

Ontario Municipal Board
Commission des affaires municipales
de l'Ontario



ISSUE DATE: July 20, 2015

CASE NO(S): PL131341

PROCEEDING COMMENCED UNDER subsection 34(11) of the *Planning Act*, R.S.O. 1990, c. P. 13, as amended

Applicant and Appellant:	High Park Bayview Inc.
Subject:	Amendment to Zoning By-law No. 438-86 – Refusal or Neglect of City of Toronto to announce a decision on the application
Existing Zoning:	R2 Z0.6 and R2 Z0.35
Proposed Zoning:	Site Specific (To be determined)
Purpose:	To permit the development of residential apartment buildings
Property Address/Description:	51-77 Quebec Avenue and 40-66 High Park Avenue
Municipality:	City of Toronto
OMB Case No.:	PL131341
OMB File No.:	PL131341
OMB Case Name:	High Park Bayview Inc. v. Toronto (City)

Heard: September 8 to 12, 2014 in Toronto, Ontario

APPEARANCES:

Parties

Counsel

High Park Bayview Inc.

J. Park, A. Frank

City of Toronto

R. Kallio

Marc Senderowitz, Jean Cormier,
Alexander Bernardino, Rishi Sharma

I. Flett

DECISION DELIVERED BY C. CONTI AND ORDER OF THE BOARD

INTRODUCTION

[1] This is the decision for an appeal by High Park Bayview Inc. (“Appellant”) regarding the failure of the City of Toronto (“City”) to enact an amendment to Toronto Zoning By-law No. 438-86 in order to redevelop a property at 51 to 77 Quebec Avenue and 40 to 66 High Park Avenue, Toronto to construct two 25 storey apartment buildings.

[2] The subject property is in the western part of the City of Toronto to the north of Bloor Street and west of Keele Street. The area is primarily residential with some commercial development characterizing Bloor Street. A large City-owned park, High Park, is located on the south side of Bloor Street, in the vicinity of the subject property.

[3] The subject property is approximately 2 hectares in size and is bounded by the High Park subway station on the south, Quebec Avenue on the west, and High Park Avenue on the east. Glenlake Avenue is located to the north of the property. The property contains two 20 storey apartment buildings, and two townhouse blocks, each containing eight units.

[4] The property is within an area of apartment buildings which extends northward from Bloor Street to Glenlake Avenue. The buildings generally range in size from 9 to 30 storeys. The areas to the north of Glenlake Avenue and west of Gothic Avenue are characterized by mainly low rise residential uses composed primarily of house form residential buildings.

[5] This appeal underwent a number of pre-hearing conferences through which parties and participants were identified, as well as procedures and issues for the hearing which were formalized through a Procedural Order. In addition to the appearances noted above, the following participants attended the hearing and provided evidence, Barbara Yarwood, Leslie Gooding, Chris Townsend, Barbi Lyn Lazarus, Drew Harvie, Jana Orac, Yves Fournier, Dennis Jones, Lorraine Cramp, and Lorrie McIntyre.

[6] At the beginning of the hearing Cheri DiNovo, MPP for Parkdale-High Park made a statement to the Board supporting the position of those opposed to the proposal.

MOTION TO ADJOURN

[7] Prior to the start of the hearing the Board was informed that the City would be seeking an adjournment. A notice of motion was filed on September 3, 2014 and a response was filed by the Appellant on September 5, 2014. It should be noted that according to Rule No. 63 of the Board's *Rules of Practice and Procedure* ("Rules") motions for adjournment without consent of the parties are required to be filed ten days in advance of the hearing date. The City's motion included a request that the Board abridge the time for serving the motion.

[8] The grounds for the City's motion were set out in the Motion Record (Exhibit 2) and in the oral submissions. The grounds for the motion indicate that City staff had been in discussions with the Appellant to attempt to settle all planning and other issues and reached an agreement on August 11, 2014. The proposed settlement was considered by City Council, but it was rejected on August 28, 2014. Council directed the City solicitor to oppose the Appellant's application at the Board hearing and retain outside consultants. The City maintained that it was not possible to retain and prepare an outside planner in time for the commencement of the hearing. In the interest of fairness Mr. Kallio requested the adjournment so that the direction of City Council could be carried out. He maintained that there would be little prejudice to the Appellant. He indicated that the Board encourages settlements and it was only the timing of the settlement discussions that resulted in the request for adjournment. He contended that a party should not be denied its rights in a hearing because of the length of settlement discussions.

[9] Mr. Kallio indicated that an adjournment of three months should be sufficient time for the City to obtain another planning witness and prepare its case for the hearing.

[10] The City's motion referred to Board Rule No. 3 and No. 6 which allow the Board to interpret its rules liberally to secure the just, most expeditious and cost effective determination of every proceeding on its merits. In addition the Board can vary its rules and procedural orders in order to ensure that the real questions at issue are determined in a just, most expeditious and cost effective manner.

[11] The City's motion was supported by an affidavit of Gregory Bryne, Senior Planner with the City.

[12] The Appellant opposed the motion to adjourn the hearing. The grounds for the response to the motion were set out in the Appellant's written response (Exhibit 3) and through oral submissions.

[13] The Appellant indicated that it had been pursuing approval of its application for approximately two years and had worked diligently to prepare for the hearing. The Appellant filed witness statements and evidence according to the schedule set out in the Procedural Order and worked to address all outstanding concerns and issues. Through discussions and some revisions to the proposal, a settlement of all of the City's issues identified on the issues list included in the Procedural Order was reached with City staff. The proposed settlement was rejected by City Council on August 28, 2014. At no point prior to August 29, 2014 was the Appellant advised that the City would be seeking an adjournment.

[14] The Appellant maintained that the request for an adjournment has been brought at the last minute and would be severely prejudicial. The other parties have prepared for the hearing as scheduled in accordance with the Procedural Order.

[15] The Appellant contended that the City could have prepared its case and secured witnesses in anticipation that the settlement might not be approved. The City had an obligation to prepare its case according to the provisions of the Procedural Order.

[16] An adjournment would cause significant prejudice to the Appellant and further delay a decision about the application.

[17] The Appellant maintained that the hearing should proceed as scheduled to consider the amended application.

[18] The Appellant relied on Board's Rule Nos. 61 to 65 to support the response to motion. The response was supported by an affidavit of Antonio Volpentesta, land use planner and Partner with Bousfields Inc.

[19] The Appellant also submitted a number of authorities to support its position.

[20] Marc Senderowitz, Jean Cormier, Alexander Bernardino, Rishi Sharma took no position on the motion, but were prepared to proceed with the hearing.

[21] After carefully considering the motion and the oral and written submissions, the Board gave the following oral ruling:

The Board has considered the motion and submissions of the parties. The Board must consider the motion to be a request for a last minute adjournment which under Rule No. 64 of the Board's Rules can be granted only in cases of unavoidable emergencies, such as illness. The failure of Council to approve the settlement reached with City staff does not fall into the category of an unavoidable emergency. Furthermore, the Board is concerned about potential prejudice to the other parties. Therefore, the Board is refusing the motion.

The Board's rules are in place to ensure procedural fairness to all parties. The decision in this appeal must be made on the planning merits of the proposal. The Board is confident that through the examination of the evidence provided by the other parties and the participants that there will be full consideration of all relevant planning issues.

[22] The Board's rules are very clear about requests for last minute adjournments. Rule No 64 states:

Emergencies Only: The Board will grant last minute adjournments only for unavoidable emergencies, such as illnesses, so close to the hearing date that another representative or witness cannot be obtained. The

Board must be informed of these emergencies as soon as possible.

[23] The Board determined from the submissions that the motion was a request for a last minute adjournment. While there is no definition in the Board's Rules about what constitutes a "last minute adjournment", in this case the Board determined that this was a last minute request because of the following factors.

[24] The dates for the hearing had long been established having been set in April of 2014. The Procedural Order for the hearing was approved by the Board on June 22, 2014 and it included the hearing dates and dates for filing lists of witnesses and witness statements which the parties maintained. The dates for filings had passed prior to the motion coming forward. The motion was filed less than the required ten days prior to the hearing date and required an abridging of time.

[25] The Board's Rules and the relevant Board jurisprudence are clear that last minute adjournments are only to be granted in cases of unavoidable emergencies such as illness. There was no unavoidable emergency in this case. Furthermore, in all of the authorities submitted in relation to the motion, the Board refused last minute adjournment requests.

[26] Mr. Kallio was correct in stating that the Board encourages settlement discussions, and the Board recognizes that the timing of the resolution of the City's issues in relation to the timing of City Council meetings resulted in the late adjournment request. Undoubtedly, it was expected that the settlement would be approved.

[27] While it may not have been desirable, the City could have made some contingency plans to prepare for the possibility that the settlement would not be approved by Council. Also, the scheduling of the hearing date may have better anticipated the timing between when there might be consideration of this matter by Council and the start of the hearing. This could have allowed for the adjournment request to be made with sufficient time before the hearing date that it would not be

considered as a last minute request. Alternatively, it may have provided sufficient time for the City to retain an outside planner.

[28] This hearing is governed by the Procedural Order which was adopted by the Board with the consent of the parties. The parties are obligated to comply with its provisions including the start date for the hearing. The evidence is that the other parties complied and filed documents according to provisions of the Procedural Order. The Board understands that the City did not file any witness statements and therefore the Board concludes that it did not plan to call any evidence. The Procedural Order in paragraph 19 states "No adjournments or delays will be granted before or during the hearing except for serious hardship or illness. The Board's Rules 61 to 65 apply to such requests."

[29] In addition, in refusing the motion the Board was aware that planning issues would be raised by Marc Senderowitz, Jean Cormier, Alexander Bernardino, Rishi Sharma and that they would be calling an expert witness to testify about planning matters. The Board was also aware that some of the participants had planning concerns. The Board determined that through the evidence of these witnesses and the Appellant's planning issues, as well as cross-examination of these witnesses by Counsel for the City that full consideration of the relevant planning matters could be achieved.

[30] Based upon all of the above factors, the Board denied the City's motion to adjourn the hearing.

THE PROPOSAL

[31] The proposed Zoning By-law Amendment is intended to put in place provisions to allow for redevelopment of portions of the subject property. The proposal involves the demolition of the two townhouse blocks on the property and the construction of a 25 storey apartment building in the location of each townhouse block. The two existing 20

storey apartment buildings will be retained. They contain a total of 659 residential units (Exhibit 7).

[32] Each proposed building will be constructed with a five storey podium, a twenty storey tower and a 6 metre (“m.”) mechanical penthouse. Street townhouse units are proposed at the ground level of each building. The two proposed buildings will contain a total of 538 residential units. The proposed gross floor area (“GFA”) of the two new buildings will be 39,300 square metres (“sq. m.”) The total proposed GFA with the existing buildings will be 84,868 sq. m.

[33] Existing access locations, one from each of High Park Avenue and Quebec Avenue will essentially be maintained and will provide access to the proposed buildings and the underground parking facility. However, the current drive-through access between Quebec Avenue and High Park Avenue will be eliminated. A total of 469 new parking spaces will be provided on site as well as 565 spaces for bicycles. The proposal includes the construction of a new indoor amenity building at the north end of the property that will include an indoor swimming pool. A total of 1,435 sq. m. of indoor amenity space will be provided if the proposal is constructed.

ISSUE

[34] The main issue for this appeal is whether or not the proposed Zoning By-law Amendment is appropriate and would provide for a development that is compatible with the surrounding area. As is the case with all Zoning By-laws, through s. 24 of the *Planning Act* it must comply with the provisions of the Official Plan. Provisions of the Toronto Official Plan require new development to respect and reinforce the character of the neighbourhood. This issue and others raised during the course of the hearing are discussed in the remainder of this decision.

EVIDENCE

[35] The Board heard evidence in support of the Appellant from Robert Glover, Alun Lloyd, Derek Coleman, Jason Crowder, and Antonio Volpentesta. Mr. Glover is a Partner with Bousfields Inc. He is a professional Architect and Registered Professional Planner who has over 35 years of experience. He was qualified by the Board as an expert in urban design matters.

[36] Mr. Lloyd is Principal of BA Consulting Group Ltd. Mr. Lloyd is a Professional Engineer who has more than 25 years of experience in transportation planning. He was qualified by the Board as an expert in transportation planning and engineering matters.

[37] Dr. Coleman is an ecologist and Registered Professional Planner with over 40 years of experience. He was qualified by the Board as an expert in ecological, natural heritage and environmental planning matters.

[38] Mr. Crowder is a Professional Engineer and an Associate with Terraprobe Inc. Mr. Crowder has more than ten years of professional geotechnical experience. He was qualified by the Board to provide opinion evidence in geological matters.

[39] Mr. Volpentesta is a Registered Professional Planner and Partner at Bousfields Inc. He has more than 25 years of professional experience in the planning field. He was qualified by the Board to provide opinion evidence in land use planning matters.

[40] The Board heard evidence on behalf of Marc Senderowitz, Jean Cormier, Alexander Bernardino, and Rishi Sharma from Michael Manett, Principal of MPLAN Inc. Mr. Manett is a Registered Professional Planner who has more than 40 years of experience. He was qualified by the Board as an expert in land use planning.

[41] The City provided no evidence at the hearing, but Mr. Kallio provided argument to support Mr. Manett's evidence.

[42] The Board heard evidence in opposition to the proposal from the participants, Barbara Yarwood, Leslie Gooding, Chris Townsend, Barbi Lyn Lazarus, Drew Harvie, Jana Orac, Yves Fournier, Dennis Jones, Lorraine Cramp, and Lorrie McIntyre.

RELEVANT FACTS

[43] Based upon the submissions of the parties and participants, the Board has determined that the following facts are relevant to this appeal.

[44] The subject property is designated as Apartment Neighbourhoods in the Toronto Official Plan. In s. 2.3.1.1 of the Official Plan, it states, "*Neighbourhoods and Apartment Neighbourhoods* are considered to be physically stable areas. Development within *Neighbourhoods and Apartment Neighbourhoods* will be consistent with this objective and will respect and reinforce the existing physical character of buildings, streetscapes and open space patterns in these areas" (Exhibit 6 A, Tab 6, p. 103).

[45] The Official Plan identifies Centres and Avenues as the main areas where residential growth will be focused (Exhibit 6A, Tab 6, p. 102). The subject property is not located in a Centre or on an Avenue, although Bloor Street located south of the property is an Avenue.

[46] In s. 4.2 of the Official Plan it states, "*Apartment Neighbourhoods* are distinguished from low rise *Neighbourhoods* because of a greater scale of buildings is permitted and different scale-related criteria are needed to guide development" (Exhibit 6A, Tab 6, p. 138).

[47] Through the Official Plan, Apartment Neighbourhoods are considered stable areas where significant growth is generally not anticipated. However, the Official Plan indicates that there may be opportunities for additional townhouses or apartments on underutilized sites and the criteria to evaluate these situations are set out in the Official Plan. The policies in s. 4.2 of the Official Plan are relevant. Criteria for development in

Apartment Neighbourhoods and development criteria are set out in s. 4.2.2 and 4.2.3. Section 4.2.3 sets out criteria for evaluating if additional development should be permitted on underutilized sites. This section states the following:

3. Significant growth is generally not intended within developed *Apartment Neighbourhoods*. However, compatible infill development may be permitted on a site containing an existing apartment that has sufficient underutilized space to accommodate one or more new buildings while providing good quality of life for both new and existing residents. Infill development that may be permitted on a site containing an existing apartment building will:
 - a) meet the development criteria set out in Section 4.2.2 for apartments;
 - b) maintain an appropriate level of residential amenity on the site;
 - c) provide existing residents with access to the community benefits where additional height and/or density is permitted and community benefits are provided pursuant to Section 5.1.1 of this Plan;
 - d) maintain adequate sunlight, privacy and areas of landscaped open space for both new and existing residents;
 - e) organize development on the site to frame streets, parks and open space in good proportion, provide adequate sky views from the public realm, and create safe and comfortable open space;
 - f) front onto and provide pedestrian entrances from an adjacent public street wherever possible;
 - g) provide adequate on-site, below grade, shared vehicular parking for both new and existing development, with any surface parking appropriately screened;
 - h) preserve and/or replace important landscape features and walkways and create such features where they did not previously exist;
 - i) consolidate loading, servicing and delivery facilities; and
 - j) preserve or provide adequate alternative on-site recreational space for residents.

(Exhibit 6A, Tab 6, p. 139).

[48] The Built Form policies in s. 3.1.2 of the Official Plan are also relevant to the proposal. They require new development to fit within the existing and/or planned context

of the area. The Built Form policies identify a number of provisions for the design of buildings and sites that apply to the proposal (Exhibit 6A, Tab 6, pp. 115 to 117).

[49] The policies of s. 3.1.3 provide guidance for the design of Tall Buildings. Policy 3.1.3.1 requires tall buildings to be designed with three parts, integrated into a single whole, consisting of a base, middle and top. Section 3.1.3.2 requires proposals for tall buildings to address key urban design considerations (Exhibit 6A, Tab 6, pp. 118-119).

[50] The subject property is zoned R 2 0.6 in Toronto Comprehensive Zoning By-law No. 438-86 (Exhibit 6A, Tab 8). The location of the townhouses on the property is zoned R 2 0.35. The property is also subject to Zoning By-law No. 22621 which defines building envelopes for the existing 20 storey buildings on the property and also for the existing townhouses (Exhibit 6A, Tab 9).

[51] The City's Tall Buildings Guidelines apply to the design of the proposed 25 storey buildings (Exhibit 6A, Tab 10).

ISSUES, ANALYSIS AND FINDINGS

[52] The Board has carefully considered all of the evidence and submissions of the parties and participants including the authorities. The Board has also reviewed the issues on the issues list included in the Procedural Order.

[53] The Appellant maintains that the subject property is an appropriate site for the proposed development. According to the Appellant's evidence, the proposal complies with all policies in the Official Plan and appropriately addresses the City's Tall Buildings Guidelines. The subject property is close to transit, being adjacent to a subway station and is an appropriate site for residential intensification. The Appellant maintains that the proposal fits within the context for the area and that the proposed Zoning By-law Amendment should be approved.

[54] Marc Senderowitz, Jean Cormier, Alexander Bernardino, and Rishi Sharma maintained that the proposal does not comply with the provisions of the Official Plan, it does not fit within the context of the area and the Zoning By-law Amendment should be refused. They maintained that the neighbourhood has a specific character and mix of high rise buildings with low rise buildings which creates a sense of space and views that would be disturbed by the proposal. They maintain that the proposal does not fit within the existing and planned context.

[55] The evidence of the participants supported this position. The participants also raised a number of other issues, including potential environmental impacts on High Park and an associated Area of Natural and Scientific Interest (“ANSI”), concerns for increased traffic, shadow and wind impacts, impacts from the increased population, lack of capacity in area schools, and the setbacks of the proposed buildings.

[56] After considering all of the evidence, the Board has determined that the issues that are critical to making this decision are those discussed in the sections below. All issues of the parties included on the issues list, while they may not be specifically mentioned have been considered in the following analysis. The Board’s findings are provided where appropriate.

Character of the Area

[57] A key factor for the Board in making this decision involves determining if there is a specific established character of the subject area that would be offended by the proposal and that must be maintained through the provisions of the relevant planning documents. As noted above, s. 2.3.1.1 of the Official Plan requires the proposed development to respect and reinforce the existing physical character of buildings, streetscapes and open space patterns in the area. In addition s. 3.1.2.1 requires the development to be located and organized to fit within its existing and/or planned context.

[58] Mr. Manett contended that the subject area is characterized by the mix of high rise buildings with low rise buildings and that the resulting spacing of the buildings is a key factor in defining the character. Mr. Manett further maintained that there is symmetry in the manner that the whole apartment neighbourhood, from Montview Avenue and Gothic Avenue, and from Bloor Street to Glenlake Avenue has developed. He contended that in the middle block of the neighbourhood there are five high rise buildings, in the adjacent blocks to the east and west there are four high rise buildings in each and in the outside blocks there are three high rise buildings. Mr. Manett indicated that to permit the proposal would create a block with six tall buildings adjacent to the centre block which would break the symmetrical pattern. Mr. Manett provided photographic evidence to illustrate this pattern of tall buildings and low rise residential buildings in the Apartment Neighbourhood (Exhibit 28).

[59] Mr. Manett maintained that the existing mix of high rise buildings with townhouses has established the context into which the development must fit in accordance with s. 3.1.2.1 of the Official Plan. Furthermore, it is this physical character which must be respected and reinforced through the proposed development in accordance with s. 2.3.1.1 of the Official Plan.

[60] Many of the participants stressed the need to maintain the existing character of the area. They contended that the addition of two tall buildings to the site would disrupt the mix of low rise and high rise buildings and create massing that would disrupt views and the sense of space between buildings.

[61] The Appellant contended that there is no particular significance to the pattern of buildings in the apartment neighbourhood. The Board heard that most of the existing apartment buildings were constructed in the 1960's and 1970's. Mr. Volpentesta maintained that the existing pattern of tall buildings with large setbacks and interspersed low rise buildings is an older form of development (tower in the park) that is not supported by current City policy and guideline documents.

[62] Mr. Volpentesta contended that high rise apartment buildings are part of the character of the area, and the proposed buildings are of similar scale to the existing buildings.

[63] After reviewing the evidence, the Board has concluded that no applicable provisions of the Official Plan or City guideline documents require that a specific mix of structures must be maintained in order to respect and reinforce the existing physical character or to fit within the context. High rise apartment buildings have been part of the character of this neighbourhood for approximately 40 years. The proposed buildings are within the range of height of the other apartment buildings in the area. According to the evidence there are other buildings ranging up to 30 storeys in height within the Apartment Neighbourhood (Exhibit 19, p. 4).

[64] Furthermore, the evidence indicates that the tower portion of the proposed buildings will have a 750 sq. m. floorplate to be built in the location of the existing townhouses. While the buildings will be taller than the townhouses, the spacing between buildings will still be substantial and will not be significantly different from the existing situation. The proposal should still maintain a sense of space between buildings.

[65] With regard to the issue of maintaining the existing symmetry of high rise buildings, the Board heard that the fourth high rise building in the block that includes the subject property was not constructed until 2005 (Exhibit 19, p. 3). If there is some symmetry that is part of the neighbourhood design and should not be disrupted, it is a relatively recent phenomenon. The Board was not presented with any planning provisions that would demonstrate that the symmetry is part of a neighbourhood structure that should be maintained.

[66] The requirements of the Official Plan regarding fitting with the context and respecting and reinforcing neighbourhood character allow for some interpretation. In the subject Apartment Neighborhood, there are two main built forms, namely high rise

apartment buildings and two storey townhouses. The Apartment Neighbourhood is bordered on three sides by mainly two and three storey houses. The proposal is not introducing a new built form into the neighbourhood; it is simply replacing one established built form with another. Substantial separation between buildings will be maintained.

[67] Mr. Manett seems to be applying an interpretation to the Official Plan provisions whereby a similar form and footprint of each existing building must be retained in order to respect and reinforce the neighbourhood character. The Board finds that this narrow view is not a reasonable interpretation of these provisions of the Official Plan. For Apartment Neighbourhoods the Official Plan requires the proposal to respect and reinforce the existing physical character, not to maintain a specific mix or arrangement of buildings.

[68] In consideration of the above, the Board agrees with the conclusions of Mr. Volpentesta that, assuming other provisions of the Official Plan can be maintained, the two proposed high rise building can be developed in a manner that respects and reinforces the physical character of the area.

Intensification

[69] There was disagreement among the parties about the degree of intensification that would be appropriate on the site. Mr. Manett contended that since the site is not on an Avenue or in a Centre that only a modest form of intensification might be appropriate. He noted that a 14 storey building is being constructed to the southeast of the site on Bloor Street, and it is on an Avenue and required the completion of a segment study before it could be approved. He maintained that the type of intensification that is being proposed on the site is excessive and should only be considered through a secondary plan.

[70] The Appellant maintained that the site is an appropriate location for

intensification. The Board heard that the provisions of the Provincial Policy Statement ("PPS") and Growth Plan for the Greater Golden Horseshoe ("Growth Plan") encourage intensification. Mr. Volpentesta testified that the site is an appropriate area for intensification under the PPS and Growth Plan.

[71] The Board heard that Official Plan polices encourage growth in proximity to areas well served by transit. Furthermore, Mr. Volpentesta testified that s. 2.2.3.6 of the Growth Plan encourages intensification throughout the built up area. He indicated that under the Growth Plan the site is within a major transit station area which is defined as the area within 500 m. of a transit station (Exhibit 6A, Tab 5, p. 79), and that these areas are considered prime locations for intensification. He indicated that the subject property is within the 500 m. of the High Park subway station and, therefore, it should be considered to be within a major transit station area. He indicated that the City's Official Plan predates the Growth Plan and therefore major transit stations areas are not recognized in the Official Plan. However, Mr. Volpentesta maintained that s.2.2.3.6(e) of the Growth Plan identifies major transit station areas as key locations for intensification (Exhibit 6A, Tab 5, p. 79) and the proximity of the site to the High Park subway station makes it a prime location for appropriate intensification.

[72] Mr. Manett disagreed with this position. He noted that there are numerous subway stations in the City and not all are necessarily appropriate locations for intensification. He indicated that intensification around transit stations should be considered through more detailed studies to determine those transit station areas where intensifications may be appropriate. He also noted that the Official Plan is intended to be the main vehicle for implementation of the PPS and it does not identify the site as being in an area where growth is proposed. Mr. Manett contended that retaining the existing townhouses on the property does not represent an underutilization of the site. He maintained that a more modest form of intensification may be appropriate.

[73] A number of participants also expressed concern about the degree of intensification proposed by the development. They indicated that it would be an

overdevelopment of the site and greatly increase the population residing on the property. They contended that the proposal would cause numerous negative impacts on a stable neighbourhood.

[74] The Board recognizes that the area has not been identified for intensification in the Official Plan. However, the Board cannot ignore s. 2.2.3.6(e) of the Growth Plan that directs municipalities through their official plans to recognize major transit station areas as one of the types of areas that are to be "...a key focus for development to accommodate intensification" (Exhibit 6A, Tab 5, p.71). Furthermore, the subject site is immediately adjacent to the subway station. Given its location, if there is any area within the Apartment Neighbourhood that should be considered for intensification, it is this site.

[75] The Board heard concerns that if the high rise buildings are approved on this site, it could lead to many other proposals for high rises on other properties within the Apartment Neighbourhood. While there may be some potential for this to occur, all proposals must be considered on their own merits and the other properties are not in such close proximity to the subway station.

[76] Furthermore, the proposed tall buildings will be constructed in the location of the existing townhouses. Only two new buildings are being proposed and substantial spatial separation between buildings will be maintained. The proposal will maintain the same number of residential buildings on the property and will not result in excessive coverage of the site.

[77] With regard to concern for precedent, no Official Plan Amendment or area study was required by the City for the proposal. If there were a concern about approval of this application setting a precedent or for similar proposals spreading to other areas, the City could have ordered a Secondary Planning exercise or area study to consider the broader implications of this type of application.

[78] With regard to the potential for intensification around other subway stations, as

Mr. Park noted in his argument, there are different circumstances for those stations. Some may be adjacent to areas designated as Neighbourhoods where an Official Plan Amendment would be required if intensification were proposed in recognition of those locations as a major transit station areas.

[79] Based upon the above, the Board cannot conclude that the proposal represents an overdevelopment of the site. The Board finds that intensification of the site is appropriate as long as the proposal meets the requirements of other relevant planning provisions.

Appropriateness of Site for Infill

[80] Having concluded that the proposal can be implemented while respecting and reinforcing the existing physical character of the area, and that the site is suitable for appropriate intensification, the Board must now determine if the site is an appropriate location for infill development in order to comply with s. 4.2 of the Official Plan.

[81] As noted earlier s. 4.2 indicates that compatible infill development may be permitted on underutilized sites in Apartment Neighbourhoods if the provisions of s. 4.2.2 and 4.3.3 can be met. Through the evidence of Mr. Glover and Mr. Volpentesta the Appellant maintained that the requirements of these sections have been met.

[82] With regard to s. 4.2.2, the Board heard that there is no need for stepping down the tall buildings in this case because there are existing tall buildings between the proposed buildings and the low-rise neighbourhoods. Mr. Glover described the results of a shadow study (Exhibit 11) that had been completed for the proposal. He stated that shadowing resulting from the proposal is mostly contained on the property and within the streets. He maintained that shadow impact is extremely limited. Mr. Glover indicated that the proposed parking associated with the buildings and the proposed bicycle parking meets the City's requirements and they are appropriate. Mr. Glover testified that all provisions of s. 4.2.2 have been met.

[83] With regard to s. 4.2.3 of the Official Plan, Mr. Glover maintained that through the proposal a good quality of life will be maintained for both the existing and future residents. As required in s. 4.2.3(b) Mr. Glover indicated that an appropriate level of residential amenity will be maintained on site, particularly with the construction of the recreation facility at the north end of the property that will contain an indoor pool. The Board heard that appropriate community benefits would be provided as required in s. 4.2.3(c) and that matters have been agreed upon pursuant to s. 37 of the Act. The proposal would maintain adequate light and privacy and areas of landscaped open space. The proposed buildings would be organized to frame streets and other spaces in good proportion and provide for adequate sky views and comfortable spaces. The evidence of both Mr. Glover and Mr. Volpentesta was that all provisions of s. 4.2.3 had been met by the proposal and that the site qualified as one where appropriate infill could be accommodated.

[84] The evidence of Mr. Manett maintained that the site should not be considered as underutilized. He expressed concern about the massing and setbacks of the proposed buildings. While he did not address the provisions of s. 4.2.2 and 4.2.3 in detail, he maintained that the proposed tall buildings would overwhelm the site.

[85] The participants expressed concern about shadowing, the massing of the proposed buildings and degree of setback from the streets. The Board also heard concerns about the loss of the existing outdoor amenity area containing the outdoor swimming pool.

[86] The Board interprets the above provisions of the Official Plan as providing the criteria in s. 4.2.2 and 4.2.3 to evaluate if a proposal constitutes compatible infill development. After considering the evidence the Board concludes that the requirements of these sections have been met.

[87] The Board heard some misgivings about the shadow study that were raised by the participants. Concerns were raised in particular about shadows being cast on

outdoor amenity spaces. However, the shadow study indicates that any impact on the outdoor amenity space is temporary and limited. After reviewing the submissions, the Board agrees with Mr. Glover's opinion that the additional shadow created by the proposed tall buildings is acceptable.

[88] With regard to concerns about massing and setbacks, the Board considers these issues to be in part a result of the building being designed to meet current standards, in particular, the Official Plan's Built Form policies in s.3.1.2 and the City's Tall Building Guidelines. Section 3.1.2.3(a) of the Official Plan requires the massing of new buildings to frame adjacent streets and open spaces in a way that respects the street proportion. The Tall Buildings policies in s. 3.1.3.1 of the Official Plan require tall buildings to be designed in three parts, with a base, shaft and a top (Exhibit 6A, Tab 6, p. 119). The Board heard that the setbacks of the buildings from the streets and the five storey podium are a response to these requirements. The setbacks and massing of the existing high rise buildings were determined under older standards and would not be acceptable under current provisions.

[89] Mr. Flett in his argument contended that the word "underutilized" should be interpreted as applying to sites that are vacant or buildings that are in a state of disrepair. He referred to use of the word in a number of definitions in the PPS (Exhibit 6A, Tab 3, p. 38, 42, 47). The Board has reviewed these provisions and none provide a definition of the word "underutilized". The word is simply being used in the definition of other terms. For example the PPS definition of "residential intensification" identifies a number of locations or types of areas that might be subject to intensification including, "...the development of vacant or underutilized lots within previously developed areas..." (Exhibit 6A, Tab 3, p. 47). This is not saying that underutilized lots must be vacant lots, but that both vacant or underutilized lots may be locations for intensification. The reference to these sections in Mr. Flett's argument and his references to authorities do not lead the Board to conclude that the term "underutilized" only applies to lands that are vacant or in disrepair.

[90] After considering all of the evidence, the Board finds that the proposal meets the criteria in s. 4.2.2 and 4.2.3 of the Official Plan and the site is suitable for compatible infill.

Built Form Policies and Tall Buildings Guidelines

[91] As noted earlier, the proposal must conform to the Built Form policies of the Official Plan in s. 3.2.1 and 3.1.3. The proposal must also be designed to address the City's Tall Buildings Guidelines.

[92] The evidence of Mr. Glover and Mr. Volpenesta was that the Built Form policies of the Official Plan and the requirements of the Tall Buildings Guidelines have been met by the proposal. They maintained that the proposed buildings fit within the existing and planned context. The location of the buildings will create a good street frontage as required in s. 3.1.2.1(a), the building entrances will be clearly visible and all other requirements of s. 3.1.2.1 have been met.

[93] Mr. Glover indicated that policy 3.1.2.2 was a focus of the design and as result the east/west drive through across the site has been eliminated. Servicing will be provided in a way that will not have negative impacts. The direct vehicular access to the street that is in front of the townhouse blocks will be eliminated. According to Mr. Glover, all requirements of this section have been met.

[94] With regard to s. 3.1.2.3 Mr. Glover indicated that the buildings have been brought to the street in accordance with s. 3.1.2.3(a) and that the articulation of the buildings reflects the street widths. He indicated that the design elements of the building with step backs and the podium respond to the requirements of s. 3.1.2.3(b). Mr. Glover indicated that the scale and transition of the proposed buildings are appropriate, that the proposed buildings exceed the requirements for building separation, that the impacts of shadowing and wind have been studied and are limited, and all other requirements of this section have been met by the proposal.

[95] It was Mr. Glover's opinion that the requirements of s. 3.1.2.4, 3.1.2.5 and 3.1.2.6 had also been fulfilled by the proposal. He noted that the design provides appropriate outdoor and interior amenity space.

[96] Mr. Glover addressed the Built Form-Tall Buildings policies in s. 3.1.3 of the Official Plan. He indicated that each tall building will consist of three parts as required in s. 3.1.3.1, the podium comprising the base, the tower as the middle and the mechanical penthouse comprising the top. He maintained that the five storey podium responds appropriately to the surrounding area, the tower portion of the building is more slender than most of the other high rise buildings in the area, and the mechanical penthouse is integrated into the design and contributes to the skyline.

[97] Mr. Glover maintained that the proposal also addresses policy 3.1.3.2 in that the design meets the built form policies of the Official Plan, the proposal fits with the structure of the Apartment Neighbourhood, the proposal fits within the existing and planned context, it takes into account the typography of the site and other buildings, it provides high quality open space areas and it meets the other goals and objectives of the Official Plan.

[98] In Mr. Glover's opinion all requirements of the Built Form policies of the Official Plan are met by the proposal.

[99] Mr. Glover also addressed the provisions of the City's Tall Buildings Guidelines (Exhibit 6A, Tab 10). He indicated that the guidelines discourage the "tower in the park" type of development, which is the pattern of development that characterizes the Apartment Neighbourhood. Mr. Glover noted that the Guidelines discourage tall buildings with elongated floor plate which characterize many of the existing apartment buildings in the area. He indicated that the proposed buildings fit within the context of the area, they have been placed to frame the street edges and the entrances are on public streets. All of these elements respond to the Guidelines. The site servicing, access and parking for the buildings has been designed according to s. 2.3 of the

Guidelines.

[100] The Guidelines indicate that buildings should be designed with a base, middle and top. As noted above, these parts have been incorporated into the design. Mr. Glover stated that the floor plate of the tower portion of the building has been limited to 750 sq. m. which is in keeping with the Guidelines. He indicated that the visual impact of the buildings will be limited through the step backs. He maintained that the separation between the towers is greater than the 25 m. recommendation in the Guidelines. Wind impacts have been studied (Exhibit 6A, Tab 15 and Exhibit 6B, Tab 23) and have been found to be acceptable as required in the Guidelines.

[101] In Mr. Glover's expert opinion the proposal appropriately addresses all provisions of the Tall Buildings Guidelines.

[102] As noted earlier, Mr. Manett contended that the proposal represents an overdevelopment of the site and that it is not appropriate to locate additional tall buildings on the property. He maintained that the massing of the buildings will have a negative impact on street proportion and that the five storey podium is not appropriate for the area. He maintained that the existing context with the pattern of tall buildings and low rise buildings should be maintained and that the proposal would break this context.

[103] The Board has already found in this decision that maintaining a specific pattern of development or mix of building types is not required, that intensification of the site is appropriate, and that the site qualifies as an infill site if other relevant policies are met.

[104] The Board considers the concerns raised by Mr. Manett about massing and the podium and by a number of participants about permitting more tall buildings on the property, to be to a large extent an expression of interest in maintaining the "tower in the park" type of structure for the area. Mr. Glover's testimony which is the only expert urban design evidence before the Board was that the proposed built form is appropriate and that the podium respects the street proportion. The Board notes that there is

articulation of the building at the third storey.

[105] Furthermore as indicated in the Appellant's evidence, the tower in the park type structure is discouraged by current policies and by the Tall Buildings Guidelines.

[106] Other issues raised by participants such as shadow and wind impacts have been addressed by the Appellant through studies.

[107] Based upon a consideration of all of the evidence, the Board concludes that the evidence provided by Mr. Glover and Mr. Volpentesta demonstrates that the requirements of the Built Form policies in the Official Plan have been met by the proposal, and the Tall Buildings Guidelines have been appropriately addressed.

Traffic, Parking, Bicycle Spaces and Site Circulation

[108] Through the evidence of Mr. Lloyd, the Appellant addressed potential issues from increased traffic caused by the proposal and also vehicular and bicycle parking requirements. He explained that a Traffic Impact Study (Exhibit 13, Attachment C) had been completed for an earlier version of the proposal which considered more residential units. Mr. Lloyd indicated that the results of the study were conservative. He indicated that the study considered traffic growth from projects that had been approved, but not yet built, assumed 1% growth from development outside of the area and projected traffic volumes from the project itself. The study found that the changes in traffic resulting from the proposal are expected to be relatively small and that traffic operations in the area will continue at an acceptable level.

[109] Mr. Lloyd indicated that City staff had accepted the traffic study.

[110] Mr. Lloyd also conducted a parking analysis for the proposal that reviewed the existing parking spaces on the property and considered additional requirements for the proposal. He indicated that the existing parking areas will be retained and that additional

spaces will be constructed underneath the proposed buildings with all of the parking garages connected.

[111] Mr. Lloyd stated that parking requirements for the property are included in By-law No. 22621 which specifies 1.25 spaces per unit. He indicated that this is an older by-law which does not necessarily reflect current requirements. The study determined that the parking facilities for the existing buildings are somewhat underused and that parking demand for the existing buildings of 0.53 spaces per unit is more reasonable.

[112] With regard to the proposed buildings Mr. Lloyd stated that City parking standards are based upon proximity to transit. The standard that applies to subway corridors was applied to the site. Also, some consideration was given to the parking requirements for rental units versus condominiums. As a result of the analysis it was determined that 859 parking spaces including 97 visitor spaces are required for the proposal. The current plans provide 860 parking spaces.

[113] Mr. Lloyd indicated that City staff has accepted the parking proposal. He noted that some parking spaces in the existing parking facilities do not meet current standards and exemptions need to be incorporated into the By-law for these spaces.

[114] With regard to requirements for bicycle spaces, Mr. Lloyd stated that the proposal will conform to version 2 of the Toronto Green Standards of one bicycle space/unit. He referred to a table in his evidence showing that the requirements are for 538 total spaces and 565 spaces will be provided (Exhibit 14, p. 9). In Mr. Lloyd's opinion, the proposal meets the City's requirements for bicycle parking and it is appropriate.

[115] Mr. Lloyd also described the site circulation plans for the proposal. He indicated that there will be a number of improvements from the existing situation, including providing for interior areas for garbage pick-up and breaking up the surface parking areas with landscaping.

[116] Mr. Lloyd maintained that the revised proposal addressed all of City's staff's comments.

[117] The Board has reviewed the submissions related to traffic, parking, bicycle spaces and site circulation. The Board finds that they appropriately address all of the requirements that have been provided to the Board in the evidence and are acceptable.

Natural Heritage and Environmental Concerns

[118] Concerns about potential impacts of the proposal on High Park and an ANSI, as well potential impacts on surface and groundwater features had been included in the issues list and were expressed in the evidence of some participants. These issues were addressed through the evidence of Dr. Coleman and Mr. Crowder.

[119] The Board heard that Dr. Coleman prepared a Natural Heritage Impact Study (Exhibit 6A, Tab 22) to assess the impacts of the proposal on natural heritage features. He explained that an ANSI has been identified in a portion of High Park associated with a Black Oak savannah. He indicated that through the provisions of the PPS the development cannot cause negative impacts on the ANSI. An area at the south portion of the subject property is within 120 m. of the ANSI which under the PPS is considered adjacent land. Dr. Coleman also testified that there are five Black Oak trees on the subject property. He indicated that there are some larger specimens in the northern part of the property and smaller trees in the southern part. He stated that the trees in the northern part of the property will be retained while those in the southwest part of the property will be removed.

[120] The Board heard that the removal of these trees is not considered to be significant. Furthermore, the Natural Heritage Impact Study determined that the proposal would have no impact on the ANSI.

[121] Dr. Coleman indicated that bird surveys had been undertaken as part of the

Natural Heritage Impact Study. Only four species of bird were identified on the site. He indicated that the potential for bird strikes on the proposed buildings was identified as a concern. Bird strikes on the existing buildings on the site were monitored over a period of 50 days and none were recorded. Dr. Coleman indicated that the proposed buildings have been designed so that they do not have highly reflective surfaces and large windows in order to avoid bird strikes. He stated that the design meets the City's Tier 1 Green Standard. He concluded that all possible steps have been taken to deal with this issue.

[122] Dr. Coleman indicated that the Black Oak savannah in High Park is maintained through a program of periodic prescribed burns. While this area is well removed from the site, Dr. Coleman recommended that the site's property manager should be notified when these burns are about to occur in order to inform the residents of the property.

[123] Dr. Coleman concluded that the proposal does not cause any negative impacts under the PPS and is consistent with PPS requirements. He stated that the proposal conforms to the provisions the Official Plan which incorporates the PPS natural heritage policies.

[124] Dr. Coleman indicated that the City retained Golder Associates to conduct a peer review of the Natural Heritage Impact Study and which confirmed the conclusions of study.

[125] Issues had been raised about negative impacts resulting from the increased use of High Park as a result of the proposal. Dr. Coleman indicated that the expected increase in visits to the dog park in High Park had been overestimated in the participants' evidence and that the park should be able to accommodate the increased use.

[126] Dr. Coleman concluded that all provisions of the Official Plan, the PPS and the issues related to natural heritage in the issues list and raised in evidence had been

satisfactorily addressed.

[127] Mr. Crowder carried out a geological and hydrogeological review of the proposal (Exhibit 18). He concluded that the proposed buildings will not affect the groundwater table. He indicated that the proposal will cause a minor increase in impervious area of the property, but that the developer is required to retain the first 5 millimetres of runoff on the site. Therefore groundwater recharge will not be affected. He stated that there is no concern that there will be impacts from the proposal on Grenadier Pond in High Park. Dr. Coleman's evidence supported this conclusion.

[128] The Board has reviewed the evidence regarding potential impacts on natural heritage and environmental matters. The expert evidence in this area is uncontradicted.

[129] The Board finds that all natural heritage issues have been addressed appropriately and the proposal complies with the Official Plan and is consistent with s. 2.1 of the PPS.

Lobbyist Issue

[130] During the qualification of Mr. Volpentesta, Mr. Flett raised a concern about the ability of Mr. Volpentesta to provide the Board with independent, objective testimony in this matter because he is registered on the City's Lobbyist List. He provided evidence of two meetings (Exhibit 21 and 22) of Mr. Volpentesta with City Councillors, one of which involved the development of the property on Bloor Street, to the southeast of the subject property.

[131] Mr. Flett contended that Mr. Volpentesta should have disclosed that he is a registered lobbyist and that he had participated in these meetings. Mr. Flett maintained that these activities called into question Mr. Volpentesta's ability to provide independent, objective evidence on the Appellant's proposal to the Board. He provided two authorities to support his position.

[132] In response to questions from Mr. Flett and Mr. Kallio, Mr. Volpentesta stated that he registered as a lobbyist out of an abundance of caution. He maintained that he at no time took an advocacy position when meeting with City Councillors and that he always attended these meetings with other people. Furthermore, he stated that many other individuals from his firm and from other consulting companies register as lobbyists.

[133] Mr. Park objected to the concern raised by Mr. Flett. He contended that Mr. Flett has raised this concern because the above-noted meetings were not disclosed in Mr. Volpentesta's witness statement. However, he maintained that not all meetings need to be listed in the witness statement. He maintained that Mr. Volpentesta has the qualifications to provide expert testimony and that should be the basis for qualifying him and hearing his evidence.

[134] Mr. Kallio indicated that he had no concern about qualifying Mr. Volpentesta. He indicated that City Council has required registration of lobbyists in recent years in order to ensure transparency regarding meetings with Councillors. He stated that professionals must be impartial because of their codes of conduct and they make their own determinations about whether or not they can support a project. He indicated that being registered as a lobbyist with the City should not exclude an individual from appearing as an expert witness before the Board.

[135] After hearing the submissions of the parties and reviewing the authorities, the Board qualified Mr. Volpentesta as an expert in land use planning, but indicated that the parties could address this matter further in their submissions. The Board determined that if there were a legitimate issue regarding Mr. Volpentesta's independence, this could be dealt with through the weight given to his evidence.

[136] However, after fully considering all of the submissions, the Board finds no basis for limiting the weight given to the evidence provided by Mr. Volpentesta.

[137] The Board understands that the requirement for the Registration of Lobbyists is set out in Chapter 140 of the *Toronto Municipal Code* which the Appellant included as Tab 3 of its Book of Authorities. The definitions in this Chapter of the code can capture the activity of a consultant who attends meetings with City Councillors to discuss planning applications. After reviewing this section, the Board understands that through an abundance of caution Mr. Volpentesta felt a need to register as a lobbyist.

[138] From the submissions, the Board understands that the intent of this section of the code is for the date and purpose of these meetings to be recorded so that there is transparency. The Board is aware that planning consultants may meet with City staff on a regular basis concerning an application and may have meetings with Councillors. This is not an unusual occurrence. The Board cannot conclude that a simple meeting of a consultant with a municipal Councillor affects the independence of that consultant.

[139] The Board agrees with Mr. Kallio's submission that experts are obligated to arrive at their own objective opinions through their professional codes of conduct. Furthermore, through recent Board practice all experts must sign the Acknowledgement of Experts Duty in which they acknowledge their obligation to provide opinion evidence that is "fair, objective and non-partisan". Mr. Volpentesta has signed such an acknowledgement.

[140] With regard to the authorities provided by Mr. Flett, the Ontario Court of Appeal decision, *Carmen Alfano Family Trust (Trustee of) v. Piersanti* [2012] O.J. No. 2042 dealt with much different circumstances than the current appeal. That decision dealt with a decision of the Superior Court of Justice which excluded an expert witness because the judge determined that the witness was not independent. In paragraph 100 of the decision, it indicates that the Superior Court judge found that the witness based his analysis on the theories of his client and had assumed the role of an advocate. In the current case there is no indication that Mr. Volpentesta has based his opinions on anything but an objective planning analysis.

[141] The other authority is a decision of former Board member Christou, *Metcalf Realty Co. v. Ottawa (City)* [2011] O.M.B.D. No. 395 where the Board questioned the independence of a planning consultant who prepared a paper asking the City's Planning Committee to direct staff to reconsider its position about an application. The Board found in that case that the actions of the consultant strayed into the territory of advocacy. Again, the circumstances are much different in the current appeal. There is no indication that Mr. Volpentesta ever requested any member of Council to direct staff to reconsider its planning opinion. All professional staff, whether working for municipalities or for consulting companies are obligated to form their own objective opinions. Requesting that Council direct staff to change their opinion runs counter to the principle of professionals determining their opinions objectively based upon the merits of a particular application. The Board has not been made aware of any attempt to interfere with the objective opinions of staff in the current appeal.

[142] In addition to the above, s. 8 of the *Statutory Powers and Procedures Act* requires that information about allegations about "the good character, propriety of conduct or competence of a party" should be raised prior to the hearing. Under this provision, the concerns raised by Mr. Flett should have been brought forward prior to the hearing rather than during Mr. Volpentesta's qualification as an expert.

[143] Based upon the above considerations, the Board dismisses the issues raised by Mr. Flett regarding the independence of Mr. Volpentesta's testimony and the Board has assigned his evidence full weight of expert planning opinion in this decision.

Other Matters

[144] Concern was raised by participants about the lack of space in area schools to accommodate children that will live in the proposal buildings. However, according to the evidence the Toronto District School Board did not object to the proposal, but requested conditions of approval and the inclusion of warning clauses in offers of purchase and sale to inform residents that children may not be accommodated in local schools

(Exhibit 6B, Tab 33). The Board expects that if this were a major concern for the School Board that would cause significant disruption to their operation and facilities that they would have opposed the development.

[145] With regard to the zoning of the property, Mr. Volpentesta indicated that the provisions of Zoning By-law No. 438-86 continue to apply to the property and that new Zoning By-law No. 569-2013 which is under appeal will not apply. The Board heard that the Zoning By-law No. 22621 essentially “shrink wraps” the building envelopes with provisions to allow the existing buildings on the site. The proposed Zoning By-law Amendment (Exhibit 25) which contains site specific provisions to permit the proposed development will amend By-law No. 438-86. It was Mr. Volpentesta’s evidence that the proposed By-law complies with all planning requirements and is appropriate.

[146] In his testimony, Mr. Volpentesta provided extensive evidence on the requirements of the PPS and Growth Plan. He maintained that the proposal is consistent with the PPS and conforms with the Growth Plan. These matters were not strongly disputed by the other parties.

[147] The Board heard that the Appellant and City staff agreed upon appropriate measures and provisions to be included in a s. 37 agreement. In addition the Board heard that tenure for the existing rental housing will be maintained and that a provision to this effect will be included in the s. 37 agreement.

[148] Mr. Park requested that the Board approve the proposal as set out in plans provided in Exhibit 7 and 23 and that the Board withhold its final order for 45 days to provide time for City staff to finalize the form of the Zoning By-law Amendment and to finalize the s. 37 agreement.

CONCLUSION

[149] The Board has considered all of the evidence and submissions provided in

relation to this appeal. Based upon the above considerations, the Board finds that the proposal is consistent with all relevant provisions of the PPS and conforms with the Growth Plan. Furthermore, the Board finds that the proposal conforms to all relevant policies of the City of Toronto Official Plan.

[150] In addition, the Board has reviewed the plans in Exhibit 7 and 23 and the proposed By-law (Exhibit 25) and finds them to be appropriate.

[151] The Board recognizes that residents of the area are deeply concerned about the potential impacts of the proposal. People living in neighbourhoods want to protect their familiar places and the investment in their homes. The concerns of residents are always considerations for the Board when they are raised at hearings.

[152] However, the Board is obligated to weigh the merits of a proposal as presented through the evidence in light of the provisions of the PPS, Growth Plan, Official Plan and other applicable planning documents. In this case, it is clear that the proposal is consistent with the PPS and conforms to the Growth Plan. It is also clear that the proposal conforms to the Built Form policies of the Official Plan and appropriately addresses the Tall Buildings Guidelines. With regard to the Official Plan policies for Apartment Neighbourhoods, the Board has determined that only a very narrow interpretation of these policies could lead to the conclusion that the proposal is not appropriate. The Board has determined that this is not a reasonable interpretation of these provisions.

[153] While neighbourhood residents may not want growth to the extent that is being proposed, the provisions of the Growth Plan that identify transit station areas as key locations for intensification must be given substantial weight.

[154] In making this decision, as required through s. 2.1 of the *Planning Act*, the Board has had regard for the decision of City Council which opposed the application. The Board respects Council's decision, but based upon a detailed consideration of the

evidence related to the relevant planning provisions, cannot agree with Council's conclusions.

[155] Through the evidence, the Board is also aware all issues raised by City staff were settled based upon revisions to the proposal and agreement on certain matters. The Board does not have detailed evidence about these matters, and since City staff did not appear at the hearing, the evidence was not tested.

[156] The Board can draw no conclusions about the final position of City staff other than that staff accepted the proposal in its final form which according to the submissions of Mr. Park was the same form of the proposal that was presented to the Board.

[157] The Board has in no part relied upon the settlement reached by City staff in making its decision, but has also found through its consideration of the evidence at the hearing that the final form of the proposal is acceptable.

[158] Mr. Park requested that the Board withhold its final order for 45 days to give the Appellant and City time to finalize the wording of the By-law and s. 37 agreement. Given the timing of the release of this decision, the Board will allow the City and Appellant 90 days to finalize these matters. The appropriate order is provided below.

ORDER

[159] The Board orders the appeal is allowed and the proposed Zoning By-law Amendment is approved in principal based upon the draft By-law submitted to the Board in Exhibit 25 and the drawings submitted as Exhibits 7 and 23;

[160] The Board with withhold its final order in this matter for 90 days from the issue date of this decision to permit the Appellant and City time to finalize the wording of the Zoning By-law Amendment and the s. 37 agreement. The parties are to submit the finalized Zoning By-law Amendment substantially in accordance with Exhibit 25 to the

Board for final approval.

"C. Conti"

C. CONTI
MEMBER

If there is an attachment referred to in this document,
please visit www.elto.gov.on.ca to view the attachment in PDF format.

Ontario Municipal Board

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