

ISSUE DATE:

**Sep. 18, 2002**

DECISION/ORDER NO:

**1263**



PL011152

Ontario Municipal Board  
Commission des affaires municipales de l'Ontario

Minto YE Inc. has appealed to the Ontario Municipal Board under subsection 22(7) of the *Planning Act*, R.S.O. 1990, c. P.13, as amended, from Council's neglect to enact a proposed amendment to the Official Plan for the City of Toronto to redesignate land municipally known as 2195 Yonge Street from Yonge-Eglinton Mixed Commercial-Residential Area A in the Yonge-Eglinton Part II Plan to a site specific amendment to permit mixed use development, including residential, retail, recreational and accessory uses, including a below grade parking garage  
Approval Authority File No: 100034  
OMB File No: O010197

Minto YE Inc. has appealed to the Ontario Municipal Board under subsection 34(11) of the *Planning Act*, R.S.O. 1990, c. P.13, as amended, from Council's neglect to enact a proposed amendment to Zoning By-law 438-86 of the City of Toronto to add a site specific amendment to the Mixed Commercial-Residential zoning for the lands municipally known as 2195 Yonge Street to permit the construction of a mixed-use development consisting of two towers (47 and 54 storeys) rising from a 5-storey podium with street-related retail uses  
Approval Authority File No: 100034  
OMB File No: Z010168

Minto YE Inc. has referred to the Ontario Municipal Board under subsection 41(12) of the *Planning Act*, R.S.O. 1990, c. P.13, as amended, determination and settlement of details of a site plan for lands composed of Lots 6, 7, 8, 9, 10, 11, 12, 13 in Block B, Registered Plan 653 York, in the City of Toronto  
OMB File No: M010102

**APPEARANCES :**

**Parties**

Minto YE Inc.

City of Toronto

Oriole Park Association Inc.  
Avenue Road/Eglinton Community Association Inc.  
South Eglinton Residents' & Ratepayers' Association Inc.

**Participants**

Kolter Property Company  
(see also Attachment 3 to this Decision)

**Counsel**

S. H. Diamond  
C. MacDougall

J. A. Paton

K. D. Jaffary

**Counsel**

A. Leibel

**DECISION DELIVERED BY J. L. O'BRIEN AND G. J. DALY**

**A) Introduction**

Toronto is the largest city in Canada and is the fifth largest 'city region' in North America. It is considered to be a 'world-class city'. The 'economic engine' for Ontario and much of the Country, it is an important area which attracts significant population migration, and will continue to play a leading role into the future.

Against this backdrop, the Board is asked to consider appeals by Minto YE Inc. ("Minto") for development of two residential buildings with a podium, immediately south of the intersection of Yonge Street and Eglinton Avenue. The proponent argues the proposal will constitute 'world-class architecture', in essence it will be a landmark and the design will be memorable. Minto further argues the planning documents should be implemented. Opponents of the project argue the appeals filed by Minto should be dismissed, for several reasons, but essentially that the site context is inappropriate.

The 0.78 hectare site is known for municipal purposes as 2195 Yonge Street, within the block bounded by Yonge Street, Eglinton Avenue, Soudan Avenue and a 6.1 metre public lane to the east. The current use is an 1960-era ten storey office building, at a density of 1.8 gross floor area, with surface commercial parking. The revised proposal presented to the Board would result in removal of the current structure and uses to be replaced by two residential/retail buildings consisting of: the north tower to be 160 metres, the south tower to be 118 metres, set upon a five storey podium along Yonge Street. About 908 apartment units would be constructed. An open space between the towers, at grade, would allow public access from Yonge Street to the easterly lane. Vehicle access would be gained from the lane and an entrance located to the south of the southern tower. The relevant initial "Site Statistics" (Exhibit 3) is appended as Attachment 1.

The proposed development (generally), and some of the surrounding developments, are depicted on Attachment 2 appended to this Decision. The area consists of stable residential neighbourhoods, community and service facilities and a node of high density residential, office and retail development.

The current Official Plan designations are:

- a) Metropolitan Toronto Official Plan – “Intermediate Centre”.
- b) City of Toronto Official Plan, Part I – “Regional Commerce Centre”.
- c) Yonge-Eglinton Part II Official Plan – “Yonge Eglinton Mixed Commercial Residential Area A”. The residential density is 3.0, the commercial density is 4.0, subject to an overall density of 5.0. Office, retail, residential and institutional uses are allowed.

The current zoning is: CR T5.0 C4.0 R3.0, consistent with uses and the mixing formula in the Part II Official Plan. The maximum permitted height is 61 metres.

Applications to amend the Official Plan and Zoning By-law, filed by Minto in December 2000 and appealed to the Board in December 2001, were not approved by Council in April 2002, but municipal staff was given instructions to negotiate a settlement on behalf of Council, subject to defined parameters. Those negotiations proved successful and the City of Toronto (“City”) appeared at the hearing in support of the revised planning amendments sought by Minto in the appeals of the applications. The Board also had for consideration a site plan under appeal.

The proposed Official Plan Amendment would allow a gross floor area of 87,680 square metres, consisting of non-residential gross floor area not to exceed 3,470 square meters and residential gross floor area not to exceed 85,910 square metres. Section 37 *Planning Act* contributions are also recited. (Exhibit 162B). The proposed Zoning By-law Amendment would implement the Official Plan under appeal, and includes provisions related to parking spaces, height limits and other technical performance standards (Exhibit 163B).

The Board conducted two prehearing conferences to organize the hearing and establish the issues. In addition, a web-site was created by the community to assist the parties, participants and the public with the exchange of reports which would be filed at the hearing. The Board has reviewed the results of that web-site experience and thanks the parties for their involvement in the electronic filing process. The methodology and technology may be used by the Board in other cases. The Board expresses its appreciation, in particular, to Mr. T. Mills for monitoring the web-site and for providing the Board with additional information regarding the usage by the public.

The appeals were opposed by several parties and participants, listed under “Appearances” in this Decision. A number of property owners in the immediate vicinity of the project also gave evidence in support of the Minto applications. The opposing associations that were represented by counsel are noted in the Decision as the “Associations”.

**B) Issues**

The parties identified the following issues for the consideration of the Board in resolving the appeals:

- 1) Whether the proposed development has been properly evaluated against in force Official Plan policies; and are the height and density desirable and consistent with the City’s Official Plan policies, including Section 2.4 of the Official Plan.
- 2) Whether the proposed mix of uses are desirable and consistent with the City’s Official Plan policies.
- 3) A residential project which exceeds permitted density by a factor in excess of three times the permitted residential density should not proceed before a formal planning review of the Part II plan for the Yonge-Eglinton area is undertaken and the consideration of the results of such a review by City Council.
- 4) Whether the proposed heights and densities are appropriate in terms of the overall City Structure of the Central Area, Centres and Mainstreets as defined in relevant Official Plan policies.
- 5) Whether the proposed building heights provide an adequate transition from the Yonge-Eglinton Mixed Commercial-Residential Area ‘A’, in which the site is located, to the High Density Residence Area, Low Density

Residence Area, and Mainstreet commercial area east and south of the site.

- 6) Whether the proposed heights fit with the existing built form context of the Yonge-Eglinton Mixed Commercial Residence Area 'A'.
- 7) Whether the proposed heights and massing of the building are desirable in terms of shadow impacts on nearby stable residential areas.
- 8) Whether the proposed heights and densities will set an undesirable precedent for the future development of Yonge-Eglinton Mixed Commercial-Residential Area 'A' in terms of built form.
- 9) Whether the densities are appropriate in terms of the impact of traffic generated by this development and the cumulative impact of other planned and potential developments in the area on the abutting communities and the area transportation system.
- 10) Whether the proposed development will have a negative impact on parking in the area.
- 11) Whether the proposed siting of the building provides adequate sidewalk width along Yonge Street.
- 12) Whether the proposed development is consistent with principles of good urban design.
- 13) Whether there are adequate accessible pedestrian connections through the site connecting Yonge Street, the subway station and the existing north-south public lane abutting the east side of the site.

- 14) Whether the appellant's proposed Official Plan and Zoning By-law Amendments to increase the height and density with the contribution of public benefits pursuant to Section 37 of the *Planning Act* are adequate.
- 15) If the appellant's proposed amendments are not appropriate without the contribution of public benefits pursuant to Section 37 of the *Planning Act*, what public benefits should be provided in connection with the proposal.
- 16) Whether and when planning for this area should include a pedestrian connection under Yonge Street to the Eglinton Subway Station.
- 17) Whether adequate green space and community services are available to meet the needs of residents resulting from increased densities proposed by this project.
- 18) Has the pedestrian wind impact resulting from the proposed development been addressed.

The Board in its deliberations is cognizant of the Issues recited above, has considered them in the context of the evidence/arguments presented and will discuss them within the following topics. This approach is consistent with the methodology, although not the groupings, used by counsel for the Associations in argument: "Some of the procedural order issues ask several questions, and some of the issues can be grouped for discussion.":

- 1) The Need for a Part II Official Plan Amendment – Section 16.4;
- 2) Prematurity Pending Completion of the Focused Review;
- 3) Precedent;
- 4) Height, Density and Massing;
- 5) Urban Design, Built Form and Architecture;
- 6) Wind Impact;

- 7) Traffic, Transit Impact and Parking;
- 8) Shadow/Sun Impact;
- 9) Section 37 *Planning Act* Benefits;
- 10) Community Input;
- 11) Proposed Official Plan/Zoning By-law Amendments, and Site Plan.
- 12) Other Matters

**C) Discussion**

The Board has considered the evidence, submissions of the parties, participants and the public, including the evening session held in the community and the arguments. The Board will not canvass all the evidence, submissions or arguments in detail but will refer to parts as necessary for an understanding of the disposition of the appeals.

The Board also notes for the benefit of the participants who were not represented by counsel, that the Board is bound to assign weight to the evidence and must give careful consideration to the qualified opinion evidence of practitioners in any particular discipline. A person may hold a degree in architecture, but is not licenced to practice, never has been licenced, and has not practiced in that field. Further, that individual may be familiar, as a renovator, with minor residential developments valued at less than \$500,000 in his career. Or a person may be qualified in real estate matters but seeks to advance theories related to the transit system. The Board must weigh all the evidence and will assess the opinions expressed by the qualified, impartial, professional witnesses against the 'lay' evidence. Similarly, the Board must assess competing professional opinions on any issue and decide which evidence and opinions to accept. Finally, the Board is compelled to consider the evidence called by any party to the proceedings, regardless of whether it is produced under summons, and must assign weight to those opinions even when the opinions expressed do not support the case advanced by the party that produced the witness. In that regard, the Board notes one extremely remarkable feature of this hearing has been the amount of evidence called on behalf of the Associations, under summons to the witnesses, which actually was

supportive of the proposed development. The Board cannot discount that evidence simply because it was given under summons.

**1) The Need for a Part II Official Plan Amendment – Section 16.4**

The Associations placed much weight on the opinions of the consulting planners called to advance their case that the proposed Official Plan and Zoning By-law amendments, together with the resultant development, are not in conformity with the existing policy framework. Much time was spent in argument critiquing the principal planning witness produced by Minto. What was noticeably absent from that argument was the evidence called by the Associations of the City planners, under summons, who maintained a Part II Official Plan amendment was not required to evaluate the applications. Further, City planning staff concluded, even in the absence of the completion of the focused review, that a planning rationale for the Minto site to be developed with buildings to at least 8.0 times coverage and to a height of 118 metres, existed. It is noted those City planners under summons did not have the benefit of hearing or reviewing the complete evidence presented to the Board.

The Board is satisfied, from the record, the planning process has been fair, open and accessible to all interested persons, and was based on a neighbourhood approach with full public participation, consistent with the goal enunciated in Section 1.14 of the Official Plan.

Section 16.4 of the Official Plan states:

**16.4 Part II Study for Large Developments**

Notwithstanding any other provision of this Official Plan, Council will consider large scale development proposals which may have a major impact on the structure or character of the City, or which may alter the form of streets and/or blocks of the City, only in light of a study of the area undertaken for the purpose of recommending policies for adoption in Part II of this Plan. Council will not make any amendments to the Zoning By-law to permit such development without first adopting such policies as may appear necessary in light of the study in Part II of the Plan.



The Board has considered the Section and accepts the interpretation of the planning consultants called by Minto, and the two City planners under summons by the Associations, that the proposed development will not have a major impact on the structure or character of the City, nor will it alter the form of streets or blocks. Mr. R. Truman, the Associations' planning consultant, advised the Board that if the focused review was completed, the applications could proceed in the absence of a Part II amendment. If Section 16.4 indeed mandates a study, and the proposed development meets the criteria which requires a Part II amendment, then Mr. Truman's concession is incongruous with the interpretation advanced by counsel for the Associations to the Board, and certainly contradicts the second planning consultant called by the Associations, Mr. N. E. Davidson, that Section 16.4, in his opinion, is "mandatory". The Board finds a Part II amendment is not required under Section 16.4.

## **2) Prematurity Pending Completion of the Focused Review**

Counsel for the Associations suggested that the matters are premature, or in the alternative, that they might be adjourned pending completion of the on-going focused review of the Yonge-Eglinton area by the City: "... the Board would benefit from having the policy decisions of Council in respect to the whole of the Area A, and preferably of the Yonge Eglinton Part II area before it. I do not suggest that the Council's conclusions should be carried into an approved Part II plan before the Board takes up the case again, although I suppose that if Part II policies had been adopted, any appeal of them might be joined with a continuation of the hearing."

The Board is puzzled by this suggestion. What possible further information would be forthcoming from completion of the focused review that is not already before the Board as it relates to these appeals? Based on the evidence, the Board concludes no additional information is required to assess these applications. Minto participated fully in the many focused review committee meetings, and provided all the reports necessary to support the development. Much of the evidence called by the Associations, as previously noted, actually supports the development without the need for further study. Finally, the evidence of the Associations' planner Mr. Truman concluded any further study or decisions by City Council need not be carried into a Part II Official Plan Amendment to proceed with a consideration of any zoning by-law amendment. Absent that requirement, and based on all the evidence before the Board, there is no need for any further delay in processing the proposed development or for further

Council/community consultations. All issues in dispute have been resolved to the satisfaction of the Board. The Board finds that the applications are not premature.

### **3) Precedent**

The term 'precedent' means: 'related to a previous case taken as a guide for subsequent cases or as a justification' (*The Canadian Oxford Dictionary*, 1998). The opponents to the development argued an "undesirable precedent" will be set. The apprehension, expressed at the hearing, was that approval of the Minto proposal will change the context of the Yonge-Eglinton area "very significantly": "there is no reason to believe that the current proposed height will remain the maximum for the area." Owners of other sites in the node, the concern continued, will conclude that they can also achieve the densities Minto is seeking.

The Board is satisfied the extensive analysis of the Minto site, within the context of the Yonge-Eglinton node and area, will not automatically create a precedent for other properties. Those other properties, if and when any development proposals are advanced, will be required to undergo the same rigorous review that the Minto development has undergone. That, in the Board's view, will result in a 'positive' precedent. Any future developments will be subjected to the same process, planning justification and exhaustive scrutiny, including an assessment of relevant policies, that are evident in the current case. Approval of the Minto project may indeed lead to other similar proposals, but the necessary studies and analysis to support those projects will be mandatory.

The spectre of applications being refused for other properties in the area leading to a cessation of development activity, is at best, a specious argument. There is no credible evidentiary foundation for that submission. There is no basis to suggest, as counsel for the Associations did, that the development industry will lose confidence "in the rules ... [w]hen the industry believes the rules will not be enforced... ." The Board is satisfied the 'rules' are being 'enforced' in the Minto case. This proposed development will not adversely impact the community, and has been the subject of extensive study. The City, and the community, can continue with the review of the Yonge-Eglinton node/area and assess impacts of other potential sites. The evidence produced by the opponents is not sufficient to convince the Board the Minto applications should be refused, or that approval will result in some unsubstantiated, undesirable precedent.

#### **4) Height, Density and Massing**

Height, Density and Massing arise specifically from concerns raised by the Associations, residents and City planners throughout the processing of the applications and was addressed in the evidence of both professional and lay witnesses. The proposed height of the two towers has changed over the course of review and is complicated by suggested acceptable heights in the City Staff Planning Report (Exhibit 27B, Tab 25) that recommended refusal of the application.

The heights of the two towers, following revisions intended to respond to City concerns, are as follows:

North Tower: 160 metres

South Tower: 118 metres

This represents a reduction of 27 metres and 44 metres for the north and south towers respectively from the original proposal.

In comparison, the Board heard that the current zoning restriction, applicable to this property and others in the immediate vicinity, is 61 metres. Minto proposes to increase height by 99 metres over that contemplated by these restrictions. Further, the existing north tower of the nearby Yonge-Eglinton Centre is 124.4 metres. The difference in height between the tallest existing tower and the taller of the two proposed towers is 35.6 metres.

City planning staff in conjunction with urban design staff undertook an assessment of appropriate heights for the Yonge-Eglinton node. It was their conclusion that tower heights of up to 118 metres (north) and 92 metres (south) were supportable from a planning standpoint. The planners' rationale for these height limitations arose from their desire to "provide a smooth transition as one moves away from the centre of Area 'A'". They considered the 124-metre tower of the Yonge-Eglinton Centre as sacrosanct. They also considered this degree of reduction necessary to address shadows.

On behalf of Minto, consultants undertook a modelling project intended to represent what people could expect to see as they move through the Yonge-Eglinton neighbourhood on a day-to-day basis. A computer did the modelling, and the consultants asserted between 90 to 95 percent accuracy for the results depicted.

To simply say the buildings are too tall does not assist the Board in assessing the appropriateness of the development. Similarly, a statement that suggests heights should be capped only when negative impacts occur does not help in assessing how a tall building must relate to its surroundings. The Board was struck by a statement made by Minto's urban designer, Mr. R. Glover,; "There is no question that these buildings are tall, but the question that must really be answered is how does it fit in, and what is the visual impact?" This is the basis upon which the Board assesses this issue.

Minto's urban designer advised that the positioning of the buildings on the site and their directional focus assists to minimize impacts of overlook and privacy. When looking out of these buildings at lower levels it was his opinion that intervening buildings and trees will block views and at upper levels, distance will achieve the same result.

Although the expectation of highest visual impact on the ground would seem to be from the southeast, in reality, the modelling shows that the highest visual impact is from the southwest in an area further removed from the site.

When viewed from closer up, particularly along Soudan Avenue, the modelling showed intervening buildings block actual views of the proposed buildings. From further away, particularly from Oriole Parkway, it was clear the buildings will be visible. In some instances, the view will be blocked for part of the year by the significant tree cover which exists within the low density residential areas, in other instances the buildings will be visible at all times. In each instance where the buildings will be clearly visible there are other tall buildings existing within the node, which also form part of the visual environment for this community.

The City urban designer called by the Associations identified four issues in the assessment of height: shadow; context; stepping; and transition. Shadow will be considered as a distinct issue. The relevant edge condition for him was Soudan Avenue, where high-density development in the core of the node is adjacent to a low-rise residential neighbourhood. He acknowledged that the context includes high buildings and that he would not want to see a slab form of construction for this site, which would inevitably result in lower, wider buildings. He agreed with the assessment of Minto's urban designer that the proposed configuration and orientation of buildings would provide better sky views and sunlight access.

All the witnesses who gave evidence on this subject area agreed that shadow was the primary concern.

The Board notes that the two planning consultants called by the Associations did not advise of a specific concern with height. Indeed Mr. Truman indicated that he had “no issue with height per se.” Section 19.23.2.4 of the Yonge-Eglinton Part II Plan outlines, in part, policy regarding building height. Mr. Truman, when asked specifically about this section, did not place weight on subparagraph (a), which indicates that Council will use its powers to pass by-laws to limit the height of buildings. He opined that this comment flows from a long-standing concern or preoccupation with height that has existed in Toronto for over 30 years. He also acknowledged that the Yonge-Eglinton Part II Plan at Section 19.23.9.3 provides a framework for varying height limits within the Plan area. The Plan uses a test of compatibility of scale and potential adverse affect on residential amenity to determine the appropriateness of varying height restrictions. The Board relies on this evidence in assessing the potential impact.

Counsel for the Associations invited the Board in its deliberations to examine the drawing entitled: “Minto’s Revised Proposal within Existing Built Form Context” (Exhibit 27B, page 538), which is appended to this Decision as Attachment 2. The Board concludes from that and other examinations of the evidence, there is an appropriate transition and the Minto towers are not out of scale with the surrounding built form.

In concluding that height in and of itself is not problematic, the Board also relies on comments made by Minto’s urban designer in assessing whether the building ‘fits in’. Mr. Glover looked to the following criteria:

- 1) distance from the building to an affected area;
- 2) building height;
- 3) intervening buildings;
- 4) landscape of area; and
- 5) orientation of building

In each of these matters it is the Board’s finding that the buildings at the heights, density and massing proposed have properly addressed their context and achieve an appropriate transition. The Board concludes that, while these buildings will be seen, they will form part of an existing landscape of tall buildings that are a significant ingredient in this community, whether viewed from the central part of the node or the residential areas surrounding it. It is clear that intervening buildings and the extensive

tree cover serve to filter views of the proposed buildings as they do for the existing circumstance. In areas where the buildings will be visually present on a consistent basis, the Board is satisfied that intervening distance will serve to effectively mitigate any impact on the community.

The difference in height between that recommended by the City's planners and what is now proposed by Minto is not, based on the evidence, problematic for the Board. The City's planners' goal in reducing height was to respond to both transition and shadows. Height reductions simply designed to maintain the supremacy of the Yonge-Eglinton Centre within the hierarchy of height does not assist the Board in conducting its assessment. This is particularly true when viewed in relation to relevant Official Plan policies concerning height, urban design and a stated desire to intensify at appropriate locations.

The existing height limit of 61 metres was designed to respond to transition at the edge condition. This was in part what led to the concern on the part of City planners. The Board is satisfied from the evidence, particularly from a review of the results of the computer modelling exercise, that the heights, massing and density proposed properly respond to the edge condition and do so within the meaning and intent of height policies of the Official Plan.

The Board concludes that the proposed building heights, mass and density as a discrete issue are not cause for concern. Minto has successfully addressed the relevant factors relating to height mass and density. The densities within the Yonge-Eglinton area are consistent with densities found in the central core of Toronto. The argument that the density proposed is incompatible with the area, and should be located in the core, is not supported by a proper analysis of the evidence. In fulfillment of the test established in the Part II Plan, the Board is fully satisfied that compatibility of scale is achieved in relation to other buildings within the node's centre and surrounding high-density and low-density residential areas. Further, the Board is satisfied that residential amenities will not be adversely affected by the proposed development.

## **5) Urban Design, Built Form and Architecture**

Several opinions were presented on the role of urban design in this hearing. The Board heard from two qualified designers, one called by Minto and one under summons from the City planning staff. In addition, several residents with either interest or experience in this issue commented. One resident in particular, gave evidence in two

specific matters related to urban design: nodal elements and streetscapes. None of the planners gave detailed evidence in this area.

Counsel for the Associations noted in argument: “My clients have no issue with the urban design of the project to the top of the five storey (west) and two storey (east) podium. Their issues with the urban design of the project relate entirely to its density and height in this particular location.”

Matters of urban design, built form and architecture have more recently factored significantly in land use planning assessment. This shift seems to arise from a desire on the part of both practitioners and the public to more fully understand the end product of the process: in this case, two tall buildings. The Board accepts that it is desirable from an approvals standpoint to know what the product will be. But the Board also sees urban design, built form and architecture as something more: it is itself a process, a means by which certainty of relationships can be assessed and impacts evaluated.

The Official Plan is focused on urban design assessment as an integral component of the review process. Section 3 of the Official Plan establishes the policy framework for consideration of urban design principles in the review of a development application.

In Section 3.5 of the Official Plan, Yonge Street is identified as a ‘prominent street’ (Exhibit 28, Map 4). It is the most important north/south street in the city. The context of Yonge Street is the consistent pattern of at grade retail with nodal development at subway stations: most notably outside the core at St. Clair, Eglinton and Sheppard Avenues. The Plan encourages development to be responsive to the unique characteristics of individual areas and to use development as a means of sustaining and enhancing such areas.

Mr. Glover viewed the node as a drastic change in scale: “an island surrounded by a sea of green”. In his opinion these strong characteristics along Yonge Street support Section 3.5 by reinforcing the high-rise/low-rise pattern of the existing nodal structure. For him, reinforcing the identity of the Yonge-Eglinton area through architectural distinctiveness and good design creates a strong pedestrian relationship at grade. This approach, in his opinion, also supports Section 3.12(a) dealing with location of buildings.

Proposed mandatory retail at grade, and the scale of the podium, reinforce the street level relationship. Almost every resident who gave evidence agreed that the east side of Yonge Street between Eglinton and Soudan Avenues needs improvement. Particular emphasis was placed on the need to link the active, successful commercial areas north of Eglinton Avenue to a similar area south towards Davisville Avenue. The Board heard that the west side of the street does not accomplish that goal now and there is no plan to change that in the immediate future. The west side of Yonge Street both north and south of Eglinton Avenue includes substantial structures with interior retail and office space primarily above grade. Mr. T. Mills in his evidence stated that he considers the east side of Yonge Street as the key to regeneration of the entire node.

Section 3.14 of the Official Plan addresses specific built form considerations. It is a key policy in the Board's consideration and states:

#### 3.14 Building Setbacks, Height and Densities

It is the policy of Council that the siting and massing of new buildings should provide an appropriate degree of continuity and enclosure to the street spaces that the buildings frame. The massing of the buildings should respect the existing street proportions and provide transition between areas of differing development intensity. Adequate sunlight access and sky views, and comfortable wind conditions and public safety should be maintained or improved in the streets and public open spaces surrounding building. To achieve these objectives, Council may:

- (a) establish consistent minimum and maximum setbacks from the property line where appropriate;
- (b) define maximum desirable building heights at the street edge;
- (c) require the upper portions of buildings to be massed, if necessary, to ensure comfortable street level conditions; and
- (d) establish maximum density limits that, in concert with other built form and siting controls, result in appropriate building mass.

The siting and massing of any building are to provide continuity. They are to enclose the street space and harmonize with existing development. The Board heard from two architects that this was specifically in their minds while designing the proposed Minto buildings. Although it was acknowledged that the proposed buildings are not the same as what exists on the site now, in the architects' opinions they are compatible and consistent with the Plan.



Mr. Glover suggested that the massing of the building with respect to the existing street, in effect the podium-tower relationship, will provide sky views that would not otherwise be achieved by a slab building built in conformity to the existing zoning by-law. In support of the height considerations, he concluded that the buildings will provide adequate sunlight access. He noted that 75 percent of the site will be covered with buildings at five-storeys or less. In terms of transition, he viewed the podium as being of assistance. Further, the south tower will step down and will acknowledge the direction of development towards the Yonge-Eglinton intersection. The podium will also support the safety factor of 'eyes on the street', which is currently lacking on the site and on this part of Yonge Street.

The location of the buildings, several properties removed from the southeast corner of the intersection, was called into question by several witnesses in opposition. However, urban design evidence, including that called on behalf of the Associations, suggested that this was not problematic. There is no Official Plan policy that dictates the buildings must be located at the Yonge-Eglinton intersection and the City's 'Urban Design Handbook' (Exhibit 27, Tab 7) supports the notion of interior block building locations.

The four design objectives established in Section 3.14 of the Official Plan are relevant to the Board's consideration. Under (a), Minto has responded to issues raised by the City and has brought the buildings closer to the street. The proposed design provides a consistent street edge with a large pedestrian sidewalk.

In response to (b), the building height of the podium has been established at 24 metres at the Yonge Street edge. This is consistent with a 'mainstreet' scale. All planners and designers, whether in support or opposed, acknowledged the appropriateness of the podium at the height proposed.

Section 3.14(c) requires massing to respond to street level conditions. Witnesses called by Minto viewed this policy as dealing with acceptability of wind conditions and sun shadows for important times. The Board agrees with this interpretation.

There was a major difference of opinion between the professional witnesses called by Minto and the consulting planners called in support of the Associations' position as it relates to the last objective. This difference in philosophy lays bare the root of the argument in this case.

Mr. Glover suggested that the appropriate way to respond to this policy is to 'mass' the building and then work back to get to 'density'. He placed the emphasis on the words in the section: "result in appropriate building mass". Mr. Truman rejected any idea that 'density' should play a subordinate role to 'massing and/or design'. Indeed he strongly objected to the approach and direction taken by the City and Minto.

The Board concludes that when trying to implement built form policies, regard is to be had for practical and functional building design, site constraints and open space. Section 3.16 appears to give further meaning to the direction of Section 3.14(d) when assessing the relationship between built form and density.

The Yonge-Eglinton Part II Plan contains only limited reference to matters directly related to design.

Section 19.23.2.1 provides the general policy framework for the Yonge-Eglinton area. It contains statements about the individual land use designations within the Plan area and provides guidance on the relationship between them. A prime objective is to 'discourage conflicts' between "Low-Density Residence" areas and other designations including the "Mixed Commercial Residential Area "A"" applicable to these lands.

The form of development to occur within the Plan area is guided by policies in Section 19.23.2.4. Mr. Glover viewed these policies as essentially ensuring a compatible relationship and included in this consideration, matters such as scale, servicing, and visual relationship.

Mr. Glover concluded the Official Plan actively encourages high-density development. The Plan specifically demands that low-density residential areas should be protected from overshadowing. Section 19.23.2.4 also speaks to the need for transition from higher to lower heights. He stated both these objectives have been accomplished in the Minto proposal.

The 'Urban Design Handbook' was developed by the City in September 1997 to assist in the interpretation of the Part I Official Plan. The evidence satisfied the Board that these general design principles have been adequately addressed. Without going through the 'Handbook' in detail, the matters of street setback, buildings on corner sites, mid-block pedestrian passages, building setbacks, harmony with neighbouring development, massing of tall buildings, streetscape improvements, pedestrian amenity, and light, view and privacy were all addressed in dealing with the policies of the Part I

and Part II Plan. The Board is satisfied that the direction given by the 'Handbook' has been effectively and appropriately integrated into the design of the proposed buildings.

There is no issue for the Board with the design of the podium and its relationship to the street. Mandatory, proposed retail will begin to establish the link between areas north and south of Eglinton Avenue in a positive fashion.

The Board does not share the concern expressed by some witnesses opposed to the project that locating these buildings away from the Yonge-Eglinton intersection will serve to undermine the supremacy of the intersection and/or that it will lead to even higher building heights at the corner. In both respects, the Board is satisfied that there are design considerations that can be employed to respond to future development proposals. The Minto project is located within the core of the node. This is clear both from a designation standpoint and from visual observation. No policy directs the highest heights to the intersection and the Board concludes that this is because there is no planning rationale or desire for this to be the case. To do so would limit flexibility within the designation and result in a stifling of design flexibility.

The Board is fully satisfied that the design proposed here is in keeping with Official Plan policy and represents good planning for the site and the area. The concern expressed by Mr. Truman over the design-based approach, does not cause the Board concern.

The Board heard much evidence that if the proposal were to proceed at the density sought it would render the planning process meaningless. On the contrary, it is abundantly clear from the evidence of professional and lay witnesses, as well as the City's policy framework, that building mass is a more important consideration in this hearing than density. This approach better addresses the desire for certainty of the end product. Density as an elusive 'number' is meaningless unless it is translated into a form that is recognizable and able to be evaluated against Plan policy and principles of good planning. The Board sees no greater certainty being achieved by using a density restriction approach than the evaluation of the urban design, built form and architecture approach used in this case.

The Board concludes that the end product, regardless of the density, properly addresses built form principles of the Official Plan and addresses potential impacts through bold, thoughtful design.

## **6) Wind Impact**

The Associations did not dispute evidence lead by Minto with respect to wind conditions. Indeed they advised, after being given an opportunity to meet with Minto's consultant, that wind conditions were no longer an issue of concern.

Section 3.26 of the Official Plan refers to Council's desire to protect pedestrians from the negative effects of wind induced by buildings. Council has not yet established wind speed standards but the objective is to provide comfortable walking conditions on streets, being the issue here.

No other witness challenged the evidence of Mr. H. Baker, Minto's wind consultant. The conclusions he determined, and which the Board accepts, are that the wind conditions from this project will meet or surpass acceptable conditions, in effect, within the comfort range for standing in the summer and walking in the winter. While there will be a change in the comfort levels from existing conditions, they remain acceptable for a pedestrian area. The Board finds that the project satisfactorily addresses the wind policies of the Official Plan.

## **7) Traffic, Transit Impact and Parking**

Counsel for the Associations, in argument, conceded: "... the proposed development, itself, will not have any major impact on traffic. I acknowledged that during the course of the hearing, and that was the evidence of the traffic consultant Michael Tedesco as well as the evidence of the applicant." That statement, coupled with the evidence of Mr. Tedesco, corroborated by Minto's transportation evidence that there will not be any anticipated adverse traffic impact from the proposed Minto development, is sufficient to dispose of the issue raised by those in opposition. In essence, there will be no significant difference in traffic generated from the existing development, the proposed development or the as-of-right zoning on the site.

The findings of Mr. Tedesco were not presented to the meetings of the Associations, premised on "... budgetary constraints of ratepayers ...". The Board is concerned with this omission in submitting information and study conclusions to the Associations. Surely, properly informed by their own consultant, the issue of traffic may have been resolved by the Associations. The Board was requested to compel all parties to file reports on a community-initiated web-site for the purpose of disseminating information related to the hearing. That same technology was available to the

Associations to distribute the traffic consultant's opinions and reports during the formulation of the positions that the Associations subsequently took on the Minto applications.

Counsel for the Associations however, argued that notwithstanding the failure of the traffic consultant to disseminate information, "[p]eople *believe* this project will cause more traffic. On the evidence, that belief is very solidly based on the further intensification of the node that is likely to result, rather than on the traffic from the project itself." In the Board's view, that concern is not sufficient to refuse the development, and is more properly addressed in the focused review of other sites in the node and area.

One concern, repeatedly expressed at the hearing by those in opposition, was the current and projected traffic infiltration within the community. The Board is satisfied any traffic generated by the Minto development would be local to the community and therefore, would not constitute 'infiltrating' traffic. If a present infiltration problem exists, it is incumbent on the City to review the situation and take remedial action, if necessary. Approval or refusal of the Minto applications will not solve the perceived current traffic problems expressed by the opponents. The problem is independent of the Minto development, as counsel for the Associations noted: "[m]easures designed to reduce infiltration, such as turn restrictions and stop signs, were routinely ignored".

The residents want a traffic infiltration plan. That is a separate issue from the Minto applications. That noted, the Board does commend to the City, based on the concerns expressed by the community, that it should consider initiating a traffic infiltration study as part of the on-going review of the Yonge-Eglinton area.

Respecting transit, no credible, qualified transportation evidence was presented by those in opposition to refute the claims advanced on behalf of Minto that the transit system can handle the anticipated passenger volumes that will be generated by the development.

Counsel for the Associations agreed: "[a]ll of the traffic experts concluded that the 888 parking spaces proposed for the development would be satisfactory." However, the zoning by-law and City policy allows a distinction in the parking requirements depending on tenure. If both towers are condominiums, the parking rate will be higher than if one building is rental and the other is condominium tenure. The relevant date for determination of the applicable standard is at the building permit stage. The evidence

lead by Minto suggests it is the intention to apply for both towers to be declared as condominiums when the building permit is sought. The draft zoning by-law would allow the flexible parking rate to be applied when the building permit is issued, depending on tenure.

Based on the evidence, and the Board's understanding of the future intent of Minto to declare both towers as condominiums, the proposed zoning by-law is to be amended to reflect one standard for the parking required on this site – that is, the higher condominium rate for both towers, thereby securing 888 spaces. This will address the concerns expressed by the Associations that sufficient parking should be provided regardless of tenure, and if excess spaces become available in the future, they could be used for commercial parking for businesses and the community. Currently, the site accommodates 145 commercial spaces. The Board agrees it is good planning to provide for the potential replacement of those existing spaces within any redevelopment of the site.

#### **8) Shadow/Sun Impact**

There was significant evidence presented on the issue of shadows cast by the proposed buildings. Changes to the proposal over the time of processing the initial applications, means that some evidence tendered was based on a building design no longer sought by Minto. Some of the material presented by those opposed relied on previous versions of the proposal to draw conclusions on the impact of shadows on the area.

Minto's consulting urban designer gave the bulk of evidence on shadows. For him, the relevant considerations included: the policy framework, existing shadow characteristics, comparison of proposed shadows to as-of-right shadows, the shape and area of new shadow, duration, the time of day and the season.

A 'moving shadow' depiction was presented as part of the evidence. It showed, in five-minute increments, the shadow cast between essentially 9 A.M. and 6 P.M. in March, June and September. In addition, evidence was tendered which distinguished between the incremental increase in shadows factoring in shadows cast by existing buildings, as well as what the impact of as-of-right shadows might be.

It is clear that a significant amount of work was undertaken on this issue. City Council specifically demanded that Minto thoroughly consider the implications of

shadow and, when looking at a means of resolving concerns raised by residents, sought a reduction in height for the two buildings which would 'remove shadow impacts as identified in the City Planning Report'. That staff report expressed concern with shadow impacts on low-density residential areas. The Board concludes that a revision to the proposed height of the two buildings appears to have been driven by the desire to address concerns on this issue.

Of all the witnesses who gave evidence at the hearing, one resident advised the Board that she believed shadows from the proposal would directly impact her home. This individual lives in a single detached home on the north side of Soudan Avenue west of Redpath Avenue within the existing designated 'High-density Residence' area. The shadow modelling suggested that an increase in shadow would occur on her property between approximately 6 P.M. and 6:30 P.M. around the Autumnal Equinox.

In support of the residents' opposition, Mr. T. Mills had undertaken an analysis based on two 54-storey buildings over the course of a full day. His assessment looked at the period from sunrise to sunset and his diagrams (Exhibit 95, page 31) show a complete shadow over the full day. Although his assessment provided some schematic identification of shadows, it did not, in the Board's opinion, assist in providing a meaningful assessment of impact. His shadows do not assist in assessing duration, timing or incremental increase. As a result they were not particularly helpful in responding to this issue.

The Associations and residents tendered no other compelling evidence on the matter of shadow.

In addition to the initial shadow assessment, Minto retained an individual who specializes in assessing the impact of sun shadows. Mr. R. Bouwmeester's peer review concluded that the shadows depicted by the Minto work accurately represent what will occur in nature. The review of the times for which investigation was conducted satisfied him that sufficient work had been completed to conclude minor impact of the proposed buildings on the surrounding community.

He disagreed with the assertion that one hour after sunrise and one hour before sunset should be investigated and factored into a decision on the impact of shadows. First, there is apparently no municipality that limits development based on this sort of criteria, but more importantly for the Board, there is no solar advantage to looking at

these times as the shadows cast by existing structures, even at the Summer Solstice, are so great that the overlap of shadow makes the investigation meaningless.

Mr. Bouwmeester completed his evidence in chief with the following comment: “[t]his proposal is perfect for this location. It might not appear so at first, but after analysis, [one] can easily conclude this.”

The Official Plan addresses sunlight in the section entitled “The Pedestrian Environment”. Section 3.27 requires consideration of sunlight availability for ‘parks and important pedestrian streets’. Sunlight standards for certain city streets identified on a Map schedule in the Plan seek to achieve three to five hours of sunlight around solar noon on one sidewalk for the period between March 21 and September 21. Although none of the streets in the Yonge-Eglinton area have been identified in this part of the Plan, the Board finds it appropriate to consider this test as part of the assessment of shadow and its impact. Further, because the site is in proximity to low density residential areas, consideration was given to the impact of shadow on this realm for extended daytime periods, in particular between the hours of 9 A.M. and 6 P.M.

The Board agrees that in order to determine impact, a longer time period than that established in the Official Plan must be tested. Some residents asserted that in order to understand the actual impact, shadow assessment should continue later into the evening to respond to how people use their private yard areas and the street. It is clear to the Board that to look at a period so close to sunrise, or sunset, does not assist in determining meaningful impact. At these times shadows are long and the ability of the sun to cast further shadows reduced.

As acknowledged by the Board, City planners proposed height reductions in part to address shadow issues to the northwest and east. They agreed that the height now proposed by Minto accomplishes the mitigation they sought in their planning report, despite higher building heights than they suggested.

Because the buildings are located within a node that includes a significant number of tall buildings, existing shadow impacts, as demonstrated in the shadow reports, are already evident. Those professionals retained by Minto who tendered the shadow reports and gave evidence considered the incremental change resulting from the Minto proposal to be minor. It is clear from all the evidence the proposal will have little impact, in terms of new shadows, on any area in the immediate vicinity of the buildings, and in particular, the pedestrian streetscape of Yonge Street or Eglinton



Avenue. Further, where new shadows will occur, they will be minimal, and those resulting shadows will move more quickly and thus, will have diminished impact on the community.

The Board must also consider and compare the proposed shadows to those which could occur as-of-right within the existing zoning by-law/use permissions for Minto and surrounding properties. Although it is arguable whether the full as-of-right shadows would come to fruition, the impact of as-of-right shadows could be much more significant than the proposed shadows. Those as-of-right shadows could have greater impacts on several locations, where the revised Minto proposal will only result in minimal impacts at three identified locations.

The evidence clearly shows that the shape and area of new shadow results in insignificant impact on low-density residential areas. The properties impacted, as identified and predicted through the shadow assessment, are as follows:

- 1) Around June 21, between approximately 9 A.M. and 9:15 A.M., four houses on Duplex Crescent will be affected;
- 2) Around June 21 between approximately 6 P.M. and 6:20 P.M., the front of some houses on the south side of Soudan Avenue near Holly Street will be affected;
- 3) Around September 21 between approximately 6 P.M. and 6:20 P.M. the front of some houses on the south side of Soudan Avenue near Redpath Avenue will be affected.

The Board concludes that the length of time that the shadows will occur, as well as the time of day at which they occur, represents a minor impact which does not result in an unacceptable adverse condition being established at these locations.

The Board accepts that an assessment of December shadows would not further assist the Board in determining impact. Shadows cast at that time of year are more related to the angle of the sun in the sky and the duration of time the sun is in the sky than any other factor.

The Board concludes that the shadows cast by the proposed buildings will not result in an unacceptable adverse impact that would lead the Board to find the proposal should not be accepted.

**9) Section 37 *Planning Act* Benefits**

Minto voluntarily negotiated the contributions with the City, although it took the position Section 37 of the *Planning Act* was not applicable to the development. Based on the Board's review of prior decisions, this panel concurs with the position advanced by counsel for Minto. The proposed increase in height and density are defensible on good planning grounds, independent of Section 37. Minto has agreed to a cash contribution of \$1.2 million to be used for social housing, \$200,000 toward the provision of an eventual connection to the transit system, design of the development and property Minto owns contiguous to the north of the subject site for an underground connection to the subway, and the use of certain construction materials on the podium to secure the design depicted at the hearing.

Counsel for the Associations produced, under summons, a City employee familiar with community needs in the Yonge-Eglinton area. She did not identify any changes that should be made to the negotiated settlement. The Board asked whether anything should be added, to which she replied: 'Council has stated its priority, and we don't have a mandate'.

Similarly, the Associations produced, under summons, a City employee familiar with parks needs in the community. Based on his evidence, and other evidence at the hearing, the Board is satisfied the proposed open space that will be available to the public as part of the development, and other facilities in the area, adequately address the needs of the future residents of the project, and will be a substantial benefit to the community.

Finally, counsel for the Associations conceded: "In view of the manner in which this case has proceeded, I am in no position to quantify requests for park and social service facilities spaces before the Board." The Board is satisfied those benefits would not otherwise have been available to the City under Section 37, or Section 16.21(a) of the Official Plan. There is not, as alleged in argument, any unfairness to other taxpayers of the City and there is no "taint" on the actions of City Council.

**10) Community Input**

Counsel for the Associations drew to the Board's attention that a "significant number" of those persons appearing as witnesses in opposition, represented areas of the City "very far from" any likely shadow or traffic impacts of this proposal. Those areas

included: Parkdale, Leaside, Summerhill, North Hill, Lytton Park, Sherwood Park and Moore Park. It was submitted the fear of those witnesses was that the Minto applications will do “great violence to the principles of the City Official Plan.” The submission continued: “They felt that if clear, simple planning regulations such as those now in place in Yonge Eglinton could be twisted to permit the current proposal, then the whole basis of Toronto’s Official Plan had been put at risk. ... they understand the Official Plan to be their Charter of Rights.” In response, the Board notes that a substantial number of amendments have been made to the City Official Plan, often on a site-specific basis for significant developments. To suggest the Official Plan in Toronto is sacrosanct, is not supported by the evidence in this case. Planning by ‘exception’ appears, from the record, to be an accepted practice in this municipality.

However, the Board has considered the relevant policies of the Official Plan in formulating this Decision and finds that the provisions have been met. Based on the evidence, much of it provided by the Associations, the draft Official Plan and Zoning By-law amendments do adhere to the Official Plan, and the “charter” which was championed, has in fact been respected.

#### **11) Proposed Official Plan/ Zoning By-law Amendments, Site Plan**

The Board accepts the evidence of Minto’s planning consultants that the Official Plan and Zoning By-law amendments have regard to the *Provincial Policy Statement* and conform to the *Metropolitan Toronto Official Plan*. The development will meet housing objectives and economic initiatives recited in those documents.

The Board accepts the evidence of Minto’s consultants that the proposed amendments are consistent with the direction of the Official Plan. Housing is encouraged within the Yonge-Eglinton area, upon a fair interpretation of Section 2.1 and Section 2.5 of the Plan. The ‘Mixed Commercial Residential Areas’ allow either commercial or residential development. The project is consistent with that policy direction.

The Associations have requested a broader range of uses, if the project proceeds. They do not want: “... an overwhelming residential building with street related retail uses.” The Board has considered Section 1.8 of the Official Plan and the “Regional Commerce Centre” policies applicable to the site and area. However, while one of the stated goals is to accommodate non-residential growth in those Centres, the provision of primarily residential uses on a site is not prohibited. In fact, the current

implementing zoning by-law would also allow substantial residential development on the Minto land, subject to a mixing formula. The Associations conceded in argument: “Mr. Truman considered the changed use. In fairness, he admitted that one project will not make a perceptible difference, but he also stated that the proposal is a major project which will have a major impact on policy if approved in its present form.” Based on the evidence produced by Minto, the Board accepts the project will adhere to the Official Plan direction and will serve the needs of the Centre by facilitating residential accommodation to serve other current and future office-commercial or mixed uses in the Centre.

The Board is satisfied retail uses should be mandatory at the grade level to facilitate completion of the continuous fabric of grade-related retail uses to the north and south of the site along Yonge Street. Otherwise, the mix of uses proposed in the draft zoning by-law, subject to the amendment to require mandatory retail uses at grade, are appropriate and the Board accepts the evidence presented on behalf of Minto in that regard.

The Associations reviewed the issue of an underground pedestrian link to the TTC, however, they conceded: “We do not suggest such a connection makes sense from the present Minto proposal. Making such a project work would require a significant re-configuration of the TTC access, and it would require some below-grade uses on the Minto site ...”. The City and Minto have provided for the possible transit link as part of the *Section 37 Planning Act* agreement. There is no planning or transportation justification to mandate the link now as part of this proposal. Future connections to the TTC through properties to the north of the site, linking at Yonge Street and Eglinton Avenue, is the logical method to address the situation, based on the transportation evidence.

The site plan provides for a pedestrian connection/open space between Yonge Street and the public lane to the east. Counsel for the Associations agreed: “If the site is to be developed as Minto proposes, then my clients accept the grade-level connection between the lane and Yonge Street, and agree that in those circumstances pedestrian access to the subway can best be provided by a signalized pedestrian access to the subway crossing giving access to the southern entrance to the TTC.” The Associations also wanted some assurance that access would be available through the site and the open area at “... all but the very early hours when the subway is not running”. These

matters will be considered by the City and Minto as part of the Section 37 *Planning Act* agreement and the site plan conditions.

The sidewalk width, as revised at the hearing, is adequate and the Board accepts that evidence, which was not seriously challenged. The final site plan is to reflect the revision.

## **12) Other Matters**

The Board is satisfied counsel for the City fairly and accurately represented the position taken by the Council on these appeals. A negotiated settlement was authorized, which was completed prior to the hearing before the Board, and was advanced as the position of Council, with proposed implementing documents. From the record, the Board can find no reason to impugn the submissions of Mr. Paton on behalf of his client. Nor will the Board comment on the imputed actions or motives of individual members of Council. The record of the decision-making process and the collective actions of the legislative body speak for themselves. If anything, the additional 'evidence' that counsel for the Associations surreptitiously introduced in argument pertaining to the Council actions, confirmed an additional opportunity to revisit the Minto appeals during the course of the hearing was afforded to Council, but it declined to reopen the matter. Counsel for the Associations urged: "... the Board would be well advised to bring only its own judgment to bear on the application, and pay little heed to the formal position of Council. If the Board should approve this proposal, on the basis that it was supported by Council, it will be said that the wool was pulled over Council's eyes given the ambiguities in the original motion and over the Board's eyes, on the basis of Council's procedural inability to reopen a matter which a large majority of Council apparently believe requires further discussion and debate." The Board wonders, parenthetically, whether the same argument would be advanced if Council had rejected the proposal, either initially or upon a reopening of the debate.

This Board has not been influenced by any extraneous considerations alleged to relate to the transactions affecting the transfer of the property to Minto, which are not before the Board for adjudication in any case. The Board has exercised its independent judgment, based on the evidence and submissions produced at the hearing, mindful always of its role to ensure the proposal adheres to acceptable standards of good and appropriate planning, that there will be no unacceptable adverse impacts on the community and the public interest is adequately protected.

Counsel for the Associations reserved the opportunity to seek costs against the City regardless of the outcome of the Decision. The Board agreed to allow that matter to be argued at a later date. The Board will reconvene upon receiving any motion, by any party to the hearing, which seeks costs. Any such motion is to be filed within thirty (30) days of the release date of this Decision, and is to otherwise follow the Board's *Rules of Practice and Procedure* for costs motions.

**D) Disposition**

The Board, based on the evidence, the submissions of counsel, and the analysis noted in this Decision, will briefly respond to the specific Issues raised by the parties set out at the commencement of Part B) above:

- 1) Yes, the proposed development has been properly evaluated against the Official Plan policies; the height and density are desirable and consistent with the Official Plan policies, including Section 2.4;
- 2) Yes, the mix of uses, revised by the Board to include mandatory retail at grade, are desirable and consistent with the Official Plan policies;
- 3) No, a formal review of the Part II Official Plan policies for the Yonge-Eglinton area is not required, based on the planning analysis and circumstances of this case;
- 4) Yes, the proposed heights and densities are appropriate in terms of the overall City Structure of the Central Area, Centres and Mainstreets as defined in the Official Plan policies;
- 5) Yes, the proposed building heights will provide an adequate transition;
- 6) Yes, the proposed heights will fit within the existing built form context;
- 7) Yes, the proposed heights and massing are desirable in terms of shadow impacts;

- 8) No, the proposed heights and densities will not set a precedent for future development; other proposals will be evaluated on their individual merits and the evidence then pertaining thereto if future applications are received by the City;
- 9) Yes, the densities are appropriate in terms of the impact of traffic generated by this development; the impact of other planned and potential developments will be assessed by the City as part of its continuing review of this area;
- 10) No, the proposed development will not have a negative impact on parking in the area; the Board will require the project to provide the parking based on the City's condominium rate, regardless of future tenure, thereby potentially maintaining commercial parking on the site accessible for use by the community;
- 11) Yes, with the modifications requested at the hearing to the proposal, there will be adequate sidewalk width along Yonge Street;
- 12) Yes, the proposal is consistent with the principles of good urban design;
- 13) Yes, there will be adequate pedestrian connections through the site;
- 14) Yes, the Section 37 *Planning Act* contributions are adequate;
- 15) No further public benefits should be provided;
- 16) Provision has been made to facilitate a future pedestrian connection under Yonge Street to the Eglinton Subway Station; the City, in consultation with the transit authority, landowners and other interested parties, will control the timing of that connection;

- 17) Yes, adequate green space and community services are available to meet the needs of the future residents of the proposal;
- 18) Yes, the pedestrian wind impact has been satisfactorily addressed.

On balance, the Board generally prefers the evidence presented on behalf of Minto where there is a divergence of opinion in assessing the appeals.

Accordingly, the appeals are allowed, but the Board will withhold the Order pending completion and receipt of the following from the City:

- 1) Revised Official Plan Amendment and Zoning By-law Amendment that incorporate the changes required as a result of this Decision;
- 2) The revised Section 37 *Planning Act* Agreement that incorporates the changes noted by counsel for the City (e.g. access hours to the open space, cladding materials for the podium, etc.);
- 3) Final site Plan and appropriate conditions to reflect the proposal, that incorporate the development as revised.

The Board will require all amended/revised materials and the site plan, including the conditions, not later than December 16, 2002.

Any motion for costs must be received within thirty (30) days of this Decision.

Attachment 1 and 2 filed with original decision

“Original signed by GJ Daly”

G. J. DALY  
MEMBER

“Original signed by JL O’Brien”

J. L. O'BRIEN  
VICE-CHAIR



## ATTACHMENT 3

### Participants

1. John Tyacke
2. Matthias Schlaepfer
3. Michael Opara
4. John C. Dellevoet
5. Kathleen Hamilton
6. Marilyn Bergman
7. Brian McGuire
8. David Vallance
9. Michael Visser
10. Peter Wood
11. George Carrere
12. Terry Mills
13. Michael Muller
14. George Teichman
15. Jay Waterman
16. J. Way
17. V. Short
18. R. Hay
19. E. Franklin
20. K. Connidis
21. B. Wilson
22. D. McKerlie
23. M. Offman
24. I. Bossons
25. S. Stock
26. A. Mitchell
27. N. Bareket
28. D. Sorenson
29. H. Katzin
30. J. McKinnon
31. J. Warren
32. A. Payne
33. L. MacAulay
34. A. Roberts
35. D. Low
36. C. Fountas
37. J. Collautti
38. J. Stewart
39. M. Martini
40. P. Smyth
41. E. Carrique
42. A. Vermes
43. B. McCormick
44. S. Orted
45. J. Merson
46. A. Lovering
47. R. Pushchak
48. M. Freel
49. E. Ehm
50. G. Roberts
51. F. Wheeler
52. M. Kordyback
53. A. Wilson
54. J. Simmons