ltd, filed an application in June 2004 to amend the City of Toronto Official Plan and Zoning By-law 438-86 to permit the development of a 16-storey condominium residential building on the west side of Yonge Street just south of Lawrence Avenue.

The subject site, which is known municipally as 3018-3020 Yonge Street, has an area of approximately 0.25 ha, a frontage of 59.77 metres along Yonge Street and a depth ranging from 42.80 metres at its southern edge to 47.44 metres at its northern edge. The site abuts lower density commercial uses to the north, a 12-storey apartment building to the south, a public library and park opposite on the east side of Yonge Street and a low density neighbourhood to the west. Of significance is the fact that the single-

family homes abutting the site to the west are at a somewhat higher elevation than the subject site. The difference was estimated to be in the range of 3 – 4 metres.

The subject site is currently occupied by a Toyota dealership and service centre, which the Appellant proposes to demolish to facilitate redevelopment. The site is designated “Low Density Mixed Commercial Residential” in the in-force 1994 City of Toronto Official Plan (the “in-force OP”) and “Mixed Use” in the 2006 City of Toronto Official Plan (the “new OP”).

Under the City of Toronto Zoning By-law 438-86 (the “Zoning By-law”) the site is zoned “Mixed Commercial Residential.” Because the proposed development does not comply with certain of the City’s land use policies, amendments to both the in-force OP and the Zoning By-law are being sought.

The Appellant is appealing the City’s refusal to amend the in-force OP and Zoning By-law, pursuant to Sections 22(7) and 34(11) of the *Planning Act*.

### The Applicable Legislation

Because the original development application was submitted in June 2004, the Board consented to consider the application in light of the statutes that were in force at that time. The in-force statutory documents include:

- *The Planning Act* R.S.O. 1990, c. P.13, as amended
- Provincial Policy Statement 1997
- Metropolitan Toronto Official Plan
- City of Toronto Official Plan 1994

Both parties also agreed (with the Board’s concurrence) to have regard for the (new) 2006 City of Toronto Official Plan as it provides perhaps the clearest indication of current City policy in the area.

### Expert Witnesses

The following professionals were qualified to provide the Board with expert opinion evidence:

- John Bousfield on land use planning
- Robert A. Glover on urban design
- Cathy Ferguson on land use planning
- John-Barry Livingstone on urban design.

Participants

Approximately three dozen local residents and property owners appeared the first day of the hearing. Seventeen requested participant status and submitted the required witness statements. The fifteen participants listed below actually testified at a special evening session of the Board:

Robert Witchell	Steven and Adrienne Yeats
Jane Nugent	Fred Glady
Claudio Tarulli	Adam Krehm
Arlene Hebert	Melissa & Hyman Ngo
Hildy Reis-Smart	Paul & Dominica Larkin
Eilene Denny	Eilene Fischer & Michael Milosevic
Ms. P. Selliah	Don Hinchley
Mr. J. Huckle & John Ford	

The participants expressed concern about parking; privacy, noise and overlook; sun/shadow impact; as well as mass and height impact.

Issues

Some 17 issues were raised. The Board's analysis of the expert evidence presented in the hearing for each issue and its findings follow below. Where deemed appropriate, the issues have been grouped together.

Issue 1: Do the proposed development and the Official Plan and Zoning By-law amendments sought by the Appellant comply with and maintain the intent and purpose of the former City of Toronto Official Plan and the former Metro Toronto Official Plan?

and

Issue 2: Are the proposed development and the Official Plan and Zoning By-law amendments sought by the Appellant consistent with the intent and purpose of the new City of Toronto Official Plan?

The Board agreed that the Official Plan of the former City of Toronto (approved in 1994) applies to this application. Testifying on behalf of the Appellant, Mr Bousfield contended that the OP and Zoning By-law policies relevant to these two issues are those dealing with residential intensification and those dealing with new developments

along main streets. Policies dealing with “residential intensification” are set out in sections 1.2, 1.5 and 1.8 of that document.

Mr. Bousfield, who was qualified by the Board to provide expert opinion evidence on land use planning, said that intensification is necessary today simply because there are “no more” greenfield sites within Toronto’s urban boundaries. He took the Board to section 1.5 of the in-force OP, which mandates that:

Council will give particular attention to the protection of the physical character of the City’s stable, low density residential neighbourhoods by ensuring that future land use changes are accommodated in a manner that is sensitive to and compatible with local conditions.

Mr. Bousfield drew the Board’s attention to the term used in the in-force OP, “sensitive to and compatible with local conditions.” He said the real problem here is finding the optimum (way) to advance the public policy of residential intensification while protecting the character of the adjacent stable low-density neighbourhoods. He suggested applying a combination of land use planning and urban design techniques to achieve the desired balance.

Section 1.8 (b) of the in-force OP indicates that it is the aim of Council to “support residential intensification throughout the City primarily ... along *main streets*... through redevelopment, conversion and infill.” The policy also states that, “Council will seek to provide a range of housing types....” Main streets” are shown on Map 8 of the OP.

Section 13.5 identifies “main streets” as:

... arterial roads in Low Density Mixed Commercial Residential Areas that are directly served by public transit. Main Streets generally consist of contiguous buildings on small lots, generally within the range of 2-5 storeys in height, which have a mix of commercial and residential uses.

The expert witnesses agreed the part of Yonge Street where the subject site is located is a typical “main street” in every respect but perhaps one. While permitted in both the OP and the Zoning By-law, commercial retail uses characteristic of Toronto’s main streets have never taken root in this particular section of Yonge Street. Mr. Bousfield explained that an earlier Part II plan had been effectively superseded by the more comprehensive *Main Streets* policies contained in section 13.2 of the in-force OP. The site specific amendments in section 18 of the earlier Part II plan (that is, sections

18.384, 18.385 and 18.386) were adopted into the Main Streets policies contained in section 13.2 of the in-force OP. These sections indicate that that part of Yonge Street where the subject site is situated is “not intended as a commercial strip but ... as (a) predominantly residential area.... Council shall encourage housing in (this) area suitable for a variety of household types.”

The Board was told there are condominium as well as a number of rental buildings on Yonge Street between Lawrence and Blythwood. A single-family neighbourhood is located west of Yonge Street.

Mr. Bousfield testified that the proposal before the Board maintains the intent and purpose of the in-force Toronto OP's *main streets* policies and MetroPlan's *corridors* policies, which generally mirror those in the in-force Toronto OP. The Board concurs. No commercial or retail is planned as part of the proposed development. This is, Mr Bousfield maintains, a tacit acknowledgement that the section of Yonge Street south from Lawrence Avenue to Blythwood has a different character from the section north from Lawrence to Ranleigh Avenue and beyond. Ms Ferguson, representing the City, concurred.

Mr. Bousfield, Ms Ferguson and the local residents who participated all agree that the most appropriate future use for the subject site is residential and that development should reflect the City's policies on intensification. Where opinion differs, however, is in the intensity of the development. Ms Ferguson maintained that the structure should have a similar density to the vast majority of the other buildings on Yonge around Lawrence – that is, about 3.0 times lot coverage – and should be roughly the same height.

Mr. Bousfield, on the other hand, vigorously argued that the newer buildings along Yonge that Ms Ferguson referred to in her density comparisons are all located north of Lawrence Avenue, a stretch which the OP recognizes as having a different character from the stretch south of Lawrence. The closest buildings are the two 1950s-era 12-storey towers at 1300 Yonge, which are located immediately south of the subject site.

The Board was told the proposed new structure would not have significantly greater height or mass than those two towers. At 6.3 times lot coverage, the density

would be lower than the density of the two towers, which were built at 7.1 times lot coverage. (The impact of density is considered under Issues 5 and 6.)

Mr. Bousfield stated that some planning justification may well have existed when the buildings Ms Ferguson refers to on Yonge (north of Lawrence Avenue to Ranleigh Avenue) were developed at 3.0 times lot coverage. He contends, however, that no planning justification exists today for redeveloping a main street such as Yonge at 3.0 times lot coverage. He suggests this is an “inexcusably low” density for Yonge Street. Making rational use of the sizable public investment in the existing infrastructure and high level transit along this key main street, he argues, requires re-development at far greater densities than what could have made sense only a few years ago. He presented evidence (Exhibit 13) that usage of the nearby Lawrence Avenue subway station is low relative to comparable-sized stations on the Yonge subway line.

While the applicable or in-force statutory documents here are the 1994 City of Toronto Official Plan and the (1994) Metropolitan Toronto Official Plan, both sides agreed (and the Board concurred) that regard should also be had for the 2006 City of Toronto Official Plan (the “new OP”).

Both parties presented evidence that it is the intent of the new OP to promote more efficient use of existing infrastructure by encouraging residential intensification along main streets (such as Yonge). Again, however, expert opinion differed on the degree of intensification and the form it should take on the subject site. (This is discussed below under Issues 5 and 6.)

After weighing the evidence of the expert witnesses on both sides of this issue, the Board finds that the proposed development generally complies with and maintains the intent and purpose of both of the in-force Official Plans (the 1994 Toronto OP and MetroPlan) as well as the new Toronto OP particularly with respect to the need for and appropriateness of intensification (of development) on the subject site.

Issue 3: Are the proposed development and the proposed Official Plan and Zoning By-law amendments sought by the applicant consistent with the Provincial Policy Statement?

The Provincial Policy Statement (PPS) issued under authority of Section 3 of the *Planning Act* provides direction on matters of provincial interest related to land use

planning and development. The PPS is implemented through the Official Plan and Zoning By-law of a municipality. Both of these documents are required to be consistent with the PPS.

Because the subject application dates from 2002, the applicable Provincial Policy Statement for this hearing is the precursor of the current 2005 PPS. The earlier PPS was issued in 1996 (and amended in 1997). A major thrust of both the 1997 and 2005 documents is intensification of land uses. The language in those sections of the two provincial policy documents dealing with intensification is closely similar.

Mr. Bousfield testified that in his opinion the proposal is consistent with both the 1997 PPS and the 2005 PPS. He took the Board to subsection 1.1.2 (b) (1) of the 1997 PPS, which mandates that land requirements and land use patterns *will be based on* densities which make efficient use of land, resources, infrastructure and public service facilities and subsection 1.1.2 (b) (3) promotes densities which support the use of public transit. Citing subsection 1.1.3.2 (a) (1) of the 2005 PPS, he contends it uses perhaps even stronger language, specifying that the land use patterns within settlement areas *shall be based on* densities and a mix of land uses which efficiently use land and resources and 1.1.3.2 (a) (2) which are appropriate for and efficiently use the infrastructure and public service facilities, which are available.

While there was no dispute between the parties that Yonge Street south of Lawrence Avenue qualifies as a built up area and is thus prime for intensification, issue was taken as to the degree of intensification contemplated, particularly in the local planning documents.

Ms Ferguson contended that the proposal does not have adequate regard to matters of provincial interest as set out in Section 2 of the *Planning Act*, nor is it consistent with the purpose of Section 1.1 and Section 3 of the *Planning Act*. The essence of her argument is the applicant's proposed development does not have adequate regard to matters of provincial interest as expressed through the local planning framework. Ms Ferguson testified that the (former) City of Toronto Official Plan sets out Council's general policies for the "low density mixed use commercial-residential area" of the subject site. It specifies a maximum density of 3.0 times lot coverage for either pure residential or mixed residential commercial. Mr Bousfield, on the other hand, maintained that this does not reflect Council's current thinking because the new City of

Toronto Official Plan, which it was agreed by the parties is not the in-force statutory plan, does not use either density or height to control development.

The Board finds Mr. Bousfield's arguments to be the more consistent with provincial policy and therefore the more persuasive. It finds that the Official Plan and Zoning By-law amendments sought by the Appellant to be consistent with both the (in force) 1997 PPS as well as the 2005 PPS.

Issue 4: Do the proposed development and the proposed Official Plan and Zoning By-law amendments sought by the applicant have adequate regard for the purpose of the *Planning Act* as set out in section 1.1, and those matters of provincial interest including but not limited to those matters set out in sections 2(f), (h), (l) (n) (o) and (p) of the *Planning Act*?

Ms Ferguson maintains that the proposal does not have “adequate” regard for the matters of provincial interest set out in Section 2 of the *Planning Act* and neither is it consistent with the purpose of either Section 1.1 or Section 3 of the *Planning Act*. Matters of provincial interest are expressed through the local planning framework. She contends that the height and density of the proposed development are inconsistent with the built form principles of both the former City of Toronto Official Plan and the new City of Toronto Official Plan and are, in any case, incompatible with the surrounding context.

While the Board understands Ms Ferguson's argument that Provincial interest is intended to be expressed through the Official Plan of the local municipality, this may not always occur. It is obvious that the proposed development exceeds both the height and density limits for the site as expressed in the old Official Plan. Presumably, Provincial interest in the 1990s lay in controlling height and density. Today, however, such is not the case. Provincial interest seems to encompass a great many other concerns – in particular those that promote those interests that can be grouped under the rubric “sustainability”. In Toronto, controlling height and density are no longer seen to be the best vehicle for promoting sustainability. Council has removed height and density as its principal development criteria and has substituted good design among other considerations.

That the height and density limits of the old Official Plan are exceeded is mitigated by the fact that the proposal satisfies (or at least does not militate against) the

City's own good design criteria and satisfies the intent and purpose of the angular plane requirements of the City's own Design Guidelines (1997).

Mr. Bousfield maintains that the subject development has followed all of the City's application, technical review and public consultation procedures that have evolved over time to ensure full regard for the six stated purposes set out in Section 1.1 of the *Planning Act*. He also contends that the subject proposal responds positively to subsections (f) to (j) and (l) to (q) of Section 2, which pertains to matters of provincial interest.

The Board adopts and relies on Mr. Bousfield's opinion on these matters and finds that the proposed development has ample regard for the purpose of the *Planning Act* as expressed in Section 1.1 and is in the provincial interest as outlined in the applicable subsections of Section 2.

Issue 5: Do the density, height and built form of the proposed development represent an appropriate development of the subject site?

and,

Issue 6: Are the proposed height, density and built form of the proposed development appropriate and compatible with the character of the surrounding neighbourhood and area?

The Appellant's proposal is for a 16-storey building some 52 metres in height. It has a floor space index (density) of 6.3 times the lot area. The Zoning By-law permits a building 16 metres high with a density of 3.0 times the lot area. The proposed development includes 198 residential condominium units, a 4-storey podium and a minimum of 130 underground parking spaces.

Ms Ferguson contends a structure of this height, density and built form is out of character not only with the existing built form on that part of Yonge Street but also and more importantly is inappropriate given the adjacent low density residential neighbourhood to the west.

In response, Mr Bousfield presented photos of the two 12-storey art deco style towers of the rental building located at 3000 Yonge Street beside the subject site and offered opinion evidence that the proposed structure would be of similar (though not

identical) height and mass and accordingly would be compatible in terms of height and mass with that building and the general area. The Board was also told that because of its contemporary design involving step-backs, special fenestration and custom balcony design, the proposed structure could be expected to have less impact on the adjacent low density neighbourhood than the 1950s block-like towers at 3000 Yonge.

The Board was told the two towers are actually considered one building since they share a single podium. There was also some question as to whether they comprised 12 or 13 storeys. The Board relies on the testimony provided by Mr. Krehm, who is the building's owner, that they are 12-storeys in height.

Mr. Bousfield testified that in the 50+ years the two towers (which were built at a density of 7.1 times the lot area) have co-existed with the abutting low-density neighbourhood there has been no adverse impact in terms of loss of property value or reduced marketability of the homes located on Courtland or Chudleigh Avenues. This testimony had to be given less weight than it perhaps deserved because Mr Bousfield was not qualified by the Board to provide expert opinion evidence on land economics. However, it was noted that his statement went unchallenged by the City's expert witnesses.

Mr. Bousfield also pointed to the 9-storey 1980s residential structure at 2900 Yonge Street three blocks south of the subject site. The Board was told that because of the local topography the proposed structure would be compatible in height and massing with this 9-storey building even though it would have more floors.

The City's expert land use planning witness, Ms C. Ferguson, disputed Mr. Bousfield's opinion. She submitted photos showing how the rear of 2900 Yonge steps down to 6-storeys where it abuts the property line of the neighbours to the rear. This feature, she contends, is mostly what makes that structure compatible with the neighbourhood to the west.

Ms Ferguson also took the Board to other structures lying within a few blocks of the subject site on Yonge Street (Exhibit 4). With the exception of the two 12-storey towers (3000 Yonge) and the 9-storey building at 2900 Yonge, all of the other buildings in the area (including the commercial office building on the NW corner of Yonge and Lawrence) had been built at seven storeys or fewer. To be compatible with

the neighbourhood, she contends, the proposed structure ideally should be “around the same height”. Ms Ferguson indicated that it was the City’s position that a building with a larger footprint, that is, one that occupied more of the site area would be preferable to one with more than nine or ten storeys.

Mr. Bousfield also argued that rapidly accelerating urban sprawl as well as the projected growth in population in the GTA combined with the underutilized public infrastructure and high level transit in the area of the subject site all militate against further lower-density residential and commercial development of the type that had occurred north of Lawrence Ave over the past two decades.

In her testimony, Ms Ferguson made reference to certain newer buildings on the two blocks of Yonge Street north of Lawrence. Mr Bousfield noted that the Yonge Street strip area north of Lawrence is primarily given over to street-level retail with one or two floors of residential on top. He contends that the five to seven storey buildings Ms Ferguson referenced in the blocks north of Lawrence are not what defines that particular area – the street-level retail is. Because there is no street-level retail on the section of Yonge between Blythwood Ave to the south and Lawrence Ave to the north, the two sections are quite different in character.

The Board was told that higher density apartment-style residential buildings tend to dominate the west side of the street and to define its character in this area. (The east side of Yonge in this area is defined by Lawrence Park and ravine.)

With respect to the proposed structure’s height, which will be some four floors taller than the tallest buildings in the area, the Board finds the proposed height will set a precedent for this section of Yonge (as discussed below under Issue 9). It also finds it will have an adverse impact on the residents of the low density residential area to the west of the subject site.

Issue 7: Do the proposed development and Official Plan and Zoning By-law amendments sought by the applicant comply with and maintain the intent of the City’s urban design and built form policies and objectives in general and in particular with respect to:

- a) pedestrian amenity
- b) light, views, privacy, overlook and shadow impacts

- c) built form policies relating to siting, setbacks, stepbacks, height, massing and scale
- d) relationship to surrounding context.

The in-force OP limits height on this part of Yonge Street to 16 metres and permitted density to 3.0 times lot coverage. The City's opposition to the subject proposal hinges in large part on its contention that a structure of the proposed height and scale would have an adverse impact on the adjacent low-density neighbourhood to the west and would cause unacceptable shadowing on the public library and park to the east. Ms C. Ferguson and Mr. J. B. Livingstone, who was qualified by the Board to give expert opinion evidence on urban design, both offered evidence demonstrating this would be the case.

Mr. Livingstone's evidence consisted principally of angular plane and sun/shadow studies. Both studies indicated to him that the proposed building would have an unacceptable impact on the surrounding area. Under cross-examination, Mr. Livingstone was shown that his angular plane study was premised on an erroneous supposition regarding the actual ground level at the rear of the site and that, in fact, the proposed design before the Board with multiple stepbacks complies on three sides with the angular plane guidelines as set out in the City's 1997 *Urban Design Guidelines*.

Mr. Livingstone agreed with the submission of Mr. Brown, counsel for the Appellant that the proposed structure does in fact conform on its north, south and west faces with the 1997 Guidelines. The Board was told this means that the proposed structure would comply with the intent of both the OP and the Zoning By-law and there should be no adverse shadow impact on the properties to the north, south, and west.

The experts agreed, however, that the structure does not comply with the Guidelines' angular planes requirements on its east face. The impact of this is increased shadowing (reduced sunlight) on the public library at the SE corner of Yonge and Lawrence and on the public park itself – particularly on the children's play area.

Both Mr. Glover, who was qualified by the Board to give expert opinion evidence on urban design and Mr Livingstone each presented sun/shadow studies as evidence. Mr. Livingstone conceded the study put forward by Mr. Glover was the more accurate since it used more sophisticated software than the City possessed. The study presented by Mr. Glover showed there would be increased shadowing on the park during some

parts of the day but that that increase did not violate even the City's strictest standards, which are applied to those main streets identified in Map 5 of the OP. The subject site is outside the area identified in Map 5 (Exhibit 2, Tab 10A). Mr. Glover testified that there would be more than five hours of sunlight on the public park at the times specified by the City. Mr. Livingstone agreed this complied with the City's sunlight requirements and did not constitute an adverse impact.

Mr. Glover testified that both the planning and design of the structure precludes any adverse or potentially adverse impact both on the neighbouring structures on Yonge Street and on the single- family homes to the west. Since the building satisfies the angular plane requirements of the City of Toronto's own Urban Design Guidelines on its west and south faces – and this was the issue being contested at this point - the City could not, with consistency, argue it would have an adverse impact on the adjacent structures on those sides.

Contradicting the opinion evidence of the urban design experts was the testimony of several of the residents in the low density neighbourhood to the west - those people whose homes would be most directly affected by the proposed new structure. They expressed concern that the proposed structure would have an adverse impact on their views to the east and north; one expressed her fear that her home would be overwhelmed by its "towering bulk". Ms Ferguson, the City's land use planner, and Mr. Livingstone, the City's urban design witness, suggested that this impact could be mitigated or even eliminated either by reducing the height of the structure and spreading the building over more of the site (thereby maintaining most of the proposed floor area) and/or by stepping down the structure towards the west property line in the manner of the 9-storey condominium building at 2900 Yonge. The Board notes that this approach tends to be encouraged by the City's built form policies.

After weighing the evidence of the expert witnesses and considering the testimony of the participants, the Board finds that the proposed development and Official Plan and Zoning By-law amendments sought by the applicant generally comply with and maintain the intent of the City's urban design and built form policies and objectives but that the height of the proposed structure will have an adverse impact on the occupants of the single-family homes to the west, which contravenes the intent of these policies and objectives.

Issue 8: Has the applicant provided sufficient information and analysis to demonstrate traffic generated by the site is acceptable, and that the proposed number of parking spaces is sufficient?

The Board heard the unopposed testimony of Ms A. Iannuzziello, P.Eng, who was qualified to present expert opinion evidence in the areas of transportation planning, transit planning and parking needs. Ms Iannuzziello testified that, in her opinion, the on-site and off-site transportation planning issues have been successfully addressed by the Applicant. The Board accepts and relies on the expert opinion of Ms Iannuzziello on the matter of on-site traffic circulation and traffic access to and from Yonge Street.

Ms Iannuzziello also testified that the Applicant intends to supply at least 130 on-site parking spaces, which is above the minimum required in the Zoning By-law and that the parking proposed complies with the By-law.

At a special evening session of the Board, which was attended by approximately two-dozen local residents, parking emerged as a major concern. The residents indicated they didn't believe 130 spaces would be enough to meet the needs of the occupants of the proposed 198 suites in the building as well as all their visitors. The residents said that they would almost certainly have to compete for street parking space with many of the occupants of the proposed new building. The Board was told that local streets are already overflowing with the residents' own vehicles as well as the vehicles of people attending the many functions and services put on by the nearby Blessed Sacrament Church (2982 Yonge Street). Yet it heard the unopposed expert testimony of Ms Iannuzziello that the issues regarding parking had been resolved by the parties.

The Board acknowledges that regardless of the availability and quality of transit service, many people need (or simply choose) to own their own personal vehicle and to have it readily at hand should they want to use it.

Issue 9: Would the proposed development and Zoning By-law amendment constitute an inappropriate precedent for the surrounding neighbourhood? Is this a relevant consideration?

The Appellant's planning witness, Mr. Bousfield, testified that it was his opinion that no opportunity for setting a precedent exists in this case. He stated that with the exception of the SW corner of Yonge and Lawrence, no other redevelopment sites exist in this area of Yonge Street. He indicated that for technical reasons there is very little

possibility of that particular site being redeveloped in the near future. He cited the presence of the underground TTC bus loop and the Hydro installation located just north of the subject site to demonstrate his point. The thrust of his argument was that the logistics of getting massive corporations like Hydro and the TTC both on side for what would be a relatively small development virtually precludes any possibility of the proposed development setting any kind of precedent, at least with respect to that site.

Ms Ferguson, on the other hand, pointed to a 2001 proposal to redevelop the three older 5-storey rental apartment buildings (photos in Exhibit 3) at 2928 and 2932 Yonge Street and One Cheritan Avenue in the block south of the subject site. That the proposal did not proceed at that time does not, she contends, lessen the possibility of another application coming forward.

Ms Ferguson also pointed to the PetroCanada retail station at 2908 Yonge (the corner of Chatsworth and Yonge) as an example of a potential redevelopment site. As gas stations within mature urban areas are typically interim uses, the Board accepts Ms Ferguson's contention that this site has real potential for residential redevelopment. The Board also accepts Ms Ferguson's argument that the owners of the PetroCanada site would very likely attempt to lever more height and/or density out of the City by using the subject site as a precedent.

The Board therefore finds the proposal would set a precedent for the redevelopment of at least one of the potential building sites in the area – the PetroCanada station - and possibly for the three nearby rental buildings as well.

Issue 10: If the development and/or a variation of such is permitted is it appropriate to require a contribution pursuant to Section 37 of the *Planning Act*? If so, what are the nature and extent of appropriate facilities, services and matters to be secured through section 37 of the *Planning Act*?

Section 37 contributions are associated with additional height and density over and above what is allowed in the in-force statutory documents. An increase in height and density is sought for the subject site.

In her witness statement, Ms Ferguson maintains that an amount of \$100,000 payable to the City of Toronto and to be used for “public parks within the immediate surrounding area” would be appropriate. In addition, the City is seeking a cash

contribution of “not less than 1% of the gross construction costs of all the buildings and structures to be erected on the site”. This amount is to be used for the installation of “on-site or off-site public art pursuant to the Percent for Public Art Programme.”

In his testimony, Mr. Bousfield pointed out that under Section 16.21 (a) of the in-force Official Plan, Section 37 contributions must be applied to a use in the immediate area of the new development and can only be used for (i) social housing; (ii) non-profit community, cultural and institutional facilities; (iii) heritage preservation; or (iv) parks. He then explained in some detail why none of these would constitute an appropriate use for the funds in the affluent, well-served Yonge Lawrence area.

The Board also heard the submission of Mr. Brown, counsel for the Appellant, that a requirement for a contribution for public art under Section 37 would be totally inappropriate since contributions for public art have been expressly deleted from the policies of the in-force OP. Mr. Brown’s argument is premised on the fact that height and density are considerations in the in force OP but not in the new (OP). This means that Section 37 contributions for public art can be sought under the new OP but they cannot under the in-force OP. Mr Brown further argues that allowing the City “to pick and choose” from among the provisions of the in force and the new OP cannot be justified from the point of view of either jurisprudence or simple fairness.

Ms Ferguson, on the other hand, maintains that not only is such a contribution justified but precedent does exist for such contributions. Reference was made to a \$70,000 dog fountain built in a park in the Yonge/St Clair area as part of a Section 37 contribution for height and density allowances for a new mixed-use development on Yonge Street at Pleasant Blvd. The Board understands that the dog fountain was being presented as an example of a certain type of public art and has no difficulty with the concept.

The Board notes that the development project in question commenced construction some time before the new OP came into full force (in July 2006). Hence, it would seem to represent a precedent for a Section 37 contribution for public art - even one for a project subject to the “old” OP. But as the parties well know, each hearing of the Board is *de novo*. This panel is not therefore constrained by any decision of any previous OMB panel.

After considering all the submissions, the Board finds that in the present instance Section 37 contributions are justified and asks the parties to negotiate an equitable settlement of this matter. The Board may be spoken to if such a settlement cannot be reached.

Issue 11: Do the proposed Official Plan and Zoning By-law amendments represent good planning?

and,

Issue 12: Are the proposed Official Plan and Zoning By-law amendments in the public interest?

Having considered the evidence presented, the Board finds in the circumstances of this case that “good planning” and the “public interest” can be determined by whether an open process has been followed and the concerns of all the stakeholders have been considered; whether the proposal is consistent with Provincial policy as expressed not only in the PPS and the local statutory planning documents but also in the *Planning Act* itself; and whether the proposed development is appropriate for the area and compatible with what is already on the ground. In other words, does the proposed development make sense on the subject site?

Ms Ferguson contends the proposed OPA and ZBA do not represent good planning and are not in the public interest and cites the reasons she has given above in arguing Issues 1 to 10 – generally that the proposal does not comply with the in force OP and Zoning By-law. The Board understands that she considers the development to be both too big and too tall, and to be therefore not compatible with what is already on the ground in the area.

Representing the proponent, Mr. Bousfield contends that the proposed OPA and ZBA represent good planning and are in the public interest because the proposed development is consistent with provincial land use policy as expressed in the PPS (specifically the policy on residential intensification in areas served by high level transit) and in the *Planning Act* itself (specifically, Sections 1.1 (a) to (e) and 2 (f) to (q)). Also speaking for the proponent, Mr. Glover offered supporting opinion evidence that the proposed development is compatible in height and built form with the other buildings in the area fronting on Yonge Street. Citing the long-standing example of the 3000 Yonge

Street towers, he maintains the proposed development will have no adverse impact on either the park to the east or the stable neighbourhood to the west.

Both the expert planners and the local residents agree that a multi-storey residential building should be built on the subject site. The question seems to be how large and more specifically how tall it should be. The Appellant's expert witnesses maintain 16-storeys will have no adverse impact on the neighbourhood and is consistent with provincial policy. City staff contends otherwise. The local residents appear generally to support the City's position.

Notwithstanding the fact that the proposal is generally consistent with the PPS and with the overall intent and purpose of both the old and new Official Plans, the Planning Act enjoins the approving authority (in this case, the Board) to ensure that the proposal also represents good planning and is in the public interest.

The Board finds the proposal generally represents good planning and is in the public interest. It also finds the proposed density is appropriate for this part of Yonge Street. However it finds the structure as proposed to be too tall for the subject site given the local built form context and will have an adverse impact on the stable neighbourhood to the west.

Issue 13: Are the form and content of the draft Official Plan amendment and Zoning By-law amendment appropriate?

The Board was asked not to rule on this issue since the Official Plan amendment and Zoning By-law amendment in Exhibit "2" (tabs 19 and 20) are not in final form.

Issues 14, 15 and 16 dealing with engineering and other technical matters concerning the proximity of the TTC underground operations were not raised at the hearing and have either been resolved or will be dealt with at the site plan approval phase. The Board did not hear any evidence nor has it made any findings on these issues.

Decision

After weighing all the evidence, the Board allows the appeal against the City's refusal to amend the (former) City of Toronto Official Plan and Zoning By-law 438-86. The Board will approve Official Plan and Zoning By-law amendments subject to the

height of the proposed structure not exceeding the height of the 3000 Yonge Street towers or 12 storeys, whichever is greater; the density not exceeding 6.3 times lot coverage; and the design of the revised structure continuing to conform to the City's angular plane parameters on its west and south faces.

At the request of the parties, the Board withholds its order until such time as final versions of the Official Plan and Zoning By-law amendments have been submitted for the Board's approval. Should no action be taken to finalize these instruments within 90 days of the issuing of this Decision, the appeals will be dismissed.

This Member remains seized and may be spoken to if difficulties arise.

"C. Hefferon"

C. HEFFERON  
MEMBER