

**ONTARIO MUNICIPAL BOARD**  
**FINAL SUBMISSIONS OF THE CITY OF TORONTO**  
**4187 DUNDAS STREET WEST**

**Summary of City's Position**

1. Madam Vice-Chair, the position of the City of Toronto on the matters before you can be summarized as follows:
  - a. The City requests the Board to refuse the proposed zoning amendment and associated site plan application;
  - b. I submit that the testimony of Ms. Johncox and Mr. Oikawa supports an apartment building on the Dundas Street West frontage with a height of no more than 6-storeys, and:
    - i. the elimination of the proposed apartment building from the *Neighbourhoods* and Second Density Residential (R2) zone [being 567 & 569 Prince Edward Drive],
    - ii. in accordance with the existing zoning regulations for the Second Density Residential (R2) zone, only singles or semis should be permitted within 567 & 569 Prince Edward Drive;
    - iii. a 45 degree angular plane setback should be applied to the rear portion of any apartment building constructed on the site [to be measured from the current location of the boundary between the General Commercial – Avenues (CG-AV) zone and the Second Density Residential (R2) zone [being the property line between 571 & 569 Prince Edward Drive], and

- iv. a set back should be applied along the Prince Edward Drive frontage in compliance with Section 3. L. (3) – of the Avenue By-law, which states: “No side yard setback is required, except where the side yard abuts a street, in which case the side yard setback shall equal the average setback from the street line for the block;”
  
- c. The City would therefore support a 6 storey building located entirely within the two lots known as 4187 Dundas Street West and 571 Prince Edward Drive, without any adjustment of the current boundary between the General Commercial – Avenues (CG-AV) zone and the Second Density Residential (R2) zone;
  
- d. The City would also be seeking Section 37 benefits if the Board were to approve additional heights and density on this site, namely \$15,000.00 per unit above the 5<sup>th</sup> floor, for the purposes outlined by Ms. Johncox;
  
- e. With respect to potential site plan conditions,
  - i. the City notes the final comments in Mr. Brown’s Closing Argument that: “I am also appreciative of the efforts of Mr. Bradley and City Staff in expediting the final release of the site plan conditions, and our client thanks Mr. Bradley and Ms. Johncox for staying behind on the second last day of the hearing so as to narrow the site plan conditions at issue, to only a few, relating to the contributions to a road improvement on Prince Edward which is not arising as a result of the traffic from our client’s proposal, as well as the need to coordinate changes to the landscape plans and confirm an internal radii with city staff, which issues we are confident can be resolved without a further appearance, in the event that you allow our client’s appeals”, and
  
  - ii. the City would therefore ask that, in the event the Board approves the Dunpar applications, the Board withhold the issuance of its Order until Dunpar and the City finalize the site plan conditions, with the understanding that the Board could be spoken to in the event of a request by either the City or Dunpar.

**Summary of Reasons for City’s Position**

**Section 24(1) of the Planning Act and the consequences of Dunpar’s election to proceed to a hearing in the absence of an amendment to the determinative Official Plan**

2. By its Decision issued on December 3, 2007, the Ontario Municipal Board (the “Board”) granted the motion brought by Kingsway and stated that, “The Board finds it does not have jurisdiction to hear an Appeal to the former Etobicoke Official Plan nor an Appeal for an amendment to the Toronto Official Plan – for which at this time no Application has been made.”
3. Given this Decision, a very unusual aspect of the present appeal is the decision of Dunpar,
  - a. to proceed with its appeal of the requested zoning amendment and site plan referral,
  - b. without first asking for an adjournment to allow Dunpar to file an application to amend the new Toronto Official Plan.
4. In making this election, Dunpar has placed the Board in a position where it must apply the test set out in Section 24(1) of the Planning Act to whichever Official Plan the Board determines is determinative, without amendment. As the Board is aware, Section 24(1) of the Planning Act, states:

Despite any other general or special Act, where an official plan is in effect, no public work shall be undertaken and, except as provided in subsections (2) and (4), no by-law shall be passed for any purpose that does not conform therewith.

5. This means that Dunpar must succeed in persuading the Board that the requested amendment to the zoning by-law conforms with the applicable official plan, notwithstanding that:
  - a. Dunpar originally applied for an amendment to the former Etobicoke Official Plan, and
  - b. then subsequently purported to use that application as the basis for seeking, on appeal, an amendment to the new City of Toronto Official Plan.

6. The City submits that regardless which official plan the Board finds is determinative, Dunpar cannot meet the test set out in Section 24(1) of the Planning Act, namely that the proposed amendment must conform with the official plan.

7. With respect to the former Etobicoke Official Plan, the City notes that on the evidence of all planning witnesses, including Mr. Peter Smith, an amendment to that Plan would be required to permit any building above 6 storeys. In this regard, Section 2.1 of Mr. Smith's Planning Report (first sentence of page 5 of the Planning Report found in Exhibit 10) states:

Pursuant to the Etobicoke Official Plan in force at the time of the application, an Official Plan Amendment was required in order to increase the permitted height from 6 storeys to 7 storeys. (underlining added)

8. I therefore submit, Madam Vice-Chair, that on the basis of that statement alone, the appeal of the zoning amendment must fail if it is tested against the "Etobicoke Official Plan in force at the time of the application."

9. Mr. Brown, in his written argument attempts to avoid this obvious conclusion by asserting that:

"he [being his witness Mr. Smith] confirmed what we know to be fact, which is that while the old policies required an amendment, they are no longer in effect, they have been repealed, and as such, there is no amendment required to a repealed official plan."

10. This seems to suggest that Mr. Brown would have the Board test the zoning application against a vacuum in so far as the determinative official plan is concerned. I submit that it would be manifestly unfair to each of the City, Kingsway, and those residents who spoke in opposition to the appeal, to,

a. find that Etobicoke Official Plan is the determinative Plan for the purposes of Section 24(1) of the Planning Act, and

- b. then, as advanced by Mr. Brown, avoid applying the provisions of that Plan on the basis that it has now been repealed.
11. The City submits that there is no interpretation of the Clergy principle that would allow the Board to find that Etobicoke Official Plan is the determinative Plan but then avoid applying the provisions of that Plan on the basis that it has now been repealed.
12. The City also submits that, (while this is contested by the testimony of Mr. Smith), on the evidence of the City witnesses and Mr. Sorensen, there is a compelling basis for the Board to find that neither the former Etobicoke Plan nor the new City of Toronto Plan would permit the proposed development to intrude into the residential neighbourhood to the south of the Dundas frontage in the manner proposed by Dunpar.
13. The City therefore submits that,
  - a. given Dunpar's election to proceed with the zoning appeal and site plan referral in the absence of the associated official plan application and official plan appeal as originally sought by Dunpar, [and without asking for an adjournment to allow Dunpar to file an application to amend the new Toronto Official Plan],
  - b. the Board should refuse the zoning appeal on the basis that the requested amendment does not meet the test set out in Section 24(1) of the Planning Act in that it does not conform to either the former Etobicoke Plan or the new City of Toronto Plan.

### **The significance of the Avenue Study**

14. Madam Vice-Chair, as you are aware from the testimony of the various witnesses, the Dundas Street West frontage of the site is located within the *Avenue* (as identified in the City's new Official Plan) known the Dundas Street West Avenue.
15. Policy 2 contained in Section 2.2 of Chapter 2 of the City's new Official Plan (page 55 of the Document Book) states that,

Growth will be directed to the *Centres, Avenues, Employment Districts* and the *Downtown* . .

16. Section 2.2.3 of the New Official Plan (page 60 of the Document Book) is headed “Avenues: Reurbanizing Arterial Corridors and Policy 1 (page 61 of the Document Book) specifies that,

Reurbanizing the *Avenues* will be achieved through the preparation of *Avenue* Studies for strategic mixed use segments of the corridors shown on Map 2.

17. I submit this means that *Avenues* are identified as areas of potential growth and intensification - and – as we know - *Avenue* Studies are to be undertaken to formulate appropriate standards for the development of each such *Avenue*.

18. Policy 2 (page 61 of the Document Book) under Section 2.2.3 states:

To facilitate and shape growth, each *Avenue* Study will engage local residents, businesses, the TTC and other local stakeholders and will set out: (then going down to subparagraph “b”) contextually appropriate as-of-right zoning and other regulations designed to achieve high quality development along the *Avenue* which establishes:

- i.) permitted uses and maximum density and height limits;
- ii.) appropriate massing, scale, siting and organization of buildings;
- iii.) appropriate scale transitions to adjacent areas; . . .

19. This part of Dundas Street West was the subject of an *Avenue* Study.

20. In this regard I note that Dundas Street West *Avenue* Study,

- a. was completed in the spring of 2006,

- b. was approved by Council with the adoption of OPA No. 13 (Tab 7) and by the passage of the Avenue By-law (Tab 10) on July 25, 26, 27, 2006, and
  - c. sets out a number of guiding principles, including a maximum height of 6 storeys (20 m.), which were established through and after extensive study and community consultation.
21. This led to the adoption of Official Plan Amendment No. 13 and the passage of the Avenue By-law for the specific purpose of implementing City Council's decision following its consideration of the Avenue Study Implementation Report (Tab 16).
22. Consistent with the practice of the new City of Toronto Official Plan, (which does not attempt to identify specific height limits), Official Plan Amendment No. 13 did not identify a specific height limit; however, it has guidelines attached, as an Appendix, which identify a maximum height of 6 storeys along the *Avenue*. (page 105 of the Document Book).
23. The Avenue By-law (717-2006) permits apartment houses in the CG-AV-H zone to a height of 14 metres, (4-5 storeys) with a further height up to 18.5 metres (6 storeys) allowed in exchange for Section 37 benefits. (A maximum floor space index of 2.5 is allowed - with 3.0 allowed in exchange for Section 37 benefits).
24. While some other *Avenue* Studies and associated implementing Avenue By-laws have allowed for additional building heights at certain intersections, the Avenue By-law (By-law 717-2006) for Dundas Street West did not establish any additional height for the intersection of Dundas Street West and Prince Edward Drive.
25. Avenue By-law (By-law 717-2006) also adjusted the boundary between the General Commercial – Avenues (CG-AV) zone and the Second Density Residential (R2) zone. In this regard:
- a. the boundary had previously bisected 571 Prince Edward Drive, and

- b. the boundary was adjusted so that all of 571 Prince Edward Drive is now included within the General Commercial – Avenues (CG-AV) zone - (while 567 and 569 Prince Edward Drive remain within the Second Density Residential (R2) zone).
26. This adjustment of the boundary between the General Commercial – Avenues (CG-AV) zone and the Second Density Residential (R2) zone is also consistent with the boundary between the Official Plan “*Mixed Use Areas*” and “*Neighbourhoods*” designations as delimited by the Map (found at page 102 of the Document Book), which “map” was adopted as an amendment to the Official Plan of the City of Toronto by Section 1 of Official Plan Amendment No. 13 (found at page 99 of the Document Book). [To assist in avoiding confusion, I remind the Board that Section 2 of Official Plan Amendment No. 13 seems to have incorrectly identified this OPA as “Official Plan Amendment No. 277”, whereas it was in fact OPA 13 but it added “Areas-Specific Policy 277” to the City’s Official Plan].
27. Madam Vice-Chair, I therefore submit that:
  - a. The City now has a very carefully crafted and recently enacted Avenue By-law that is intended to both permit and control the “Reurbanizing” of this *Avenue* in accordance with the intensification and neighbourhood protection policies of the New Official Plan;
  - b. More specifically, the Avenue By-law was passed by the City for the purpose of satisfying Policy 2 under Section 2.2.3 of the new Official Plan, which requires “contextually appropriate as-of-right zoning”;
  - c. This is in stark contrast to the situation that I sometimes see where I am dealing with an requested amendment to a zoning by-law that,
    - i. is decades old, and
    - ii. may arguably be no longer relevant;
28. Here we have exactly the opposite situation - we have a zoning by-law that,

- i. is brand new,
  - ii. is the result of an *Avenue* Study (undertaken with extensive community consultation, including attendances by a representative of Dunpar) that was intended to both allow and control reurbanization and to lead to a zoning by-law that establishes “contextually appropriate as-of-right zoning”, and
  - iii. we have a carefully crafted height limit and newly revised boundary between the General Commercial – Avenues (CG-AV) and Second Density Residential (R2) zones.
29. The passage of the Avenue By-law was not appealed by anyone, including Dunpar.
30. The appeal before you is the first appeal to the Board of an application for an amendment to the height limit and zoning boundaries established by this Avenue By-law or, for that matter, by any other Avenue By-law.
31. Madam Vice-Chair, as noted by Mr. Oikawa in his testimony, I submit that if the Dunpar application were approved as requested by the applicant, it would set a precedent. It may risk establishing a precedent that, if followed, would mean the City’s Avenue Study Program and its implementing pre-zoning strategy is simply setting new “floors” for development rather than setting appropriate as-of-right standards that both permit intensification of *Avenues* while protecting *Neighbourhoods*. The City would risk that in attempting to pre-zone land for appropriate intensification standards, it would be merely setting a starting point for further zoning amendments.
32. With this in mind, it is my submission that, while an owner is indeed entitled to apply for an amendment to an Avenue By-law,
  - a. the Board should be cautious about granting amendments to such a freshly minted Avenue By-law, and

b. unless there is something compelling which requires and justifies a requested amendment, there should be no exception to allow either additional height or an amendment to the location of the boundary of the *Avenue*.

33. In this case, it is my submission that the witnesses presented by the City, and by Mr. Longo,

a. see no justification for the Dunpar's requested zoning amendment to height and boundary location,

b. are of the opinion that,

i. the requested amendments should not be allowed,

ii. allowing the requested amendments would undermine the policies of the City's new Official Plan regarding the Avenue Study process for establishing appropriate as-of-right zoning,

iii. allowing the requested amendments be inconsistent with the policies of the new Official Plan with respect to the protection of Neighbourhoods, and

iv. allowing the requested amendments may set an inappropriate precedent for other sites in this *Avenue*, particularly the site immediately across the street on the west side of Prince Edward Drive.

34. I submit Madam Vice-Chair that in such circumstances, [and given Section 1.1 (f) of the Planning Act, which specifies that the Purposes of the Act are, "to recognize the decision-making authority and accountability of municipal councils in planning"], there should be an onus upon the appellant,

a. to establish that the newly minted Avenue By-law does not establish "contextually appropriate as-of-right zoning" required by the Official Plan, and

- b. that the requested amendments are necessary to permit the construction of a “contextually appropriate” development.
35. In this regard we have (in Exhibit 25) the benefit of an illustration (courtesy of the as-of-right building envelope plan prepared by Dunpar’s consultants) as to the type of building that could be built as-of-right under the Avenue By-law.
36. The as-of-right building envelope plan shown on Exhibit 25 demonstrates that the entire site, including the tail at the rear of 567 and 569 Prince Edward Drive) can be developed in a manner that is consistent with the policies of the new Official Plan regarding,
- a. the intensification of *Avenues*, (with an apartment building squarely focused on the corner of Dundas and Prince Edward Drive and stepped back at 45 degrees from 567 Prince Edward Drive), and
  - b. the protection of *Neighbourhoods*, (with single family homes constructed within each of 567 and 569 Prince Edward Drive).
37. I submit that it is also significant that Mr. Glover acknowledged that from an urban design perspective, an appropriate building could be built without the requested amendments to the zoning by-law.
38. I submit that it was apparent from the attendance, during the evening session, of members of the public opposed to the Dunpar application and from the comments of those who spoke that the area residents have participated the Avenue Study with the expectation that it would establish appropriate standards for intensification along the *Avenue* while protecting the residential neighbourhood to the south. I commend their comments to the Board.

**Relationship between the Clergy Principle and the Avenue Study**

39. I have given some thought to the relationship between the “Clergy Principle” and whether that would justify ignoring the Avenue Study and the resulting Avenue By-law in considering Dunpar’s zoning appeal.

40. In the decision of the Board issued on November 29, 2007 (PL060707) in the matter of an appeal by Sun Life Assurance Company of Canada pursuant to subsection 51(39) of the Planning Act regarding the site at 395 Martha Street in the City of Burlington, the Board reviewed the case law regarding the “Clergy Principle” and provides *inter alia* the following comments,

The fact that public policy considerations are germane to planning decisions made by a municipal council or this Board, does not allow for the abrogation of the rules of natural justice or procedural fairness. Both private parties and representatives of the public interest are entitled to understand the “rules of the game” from the outset . . . .

The Board finds that the *Clergy* principle is not merely a Board policy; it is an enunciation of a principle of natural justice and procedural fairness. It is well-settled law that natural justice and procedural fairness require that a party know the case it must answer and be permitted to answer that case. If in the context of planning law, the policy regime were a moving target, natural justice would be absent. . . .

. . . The Board will not permit derogation from these principles by finding that an instrument like OPA 62, adopted on June 11, 2007, is relevant to an application filed with the City on September 30, 2002.

41. With this in mind, I would note that the Reply from Mr. Oikawa informs us that:
- a. The original application for a 10 storey apartment building was filed on February 1, 2006;
  - b. In a letter dated February 23, just 3 weeks later, Dunpar asked that Toronto Planning Staff not process the application as the application was being revised;

- c. Prior to the filing of the original application, the City of Toronto's new Official Plan was adopted on November 26, 2002 and was approved, with modifications, by the Ministry of Municipal Affairs and housing on March 17, 2003. It was appealed to the Ontario Municipal Board (but not by the owner of the subject lands). The Ontario Municipal Board issued its Order on July 6, 2006, approving major sections of the Plan;
- d. While the original application was filed on February 1, 2006, it was replaced on the owner's initiative by a new application received by the City on June 20, 2006 for an 8-storey, 85 unit building with a floor space index of 3.18, and later revised by a submission received on October 15, 2007 for an 8-storey, 83 unit building with a floor space index of 3.29.
- e. Toronto Planning staff was not informed by Dunpar that it wished the application to be considered under the old Etobicoke Official Plan. This was despite a preliminary staff report dated August 12, 2006, which went to Etobicoke York Community Council on September 13, 2006 and a subsequent staff report dated, March 12, 2007 which was considered by Etobicoke York Community Council on March 27, 2007. These reports only mentioned the New Toronto Official Plan. Dunpar did not ask the Community Council to consider the proposal under the old Etobicoke Official Plan when they deputed at Community Council.
- f. The applicant seeks to amend the provisions of the Dundas Street West Avenue By-law (passed on July 27, 2006). However, that Avenue By-law was enacted pursuant to the policies of the City of Toronto's new Official Plan. The new Official Plan contains policies respecting development within areas designated under that Plan as Avenues. The

Etobicoke Official Plan does not contain any Avenues policies. Therefore, any amendment to that new “Avenue” zoning by-law must conform to the new City of Toronto Official Plan.

42. As we know, despite an awareness of the Avenue process and the passage of the Avenue By-law, Dunpar chose not to appeal the Avenue By-law. Instead Dunpar now wishes to rely upon its original application to amend the Etobicoke Zoning Code, (as it was prior to the Avenue By-law), to obtain amendments to as-of-right standards developed by the Avenue Study and enacted by the Avenue By-law.

43. The City respectfully submits that,

a. given the foregoing, and

b. particularly as Dunpar now wishes rely upon its old application to amend the Etobicoke Zoning Code (as it was prior to the Avenue By-law), to obtain amendments to as-of-right standards developed by the Avenue Study and enacted by the Avenue By-law,

it would not “derogate from the rules of natural justice or procedural fairness” to test the requested amendment to the Avenue By-law against the very official plan policies that the Avenue By-law was passed to implement (namely, the policies of the New Official Plan).

44. In this regard, I submit that the establishment of the height limit and the adjustment to the location of the boundary between the General Commercial – Avenues (CG-AV) zone and the Second Density Residential (R2) zone were each key elements of the Avenue By-law that Dunpar now wishes to amend.

### **Specific Comments regarding Height**

45. In the fourth paragraph on page 8 of his Written Argument, Mr. Brown states that:

There is no contradiction amongst any of the witnesses, as to the stability of the area, both on the Dundas street frontage, and . . . with the area being considered as stable and in transition. There are variations on Dundas Street of 4 storeys (from 2 to 6 storeys in height), and the area is stable.

46. It is unclear to me from this statement if Mr. Brown wishes to assert that Dundas Street West in this area is “stable” or “in transition.” I submit that,
- a. on the evidence of all of the witnesses, Dundas Street West in this area is not “stable” but is in fact “in transition” from under developed sites (“containing older automobile-oriented commercial and industrial-type buildings” to an “emerging building pattern and character” of “development containing street-related mixed-use, residential and Main Street character” – section 4.3 of the Witness Statement of Robert Glover), and
  - b. notwithstanding this transition, this *Avenue* has no buildings taller than 6 storeys (of which there are three).
47. Mr. Glover in his testimony referred to the Urban Design Handbook of the former City of Toronto (page 161 of the Document Book) for the purpose of supporting the height against the width of Dundas Street West. He took us to the sentence at the bottom of the first paragraph, which states:
- Main Streets generally have a proportion of 0.8 to 1, residential streets as low as 0.5 to 1.
48. I submit that this urban design concept, if applied, would preclude the proposed 7 storey wall of the building on Prince Edward Drive. That ratio on Prince Edward Drive might not be an issue if the building was squarely on the corner of the intersection, (as in the case of the as-of-right building shown on Exhibit 25), but it is my submission that as the building progresses south down Prince Edward Drive the failure to comply with the ratio for residential streets

demonstrates that this building would be out of character with the low rise residential nature of Prince Edward Drive.

49. I also reiterate my above comments that as the height limit set out in the Avenue By-law was implemented as a result of the Avenue Study it would be inappropriate to now allow the height limit to be exceeded.
50. I also again note that if the application is to be tested against the former Etobicoke Official Plan, the proposed height of the building, (regardless of whether it is determined to be a 7 or an 8 storey building), would fail as an amendment to that Plan would have been required for any height above 6 storeys.

#### **Dunpar's request to shift the zoning boundaries**

51. Dunpar has requested the Board to shift the boundary between the General Commercial – Avenues (CG-AV) zone and the Second Density Residential (R2) zone,
  - a. from its current location (as established by the Avenue By-law) between 571 & 569 Prince Edward Drive),
  - b. to the southern lot line of 567 Prince Edward Drive.
52. The first question here is – would this request conform to the Official Plan that is in effect.
53. Mr. Smiths' witness statement tells us that: "Pursuant to the new Toronto Official Plan, an Official Plan Amendment is being sought out of an abundance of caution to redesignate the southerly portion of the site from *Neighbourhoods* to Mixed Use Areas and to adjust the boundaries of the Areas-Specific Policy 277."
54. We know that, as a result of Mr. Jackson's decision on the motion brought by Mr. Longo, that application to amend the Official Plan is no longer before the Board.

55. So, the obvious question arises - did Dunpar actually need that Official Plan Amendment that Mr. Smith advised was being sought only out of an abundance of caution.

56. The City submits that the answer to that question is emphatically yes.

57. In that regard I rely on the evidence of all three witnesses advanced in opposition to the Dunpar's application and I would refer the Board to the Interpretation Policies contained in the new Official Plan – section 5.6 on page 87 [under the heading INTERPRETATION] – specifically policy 5.

58. Policy 5 tells us that,

Boundaries of land use designations on Maps 13-23 inclusive are general except where delimited by a defined Secondary Plan or area specific policy, or where they coincide with fixed distinguishable features such as roads, public laneways, utility corridors, railroads, watercourses or other clearly defined physical features.

59. In this regard, we have the testimony of Mr. Oikawa, including his illustration of the decision tree shown in Exhibit 29 page 10, and his opinion that we now have an area specific policy that gives us a fixed boundary.

60. We also have his and Ms. Johncox's testimony regarding the next provision which states:

In all other instances, the boundaries of land use designations will be determined by a review of: a) existing zoning by-laws; b) prevailing lot depths; c) orientation of lot frontages; d) lot patterns; and e) land use patterns.

61. Their testimony is that these criteria would not permit the interpretation supported by Mr. Smith in his testimony.

62. We also have the next statement:

Where the intent of the Plan is maintained, minor adjustments to boundaries will not require amendment to this Plan. (underlining added)

63. While Mr. Smith did not agree with me that this criteria, “Where the intent of the Plan is maintained,” modified the above 5 listed criteria, he did agree that this test of maintaining the intent of the Plan did have to be satisfied and that it would include the policies of the Plan regarding the protection of *Neighbourhoods*.
64. At this point I would remind the Board of the testimony of Mr. Oikawa when he stated that the new City of Toronto Official Plan is meant to divide the City into two types of areas, namely, areas where growth is to occur and areas that are meant to be “stable”.
65. So then we had that interesting discussion as to what is meant by “stable”.
66. In that regard I would refer the Board to the policies in the new Official Plan dealing with *Neighbourhoods* (starting at page 79 of the Document Book) and specifically to the provisions in Policy 5 (found at page 81 of the Document Book) which state:

No changes will be made through rezoning, minor variance, consent or other public action that are out of keeping with the physical character of the neighbourhood.

The prevailing building type will be the predominant form of development in the neighbourhood. Some *Neighbourhoods* will have more than one prevailing building type. In such cases, a prevailing building type in one neighbourhood will not be considered when determining the prevailing building type in another neighbourhood.
67. I submit that the prevailing building type in this *Neighbourhood* is single family residential, and that it does not include apartment buildings of any sort.
68. Simply put Madam Vice-Chair it is my submission that the proposed building, on a lot which would occupy over 40 percent of the length of the block between Dundas Street West and

Government Road, would be introducing a change that is out of keeping with the physical character of that residential block and out of keeping with the physical character of that *Neighbourhood*.

69. So in summary I submit that:

a. the intent of the Official Plan is that,

i. *Avenues* are meant to be growth areas, and

ii. *Neighbourhoods* are meant to be stable area that are not intended for growth,

b. the proposal would result in too much of the Prince Edward block being converted into an apartment development and also result in this *Neighbourhood* area being used for growth that is actually intended to occur in the *Avenue*.

70. I also submit that based upon Mr. Oikawa's testimony, it is not necessary to introduce growth into *Neighbourhoods* in order to meet the population growth objectives.

71. The question may still arise – but what if the Board were to regard the former Etobicoke Official Plan as the determinative plan.

72. Even in that event, it is my submission that permitting the proposed development would not conform to those provisions of the Etobicoke Official Plan that addressed the boundary issues. I would refer you to the testimony of Mr. Oikawa in that regard.

73. Mr. Oikawa opined that if the Etobicoke Official Plan were to still apply to the site, then the application would have to amend that Official Plan's provisions to change the land use designation of 567, 569, and 571 Prince Edward Drive from "Low Density Residential" to "Commercial-Residential Strip."

74. He specifically disagrees with Mr. Smith's opinion as expressed in Sections 1.0, 2.2, 4.5 and 5.2 of Mr. Smith's Planning Rationale Report where Mr. Smith states that the Etobicoke

Official Plan would permit an adjustment of the boundary without an Official Plan amendment. Mr. Oikawa does not agree that this is the proper interpretation of the Etobicoke Official Plan policies.

75. In summary, Mr. Oikawa does not agree that Policy 12.1.8, being the Interpretation Section of the Etobicoke Official Plan should apply as it is a general policy relating to all 19 land use designations in the Etobicoke Official Plan while the Dundas Street West designation of “Commercial-Residential Strip” has two specific policies, Section 4.4.6 and Section 4.4.7. In his opinion the specific Policy 4.4.7 “trumps” the general policy 12.1.8. Policy 4.4.7 would require the application to be considered, **on a comprehensive basis**, and it is his opinion the expansion of the Commercial-Residential Strip designation from 4187 Dundas Street to the adjacent 567 and 569 Prince Edward Drive does not conform to this policy because the policy requires that amendments to the zoning code be undertaken on, “a comprehensive basis”. It is his opinion that the proposal to extend the boundary of 4187 Dundas Street is a site-specific proposal and not a comprehensive basis. It is also his opinion that a comprehensive study was in fact undertaken already, namely the Dundas Avenues Study. It examined the boundaries of the area through the Dundas Avenues Study and the boundary was enlarged to include 571 Prince Edward Drive. It did not include 567 and 569 Prince Edward Drive.
76. It is also his opinion that Policy 4.4.6 cannot be used to rezone the R2 lands of 567, 569 and 571 Prince Edward Drive because any such zoning by-law clearly would not conform to the Official Plan as required by Section 24.1 of the Planning Act.
77. It was also Mr. Oikawa’s opinion that the additional dwelling units generated by the additional height of the proposal and its intrusion into a stable residential area is not needed to achieve the Metropolitan Official Plan’s population targets because they have already been met.

## **Visual Impact**

78. Madam Vice-Chair at this point I would like to contrast what I call the visual impression or the visual impact of the,
- a. as-of-right buildings (being one apartment building and two single family homes) as shown on Exhibit 25, and
  - b. the proposed apartment building.
79. It is my submission that a visual examination of the two plans demonstrates,
- a. that the as-of-right apartment building is squarely fixed on the intersection, but
  - b. the proposed apartment building is primarily a Prince Edward Drive building and not a Dundas Street building (unlike the Essence and the Retirement Home).
80. I also submit it should go without saying that Dunpar can't change the residential designation of 567 and 569 Prince Edward Drive simply by demolishing the two single family homes that existed on those lots.

## **Section 37 of the Planning Act**

81. With respect to the Section 37 benefits ,
- a. I note that while Mr. Smith relies exclusively on his comments regarding the former Etobicoke Official Plan to state that the City is not entitled to secure any facilities, services or matters through Section 37 of the Planning Act,
  - b. he clearly cannot rely on the former Etobicoke Official Plan to determine the height limits for the site,

- c. it would therefore be inequitable to allow Dunpar to rely on that former official plan for the purpose of denying the needed improvements to the street allowance and park improvements, and
  - d. I also submit there is some irony in Mr. Smith's approach - in that Section 37 applies when height increases are being sought – the extra height is the very thing that he acknowledges the form plan would not permit.
82. In any event, even if the former Etobicoke Official Plan was accepted as being the determinative plan, I note that a planning study has been undertaken that has resulted in the Avenue By-law, which does contain provisions relating to securing matters under Section 37 of the Planning Act – therefore – I submit that on the evidence the test set out in the former Etobicoke Official Plan has in fact been met.
83. However, it is the City's position that it is the new City of Toronto Official Plan that should apply and that the testimony of Ms. Johncox provides sufficient basis for the board to impose a condition, if the proposal is approved, to secure contributions toward the improvement of the streetscape and the parkland.

#### **Specific Comment upon Mr. Brown's Written Argument**

84. While I do not propose to respond in detail to every assertion that Mr. Brown makes, there are a number of themes in Mr. Brown's Written Argument that I wish to address.
85. Mr. Brown attempts to use the Brownstone townhouses as a justification for his client's proposed apartment building and its intrusion into the *Neighbourhood*. I submit that these townhouses were approved under the former Etobicoke Plan (and prior to the Avenues Study), which allowed for townhouses as a permitted house form in the abutting low density residential areas and as such cannot credibly be used as a planning precedent to justify the intrusion of an apartment building into the *Neighbourhood*.
86. Mr. Brown asserts that there is no adverse impact from allowing the 45 degree angular plane to be taken from the southern boundary of his client's site. What this ignores is that it would

allow his client to have the benefit of its own action in demolishing the two single family homes that were located in the *Neighbourhood*. If his argument were accepted it would mean that the 45 degree angular plane could be located even further to the south still, provided his client could acquire the properties to the south and demolish them as well. This surely cannot be an appropriate way to protect the character of the existing *Neighbourhood*.

87. Mr. Brown asserts that the Avenue Study did not adequately address the issue of height and implies that the 6 storey limit was established without proper review of all relevant matters. In response, I submit that the Avenue Study clearly examined the issue of height and in fact contained suggested height limits for consideration. Mr. Brown states, “we reviewed the mapping which was not included, which suggested higher heights could be considered”, but he omits to note that that same map showed higher suggested heights for consideration on the north side of Dundas than on the south side.
88. With respect to the Neighbourhood policies of the new City of Toronto Official Plan, Mr. Brown seems to assert that the fact that some *Neighbourhoods* within the City have four story walk up apartment buildings should mean that apartment buildings can be permitted by the Zoning By-law within each and every *Neighbourhood* in the City. I submit that this assertion is completely inconsistent with the concept of stability within existing *Neighbourhoods* and if accepted could in fact lead to de-stabilizing the existing character of *Neighbourhoods*, such as this one, where the prevailing built form is one or two storey single family homes.
89. Mr. Brown asserts that the City witnesses seem to have taken different approaches depending upon the position of City Council with respect to applications. For example, he states:

The city’s inconsistency and unreasonable in their approach, was highlighted by Mr. Oikawa’s attempt to invent distinctions from other proposals, where the approved heights in an Avenue Study were either varied or amended. If the City Staff and/or Council supported the amendment, that was a distinction. If the site was excluded, as a result of an appeal, and then a settlement was reached, that was a distinction. He tried to argue that the Avenue Study already determined that this site was not a landmark, although that argument is difficult to reconcile with the mapping which provided an illustration which

would lead any reasonable person to believe that the authors of the report anticipated a 7 or 8 storey building on the subject site.

And with the greatest respect, the unreasonable approach taken by Mr. Oikawa, became clear when we reviewed the staff report he authored, with the support of the local councillor and the committee of adjustment, approving a 12 storey building on an avenue which had been approved with 6 storey heights.

90. In response, I would ask the Board to specifically repudiate this attack on Mr. Oikawa's credibility. I submit that Mr. Oikawa's testimony was of the highest order of professionalism and that this suggestion that he was attempting to invent distinctions should not be allowed to pass without comment from the Board.
  
91. With respect to the Queensway site, Mr. Oikawa gave evidence that the site is located within a Site and Area Specific Policy in the New Official Plan (Area 6) in which 1,270 dwelling units were permitted in the Official Plan. An application was approved to rezone the majority of the lands in Area six, but did not include the lands identified by Mr. Brown. The development on the site was viewed in the context of the development surrounding it, 5 other high rise towers all of which are and were permitted in the Official Plan. Mr. Oikawa did not rely on a "flexible interpretation of the Official Plan Boundary" on that site, as put forward by Mr. Brown. The Official Plan Site and Area Specific Policy clearly permits the development of the whole "superblock" for 1,270 dwelling units as well as 83,722 sq. m. of commercial space. No interpretation of the Official Plan was required because the policies of the Official Plan state that the Site and Area Specific Policies prevail when in conflict with the rest of the Plan.
  
92. Mr. Brown also infers that Ms. Johncox said that City staff used the same Interpretation policy when doing the Avenues By-law. I wish to note that the City used the Section of the Interpretation policy that says that the boundaries are general except where they are defined in an area specific policy. City staff used area specific policy 277 to interpret the boundary not the remainder of policy 5.6.5 used by Mr. Smith.

All of which is respectfully submitted.

December 14, 2007

Stephen M. Bradley

Solicitor for the City of Toronto

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