

ISSUE DATE:

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PL130195

Ontario Municipal Board
Commission des affaires municipales de l'Ontario

Queen EMPC Six Limited 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 rezone lands respecting 1884 Queen Street East to permit the redevelopment of a 6-storey mixed-use building

O.M.B. File No.: PL130195

APPEARANCES:

Parties

Counsel

Queen EMPC Six Limited ("the Applicant")

D. Bronskill
J. Drake

City of Toronto ("City")

J. Braun
N. Rolfe (student-at-law)

Greater Beaches Neighbourhood
Association ("GBNA")

D. Wood
A. Sadvari

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D. Tang

Participants

East Beach Community Association

H. Looije O/B Beach Triangle Residents'
Association

Darrin Miles

S. Giblon

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Allan Munro

Scott Bullock

Brian Graff

Adam Smith O/B the Beach B.I.A.

DECISION DELIVERED BY BLAIR S. TAYLOR AND ORDER OF THE BOARD

INTRODUCTION

[1] On February 25, 2013, the Applicant appealed to the Ontario Municipal Board (“Board”) a rezoning application for the lands known municipally as 1884 Queen Street East (the “Subject Lands”) that had been filed with the City on or about October 1, 2012. The basis of the appeal was that the City had failed to enact the requested amendment within the statutory time period set out in the *Planning Act* (“Act”). Although conceptual site plan drawings, including elevations, floor plans, and some block renderings were submitted as part of the rezoning application, no site plan application was made at the time, and no site plan appeal is before the Board. Thus only the rezoning application is before the Board.

DECISION

[2] The Board has decided to allow the appeal in principle, and will withhold its Order for six months to enable the parties to prepare a draft zoning by-law for the Board’s consideration.

THE PROPOSAL

[3] The Applicant proposes a six storey mixed use development on the Subject Lands, with ground floor retail, and possibly office uses on the second floor, with the balance being residential. Alternatively, the Applicant proposes ground floor retail with the balance being residential.

THE SITE

[4] The Subject Lands are located at the northeast corner of Queen Street East and Woodbine Avenue (the "Intersection"), in the area known as the "Beach" or the "Beaches." The Subject Lands are a rectangular parcel of land with approximately 38 m of frontage on Queen Street East, and a depth of 37.5 m on Woodbine Avenue. Its area currently is about 0.142 ha. It is about a five minute walk from the Subject Lands to Lake Ontario.

[5] Located at the rear of the site is a public lane. If development were to proceed, the City would require a lane widening of some 1.67 m, which in turn would reduce the Subject Lands site area to about 0.136 ha.

[6] The Subject Lands are currently vacant. Prior to this development application, the Subject Lands had been used as a gas station and coffee shop.

THE IMMEDIATE CONTEXT

[7] The Subject Lands are located on a short block of Queen Street East. There are only two other lots on the block. Immediately abutting to the east is a Toronto Transit Commission ("TTC") building at about the midpoint of the block. Further east of the TTC building, at the northwest corner of Queen Street East and Herbert Avenue is Toronto Fire Hall 227 (the "Fire Hall"). The hose tower for the Fire Hall is actually located at the northwest corner of Queen Street East and Herbert Avenue and situated above the hose tower is a clock with clock faces in each direction. The Fire Hall has been on the City's list of potential heritage buildings since 1973, and with the amendments to the *Heritage Act*, is now a listed building in the City's Heritage Register. It is not a designated building, and is it not within a Heritage Conservation District.

[8] To the north of the Subject Lands is the aforementioned public lane and abutting the lane is a four storey apartment building.

[9] Currently, at the northwest corner of the Intersection, is an older two storey building with retail at grade, residential above and two large bill board signs erected on the second floor roof. A development application has been filed for the corner proposing a six storey development which is under appeal. Further west is a new development

currently under construction that is six storeys in height and which occupies over 50% of the frontage of that block.

[10] At the south west corner of the Intersection is a newer five storey building with retail at grade and residential above with covered balconies along an extensive frontage on Queen Street.

[11] At the south east corner of the Intersection is an older three storey building with retail at grade and residential above.

THE PLANNING FRAMEWORK

[12] At the date of the application, the following constituted the planning framework.

[13] The Provincial Policy Statement (“PPS”) of 2005 supports intensification, the optimization of existing infrastructure, the maximizing of the efficiency of existing transportation and public transit in particular, and redevelopment of brown field sites (such as the Subject Lands).

[14] The Growth Plan for the Greater Golden Horseshoe (“Growth Plan”) was established under the *Places to Grow Act* 2005, and *inter alia* seeks the development of compact, vibrant, and complete communities which optimize the use of existing and new infrastructure, and the redevelopment of brown field sites. Intensification is to be focused along “intensification corridors” which are along major roads... “that have the potential to provide a focus for higher density mixed use development consistent with planned transit service levels.”

[15] The Subject Lands are designated in the City’s Official Plan as “Mixed Use Areas.” The uses permitted include residential and commercial uses. The City’s Official Plan does not specifically set out height or density limitations.

[16] The Subject Lands are also designated as “Avenues” in the City’s Official Plan. Such a designation is a policy direction to signal growth and intensification.

[17] While the Official Plan does not provide specific limitations on height or density, it does provide for Avenue Studies, or alternatively Avenue Segment Studies, to be done to guide development.

[18] The zoning in effect under Zoning By-Law 438-86 is MCR: Main Street Commercial/Residential. Residential and commercial uses are permitted. The maximum height is 12.0 m which would allow about a four storey building at a maximum density of 2.0 times the lot area.

[19] Additionally, the Subject Lands have a site specific zoning through By-Law 1994-0091 which was designed to implement a development application (never built) and required a front yard setback toward the eastern frontage for some 17 m in length starting at 2.5 m and increasing to 5.0 m at the eastern property line (the "Notch").

GUIDELINES

[20] The first set of guidelines date from a report in the late 1980s and is known as the Queen Street East Urban Design Guidelines (the "2004 Guidelines"). These guidelines have a unique history as they were adopted by City council in 1991, and added to the Secondary Plan for the area in 1992. For about a decade these "guidelines" were Official Plan policy.

[21] With the advent of the new City Official Plan in 2002, these guidelines were not carried forward into the Official Plan but consolidated in the City's Urban Design Guidelines in 2004. Thus they reverted back to "guideline" status as opposed to official plan status.

[22] For the Subject Lands, the 2004 Guidelines created a sub-area at the entrance to the Beaches: that is the four corners of the intersection of Queen Street East and Woodbine Avenue. This intersection is called the gateway to the Beaches, and the Guidelines encourage the construction of highly prominent buildings to act as landmarks for the neighbourhood and which will clearly define the street edge. The objective was to create a well-defined entrance to the Beaches neighbourhood by facilitating the development of prominent buildings having an outstanding architectural design which reflects the overall character of the neighbourhood.

[23] With regard to setbacks, the 2004 Guidelines provided that generally the entire building should be sited to the street line, but provided specific guidance that ... "the building(s) on the northeast corner of Queen Street East and Woodbine Avenue should be setback from the street line in order to protect views of the Fire Hall clock tower."

[24] Additionally, under the heading of Open Space, it was noted that ... “Any building on the northeast corner should provide quality at-grade public open spaces along the Queen Street East frontage.”

[25] In 2010, the City adopted the Avenue and Mid-Rise Building Study (the “2010 Mid-Rise Guidelines”). Where applicable, the 2010 Mid-Rise Guidelines provide a detailed series of performance standards to guide development along the avenues. For example, one of the performance standards is the guidance that the maximum height allowable should be no greater than the width of the Avenue right-of-way. Another performance standard utilizes a 45 degree angular plane at a height of 80% of the right-of-way width and subsequent stories must fit within the angular plane.

[26] Also, in progress at the date of the application, was the Queen Street East Visioning Study leading up to the 2012 Queen Street East Urban Design Guidelines (the “2012 Guidelines”). Adopted by Council on November 27, 28, and 29, 2012, these design guidelines have policies that specifically reference the Subject Lands:

The Fire Hall is an important landmark for the Beach and will be visible as one approaches Woodbine Avenue from the west. Visibility of the Fire Hall will be protected from the vantage point of a pedestrian who is standing at any of the four corners of Queen Street East and Woodbine Avenue. In addition the clock tower must be visible from the south sidewalk of Queen Street in accordance with the alignment extended from the vantage point of a pedestrian on the northwest corner of Queen and Woodbine.

BACKGROUND AND CONTEXT

[27] The Toronto and East York Community Council, on January 10, 2012, adopted the following resolution with regard to a request for a visioning study of Queen Street East between Coxwell Avenue and Neville Park Boulevard:

The Toronto and East York Community Council requested the City Planning Division to undertake a visioning study in 2012 of Queen Street East between Coxwell Avenue and Neville Park Boulevard, in consultation with the Ward Councillor, local community and other appropriate City Divisions, to develop appropriate Design Guidelines that balance the policies of the Official Plan with the desire of the local community to maintain the existing character of this portion of Queen Street East.

1960-1962 Queen Street East

[28] On April 26, 2012, Planning Staff provided their recommendations with regard to a rezoning application for 1960-1962 Queen Street East (“Lick’s”). That property was

located at the northeast corner of Kenilworth Avenue and Queen Street East and was the subject of a proposal for a six storey mixed use development with retail at grade and 29 residential units, and a floor space index ("FSI") of 3.82. Most of the built form along both sides of Queen Street East was comprised of one and two storey buildings, and immediately east of the Lick's site was a one storey structure. The Lick's site was designated Mixed Use Areas, and located on an Avenue. The zoning was Mixed Commercial Residential with a maximum height of 12 m and a total density of two times the lot area. Pursuant to the Official Plan requirements for an Avenue, an Avenue Segment Study had been required by the City from Woodbine Avenue to east of Lee Avenue. Staff were satisfied with that Avenue Segment Study which concluded that there were limited opportunities for redevelopment due to existing conditions and that the proposed development would not create a negative precedent for the area studied. Staff reviewed both the 2004 Guidelines and the 2010 Mid-Rise Guidelines and noted that the proposed building matched the existing street proportion and provides a step back above the fourth floor which helped ensure a comfortable street wall and public realm condition in accordance to the built form provisions of the Official Plan and the existing zoning. The elevations were revised to lower the brick treatment to include only the first three storeys.

[29] With regard to the 2010 Mid-Rise Guidelines the staff report stated the following:

The Official Plan states in the sidebar that applications for development of Avenues, prior to a segment study should be evaluated against the Avenues criteria, the detailed performance criteria contained for the Mixed Use Land use designations and the Urban Design policies contained in the Plan.

Mid-rise performance standards were developed by the City with regard to all of the Official Plan policies, including the Avenues policies, the Mixed Use land use policies and the Urban Design built form policies. The Avenues and Mid-Rise Buildings Study was adopted by City Council in July 2010. The intent of the study was to implement the Official Plan objective of re-urbanizing Toronto's main streets in a manner that is compatible with neighbours, through the use of performance standards that shape building envelopes. The performance standards laid out in the Mid-Rise Guidelines have their origins in planning practice and the experience of encouraging mid-rise on Avenues in the last decade as part of the Official Plan direction over that period of time.

A motion was adopted by City Council on July 8, 2010 that removed Queen Street East from the study area map. Notwithstanding the exclusion, the Mid-Rise Guidelines remain a useful tool for the review of development applications for mid-rise buildings on Avenues where there are adjacent residential neighbourhoods. In addition, the mid-rise guidelines ensure that an appropriate pedestrian scale is incorporated along street edges.

[30] The staff report then found that the building height of 20 metres excluding the mechanical penthouse equaled the width of Queen Street East right of way forming a 1:1 relationship which relationship had been studied and deemed to result in a comfortable street proportion and was supported by the Official Plan.

[31] Finally staff stated that:

... On balance, significant redevelopment is not a trend along Queen Street East, is not supported by the general thrust of the Official Plan and the 1987 guidelines and is not anticipated given the fabric and constraints demonstrated in the segment study and staff analysis. Incremental change is considered appropriate and this proposal does not itself prevent the effective development and implementation of an updated visioning study. Moving forward, any new application should wait for the outcome of the visioning study.

[32] Subsequently the Lick's application was revised to include a 0.9 m step back above the third floor along the Queen Street East frontage, and Council approved the application, but also directed staff that any rezoning applications received after City council's request for a Visioning Study for Queen Street East (January 2012) between Coxwell and Neville Park Avenue be ... "considered in the context of and concurrently with the Queen Street East Visioning Study."

CHRONOLOGICAL EXCERPTS

[33] As noted above, in January 2012, City Council requested a visioning study for the Queen Street East area.

[34] On June 15, 2012, the architects for the Applicant produced the first set of drawings for a six storey mid-rise building for the Subject Lands.

[35] On June 16, 2012, the City held the first community workshop for the Queen Street East Visioning Study, which was attended by over 100 people.

[36] On July 25, 2012, the second community workshop was held with about 32 attendees.

[37] As of August 12, 2012, the draft guidelines for the Kew Beach Precinct provided that ... "Maintain views of the Fire Hall when viewed east of Woodbine."

[38] In September 2012, the Discussion Guide 2 was issued by the City for the Queen Street East Visioning Study. In part it said about the process that it was ... “testing different ideas proposed by City staff on how to balance the policies of the Official Plan with the desires of the community” and later... “Based on the Avenue and Built Form policies, the City discourages buildings that exceed the width of the street. Queen Street East is 20 metres wide and in the absence of any new policies or guidelines regarding building height in this area, this means that the City supports buildings that are up to 20 metres tall (or approximately six storeys) on Queen Street East (provided that they meet all of the other associated built form principles). These Avenue and Built Form policies in the 2006 Official Plan would allow for rezoning of properties above the four storey zoning (established in 1986). That is why the City supported the zoning by-law amendment for the Lick’s development.

[39] On September 19, 2012, a draft set of Urban Design Guidelines was presented by the City for comment. The draft included under the heading Massing, that the views of the Fire Hall would be maintained from the sidewalk on the northeast corner of Woodbine and Queen Street East, and that the view of the clock should also be visible when viewed from the east.

[40] By staff report dated September 20, 2012, recommendations were made to Council with regard to a proposed Official Plan Amendment to Adopt New Heritage and Public Realm policies related in part to views of prominent buildings, structures, and landscapes (“OPA 199”). The Beach Fire Hall (and clock tower) was not listed in as one of these buildings by staff.

[41] On October 1, 2012, the Applicant filed its application for an amendment to the zoning by-law.

[42] On October 12, 2012, Council in response to a public deputation added the Queen Street East Fire Hall clock tower as a significant view shed to OPA 199.

[43] On November 27, 2012, the Queen Street East Urban Design Guidelines were approved by City Council.

[44] On February 25, 2013, the Applicant appealed its application to the Board.

[45] On April 4, 2013, City Council adopted OPA 199 which is presently at the Ministry of Municipal Affairs and Housing (“MMAH”).

[46] On May 7, 2013, a staff report with a request for directions was approved by City Council to oppose the Applicant’s appeal before the Board.

[47] Also on May 7, 2013, City Council adopted an amendment to the City’s Zoning By-law 438-86 to implement the Queen Street East Urban Design Guidelines for the Subject Lands and the TTC lands to the east as Zoning By-law 2013-607, which is under appeal and not before the Board. That Zoning By-law would in part provide for a diagonal and graduated height limit across the Queen Street East frontage of the Subject Lands and the TTC Lands ranging from 3.5 m to 6.5 m on the Subject Lands to 9.5 m on the TTC lands.

[48] On July 9, 2013, the Applicant filed a formal resubmission to its application which *inter alia* reduced the overall gross floor area and density, provided additional setbacks and stepbacks at the rear of the property, and presented two options for the second storey of the proposed building. The first option proposes residential uses, whereas the second option proposed office space on the second floor. The height remained at six storeys, and the FSI was reduced from 4.70 to 4.36.

DEVELOPMENT HISTORY

[49] The Subject Lands have previously been the subject of two development applications.

[50] The first was in 1990 when an application was made for a four storey mixed use building. The application was approved by the City in 1991 but never built. The staff report at the time noted the following:

This conceptual design, siting and massing of the proposal achieves two key urban design objectives. First, the proposal is stepped back from the corner of Queen Street East and Woodbine in order to preserve a vista of the fire hall clock tower. Second, the block form character of the building helps give the proposal a landmark quality which strongly demarcates the entrance to the Beaches neighbourhood along Queen Street.

[51] As the 1990 application was never built, in 1994 City Council had before it a staff report that recommended *inter alia* a site specific amendment for the Subject Lands to the

City's zoning by-law. Staff noted that in 1991, Council approved the development application for the Subject Lands that would have resulted in a four storey mixed use building ... "stepped back from the corner of Queen Street East and Woodbine Avenue in order to preserve a *vista* of the Fire Hall clock tower."

[52] Staff thus recommended that the setback from the Queen Street East lot line be introduced to the Zoning By-law similar to that in the development proposed and approved by the City in 1991.

[53] Thus, in the Zoning By-law 1994-0091, a zoning map was introduced depicting the Subject Lands and the "Notch" at the easterly portion of the Queen Street East frontage having a setback at the easterly lot line of 5 m for a distance of 5.5 m, then reducing to 2.5 m for a distance of 11.5 m.

[54] A second development application was for the proposed replacement of the service station on the Subject Lands with a new service station in 2006, which was also not built.

THE HEARING

[55] The parties before the Board included the Applicant, the City, the GBNA and 140, being the owner of the four storey apartment north of the Subject Lands. Also before the Board were ten participants.

[56] The Applicant called five witnesses: an architect, a heritage planner, a transportation engineer, an urban designer and a land use planner.

[57] The City called two witnesses: an urban designer and a land use planner.

[58] GBNA called three witnesses: a heritage planner, an architect, and a director of the GBNA.

[59] The issues of 140 were resolved shortly after the hearing commenced, and are reflected in Conditions of Approval found in Exhibit 15. Essentially those conditions of approval require the removal of the second and third floor balconies currently shown on the north wall of the proposed building as set out in Exhibit 7. (The revised north elevation to implement the 140 Conditions of Approval is found in Exhibit 30).

[60] In addition, the Board received over 125 written submissions from members of the public. In reviewing those submissions, the Board noted the following themes: Urban Design Guidelines (including height, density, massing, and design) heritage, traffic, parking, infrastructure, tourism (parking), and precedent.

[61] With regard to these themes, the Board heard expert evidence on traffic and transportation only from one witness: the transportation consultant for the Applicant, which witness was not cross examined. Thus, his evidence as to traffic and transportation matters was unchallenged by the City and the GBNA.

[62] With regard to infrastructure, the Board has read the comments with regard to existing homes and basement flooding in the Beach. The evidence before the Board is that the Applicant, as part of its application, completed a Functional Servicing Report which found that the proposed development can be appropriately serviced with the existing municipal services.

[63] Neither the City nor the GBNA raised any issue or provided any evidence at the hearing to the contrary.

[64] The other themes are dealt with below.

CULTURAL HERITAGE

[65] The Subject Lands are vacant and without any cultural heritage value. They are not designated, not listed, and not within a Conservation Heritage District.

[66] The immediately abutting lands (the TTC building) are not designated, not listed, and not part of a Conservation Heritage District.

[67] The Fire Hall is neither designated nor part of a Conservation Heritage District: it is however listed in the City's Heritage Register. It has been described by members of the public as "iconic" "historic" and "a landmark".

[68] Section 2.6.1 of the Provincial Policy Statement provides this direction:

2.6.1 Significant built heritage resources and significant cultural heritage landscapes shall be conserved.

Conserved is defined to mean... the identification, protection, use and/or management of cultural heritage and archaeological resources in such a way that their heritage values, attributes and integrity are retained. This may be addressed through a conservation plan or heritage impact assessment.

[69] While there are no cultural heritage resources on site, a heritage impact assessment (“HIA”) was completed by E.R.A. Architects Inc. and it formed part of the development application materials when filed with the City. The purpose of the HIA was not to address the Subject Lands, but rather to address the effect of the proposal on the heritage character of the Fire Hall. It is noted that a HIA was not required by the City for a complete application submission.

[70] In that regard s. 2.6.3 of the PPS provides:

Development and site alteration may be permitted on adjacent lands to protected heritage property where the proposed development and site alteration has been evaluated and it has been demonstrated that the heritage attributes of the protected heritage property will be conserved.

[71] Adjacent Lands are defined in the PPS and it means:

For the purposes of policy 2.6.3, those lands **contiguous** to a protected heritage property or as otherwise defined in the municipal official plan”. (Emphasis added.)

[72] It is apparent that the Subject Lands are not contiguous to the Fire Hall as the TTC building intervenes.

[73] Reference is then made to the City’s Official Plan which in s. 3.1.5.2 states:

Heritage resources on properties listed on the City’s Inventory of Heritage Properties will be conserved. A Heritage Impact Statement may be requested for development proposals on a property on the City’s Inventory of Heritage Properties and will be required where the development entails an amendment to the Official Plan and/or Zoning By-law. Development adjacent to properties on the City’s Inventory of Heritage Properties will respect the scale, character and form of the heritage buildings and landscapes.

[74] Again the proposed development is not adjacent to the Fire Hall.

[75] That notwithstanding, the E.R.A. Architects Inc.’s HIA references the 2004 Guidelines and the required setback at the northeast corner to protect views of the Fire Hall clock tower.

[76] The (then) draft 2012 Guidelines would have suggested that the Fire Hall be visible as one approaches Woodbine Avenue from the west and visibility of the Fire Hall be protected from the vantage point of a pedestrian standing on the northeast corner of Queen Street East and Woodbine Avenue.

[77] For the Board, it is noted that the 2012 Visioning Study did not contain or authorize or sponsor any heritage reports with regard to the Fire Hall.

[78] While the 2012 Guidelines provide detailed provisions as to views from all four corners of the Intersection, nowhere is there any heritage documentation to support such a position.

[79] From the Board's perspective that is a fundamental omission of the Visioning Study.

[80] Of similar note is the proposition that the Board should have regard to OPA 199 and the view shed of the Fire Hall to be protected. First, OPA 199 is not in force or of effect, as it is with MMAH.

[81] That notwithstanding, the Board has had regard to the Council's position on OPA 199, and the proposed view shed to be protected. However, it is also noted in accordance with s. 2.1(b) of the Act that the City staff did not recommend the view shed of the Fire Hall be protected in the staff's original report and that the Council simply added the view shed. And the Board notes the lack of any heritage documentation to support the position that the Fire Hall and clock tower should be visible from all four corners of the Intersection.

ZONING BY-LAW 2013-0607

[82] The City and GBNA submit that the Board should have regard to Zoning By-law 2013-0607 as the most current indication of Council direction with regard to the Subject Lands.

[83] Zoning By-law 2013-0607 as adopted by Council (but appealed to the Board) was a City initiated zoning amendment brought forward by City staff in a report dated March 19, 2013.

[84] The City's staff report recommended the adoption of the Zoning By-law to implement the new Urban Design Guidelines for Queen Street East. Zoning By-law 2013-0607 applies only to two properties: the Subject Lands and the TTC lands east of the Subject Lands.

[85] The effect of Zoning By-law 2013-0607 *inter alia* is to create a diagonal graduated height from the northeast corner of the Intersection towards the Fire Hall with heights starting at 3.5 m for about two thirds of the frontage of the Subject Lands, then increasing to 6.5 m for the remaining third. For the TTC lands, the height increases to 9.5 m. To the north of this diagonal graduated height, the balance of the zoning sets the maximum height at 12 m, except for the Woodbine Avenue frontage of the Subject Lands, which is set at 9.5 m.

[86] Zoning By-law 2013-0607 was adopted by City Council on May 7, 8, 9, and 10, 2013 and appealed to the Municipal Board on June 5, 2013 and is not a matter before this panel of the Board.

THE GUIDELINES

[87] The Board notes that the GBNA did not call any land use planning evidence.

[88] The Board notes that the City did not call a cultural heritage expert.

[89] The Board notes that the written submission of the City states: "This is a case all about Urban Design", and ... "The key question the Board needs to determine is what the appropriate built form is for this site."

[90] The Board notes that the Witness Statement of the City planner states that consistency with the PPS is not at issue.

[91] Similarly the Witness Statement of the City planner states that conformity with the *Places to Grow Act* is not at issue.

[92] To determine the "key question" as posed by the City, the Board would make the following observations with regard to the three sets of guidelines that were referenced in this hearing.

[93] The 2004 Guidelines were actually Official Plan policy for over ten years. However they precede the 1995 PPS, and were before the *Places to Grow Act*, and before the “new” Official Plan of the City. They were however the adopted guidelines of the City at the date of the application. The 2004 Guidelines provide a specific section for the Entrance to the Beaches within which the Subject Lands are located. Set out below in full are the full provisions for this sub-area:

The Entrance to the Beaches

The intersection of Woodbine Avenue and Queen Street East is the “gateway” to the Beaches neighbourhood. This major access point represents the symbolic entry to the neighbourhood. It is important to encourage the construction of highly prominent buildings in this area which will act as a demarcation element or landmark for the neighbourhood and which will clearly define the street edge.

This sub-area is located at the intersection of Queen Street East and Woodbine Avenue (four corner properties only).

The objective is to create a well-defined entrance to the Beaches neighbourhood by facilitating the development of prominent buildings having outstanding architectural design which reflects the overall character of the neighbourhood.

Public Realm

Any building on the northeast corner will provide quality at-grade public open spaces along the Queen Street East frontage.

Site Organization

Any building(s) on the northeast corner of Queen Street East and Woodbine Avenue will be setback from the street line in order to protect views of the Fire Hall clock tower.

Massing

Block form buildings will mark the entrance to the Beaches.

A high level of architectural detail is encouraged on building facades.

Building bays will not exceed 8 m in width.

The 2010 Mid-Rise Guidelines

[94] The 2010 Mid-Rise Guidelines were the result of a City initiated study to examine the urbanizing of avenues. In October 2008, the City hired Brook McIlroy Planning and Urban Design/Pace Architects to undertake the Avenues & Mid-Rise Buildings Study.

[95] The Avenues & Mid-Rise Buildings Study was reported to City Council on May 4, 2010 and staff recommended approval of the Study. The Study included Queen Street East.

[96] City Council adopted the Avenues & Mid-Rise Buildings Study on July 6, 2010 but at that time City Council amended the Study Area Map in the City staff report by removing Queen Street East from the Avenues and Mid-Rise Buildings Study Area.

[97] The Board observes that the Avenues & Mid-Rise Buildings Study are post the 2005 PPS, post the *Places to Grow Act*, and were adopted to implement the “new” Official Plan of the City.

[98] An author of the Mid-Rise Guidelines, Anne McIlroy, gave evidence at the hearing for the Applicant. She stated that the intent of the Study had been that the performance standards in the study would have applied to Queen Street East. She stated that City staff had recommended approval of the report and the City Council had adopted same but removed Queen Street East from the study map.

[99] Her evidence was that the Mid-Rise Guidelines were appropriate for use for the Subject Lands and that the proposed height was based on the 1:1 ratio to the right-of-way widths, which in these circumstances was appropriately set at six storeys.

[100] The Board observes that prior to the 2012 Guidelines, the Mid-Rise Guidelines had been used by City staff in evaluating other development proposals on Queen Street East.

[101] The Board was referred to the City staff report on Lick’s (prepared by the same City planner who gave evidence before this panel of the Board), where the report noted the following with regard to the Official Plan and the Mid-Rise Guidelines:

Mid-rise performance standards were developed by the City with regard to all of the Official Plan policies, including the Avenues policies, the Mixed-Use land use policies and the Urban Design built form policies. The Avenues and Mid-Rise Buildings Study was adopted

by City Council on July 10, 2010. The intent of the study was to implement the Official Plan objective of re-urbanizing Toronto's main streets in a manner that is compatible with neighbourhoods, through the use of performance standards that shape building envelopes. The performance standards laid out in the mid-rise guidelines have their origins in planning practice and the experience of encouraging mid-rise on Avenues in the last decade as part of the Official Plan direction over that period of time.

A motion was adopted by City Council on July 8, 2010 that removed Queen Street East from the study area map. Notwithstanding the exclusion, the Mid-Rise Guidelines remain a useful tool for the review of development applications for mid-rise buildings on Avenues where there are adjacent residential uses. For example, the mid-rise guidelines encourage setbacks for the base of buildings and stepbacks of upper floors to ensure acceptable sun/shadow and privacy conditions to adjacent residential neighbourhoods. In addition, the mid-rise guidelines ensure that an appropriate pedestrian scale is incorporated along street edges.

[102] The Board observes that the development lands for that proposal were located further east: on the northeast corner of Kenilworth Avenue and Queen Street East and abutted a one storey building to the east, and staff recommended approval of a six storey building which Council approved.

[103] The Board also notes that City Council, when approving that development, directed that any new applications be considered in the context and concurrently with the 2012 Guidelines.

2012 Guidelines

[104] The Visioning Study led to the 2012 Guidelines which recommended *inter alia* (and City Council adopted) buildings to be perceived as four storeys from eye level on the other side of the street, new development to maintain views of the Fire Hall clock tower from the vantage point of a pedestrian standing on the sidewalk of any of the four corners of the Intersection, a 4.8 m setback along Queen Street East and 3.5 m maximum height for the first floor.

[105] These guidelines ultimately resulted in Zoning By-law 2013-0607 with its diagonal and graduated maximum heights along the Queen Street East frontage of the Subject Lands and the TTC building.

The Resubmission

[106] In response to the 2012 Guidelines, the Applicant made on July 9, 2013, a resubmission of its development application, including the following amendments to its

development proposal: a setback of 4.8 m to 5.026 m for Queen Street East, a setback of 0.6 m along Woodbine Avenue, a series of changes to the north elevation, and the removal of residential balconies on the second floor of Queen Street East and Woodbine Avenue frontages. This had the effect of reducing the FSI from 4.7 to 4.36. The resubmission also included the option to have non-residential uses on the second floor.

EVIDENCE

[107] The Board heard from a traffic and transportation expert, two heritage planners, two architects, two urban designers, two land use planners, twelve members of the public and four participants.

TRAFFIC AND TRANSPORTATION

[108] The traffic and transportation evidence of Kim Nystrom was unchallenged. Mr. Nystrom had prepared the original Traffic Impact and Parking Study that accompanied the filing of the development application.

[109] For the resubmission, Mr. Nystrom prepared the July 2013 Traffic Impact and Parking Study Update examining the two development options: the second option being the use of the second floor for non-residential uses.

HERITAGE PLANNERS

[110] Michael McClelland of E.R.A. Architects Inc. had been retained by the Applicant in July 2012 and his firm prepared a HIA dated September 28, 2012. The scope of the assessment was to assess the impact of the proposed development on the listed heritage building at 1904 Queen Street East being the Fire Hall.

[111] Mr. McClelland's evidence was that the proposed design shows a setback at the southeast corner that although not consistent with the site specific provision (the "Notch") of the Zoning By-law did maintain an appropriate balance between urban street form and suitable views of the Fire Hall.

[112] With regard to the 2012 Guidelines that would require visibility of the Fire Hall from the vantage point of a pedestrian who is standing at the northeast corner of the Intersection, he noted that the Guidelines at the time of his report were only in draft form.

His evidence however was that the proposed vantage point of the then draft guideline was unreasonable in an urban context where the in force guidelines recommended a prominent building at the northeast corner of the Intersection.

[113] His basic premise was that an appropriate viewing distance of the Fire Hall and facade should be recognizable for the length of one city block, and he relied upon the drawings in Exhibit 19 demonstrating views of the Fire Hall as one approaches from the south side of Queen Street East being approximately mid-block between Woodbine Avenue and Rainsford Road.

[114] With regard to OPA 199, he noted it was still under review when they were preparing their report. When preparing his witness statement, he did take it into account but noted that there was nothing in the background documents or in the heritage documentation material on the Fire Hall itself that would substantiate the heritage significance of protecting view “from all four corners of the Intersection.”

[115] The Board also heard from Christopher Borgal who was retained by GBNA in August 2013.

[116] Mr. Borgal testified that in his opinion the Fire Hall was worthy of heritage designation, and that views of the Fire Hall and the clock tower should be protected.

[117] He opined that OPA 199 and Zoning By-law 2013-0607 should be given considerable weight.

[118] In his Witness Statement, Mr. Borgal stated that the Official Plan prior to the adoption of OPA 199 did not explicitly address views of cultural heritage resources.

[119] In reference to the 2012 Guidelines, his witness statement provided that the 2012 Guidelines augment the recommendations found in the earlier guidelines prescribing the preservation of the views of the Fire Hall clock tower. “As I mentioned previously, this recommendation is also based on planning requirements dating back at least two decades.” (Exhibit 42A Tab 3.1.23)

[120] His Witness Statement also provided his view that “adjacent” in the Official Plan was not intended to be restricted to lands abutting a heritage site.

ARCHITECTS

[121] The Applicant's architect Roland Rom Colthoff was formally retained on June 11, 2013, but had been consulted earlier. By June 15, 2012 he had prepared Preliminary drawings for the Subject Lands that were based on a six storey development concept.

[122] In his evidence he stated that the proposed development adequately respected and protected appropriate views of the Fire Hall, that the proposed built form conformed to and addressed the urban design policies of the City's Official Plan and in particular the Mid-Rise Building Performance Standards, and that it was in keeping with development that is similar in scale and massing on the west side of the Intersection.

[123] He opined that the proposed built form was appropriate and compatible with the physical context of the area, that there were no undue adverse visual impacts, that there was no undue adverse shadow impact on neighbouring properties and that the proposed development did not represent an overdevelopment of the property.

[124] The site plan elevations were exhibits to the hearing but as noted above the site plan application is not before the Board.

[125] The proposed elevation has a prominent white (marble?) corner facade treatment at the Intersection, while the remainder of the proposed building has a mixture of red brick and glass.

[126] GBNA retained Michael Spaziani, architect in August of 2013.

[127] Mr. Spaziani, in preparation for the hearing, had taken numerous photographs of the area, both east and west of the Intersection in order to obtain an appreciation of the character of the neighbourhood.

[128] Having done so, he stated in his Witness Statement that ...“the view to the Beach Fire Hall clock tower has been identified for over two decades as a significant view and should be protected against new adjacent development initiatives that adversely redirect that focus.” (Exhibit 44A Tab 3.1.14) Thus he felt that OPA 199 was directly relevant to the hearing and provided the urban design direction.

[129] He also opined that the Subject Lands were capable of supporting an excellent urban infill project and that Zoning By-law 2013-0607 did not adequately control height mass and setback in a way that reflected the physical and heritage context of the site.

[130] His evidence was that the 2004 Guidelines in calling for a prominent building at this location did not give license to increase height and mass as a marker for this village gateway, and that the result was not in keeping with the character of the area. Instead his view was that appropriate scale, setbacks, landscape, character and massing can convey the idea of an outstanding architectural design.

[131] He testified that the Subject Lands could support a development that reasonably achieved the proper degree of intensification within the guidance of parameters established by community consultation, city policies and good urban design principles.

[132] That design in his view would be five storeys in height, have a 7.8 m Queen Street East setback, have a 4.8 m Woodbine Avenue setback, utilize the provisions of Zoning By-law 2013-0607, have an FSI of 3.1 above ground, 41 residential units, and the floor to floor height of the ground to second floor be limited to 3.5 m.

[133] Mr. Spaziani was also of the view that the architectural design of the building should reflect the heritage character and principles of the Beach context. The upper floors should not overhang the sidewalk and create an unfamiliar and non-typical storefront condition. Rather upper floors should step back from lower floors. Storefronts should be limited to 6 m in width, and building mass broken down into discrete elements of no more than 8 m in width to reflect the scale of small frontage development in the Beach.

URBAN DESIGN

[134] Ms. McIlroy's firm was retained by the Applicant in February 2013 to provide input with regard to urban design, which comments lead in part to the resubmission.

[135] She is a principal of Brook McIlroy, which firm was retained by the City to prepare the Avenues and Mid-Rise Building Study ("Mid-Rise Study"), to implement the Avenues designation in the City's Official Plan.

[136] The Mid-Rise Study was a two year process involving a multi-disciplined team, and it developed performance standards through public consultation, meetings, workshops and other forums. Queen Street East was identified as an Avenue in the Mid-Rise Study.

[137] Ms. McIlroy supported the use of the Mid-Rise Study and supported the proposed six storey mid-rise mixed use building with a 4.8 m setback on Queen Street East. In her opinion, the setback would preserve appropriate views of the Fire Hall and clock tower.

[138] She had specific concerns with regard to the proposed use of the 2012 Guidelines in contrast to the Mid-Rise Study.

[139] Specifically she noted these differences:

- five storeys versus six storeys
- ground level retail height at 3.5 m not 4.5 m
- the use of a 26 degree angular plane and determining its application versus the 45 degree angular plane
- a 6.25 m stepback above the third floor
- resulting limitations on residential units as a result of the 6.25 m stepback
- 3.0 m stepbacks above the third floor which are actually 4.0 m when drawn three dimensionally
- limits to integrating the mechanical penthouse on the roof top
- chamfers required on all levels of a building on a corner lot

[140] Based on those differences, her opinion was that the 2010 Mid-Rise Guidelines and its performance standards were the appropriate standards to assess the urban design attributes of the proposed development.

[141] Applying those performance standards to the development application, she recommended the development application to the Board and opined that the height at six storeys reflected the 1:1 ratio of height to right-of-way width, the front façade generally conformed to the angular plane requirements resulting in a minimum of five hours of sunlight onto the public sidewalk, the setback of the front façade on Queen Street East substantially conformed to the 45 degree angular plane, and the minimum street wall height of 10.5 m met the Mid-Rise Performance Standard.

[142] The Board heard urban design evidence from James Parakh, who is the Acting Director of Urban Design for the City.

[143] Mr. Parakh had been intimately involved with the process leading up to the 2012 Guidelines. At the second public meeting of July 25, 2012 he had presented an overview presentation which an assessment of the Beach area, built form studies, existing zoning, sun shadow drawings, reference to the Mid-Rise Study, and existing examples of six storey buildings at 2010 Queen Street East, an approved development at Bellefair Avenue, an approved development application at 1960 Queen Street East, and a development application for a six storey building at 1 Rainsford Road.

[144] He developed the initial Draft Urban Design Guidelines for Queen Street East dated September 12, 2012 which included a provision under Massing which stated that new development in this precinct will maintain views of the Fire Hall when viewed from the sidewalk on the northeast corner of Woodbine Avenue and Queen Street East.

[145] This draft Urban Design Guideline was substantially carried forward to the September 19, 2012 Community Workshop and ultimately to the November 2012 Queen Street East guidelines report:

The historic Fire Hall and its clock tower have become the heritage symbol of Queen Street East in the Beach and are widely regarded as the gateway to the precinct. The value of its visibility has benefits from a heritage, urban design, and tourism perspective.

New development in this precinct will maintain view of the Fire Hall clock tower when viewed from a pedestrian standing on the sidewalk at any of the four corners of Queen Street East and Woodbine Avenue.

[146] In his evidence before the Board, Mr. Parakh examined the Applicant's proposed massing in juxtaposition to the Mid-Rise Study, the as of right zoning, the appealed Zoning By-Law 2013-0607, and the 2012 Guidelines.

[147] He noted that the development proposal does not comply with the adopted Zoning By-law 2013-0697, and did not conform to the adopted OPA 199 which includes view protection for the Beach Fire Station 227 Clock Tower.

[148] He opined that the current development proposal does not comply with or maintain the intent of the Urban Design Official Plan provisions regarding compatibility, fit, scale, transition and impact, and he recommended that the application be refused.

LAND USE PLANNERS

[149] Wendy Nott provided land use planning evidence in support of the application. In general terms she told the Board that:

- The application conformed to the Growth Plan with respect to intensification of a brownfield site in an intensification corridor.
- The application was consistent with the PPS.
- The application had regard to matters of Provincial interest as set out in s. 2 of the *Planning Act*.
- The application conformed to various policies of the City's Official Plan with regard to urban structure, land use, built form, housing, heritage, and the redevelopment and intensification of an underutilized brownfield would be achieved in accordance with the City's planning framework for Mixed Uses on Avenues, which are considered for higher density development.
- The application's proposed massing and location was similar to other developments constructed or approved in the immediate area,
- The application proposed massing and location would provide for compatible relationships to adjacent buildings without significant adverse impacts on matters such as light, view, privacy, protection of appropriate views to the Fire Hall clock tower and transitions to the adjacent neighbourhood.
- The application did not represent an overdevelopment of the site.
- And that there were no significant impacts arising from the cumulative density, height and scale of the proposed development.

[150] Ms. Nott described the Beach as a quaint neighbourhood of some three kilometers along Queen Street East from Coxwell Avenue to Victoria Park Avenue, having a lively commercial main street, a healthy residential area with low density in the interior areas and apartments along the major roads, with incremental change over the years, specifically noting the redevelopment of the former Greenwood Race Track.

[151] Ms. Nott noted that the Subject Lands were located at the intersection of two major arterial roads, and that this intersection had been considered for a number of years as the gateway to the Beach. She examined the four corners of the Intersection and described the three storey building on the southeast corner, the two storey building on the northeast corner (with a proposed six storey development application) and the five storey

development on the southwest corner. To the north was a four storey apartment building and to the immediate east was the TTC building and the Fire Hall beyond that.

[152] With regard to the Official Plan, she noted that the Subject Lands are designated Mixed Use and also as an Avenue where reurbanization is anticipated and encouraged.

[153] In the ordinary course, the Official Plan would look for an Avenue Study but since not all the Avenues can be studied at once, the Official Plan allows for development to proceed where an Avenue Segment Study has been completed. Ms. Nott noted that her client had not been required by the City to conduct an Avenue Segment Study and she believed the reason for that was the recently completed Avenue Segment Study that had been done for the Lick's development proposal. In the City staff report dated April 26, 2012, the report references the Avenue Segment Study and states:

The change that is anticipated through the Segment Study suggests that there are limited opportunities for redevelopment due to existing conditions (e.g. heritage designation, shallow lots with no rear access, existence of 6 or more rental units, fragmented ownership). The Avenue Segment Study concludes that the proposed development would not create a negative precedent for the area studied.

[154] With regard to the 2012 Guidelines, Ms. Nott observed that they did not constitute an Avenue Study in accordance with the City's Official Plan, and that there was a mandate from the start of the visioning process.

[155] That mandate she said is found in the Council motion and it states as follows:

The Toronto and East York Community Council requested the City Planning Division to undertake a visioning study in 2012 of Queen Street East between Coxwell Avenue and Neville Park Boulevard, in consultation with the "Ward Councillor, local community and other appropriate City Divisions, **to develop appropriate Design Guidelines that balance the policies of the Official Plan with the desire of the local community to maintain the existing character of this portion of Queen Street East.** (Emphasis added)

[156] In contrast she noted the provisions of the Official Plan under the heading Implementation Plans and Strategies for City Building s. 5.3.2. In the non-statutory portion of the section it states:

Other **implementation** plans, strategies and guidelines are needed to support the Plan's objectives overtime and provide more detailed implementation guidance. (Emphasis added)

[157] The actual statutory policy of the Official Plan states:

5.3.2.1 Implementation plans, strategies and guidelines will be adopted to advance the vision, objectives and policies of this Plan. **These implementation plans, strategies and guidelines, while they express Council policy, are not part of the Plan unless the Plan has specifically adopted them, in whole or in part, and do not have the status of policies in this Plan adopted under the *Planning Act*.** (Emphasis added)

[158] Ms. Nott added that it is the statutory policy that will prevail over the (non-statutory) guidelines.

[159] Generally, with regard to guidelines, she stated that unlike a (statutory) zoning by-law, guidelines are not a pass/fail test. The purpose of guidelines is to allow a contextual analysis of a proposal on a particular site.

[160] In this instance there were before the Board three sets of guidelines. Ms. Nott testified that the 2004 Guidelines were “in force” at the time of the application but contain largely qualitative guidance with fewer quantitative standards to control height, massing, setbacks, etc. This she contrasted to the 2010 Mid-Rise Guidelines that Ms. McIlroy had prepared for the City, and that Study with its performance standards does establish quantitative performance standards such as a maximum height based on a 1:1 ratio to the street right-of-way. Thus Ms. Nott was of the view that it was appropriate to utilize the 2010 Mid-Rise Guidelines with regard to this development application in a manner similar to what the City had done for the Lick’s application. In her opinion the development application substantially complied with both the 2004 Guidelines in creating a prominent building at the Intersection and respecting appropriate views of the Fire Hall. With regard to the 2010 Mid-Rise Guidelines, she testified that it met the height provisions, massing provisions, with minor penetrations into the 45 degree angular plane.

[161] With regard to the 2012 Guidelines, Ms. Nott indicated that they had been officially adopted after the application had been filed with the City. Notwithstanding that, it was her opinion that the guidelines were relevant but not solely determinative of the development application. She noted that originally the 2012 Guidelines had allowed an overlapping of boundaries of precincts at intersections and that was what had been approved by Council. She viewed this as appropriate to acknowledge the need to relate development to all four corners of an intersection. However, she also testified that after Council approval, staff had used their authority (to make “stylistic and formatting” revisions), and

had revised the 2012 guidelines to remove the overlap between precincts, thus creating firm boundaries between the precincts. As a result, for example the corners west of Woodbine Avenue in the Woodbine precinct, which would be allowed a maximum height of 18.5 m versus east of Woodbine Avenue in the Kew Beach precinct would have a maximum height of 15.5 m on a medium depth lot, and a street wall height of four storeys west of Woodbine Avenue and three storeys east of Woodbine Avenue. This she felt was an abandonment of the principle of a relationship between developments at an intersection generally, and for this site, failed to recognize the importance of the Intersection as a gateway to the larger Beach neighbourhood.

[162] With regard to views to the Fire Hall, she noted that the 2012 Guidelines required views to be maintained from all four corners of the Intersection in the Kew Beach Precinct, and for the Woodbine Precinct it required views to be maintained from the south side of Queen Street East for about 1.5 blocks west of the Intersection. The proposed development did not meet that requirement. It maintained views from the south side of Queen Street East up to about 80 m west. In her view the development proposal from a planning and urban design policy perspective did provide an appropriate view of the Fire Hall clock tower, although not in the manner prescribed by the 2012 Guidelines. Thus, Ms. Nott opined that the development application did have adequate regard for the 2012 Guidelines even though they were not approved at the date of the application.

[163] In conclusion, Ms. Nott highlighted these points:

- A proper planning assessment should have a broad range of public policy considerations and apply in a balanced way, or as the Official Plan says: “one size does not fit all”.
- That this case is not about which guidelines prevail.
- The Official Plan allows guidelines to play a role in planning decisions, but that is only one element of the process.
- The Official Plan anticipates Avenues to be different, that individual sites will respond differently as good planning would look to the fit with the context and to minimize impacts.
- The Avenue Segment Study forecasted only incremental development along Queen Street East.
- The development proposal conforms to the Growth Plan as a brownfield site and on an intensification corridor.

- The development proposal is consistent with the PPS.
- The development proposal conforms to the Official Plan with regard to the policies on Urban Structure, Built Form, the location for intensification, and appropriate built form and does not represent overdevelopment in its neighbourhood context.
- The height and massing are compatible, and allows appropriate views to the Fire Hall clock tower.
- The development proposal is contextually similar to other constructed and approved six storey developments in the immediate area on Queen Street East.
- And that there were no significant impacts arising from the cumulative density, height and scale of the proposal.

[164] Thus Ms. Nott stated that in her opinion the development application represented good planning and recommended approval of the development application by the Board.

[165] The Board heard from Leontine Major, the Senior Planner for the City of Toronto and formerly City of East York since 2003. She has been responsible for the carriage and control of this application since its submission. She had attended the Applicant's meeting with the Ward Councillor in February of 2012, and the pre-consultation meeting with City planning staff in July 2012. She testified that the Applicant was advised of the Visioning Study and the expectation that the application would reflect the outcome of that study. In her role as senior planner she had done the agency circulation of the application and received all comments. She had prepared the March 19, 2013 staff ("Directions") report and she indicated that she did not recommend approval of the development application.

[166] In her witness statement, Exhibit 38A, paragraph 26, she states that the proposed development does not conflict with the PPS. Similarly in paragraph 32, she states that the proposal does not conflict with the Growth Plan. However, she opined that the proposal did not meet the policies of the Official Plan.

[167] With regard to the Official Plan and in her March 19, 2013 report, she advised the Board that the Subject Lands were located on an Avenue and such avenues were important corridors where reurbanization is anticipated and encouraged.

[168] Official Plan policy 2.2.3.1, she noted states that reurbanizing the Avenues will be achieved through the preparation of Avenue Studies for strategic mixed use segments of the avenue corridors. (Policy 2.2.3.2 then provides in detail what is required for an

Avenue Study). However, Ms. Major noted that the City has a lot of Avenues and cannot study all of them at the same time.

[169] This is referenced in the non-statutory notes of 2.2.3 that provide:

... Some of the Avenues already serve as “main streets” that are focal points for the local community... These traditional “main street” Avenues already have zoning in place to guide mixed use development in a way that fits with the neighbourhood, and will be a low priority for Avenue reurbanization studies.

[170] Ms. Major stated that as the Beach was not a priority candidate for an Avenue Study, and since it had zoning in place, a visioning study was proposed to update the old guidelines and “tweak” the guidelines and “tweak” the Zoning By-law. She stated that the visioning study was not equivalent to an Avenue Study, but was warranted and appropriate and “mirrored” an Avenue Study.

[171] Referencing the existing zoning, she noted that the Subject Lands had a maximum height of 12 m, a density of two times the lot area. She observed that the proposed height was 20 m versus the 12 m allowed, but also stated that the number is not as important as the building envelope and the sensitive nature of the site close to the Fire Hall, which she recalled as the most discussed site during the visioning process.

[172] With regard to the existing zoning, Ms. Major detailed the development applications that had been previously approved including the 1991 development that would have had a four storey building on the Subject Lands but with the “Notch” in the proposed Zoning By-law which would have required setbacks to preserve views to the Fire Hall clock tower.

[173] In 1994, she indicated that staff had brought forward a report recommending a site specific zoning for the Subject Lands that would introduce that “Notch” to the zoning by-law. She noted that the current development application does not respect that Notch.

[174] With regard to the resubmission, Ms. Major had concerns that firstly there still was no site plan application filed with the resubmission, and secondly that the option to have commercial uses on the second floor could be problematic. She noted that a medical office might then be located on the second floor and that would likely generate a significant amount of both parking demand and traffic. Therefore, she was opposed to the second option put forward by the Applicant in the resubmission.

[175] With regard to the guidelines, she testified that the 2004 Guidelines were the guidelines in force at the time the application was made, but that the guidelines needed updating. Hence with the processing of the development application for Lick's, City Council's approval of June 6, 7, and 8, 2012, came with the direction that any rezoning applications received after City Council's request for a visioning study be considered in the context of and concurrently with the visioning study.

[176] The visioning study commenced in June 2012 and finished in September 2012, which she acknowledged was a "compact" time frame, but "did not compromise the study." The Guidelines were adopted by Council at the end of November 2012.

[177] Whereas the 2004 Guidelines had commenced at the Intersection, with the development of the Greenwood Race Track, it was appropriate to include the former Greenwood Race Track lands in the study, and create districts that had distinct character.

[178] The Subject Lands would fall within the Kew Beach precinct and as such the most important aspect of the guidelines would require maintenance of views from all four corners of the Intersection. It would also provide for: 4.8 m setbacks to street walls, a maximum of three storeys or 9.5 m of height at the street wall, buildings to be perceived as a four storey building from the opposite side of the street, a maximum height of 12.5 m on small lots, 15.5 m on medium depth lots, and 18.5 m on deep lots, and for corner lots a 45 degree chamfer. Only the 4.8 m setback had been incorporated into the resubmission she noted.

[179] In her opinion, the development proposal did not have regard for either the 2004 Guidelines or the 2012 Guidelines.

[180] Following the adoption of the 2012 Guidelines, Ms. Major had prepared the staff report for Directions for Council consideration dated March 19, 2013. Also going forward at that time was a site specific Zoning By-law 2013-0607 that would require as of right development to comply with the new Guidelines. This By-law included the Subject Lands and the TTC lands to the east and proposed the diagonal and graduated heights to preserve views to the Fire Hall clock tower.

[181] Ms. Major noted that while this By-law is under appeal, it is Council adopted and should be considered by the Board.

[182] In concluding her evidence, Ms. Major stated that in her opinion the application did not represent good planning, it exceeded the current zoning provisions, did not conform to the Official Plan, blocked the view of an important City heritage building, and would result in overdevelopment of the Subject Lands. Therefore she recommended that the Board dismiss the appeal.

[183] Under cross examination, Ms. Major agreed that one of the goals of the visioning study was to respect the character of the area. When asked if such a goal were to be found in the Official Plan policies for Mixed Use Areas, she indicated that it was not there, (but it was in the “Neighbourhoods” provisions of the Official Plan). She confirmed that the land use designation for the Subject Lands was Mixed Use and not *Neighbourhoods*.

[184] Ms. Major was also questioned with regard to the staff report prepared in support of the Lick’s development application for a six storey development and she acknowledged that staff had utilized the Mid-Rise Study performance standards and the 2004 Guidelines and the development was found to be in conformity with the Official Plan, and that there had been no change to the Official Plan since that approval. She also testified that the Council resolution approving the Lick’s development, directed staff that for any rezoning applications after the date of the Council direction for the visioning study, such applications were to be considered in the context of and concurrently with the visioning study and that the Applicant was aware of this early in the process.

PUBLIC SUBMISSIONS

[185] As there was considerable public interest in this hearing, the Board held a public session on October 15, 2013 at which time some twelve members of the public spoke with considerable passion about their neighbourhood. The public session was well organized largely through the efforts of the GBNA, for which the Board is most appreciative. In order to make the most efficient use of the Board’s time, the GBNA also co-ordinated the submission of written public comments to augment the residents who came forward and made oral presentations.

[186] The ambit of the public presentations was quite broad including representatives of residents associations, participants at the visioning study, one resident property owner who supported the application, an artist who provided a sketch showing what she envisioned for the Subject Lands (a six storey building with a corner chamfer, and

successive setbacks after the third, fourth and fifth floors), and one resident who was openly distrustful of the process and challenged the Board to show that it was listening to the residents. The issues that the Board heard on a repeated basis were the lack of respect for the 2012 Guidelines, the importance of views to the Fire Hall, traffic in the area that was at 100% of capacity, parking that was 50-100% oversubscribed, the TTC commute taking more and more time, the TTC wishing a ban on street parking until 7-8 p.m. to enable a better commute, that the lack of parking was effecting tourism, and that the views of residents should carry more weight in the decision making process.

[187] The Board also heard four individuals that had been granted participant status. Collectively the participants strongly advanced the argument that the 2012 Guidelines should be respected and the views of the Fire Hall clock tower preserved (from all four corners of the Intersection). One participant testified that the guideline to require views of the Fire Hall clock tower from all four corners of the Intersection had been introduced by Mr. Parakh late in the visioning process. Another participant in response to the issue of the appropriate first floor building wall height, had done a personal survey of a number of Queen Street East properties from which he advised that he had found developments that had ground floor heights ranging to 4.01 m and 4.06 m as opposed to the 3.5 m maximum set out in the 2012 Guidelines.

COMMENTARY

[188] Ontario has a policy led land use planning regime:

- The *Planning Act* mandates the Board to make decisions that are consistent with the Provincial Policy Statement.
- The *Planning Act* mandates the Board to make decisions that conform to the Growth Plan for the Greater Golden Horseshoe.
- The *Planning Act* mandates the Board to have regard to matters of provincial interest.
- Section 24 of the *Planning Act* mandates that no by-law shall be passed for any purpose that does not conform to the Official Plan. Thus, the Official Plan is the

key determinant in the consideration of any proposed zoning by-law amendment.

[189] When the Board is to make a decision, s. 2.1(a) of the Act requires the Board to “have regard to” any Council decision made under the Act and relating to the same planning matter.

[190] Equally, the Act, under s. 2.1(b) requires the Board to “have regard to” any supporting information or material considered by Council in making the decision in s. 2.1(a).

FINDINGS

[191] With regard to the PPS, the Board accepts the evidence of both land use planners that the proposed development is consistent with the PPS.

[192] With regard to the cultural heritage policies of the PPS, the Board finds that the Subject Lands are not designated, not listed, and not part of a conservation heritage district. Moreover the Board finds that the Subject Lands are not “adjacent” to a “protected heritage property” as the Subject Lands are not contiguous to a protected heritage property, and the Fire Hall is not designated under the *Ontario Heritage Act*, or within a designated Heritage Conservation District.

[193] With regard to the Growth Plan, the Board accepts the evidence of both land use planners that the development conforms to the Growth Plan, as the proposed development would represent intensification of a brownfield site and it is located within an intensification corridor.

[194] Concerning s. 2 of the Act, the Board prefers the evidence of Ms. Nott that the proposed development has appropriate regard for the matters of provincial interest. The proposed development does not directly impact the Fire Hall, provides a mix of commercial and residential uses near public transit, will provide both employment opportunities and additional housing, and with no unacceptable adverse impacts on the surrounding area.

Section 2.1 of the *Planning Act*

[195] Submissions have been made to the Board that the Board should have regard to the decisions of Council with respect to the 2012 Guidelines, the decision of Council in response to the “Directions” report of March 19, 2013, the site specific rezoning of the Subject Lands and the TTC lands in Zoning By-law 2013-0607, OPA 199 which would put in place Official Plan policies with regard to views to certain heritage structures including the Fire Hall in this case.

[196] Section 2.1 of the Act requires the Board to consider the decisions of Council and to weigh those decisions against the evidence that has come before it. The section also carries on in s. 2.1(b) to require the Board to also have regard to the planning documents that were before Council at the time Council made its decision.

[197] The Board would first observe that Council made no decision on the merits of this application until after it had been appealed to the Board.

[198] With regard to Zoning By-law 2013-0607, it was passed by Council again after the appeal to the Board of this matter. It is under separate appeal to the Board. The Board has given consideration to this By-law but for the reasons set out below attached greater weight to the existing By-law and decisions of Council.

[199] With regard to OPA 199, it was the subject of a staff report to Council that did not recommend at first instance the inclusion of the Fire Hall. That was added by Council. The Board notes the evidence of Mr. McClelland that nowhere is there any substantive report or documentation or study recommending designation status as a heritage structure for the Fire Hall, nor is there any report, documentation or study recommending the preservation of the views to the Fire Hall. The Board gives greater weight to the existing Official Plan.

[200] The Board does note that City Council had previously approved a development application for the Subject Lands based on the “Notch” setback, and subsequently City Council, on the recommendation of staff passed a site specific zoning by-law to implement that “Notch” to preserve what was considered by Council and staff to be adequate preservation of views of the Fire Hall. The protection of that view was not from

all four corners of the Intersection. That is the by-law that was in force and effect at the time of the application.

[201] The Board has also considered the decision of Council directing staff to prepare a visioning study...to develop appropriate Design Guidelines **that balance the policies of the Official Plan with the desire of the local community to maintain the existing character of this portion of Queen Street East.** (Emphasis added)

[202] The evidence of Ms. Nott was that the direction of Council came with a mandate: to balance the Official Plan policies with the desire of the local community to maintain the existing character of this portion of the street.

[203] “Balance” is usually defined as being an instrument for weighing, or a counter balancing weight, force or influence.

[204] The Board has considerable concern with a visioning exercise that commences with the objective of somehow “counter balancing” the approved Official Plan policies to meet the desires of local residents.

OFFICIAL PLAN

[205] The Official Plan specifically references “guidelines” in s. 5.3.2 non-statutory language, but always in the context of “implementation”: i.e. “Implementation plans strategies and guidelines are needed...”

[206] The statutory language of the Official Plan states:

5.3.2.1 **Implementation** plans, strategies and **guidelines will be adopted to advance the vision, objectives and policies of this Plan.** (Emphasis added)

[207] Thus the Board finds that guidelines are to implement Official Plan policy.

[208] For the Mixed Use designation, the Official Plan is clear that such designated sites are to be reurbanized. The non-statutory provisions in the Official Plan state that ... “reurbanization is anticipated and encouraged.” It further states that Avenues will be transformed incrementally, and the means of doing this is an Avenue Study.

[209] The Official Plan in s. 2.2.3.2 sets out what will be required in an Avenue Study including (and therefore not limited to):

- a. investments in community improvements including:
 - i. streetscape improvements
 - ii. transportation improvements such as transit priority measure
 - iii. parks and open space
 - iv. upgraded water or sewer infrastructure
- b. contextually appropriate as of right zoning and other regulations designed to achieve high quality development 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
 - iv. restrictions on parking at grade and driveways in front of buildings
 - v. and transit supportive measures such as: minimum development densities, maximum and minimum parking standards, restrictions on auto oriented retailing and servicing.

[210] The Official Plan provides that development can precede an Avenue Study if an Avenue Segment Study is done. The non-statutory provision of the Official Plan states that such an Avenue Segment Study will be a process that mirrors that of an Avenue Study. The Board notes that Ms. Major opined that the Visioning Study “mirrored” that of an Avenue Study.

[211] The Official Plan provides in s. 2.2.3.3 (a) that development can precede an Avenue Study, and the basis for that is found in s. 2.2.3.3 (b) which sets out the criteria for an Avenue Segment Study. The Board notes that there is no corresponding Official

Plan policy that sets out specific criteria for guidelines. Thus the Board finds that an Avenue Segment Study mirrors an Avenue Study, and not a visioning study.

OFFICIAL PLAN DESIGNATION

[212] The Subject Lands are designated as Mixed Use Areas which are to absorb most of the anticipated increase in retail, office and service employment in the City as well as much of the new housing. Section 4.5.2 of the Official Plan provides the development criteria for Mixed Use Areas including the following subsections:

- (c) directing the location and massing of new buildings to provide a transition between areas of different development intensity and scale and setbacks and/or stepping down of heights towards lower scale neighbourhoods
- (d) providing for the adequate limiting of shadow impacts
- (e) locating and massing new buildings to frame the street edge
- (h) taking advantage of nearby transit services

[213] The Board notes the absence of any Official Plan policy directive to “maintain the existing character of this portion of Queen Street East.”

[214] Rather the Board notes the Avenues designation for the Subject Lands. This designation in the non-statutory provisions of the Official Plan is described as being on “important corridors along major streets where reurbanization is anticipated and encouraged.”

[215] To facilitate such reurbanization, the Official Plan envisages Avenue Studies, or alternatively Avenue Segment Studies, (see s. 2.2.3.2 and s. 2.2.3.3.).

[216] The City did not assign a high priority to an Avenue Study for Queen Street East.

[217] In this case, the City did not require an Avenue Segment Study of the Applicant, apparently on the basis of the Avenue Segment Study that had just been completed for the development proposal at Lick’s.

[218] The City staff report to Council on that development application found that those lands were designated as Mixed Use Areas, located on an Avenue, and that the proposal was consistent with the PPS, conformed to the Growth Plan, utilized the Mid-Rise Study performance standards and recommended approval of a rezoning by-law to enable the construction of a six storey mixed use building with a density of 3.82 times the area of the lot.

[219] City Council approved the rezoning for Lick's with one modest amendment to include a 0.9 m stepback above the third floor.

[220] The Board finds that there has been no (in force and of effect) change to the Official Plan since the approval of that development application. OPA 199 has been considered but given little weight. Zoning By-law 2013-0607 has been considered but given little weight. Thus, the only significant change in circumstances since the approval of Lick's has been the 2012 Guidelines.

[221] In the evidence of Ms. Major, she places great emphasis on the 2012 Guidelines, Zoning By-law 2013-0607, and OPA 199, to conclude that the development application before the Board does not comply with the provisions of the Official Plan.

[222] Ms. Nott disagrees, and testified that the non-statutory provisions of the 2012 Guidelines cannot prevail over the statutory provisions of the Official Plan.

[223] The Board prefers the evidence of Ms. Nott and finds that in principle the proposed rezoning conforms to the Official Plan policies for the Mixed Use Areas and the Avenues.

HEIGHT

[224] With regard to height, the Board notes that there is no height limit in the Official Plan.

[225] Contextually the Subject Lands have a four storey apartment building to the north, the TTC building (non-residential) to the east, a three storey building to the south, a two storey building to the west and a five storey building to the southwest. The 2010 Mid-Rise Guidelines recommend a maximum height based on a 1:1 ratio to the street right of way, which is 20 m exclusive of the mechanical penthouse. The Board finds such height to be

consistent with the development approval of the City at Lick's, which location the Board finds to be of lesser prominence than the Subject Lands.

PERMITTED USES

[226] The Board prefers the evidence of Ms. Major with regard to the permitted uses. Allowing commercial uses on the second floor could cause parking issues. Thus the Board finds that retail at grade and residential for the balance of the building to be appropriate.

QUEEN STREET SETBACK

[227] The 2012 Guidelines recommend a 4.8 m setback which the Applicant has adopted in its resubmission.

[228] The 2004 Guidelines state that any building on the northeast corner of the Intersection will be setback to protect views of the Fire Hall clock tower.

[229] Thus, in addition to the 4.8 m setback, the Board finds it reasonable and appropriate to maintain the Notch setbacks that were adopted by City Council and incorporated into the comprehensive zoning by-law through Zoning By-Law 1994-0091. To maintain those views, no balconies shall penetrate that setback.

MASSING

[230] The 2004 Guidelines require a blockform building to mark the entrance to the Beach, with a high level of architectural detail, and building bays not to exceed 8 m in width. The 2004 Guidelines also state that the objective is to create a well-defined entrance to the Beach neighbourhood by facilitating the development of prominent buildings having outstanding architectural design which reflects the overall character of the neighbourhood.

[231] On the Lick's development application, the staff recommended a rezoning based on a site plan design to implement the performance standards of the 2010 Mid-Rise Guidelines. Council modified the rezoning and the design with the introduction of a 0.9 m setback above the third floor at 10.4 m. The Board has considered that recommendation by staff and that decision by Council to utilize the 2010 Mid-Rise Guidelines and the

Board finds it appropriate to do so in this case, but also with the additional 0.9 m setback at 10.4 m.

[232] Exhibit 15 sets out the conditions of approval that satisfied 140 with regard to the rear façade of the proposed development. No issue was raised during the hearing with regard to those conditions of approval, and hence the Board finds them appropriate for the north elevation.

[233] The 2004 Guidelines, under the heading Public Realm, require at the northeast corner of the Intersection quality at-grade public open spaces along the Queen Street East frontage.

[234] The 2010 Mid-Rise Guidelines provide that for key locations such as the intersection of two major Avenues, design features should give prominence to the corner.

[235] The 2012 Guidelines would recommend that for new development on corner lots that a 45 degree chamfer or rounded corner be provided to give more breathing room to pedestrians and soften the mass of the building.

[236] The Board notes that the Subject Lands are located at the intersection of two major roads, and have long been regarded as part of the entrance to the Beach. The 2004 Guidelines call for a prominent building and the Mid-Rise Study calls for prominence at such corners.

[237] The Board notes that for the corner lot at Lick's, no requirement was made for a chamfer, and thus the Board prefers the 2004 Guideline and the 2010 Mid-Rise Guidelines direction for prominence at the corner location.

[238] With regard to the proposed Queen Street East and Woodbine Avenue facade treatment for this development proposal, the Board concurs with the evidence of Mr. Spaziani and finds that the proposed overhangs of the upper floors to the ground level do not reflect the character of the existing area and does not find them appropriate.

FLOOR SPACE INDEX

[239] The Board finds therefore with the removal of the proposed overhangs that the F.S.I. shall be proportionately less than 4.36. The F.S.I. will arise out of the final site plan drawing.

DECISION

[240] Having found that the proposed development conforms to the Official Plan policies, the Board then had regard for the draft by-law that had been submitted for approval. That draft by-law does not reflect the modifications as noted above and as found in Exhibit 15.

[241] Thus the Board will allow the appeal in principle. The Board will withhold its Order for six months to allow the parties to prepare same for the Board's consideration.

[242] The Board finds that one of the options open to the City was to follow the Official Plan policies and prioritize that an Avenue Study be done. Such a study would have examined *inter alia* community improvements required including transportation improvements, upgraded water or sewer infrastructure, contextually appropriate as of right zoning to establish permitted uses, maximum density and heights, restrictions on parking at-grade and transit supportive measures, all of which have been mentioned in the public submissions.

SITE PLAN

[243] To assist the parties, notwithstanding the fact that the Board does not have before it a site plan referral, the Board has some observations on the conceptual site plan that was provided with exhibits depicting conceptual elevations, and facades.

[244] Upon review of those exhibits, the Board observes that it would appear that the elevations display a use of materials and design that do not in the words of the 2004 Guidelines ... "reflect the overall character of the neighbourhood." For example, the exhibits seem to depict the desire to establish "prominence" through the use of a white marble? corner façade.

[245] In that regard the Board harkens to the evidence of Mr. Spaziani that materials and colours should be utilized that reflect the character of the neighbourhood, and that in the Lick's development, the bricking was limited to the first three storeys.

"Blair S. Taylor"

BLAIR S. TAYLOR
MEMBER