

ISSUE DATE:

**Apr. 30, 2004**

DECISION/ORDER NO:

**0836**



PL030485

Ontario Municipal Board  
Commission des affaires municipales de l'Ontario

1191777 Ontario Limited, SAVE Yorkville Heritage Association, Stacey Reginald Ball and the ABC Residents' Association have appealed to the Ontario Municipal Board under subsection 17(24) of the *Planning Act*, R.S.O. 1990, c. P.13, as amended, from a decision of the City of Toronto to approve Proposed Amendment No. 252 to the Official Plan for the City of Toronto to permit the development of a mixed use residential/commercial building by increasing the maximum density to allow a building consisting of 4 times the area of the property  
O.M.B. File No. O030090

1191777 Ontario Limited, SAVE Yorkville Heritage Association and Stacey Reginald Ball have appealed to the Ontario Municipal Board under subsection 34(19) of the *Planning Act*, R.S.O. 1990, c. P. 13, as amended, against Zoning By-law 192-2003 of the City of Toronto  
O.M.B. File No. R030100

**APPEARANCES:**

**Parties**

**Counsel**

Avenue Bay Cottingham (ABC) Residents/  
Save Yorkville Heritage Association

K. Jaffary

Yorkville (2001) Limited

S. Diamond  
C. MacDougall  
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City of Toronto

B. O'Callaghan  
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**DECISION DELIVERED BY J. de P. SEABORN**

The matters before the Board are appeals made in respect of Zoning By-Law 192-2003 (By-law) and Official Plan Amendment 253 (OPA) enacted by the City of Toronto (City) Council to enable the applicant, Yorkville (2001) Limited (Yorkville 2001), to develop a mixed-use commercial residential complex proposed to include retail at grade, two condominium towers on Yorkville Avenue, and six townhouses on Scollard Street.

The appellants, the Avenue Bay Cottingham Residents (ABC) and SAVE Yorkville Heritage Association (SAVE Yorkville), oppose the development primarily on

the basis that the project is incompatible with the area, and the height and massing of the residential condominium towers, in particular the proposal for an 18 storey tower on the east portion of the site, is too high, too intense and will overwhelm the Village of Yorkville. The appellants were clear from the outset that they were not opposed to re-development of the existing site (largely a public parking facility and vacant buildings) and were supportive of the plans to preserve the historical façade of the former Mount Sinai Hospital, to provide for retail shopping at grade and the construction of townhouses on Scollard Street. However, the massing and density, coupled with a tall building in the heart of Yorkville, is considered to be inappropriate intensification, adding too much height given the character of the area. In short, the appellants would be supportive of a scaled back version of the project, more consistent with the existing site specific by-law permissions, enacted in 1993 (By-law 382-93), which permits less height and density than that proposed by Yorkville 2001.

Over the course of the nine-day hearing, the Board heard evidence in support of the OPA and By-law from a range of expert witnesses retained by Yorkville 2001, including: Mr. Pontarini, the architect; Mr. Glover, urban design; Mr. McClelland, a heritage architect; Mr. Lloyd, a transportation planner; Mr. Dudeck, an area resident and member of ABC; Mr. Lewinberg, a land use planner; and Ms. Gillezeau, an economist. In addition, the Board was presented with evidence supporting the development from the City's land use planner, Mr. Crooks and Mr. Persiko, a representative of the Toronto Parking Authority (TPA). Mr. Persiko's evidence related to the parking arrangements for the site, given it is operated by the City as a surface lot. The proposal includes an underground public parking component, which will be operated by the TPA. In order to accommodate a number of members of the public who wished to address the Board, a session of the hearing was convened in the evening. The Board heard from approximately 25 participants, both in support of and in opposition to the redevelopment project.

Ms. Keesmaat, a land use planner, testified on behalf of the appellants as did Mr. Baird, an experienced architect. The Board also heard from Mr. Caliendo, a representative of the ABC, Ms. Chung from the Greater Yorkville Residents Association (GYRA) and as well as individuals who live and work in the community. Mr. Wookey testified on behalf of the Bloor-Yorkville Business Improvement Area (BIA) and representatives from heritage organizations also provided evidence to the Board.

**A. Site Conditions and Development Proposal**

The site proposed for re-development is situated between Scollard Street and Yorkville Avenue, west of Bay Street, east of Avenue Road and north of Bloor Street. The site includes eight properties, 76, 88R, 92 and 100 Yorkville Avenue and 95, 115, 119 and 121R Scollard Street. The property consists of: the vacant building fragment of the former Mount Sinai Hospital façade (100 Yorkville Avenue), a designated heritage structure; a one storey building at 92 Yorkville Avenue which houses an art gallery; and a vacant building at 95 Scollard Street. The balance of the site is either vacant or forms the TPA surface parking lot, which has been in existence for approximately 28 years.

The development proposal includes six 3-storey townhouses fronting onto Scollard Street and two residential condominium towers facing Yorkville Avenue. The west tower, at 8 storeys or approximately 34 metres in height, will incorporate the Mount Sinai façade and include retail at grade. The east tower at 18 storeys or approximately 60 metres in height, will also include retail at grade, and will be situated at the north end of Bellair Street which runs north from Bloor Street, terminating at Yorkville Avenue. In total, the area of the site is 6,179 square metres with approximately 87 metres of frontage on Yorkville Avenue and 45 metres of frontage on Scollard Street. Together, the two towers will provide 191 residential condominium units of varying sizes with the first two storeys of each building devoted to retail/commercial uses. Two pedestrian walkways are incorporated into the design, providing a north/south above ground connection between Scollard Street and Yorkville Avenue.

Parking is proposed to be provided by a three-level underground garage situated beneath the towers and a one-storey garage underneath the townhouses. Public parking will be available on the first two levels of the garage, which will be operated by the TPA. Parking for the condominium residents will be accommodated on the third level. In total, 355 spaces are proposed, with 150 of these spaces for public parking. Access to the public garage will be available from Yorkville Avenue while residents will be able to access the facility from both Scollard Street and Yorkville Avenue. Access to the six townhouses will be from Scollard Street.

The existing site specific planning permissions allow a density of 3.28 times the area of the lot whereas the proposal is for 4 times coverage. The maximum height

permission is 28.8 metres or about 9 storeys, whereas the proposal is for two towers of 8 and 18 storeys respectively. The development proposal incorporates an agreement between Yorkville 2001 and the City pursuant to Section 37 of the *Planning Act*. In return for an increase in height and density beyond what is currently permitted, the agreement secures the preservation of the historic Mount Sinai Hospital façade, provides for the two-mid block pedestrian walkways, and secures specific building materials and design.

**B. Issues**

The position of the appellants was that while the site has remained largely vacant for a number of years and requires rejuvenation and re-development, not just any development is appropriate given the size of the site and its prominence within the Yorkville area. While five issues were identified at the pre-hearing conference, the major area of contention and the issue which occupied most of the evidence from the expert witnesses and the participants, was whether the height of the proposed east tower at 18 storeys is appropriate for a site, in what was characterized by the appellants, as the heart of the Village of Yorkville.

Other matters at issue included: whether the proposed density can be accommodated without resulting in a massing that is inappropriate for the site; potential visual and shadow impacts; and whether the public benefits and the visitor and public parking is in the public interest and can be satisfactorily assured. In this regard, the appellants raised particular concerns with respect to arrangements between the TPA and Yorkville 2001 surrounding the provision of public parking. An additional concern raised at the pre-hearing conference was the proposal by Yorkville 2001 to develop the project in two phases. This issue was settled at the outset of the hearing and Yorkville 2001 advised that in the event of an approval from the Board, it would no longer phase the development. Therefore, the OPA and By-law enacted by Council would require minor amendment to remove any reference to phasing.

**C. Planning Regime**

Considerable expert opinion evidence was presented to the Board in connection with the various planning documents and policies, guidelines and zoning instruments

applicable to the Bloor-Yorkville area generally and the site in particular. A brief overview is provided below.

## **1. Provincial Policy Statement (PPS)**

The Board is required under subsection 3(5) of the *Planning Act* to have regard to policy statements issued on matters relating to municipal planning that are in the public interest. The Board must also have regard to matters of provincial interest set out in subsection 2 of the Act. Accordingly, the planners directed the Board to particular provisions of the PPS including policies promoting: efficient, cost effective development and land use patterns; a full range of housing types and densities; long term economic prosperity, including maintaining the well being of downtowns, and; heritage preservation.

## **2. Official Plan Policies**

The policies contained in the Official Plan for the former Municipality of Metropolitan Toronto (Metro Plan) remain applicable until the Official Plan for the amalgamated City (new Plan) is in force. The Board was directed to a number of policies in Metro Plan, in particular those encouraging reurbanization, economic development, housing, preservation of heritage resources and strengthening the character of an area including cultural resources, promoting tourism, and public facilities.

In addition to Metro Plan, Part I and Part II of the Official Plan for the former City of Toronto also contain policies relevant to the proposal. The Part I Plan designates the site as Low Density Mixed -Commercial Residential (Section 13.4 and Map 1B). Under Section 13.1 Mixed Commercial-Residential Areas are areas of mixed land use whose primary character and proportion of use will vary from area to area in accordance with the policies of the Part 1 Plan. These areas contain a mix of commercial, residential and institutional uses in low rise form, generally within the range of 3 to 5 storeys. However, alternate density limits are provided for and the portion of the site fronting onto Yorkville Avenue is identified on Map 1B as having a maximum total density of 3.2, a maximum commercial density of 3.2 and a maximum residential density of 3.2 times the area of the lot.

The Part II Plan for North Midtown is applicable to the site and identifies Areas of Special Identity and the site falls within two of these areas. That part of the proposed development that is on Yorkville Avenue is located within the Village of Yorkville Area of Special Identity, while the portion of the project that fronts onto Scollard Street is located within the Scollard/Hazelton Area of Special Identity (Part II Plan, Map B). The planners also directed the Board to policies contained in the new Plan, which are intended to replace existing policies in Metro Plan, and the Part I and Part II Plans. The new Plan designates the site as within the Downtown and Central Waterfront (Map 2). While the Part II Plan for North Midtown is not replicated in the new Plan, Site and Area Specific Policies for Areas of Special Identity are found in Chapter 7. Given the new Plan is not in force, these policies are not determinative of the matters before the Board; however, they are relevant insofar as the new Plan represents Council's planning vision for the amalgamated City.

### **3. Zoning Regime**

The parent zoning by law for the City (By-law 438-86, as amended) designates the site as a mixed commercial-residential zone, with a total permitted density of 3.0 times coverage (2.5 commercial and 3.0 residential) on Yorkville Avenue and a maximum height of 18 metres. On Scollard Street, the permitted densities are 2.0, with a height permission of 12 metres.

The site is also subject to By-law 382-93, approved by the Board in May, 1993. The site specific permission allows for a mixed use building, with up to 13 dwelling units and a maximum non-residential floor area of 15,821 square metres. The height permissions vary across the site: 16.5 metres permitted on the west ends of Scollard Street and Yorkville Avenue respectively; 17 metres permitted on the eastern end of Scollard Street; 19.5 metres permitted on the eastern end of Yorkville Avenue; and 28.8 metres permitted at the center of the site. The site specific approval is for a largely commercial development, with a row of 13 3-story residential units proposed for the top floors, indoor residential walkways between Scollard Street and Yorkville Avenue and higher podiums than what is proposed by Yorkville 2001. As part of the visual evidence, a model was provided which showed the height and massing of the previous proposed site plan so it could be compared to the application before the Board. The main differences in the schemes relate to orientation of the development to the street,

massing, height and use. Site Plan approval however was never pursued for the existing approval and the parties agreed that it was highly unlikely that the 1993 project would ever be built.

#### **4. Urban Design Guidelines and Heritage Conservation**

In addition to the policies set out in the applicable official plan documents, the Board was directed to the North Midtown Urban Design Guidelines (North Midtown Guidelines), the City of Toronto Urban Design Handbook and the more recent Bloor-Yorkville Urban Design Guidelines (Bloor-Yorkville Guidelines), which are not yet in force. The North Midtown Guidelines, prepared in 1983, describe the Village of Yorkville as the heart of an internationally known retail area comprised of mainly low rise buildings along Yorkville Avenue and Cumberland Street. Dominant uses in the area are described as including outdoor cafes, boutiques and restaurants. The North Midtown Guidelines indicate that vehicular access points should be minimized, north south pedestrian access points between Scollard and Yorkville Avenue be established, and shows that the portion of the site on Yorkville at Bellair is appropriate for a “terminating feature”. The Bloor-Yorkville Guidelines, while not yet approved, were developed in 2002 with participation by the Bloor Yorkville BIA, the City and representatives of ABC and the GYRA. The introduction to the guidelines set out many of the same views the Board heard during the hearing. The Bloor-Yorkville area is in need of revitalization and a clear vision. The guidelines are intended to provide that vision and to assist the community in responding to development applications.

The site is adjacent to and south of (but not included in) the area encompassed by the Yorkville-Hazelton Area Heritage District Conservation Plan, which was approved by the Board in early 2004. The former Mount Sinai Hospital site was designated some years ago under Part IV of the *Ontario Heritage Act*, however only the façade remains in tact and the proposal will not result in any further demolition, but rather incorporate the remaining heritage features into the development. As indicated at the outset, preservation of this heritage façade was supported by all parties.

#### **D. Discussion of Issues and Findings**

##### **1. Height of the East Tower**

As indicated at the outset, the issues for the hearing were relatively narrow, with the overriding objection to the application that it is incompatible with the character of Yorkville. The main concern is the proposed height and massing of the east tower at the terminus of Bellair Street, within the Yorkville Area of Special Identity. Ms. Keesmaat's opinion was that the height of the east tower is inconsistent with applicable official plan policies and the existing zoning regime and, as such, the application does not represent good planning. In addition to Ms. Keesmaat's planning opinion on the matter, the Board heard from some area residents that while they supported redevelopment at the site, the height of the east tower has the potential to overwhelm the Village of Yorkville, negatively affecting the character of the area.

The Village of Yorkville has been in transition since the early 1970's. The main corridors surrounding the area, including Bloor Street to the south, Bay Street to the east and Avenue Road to the west are characterized by a combination of retail and commercial uses and residential and office high rise buildings. Bloor Street is a popular shopping destination, serving both residents of the City and tourists. The Four Seasons Hotel, a high rise building to the west of the site, is situated at the south east corner of Yorkville and Avenue Road. To the east of the site, at the corner of Yorkville and Bay Street, 18 storey developments have been approved. Directly to the south of the site, along Bloor Street, the former University Theatre site has been completely re-developed, maintaining the original building façade. At the northwest corner of Yorkville and Hazelton Avenue, a 9 storey commercial/residential project, known as York Rowe, has been approved.

Ms. Keesmaat's opinion was that the surrounding tall buildings are appropriate as they are situated on major transportation corridors and on the perimeter of the Village of Yorkville. The surrounding tall buildings help to define the edges of the Village whereas the proposal for the 18 storey east tower will introduce a "new building typology in the interior of the Village that will overwhelm its special character. As a precedent for similar developments, this proposal will have an adverse impact on the Village as it will diminish its distinction within the city, through a continuation of built forms that can be experienced throughout the City of Toronto. The Village is unique precisely because of its proximity to tall buildings and large scale developments, and its distinctness from them" (Exhibit 38, page 15).

In considering the issue of height, the Board does not accept that the introduction of a tall building on Yorkville Avenue at the terminus of Bellair will overwhelm the character of the Yorkville area. From an urban design perspective, that portion of the site at the end of Bellair has been identified in planning documents and urban design guidelines as an appropriate terminus. The Board adopts and relies upon Mr Glover's opinion, as an architect and planner, that taller buildings are appropriate terminating elements in the City. While a terminating feature does not have to be a tall building, there is nothing to prevent a tower acting as a terminating feature. The architectural design of the tower, coupled with the materials to be used ensures the streetscape is maintained consistent with Yorkville Avenue, without negative impact. The Board also relies on the opinion of Mr. McClelland that the character of Yorkville is not defined by an absence of tall buildings, but by the retention of heritage features and infilling missing pieces of the urban fabric. The project before the Board adds height, but it also preserves a crumbling heritage feature and will fill in gaps in the Yorkville Avenue streetscape that are currently occupied by vacant buildings and the above ground parking lot. While a structure of less than 18 storeys could also achieve the same purpose, the Board has to consider and evaluate the application that is before it, as opposed to analyzing alternatives that are not proposed.

In considering the issue of height, the Board has also taken into account Ms. Keesmaat's opinion that the Village of Yorkville itself is characterized by 2-3 storey buildings and that the introduction of a tall building will diminish the distinctiveness of the area. However, the precise location of the taller tower persuades the Board that a tall building is not incompatible. The site falls within two different areas of Special Identity. The north part of the site falls within the Scollard/Hazelton Area of Special Identity which, under the Part II Plan, describes the area as 2 and 3 storey houseform buildings on small lots, built close to the street line, with entrances at street level and mixed commercial-residential above the retail stores. The east tower fronts onto Yorkville Avenue and is within the Yorkville Area of Special Identity, not the Scollard/Hazelton Area of Special Identity to the north. The character of Yorkville Avenue and Scollard Street are different, which is precisely why townhouses are proposed for Scollard Street, with the height reserved for that part of the site that represents the terminating feature.

As indicated at the outset, existing approvals for the site would allow for an increase in height beyond the existing 2 to 3 storey buildings referred to by Ms. Keesmaat as being characteristic of the Village of Yorkville. The existing permissions for the site would allow an 8 to 9 storey building in any event. The as of right approvals, which have been in place for over 10 years, permit a height of just under 30 metres at that portion of the site on Yorkville Avenue. The appellants argued that the 18 storey east tower (about 60 metres) is just too high, however, the objections to height were not supported by any empirical evidence of impact, beyond a sense that Yorkville should not house a tall towers. Tall towers can be seen within the Yorkville area, given residential and office towers along the main arterial roads surrounding the area. Yorkville itself is located in the downtown core with views of tall buildings in all directions. For example the Four Seasons Hotel, which is over 30 stories in height, can clearly be seen looking west from the intersection of Yorkville Avenue and Bay Street. In the absence of wind or shadow impacts on adjacent properties, streets or parks, the view of a tall building alone is not enough for the Board to conclude that the tower is incompatible with the area or that it will destabilize the area. It will not dwarf residential homes, as the location of the taller tower is in the middle of a commercial/retail shopping area. Residential homes are mainly to the north of Scollard Street, or to the west of Avenue Road. Accordingly, the Board does not agree that the visual impact of a tower at the terminus of Bellair will impact residents who live in the area.

The increase proposed increase in height is not out of keeping with the character of the area nor is it incompatible with surrounding development. The massing of the development has been designed in such a way as to maintain the traditional streetscape, which will also serve to limit visual impact, if any, at the street level. As Mr. Lewinberg testified, the height and massing will provide a visual focus from a distance but it will generally not be perceived by pedestrians on Yorkville Aveune, where the focus will be the retail podium, consistent with the existing streetscape. The Board accepts Mr. Lewinberg's opinion in this regard.

The Board has considered all of the evidence presented on the issue of the location and height of the east tower. The Board finds that the proposed east tower is not out of character for the area, nor is it too high. In arriving at this conclusion, the Board has considered the various planning instruments, urban design guidelines, the expert opinion evidence and the views of the area residents, some of whom support the

project, while others remain opposed despite a general acknowledgment that the site is in need of redevelopment. The Board has also considered the Bloor-Yorkville Guidelines which direct higher densities and building heights to the corridors and arterial roads. However, the location of the taller tower is situated at a visual terminus, which invites a different treatment than other sites along Yorkville Avenue. In addition, while the built form framework in the Bloor-Yorkville Guidelines identify Yorkville Avenue and Scollard Street as primarily candidates for low rise form, the Yorkville 2001 site is not identified as such other than recommending low rise at the street edge, which is a feature of the project.

The Board finds that a proposal for increased height is compatible with official plan policies and urban design objectives, policies, and guidelines. Height cannot however be viewed in isolation. The proposal to increase the height beyond what is currently permitted under the site specific by-law represents good planning, when considered with the other positive features of the project including revitalization, filling in a vacant gap along Yorkville Avenue, incorporating heritage features and providing an improved pedestrian environment with new sidewalks, street level retail and pedestrian connections.

## **2. Proposed Density and Massing**

The requested increase in density beyond the 3.2 times coverage permitted under the existing site specific zoning by-law has to be considered in the context of the built form and massing proposed for the site. The proposal calls for an overall density of 4.0 times coverage. The two towers will be constructed on 2 storey podiums of 8.8 metres for the east building, and 8.9 metres for the lower tower to the west. The planners and urban design experts explained, through both their oral and visual evidence, that the podiums will be constructed in such a way as to provide for retail continuity along Yorkville Avenue. The set backs for the podium components are designed in such a way as to incorporate the Mount Sinai façade, a landscaped courtyard and complete the retail frontage along this part of Yorkville Avenue.

Given that the site consists today of a surface parking lot and largely vacant buildings, the proposal as it relates to improving the streetscape was largely supported by the appellants. While Ms. Keesmaat agreed that the podium component of the

development is intended to reflect the two to three storey commercial/retail uses in the neighbourhood, she maintained her view that the massing of the density is inconsistent with the character of Yorkville, objecting to the scale of the frontages along Yorkville.

The Board is satisfied that the density and massing of the development conforms to applicable policies in Metro Plan and the Part 1 and Part 2 Plans and various urban design guidelines. The model and visual evidence outlines a proposal conforming to built form policies that require new buildings to be sited and massed in relation to streets, open space and neighbouring development. The public sidewalk is respected and the pedestrian walkways will link Yorkville Avenue and Scollard Street above ground. In this regard, the Board heard evidence that covered or underground walkways in this area have not been successful from a retail perspective. The podium component respects the emphasis contained in the Part 1 Plan in relation to built-form, urban design and environmental objectives, including sunlight and wind. The appellants agreed that wind was not a factor and that the sunlight studies also indicate that shading is not at issue.

The Board adopts and relies upon the opinion of Mr. Glover that the proposal meets the intent of the Part 2 Plan policies designed to encourage development that enhances streetscapes, parks, pedestrian ways and views. The massing for the site is also consistent with the various urban design policies and objectives. The podium component of each tower will complete the streetscape along Yorkville, maintain the heritage component and improve upon the existing situation of vacant buildings and surface parking. The proposal will provide for continuous retail frontage along Yorkville Avenue which supports policies aimed at economic development and revitalization for the area and will provide an attractive streetscape for both residents and tourists.

The Board was also persuaded by the visual evidence which superimposed renderings of the development on the existing streetscape. The Board adopts Mr. Lewinberg's opinion that the massing will accommodate the density in a way that is compatible for the surroundings. Because low-scale retail is maintained, the key built form characteristics emphasized in policies set out in the Part 1 and Part 2 Plans as well as the new Plan, and the Urban Design Guidelines and the more recent Bloor-Yorkville Guidelines are satisfied by the proposal. In addition, while all parties agreed the previously approved building is unlikely to ever be pursued regardless of the outcome of

the Yorkville 2001 application, the massing and built form of that proposal included a slab-like wall extending the length of the site and was judged by all witnesses to be far less compatible with the streetscape than the proposal before the Board.

The proposal also will assist in the overall revitalization of the area, improving retail opportunities. The Board heard evidence from a number of participants that Yorkville remains in transition and while Bloor Street has been transformed over the past decade, Yorkville remains underutilized, characterized by vacant commercial space and a dearth of retail stores. Ms. Gillezeau testified that there has been a significant loss of retail jobs in the Bloor- Yorkville area as compared to an increase in job opportunities across the City. Ms. Gillezeau's economic analysis concluded that the Yorkville area has been in decline with respect to its economic strength. The development can only assist in attracting tourists and shoppers to the area given the high quality retail that is proposed for the podium component of the project. The proposal therefore is consistent with official plan policies and goals and objectives in respect of revitalization of the downtown core and intensification and housing policies which are satisfied by the residential component of the project. The residents who move into the condominiums will represent a significant influx of consumers to the area who will play a role in revitalizing the existing retail and small scale commercial establishments, many of whom are struggling financially.

### **3. Public Benefits, Parking and Traffic**

The appellants were clear that they do not want revitalization and redevelopment at any cost, regardless of the fact that the status quo is unattractive. The suggestion was made to the Board that redevelopment may have to wait and the Board should not approve this project on the basis that "something is better than nothing". The Board was also told that an approval could set a precedent for tall buildings in the heart of Yorkville. The Board has considered these arguments carefully.

On the issue of precedent, the Board is not persuaded that precedent should be considered as a test or rationale for rejecting an otherwise meritorious application. Every project has to be judged on its own merits, having regard to the applicable policies, the site and the details of the development project. Moreover, impacts have to be assessed on a project by project basis as well as the positive and negative attributes

of the proposal. Rarely are any two applications exactly alike. While the Board agrees an approval should not be given merely because the site is in need of rejuvenation, there are many positive features of the project, a number of which are endorsed by all parties. These positive features, which are consistent with the City's policies and objectives, should not be ignored.

Moreover, the City has secured significant public benefits from Yorkville 2001 by way of an agreement pursuant to Section 37 of the *Planning Act*. While Ms. Keesmaat suggested the matters secured under the agreement would be required in any event as features of any good planning, the heritage easement agreement, pedestrian walkways and quality of materials are all items that can properly be categorized as public benefits within the meaning of the policies contained in the Part I Plan and Section 37 of the *Planning Act*. The Board adopts and relies upon the evidence of Mr. Crooks in particular that the City is satisfied with the terms of the Section 37 Agreement and that the agreement conforms with the provisions of the Part 1 Plan. In arriving at this finding, the Board also relies on Mr. Crook's opinion that as a prerequisite to considering the attributes of the Section 37 Agreement, the project itself must satisfy the test of good planning. Mr. Crook's opinion is that the project does constitute good planning and it is for that reason that the City endorses the proposal not because additional public benefits are secured pursuant to the Section 37 Agreement.

One aspect of the project that was addressed in evidence is the matter of parking on site following redevelopment. The proposal before the Board ensures that parking provided by the City at the existing surface lot will continue to be available, albeit underground. At the outset of the hearing, concern was raised by the appellants that the arrangements between the City and the TPA were not available for review and an issue was raised as to whether the City's support of the development was linked to financial arrangements between Yorkville 2001 and the TPA with respect to continued parking at the surface lot, which occupies a significant proportion of the site. Following argument on a motion for production and subsequent discussions between the parties, the City produced the in-camera report to Council prepared by the TPA with respect to arrangements between the TPA and Yorkville 2001 to maintain public parking at the site.

There was a concern expressed by the appellants that Council's support of the OPA and By-law to accommodate the development had somehow been influenced by the financial arrangements between the developer and the TPA, which ultimately concluded with funds being advanced to the developer and the TPA holding a mortgage on the property. Mr. Persiko, Director of Real Estate and Development at the TPA, testified with respect to these arrangements. Based on the evidence of Mr. Persiko, the Board finds that the interest of the TPA in the project was restricted to ensuring that public parking continue to be available at the site following redevelopment, if any. Mr. Persiko was clear that the interest of the TPA was to secure parking at the site in the event of an approval. In the event that an approval is not forthcoming, the parking would continue to be available on site and the TPA would operate the lot as it does today. While the relationship between the developer and the TPA was a matter raised by the appellants, disclosure in advance of the hearing by the City of the financial arrangements made between the TPA and the developer would likely have addressed the appellants concerns in this regard and negated the need for Mr. Persiko to testify.

Mr. Lloyd testified on behalf of Yorkville 2001 with respect to traffic and the Board accepts his opinion, which was not challenged, that the project will not have an impact. Access is proposed from Yorkville Avenue, east of Bellair Street, for public parking and for access to the condominiums. Access for the townhouses will be at 95 Scollard Street. Access, parking, loading and servicing were not issues raised as creating negative impacts, subject to the detailed requirements on these matters being addressed by Yorkville 2001 in accordance with the Site Plan.

**E. Decision**

Based on all of the evidence and the submissions of the parties, the Board finds that the application represents good planning and should be approved. The Board is not persuaded by the evidence of those opposed that the height of the east tower should defeat the application. The evidence was not convincing that a tall building at the terminus of Bellair will impact the character of the area or create a negative impact visually. The site can tolerate the increase in height and density requested by Yorkville 2001 beyond what is currently prescribed. In arriving at this conclusion, the Board has considered the various cases presented during argument and the principles contained therein and finds that the proposal, including the height of the east tower at the

proposed location which is a terminus, meets the test of compatibility. In arriving at this finding, the Board is not indicating that the Yorkville area should be redeveloped with tall towers. For this site, at this location, height is not a negative feature such that the proposal should be defeated.

The Board has also considered and has had regard for the provincial interest pursuant to Section 2 of the *Planning Act* and to the policies contained in the PPS. The Board finds that the proposal is in the provincial interest and conforms to the PPS. The OPA and By-law under appeal are consistent with the policies contained in Metro Plan, the Part I and Part II provisions of the Official Plan of the former City of Toronto, and the proposal represents appropriate urban design in accordance with the provisions of the North Midtown Guidelines. While the new Plan for the City is not yet in force, based on the evidence of City planners, the project is consistent with its vision and policy objectives. Similarly, the proposal is consistent with the policy objectives set out in the Bloor-Yorkville Guidelines. The evidence did not suggest either on or off site impacts such as wind, shadowing or traffic, and no demolition is involved.

The project will result in a largely vacant site being re-developed, a goal that all of the parties and participants supported, and the existing surface lot will be replaced with underground garage, ensuring that public parking continues to be provided at the site. Additional benefits of the project, including the Heritage Easement Agreement, quality of materials, and the pedestrian walkways are secured by way of an agreement pursuant to Section 37 of the *Planning Act* and are therefore satisfactorily assured. The Board finds that the Section 37 Agreement represents good planning and conforms to the policies set out in the Part 1 Plan.

In light of the advice from the parties that the OPA and By-law under appeal require minor revision to remove any reference to phasing the development project, the appeals are allowed in part to accommodate this agreed upon change. In all other respects, the appeals are dismissed. The Board's Order shall be withheld for 30 days to permit Yorkville 2001 and the City an opportunity to revise the OPA and By-law to remove any reference to phasing the development. The revised instruments are to be reviewed with Mr. Jaffary, on behalf of the appellants, prior to filing with the Board. Thereafter, an Order will issue consistent with the Board's decision modifying the OPA and, as modified, giving approval to the revised instrument. The By-law will also be

modified in accordance with the agreed upon amendments. Submissions with respect to costs, if any, shall be filed with the Board within 30 days of the date of this decision.

J. de P. SEABORN  
VICE CHAIR