

**Local Planning Appeal Tribunal**  
Tribunal d'appel de l'aménagement  
local



**ISSUE DATE:** August 08, 2018

**CASE NO(S):** PL140905  
MM160039

The Ontario Municipal Board (the “OMB”) is continued under the name Local Planning Appeal Tribunal (the “Tribunal”), and any reference to the Ontario Municipal Board or Board in any publication of the Tribunal is deemed to be a reference to the Tribunal.

**PROCEEDING COMMENCED UNDER** subsection 17(24) of the *Planning Act*, R.S.O. 1990, c. P.13, as amended

Appellant: Upper Village Investments Ltd.  
Appellant: RioCan Holdings (Sunnybrook) Inc. and others  
Subject: Proposed Official Plan Amendment No. OPA 253  
Municipality: City of Toronto  
OMB Case No.: PL140905  
OMB File No.: PL140905  
OMB Case Name: RioCan Holdings (Sunnybrook) Inc. v. Toronto (City)

**PROCEEDING COMMENCED UNDER** subsection 34(19) of the *Planning Act*, R.S.O. 1990, c. P.13, as amended

Appellant: 346-350 Eglinton Avenue West Holdings Ltd.  
Appellant: 352-356 Eglinton Avenue West Holdings Ltd.  
Appellant: Upper Village Investments Ltd.  
Subject: By-law No. 1030-2014  
Municipality: City of Toronto  
OMB Case No.: PL140905  
OMB File No.: PL141112

**PROCEEDING COMMENCED UNDER** subsection 114(15) of the *City of Toronto Act*, 2006, S.O. 2006, c. 11, Sched. A

Subject: Site Plan  
 Referred by: Terranata Developments Inc.  
 Property: 346, 350, 352 & 356 Eglinton Avenue West  
 Address/Description:  
 Municipality: City of Toronto  
 OMB Case No.: MM160039  
 OMB File No.: MM160039  
 OMB Case Name: Terranata Developments Inc. v. Toronto (City)

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

Applicant and Appellant: Terranata Developments Inc.  
 Subject: Application to amend Zoning By-law No. 438- 86 and City-wide Zoning By-law No. 569-2013 - Neglect of the City of Toronto to make a decision MCR under By-law No. 438-86 and CR under Proposed City wide By-law No. 569-2013  
 Existing Zoning: MCR under By-law No. 438-86 and CR under Proposed City wide By-law No. 569-2013  
 Proposed Zoning: Site Specific (To be determined)  
 Purpose: To permit a fifteen-storey mixed-use building  
 Property: 346, 350, 352 & 356 Eglinton Avenue West  
 Address/Description:  
 Municipality: City of Toronto  
 Municipality File No.: 15 214446 NNY 16 OZ  
 OMB Case No.: MM160039  
 OMB File No.: PL160568

**Heard:** March 19 – 28, 2018 in Toronto, Ontario

**APPEARANCES:****Parties**

Terranata Developments Inc.  
 346-350 Eglinton Avenue West Holdings Ltd.  
 352-356 Eglinton Avenue West Holdings Ltd.

City of Toronto

**Counsel**

D. Bronskill

A. Suriano  
 L. Bisset

**DECISION DELIVERED BY SUSAN de AVELLAR SCHILLER AND ORDER OF THE TRIBUNAL**

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**INTRODUCTION**

[1] Between 2012 and 2014 the City undertook an extensive study of 20 kilometres of Eglinton Avenue from Jane Street on the west to Kennedy Road on the east. The study was undertaken in anticipation of the opening of the Eglinton Crosstown Light Rapid Transit (“LRT”) line, a higher order transit service. The study is known as Eglinton Connects and resulted in City of Toronto (“City”) Official Plan Amendment 253 (“OPA 253”) and By-law No. 1030-2014.

[2] OPA 253 and By-law No. 1030-2014 have been the subject of several appearances before the Tribunal, differently constituted. Together these two files constitute Tribunal case number PL140905.

[3] The proceedings that are the subject of this appearance are site-specific to 346, 350, 352 and 356 Eglinton Avenue West (“Subject Site”) and deal only with the appeals by Terranata Developments Inc., 346-350 Eglinton Avenue West Holdings Ltd. and 352-356 Eglinton Avenue West Holdings Ltd. (together “Terranata”) of By-law No. 1030-2014, the Terranata appeal of its proposed amendments to By-law No. 438-86 and By-law No. 569-2013 for the neglect of the City to make a decision, and the Terranata referral of a proposed site plan to this Tribunal.

[4] On consent of the parties, the Tribunal adjourns the site plan referral (case number MM160039) until after the Tribunal’s final decision on the zoning by-law appeals.

[5] The Subject Site is designated as Mixed Use and the development proposal is for a nine-storey, mixed use commercial/residential building adjacent to a main station entrance on a higher order transit line. The Subject Site fronts on to a main east-west arterial, identified by the City as an Avenue and appropriate for mid-rise development.

At the rear of the Subject Site is a townhouse development that is within a Neighbourhoods designation.

[6] The City opposes the development, as do several area residents who addressed the Tribunal as Participants. Noteworthy in the evidence of the Participants was the repeated emphasis on a willingness to see the Subject Site redeveloped but with certain modifications to address their collective concerns.

[7] Terranata called three witnesses:

1. Michael S. Goldberg, qualified to provide expert opinion evidence in land use planning matters;
2. Bojana Ivanova, qualified to provide expert opinion evidence in architecture and urban design; and
3. Greig Bumstead, qualified to provide expert opinion evidence in transportation planning.

[8] The City called three witnesses:

1. Diane Silver, qualified to provide expert opinion evidence in land use planning matters as noted above;
2. Sasha Terry, qualified to provide expert opinion evidence in urban design; and
3. Hans Riecko, qualified to provide expert opinion evidence in transportation planning.

[9] The City had initially filed an expert witness statement for a second transportation planner, Dewan Karim. The City advised the Tribunal that, on reflection, the City felt it

was unnecessary to call this witness. Hearing no objection, the Tribunal agreed to the withdrawal of the witness and showed as deleted from Tab 3 of Exhibit 5 the witness statement of Mr. Karim.

[10] The Board also heard from nine Participants, all of whom appeared in opposition to Terranata: Brian Howard, Stephen Vetter, John O’Sullivan, Richard Martin, James Kabrajee, Ann Winter, Julia Fisher, Kathryn Fitzwilliam, and Richard MacFarlane.

[11] Having heard and considered the evidence and submissions of the Parties, the evidence of the Participants, and having applied the requisite statutory tests in these matters, the Tribunal allows the appeals in part subject to certain directed revisions to the development proposal and the satisfactory completion of certain other matters set out more fully below. The Tribunal’s reasons follow.

## **ANALYSIS AND FINDINGS**

[12] The Eglinton Connects study had several areas of analysis including land use, built form, heritage, transportation and public realm.

[13] There is no dispute that the appropriate land use designation is Mixed Use. The proposal is for a mixed use development with commercial on the bottom fronting on Eglinton Avenue West and with residential units above.

[14] There are no heritage issues that impact the Subject Site.

[15] The Subject Site is on the north side of Eglinton Avenue West between Avenue Road on the east and Castleknock Road on the west. Burnaby Boulevard is the first street north of Eglinton Avenue West.

[16] Adjacent to the north of the Subject Site is a townhouse development. This development forms an L shape with some units having frontage on Burnaby Boulevard and others having frontage on Avenue Road. Additional townhouse units nestle inside

this L shape.

[17] The townhouses are within a Neighbourhoods designation in the City Official Plan ("OP"). The change in designation from Mixed Use to Neighbourhoods occurs at the rear property line of the Subject Site.

[18] The principal dispute in this matter is the question of compatibility of the proposed mixed use development with the adjacent low rise residential use in terms of shadow, privacy and overlook. These, in turn, engage the question of whether mitigation is appropriate and, if so, whether the appropriate mechanism for mitigation is the application of a 45 degree ("45°") angular plane measured from the edge of the Neighbourhoods designation at the north lot line of the Subject Site. Grouped together, these are issues of built form.

[19] Eglinton Avenue West and Avenue Road are both heavily travelled and very busy. For this proposal, these conditions raise the issue of the size and quality of the public realm in front of the Subject Site on Eglinton Avenue West.

[20] The Subject Site is closest to Avenue Road and is immediately adjacent to the west of the main entrance to the Avenue station on the LRT, which is located at the northwest intersection of Avenue Road and Eglinton Avenue West. The LRT is higher order transit. Located immediately adjacent to the main entrance for the Avenue station raises the issue of an appropriate parking standard for the development.

### **Built Form**

[21] The performance standards in By-law No. 1030-2014 that deal with built form rely heavily on, and draw from, the *Avenues and Mid-Rise Buildings Study* of May, 2010 ("Mid-Rise Study"), with some specific changes.

**Height:**

[22] The Parties agree that a mid-rise building is appropriate for the Subject Site. The Mid-Rise Study suggested a maximum mid-rise, mixed use building height of 11 storeys, with some cautions regarding the ability of any given lot to carry the height and the relationship of the height to the width of the adjacent street right-of-way (“ROW”).

[23] The planned ROW for Eglinton Avenue West in this area is 27 metres (“m”). The Mid-Rise Study suggested a height of eight storeys or 25.5 m for a mixed use mid-rise building on a 27 m planned ROW. By-law No. 1030-2014 sets a height limit on the Subject Site of 22.5 m, which is about seven storeys. The proposed development is for nine storeys at slightly over 30 m.

[24] The Mid-Rise Study recommendation of eight storeys was a general recommendation for roads with a 27 m ROW. This recommendation did not consider a site immediately adjacent to a main station entrance of a higher order transit service.

[25] The City submits that the Eglinton Connects study, that informs the performance standards in By-law No. 1030-2014, did consider the Subject Site’s location in relation to the higher order transit service which the LRT represents. Since the height limit selected in By-law No. 1030-2014 is even lower than that recommended in general terms in the Mid-Rise Study, the unique location of the Subject Site in relation to higher order transit does not appear to the Tribunal to have played a major part in the selection of a height limit of 22.5 m.

[26] Additionally, the Eglinton Connects study was undertaken when the provincial Growth Plan for the Greater Golden Horseshoe 2006 (“GGH 2006”) was in effect and prior to the time the provincial Growth Plan for the Greater Golden Horseshoe 2017 (“GGH 2017”) came in to effect. Regardless of the fact that the Eglinton Connects study was an extensive, multi-year study, the planning instruments before the Tribunal in this hearing must still be assessed against the GGH 2017 and not the GGH 2006.

[27] While there are many similarities between the GGH 2006 and the GGH 2017, they are not the same. As the Ontario Municipal Board stated in *Adi Development Group Inc. v. Burlington (City)*, 2018 CarswellOnt 2479, the GGH 2017 has placed considerable emphasis on intensification within a compact urban form that contributes to complete communities. In the context of intensification, the GGH 2017 places even greater emphasis on transit and on transit-supportive development than did the GGH 2006.

[28] At policy 1.2.1 dealing with guiding principles, the GGH 2017 states:

...The policies of the Plan regarding how land is developed, resources are managed and protected, and public dollars are invested are based on the following principles:

...Prioritize *intensification* and higher densities to make efficient use of land and *infrastructure* and support transit viability.

[29] Then in chapter 5, dealing with implementation and interpretation, policy 5.1 states:

Key to the success of this Plan is its effective implementation...

Except for some minor matters, most planning decisions can affect the achievement of the policies of this Plan...

Where a municipality must decide on a planning matter before its official plan has been amended to conform with this Plan, or before other applicable planning instruments have been updated accordingly, it must still consider the impact of the decision as it relates to the policies of this Plan which require comprehensive municipal implementation...

[30] The Tribunal finds that a nine-storey building is, in principle, both reasonable and represents good planning on a site where the planned ROW of the road is 27 m and where the site is immediately adjacent to a main station entrance of a higher order transit service.



**Rear Façade Transition:**

[31] When two different land use designations are adjacent to one another, compatibility of built form as well as of land use emerge.

[32] In this case, there is no issue of compatibility of land use between the mixed use designation on the Subject Site and the Neighbourhoods designation on the townhouses to the rear. The issue is compatibility of built form.

[33] While framed by some of the Participants as a question of height, the Tribunal finds that height itself is not the issue. Compatibility is measured instead by shadow, privacy and overlook.

[34] The Subject Site, and the townhouses adjacent to the north, are in an urban area and experience an urban condition. Any mid-rise, mixed use redevelopment of the Subject Site will result in some shadowing and some overlook. Some shadowing and some overlook are simply recognized parts of the urban condition. The City OP deals with these circumstances by requiring that the new development is designed to ensure that there is adequate light and adequate privacy for the adjacent residential land use. "Adequate light" does not mean "no shadows" and "adequate privacy" does not mean "no overlook".

[35] The proposed development is set back 6.3 m from the rear property line and then rises straight up to the main roof line at 30.2 m. There is an 11.6 m step back above the main roof line to accommodate an additional 5 m of mechanical penthouse but there is no step back at the rear within the main part of the building.

[36] In addition to there being no step back from the low rise residential buildings to the rear of the proposed building, the design of the proposed building shows balconies from the fourth floor to the ninth floor. These proposed balconies intrude into that 6.3 m setback and effectively bring the proposed building, and its prospective residents who are enjoying their balconies, even closer to the low rise residences to the north with an

increased privacy intrusion.

[37] The City's witnesses emphasized the desirability of step backs at the rear. The City's witnesses were consistent in their expert opinions that the appropriate building envelope within which such step backs should occur is the application of a 45° angular plane that goes from north to south so that the building rises as it addresses Eglinton Avenue West. Additionally, City witnesses testified that the 45° angular plane should be measured from the property line that separates the Mixed Use designation from that of Neighbourhoods rather than measured from a point within the Neighbourhoods designation. A 45° angular plane measured at the boundary between the Mixed Use and the Neighbourhoods designations places the responsibility for providing a built form transition on the proposed new development and not on the existing development.

[38] Mr. Goldberg, called by Terranata, rejected this view quite strongly and suggested that any such angular plane should be measured from the residential street to the north, Burnaby Boulevard, and not from the property line.

[39] A measurement taken from Burnaby Boulevard would utilize the existing townhouses, which are designated Neighbourhoods, as part of the transition between the Mixed Use designation and the Neighbourhoods designation. In support of this approach, Mr. Goldberg expressed the expert opinion that the townhouse development was an edge condition for the Neighbourhoods designation and should be utilized as part of an appropriate transition. He cited several other developments as illustrations which appeared to have no angular plane from adjacent low-rise residential development or which appeared to utilize the low-rise residential development as part of the transition of the higher rise built form to the surrounding low-rise residential neighbourhood.

[40] The Tribunal acknowledges that an examination of certain other developments, advanced by Terranata as illustrations, suggests that there may not have been consistency in the application of the 45° angular plane. The Tribunal finds three key

difficulties for these illustrations to be accepted as appropriate precedents to apply a 45° angular plane from Burnaby Boulevard rather than the property line.

[41] The first difficulty is that the City planners involved in these illustrations were not called to testify. Ms. Silver, called by the City, was both consistent and emphatic in her evidence that she would not have recommended the treatment shown in the illustrations.

[42] The second difficulty is that the application or not of a 45° angular plane is only one piece of an entire package of a proposed development. By considering the illustrations through the single lens of the application of a particular angular plane for transition, the Tribunal is unable to assess whether other considerations and elements contributed to a decision that approved these other developments.

[43] The third difficulty is that what happened on these other sites does not address the question of adequate privacy in the case now before the Tribunal.

[44] The townhouses are in place and occupied now. They are not part of the proposed redevelopment of the Subject Site nor were they proposed for development coincidentally with the application for redevelopment of the Subject Site. Additionally, the existing townhouse development has both at-grade and rooftop amenity space.

[45] The Tribunal finds that, while there is some additional shadowing, there is still adequate light for lands within the Neighbourhoods designation to the north. Adequate privacy, however, is not met by the current proposed design. The Tribunal finds that adequate privacy for the adjacent low-rise residential units in the adjacent Neighbourhoods designation requires some stepping back of the proposed development on the north side of the proposed building.

[46] Terranata provided the Tribunal with no suggested angular plane from the northern property line, or alternative building design, to provide rear façade step backs. As such, the evidence before the Tribunal to mitigate the impact of inadequate privacy

was confined to the application of the 45° angular plane.

[47] The City initially suggested the application of a 45° angular plane, but its visual exhibit of the impact of this application had the 45° angular plane measured from the wrong height.

[48] The Subject Site has an existing retaining wall at the rear property line. That retaining wall is 3.6 m higher than the grade of the existing lane at the rear of the existing structures on the Subject Site. The retaining wall height is the height at the rear property line and is the appropriate starting height for a rear angular plane measurement, not the much lower height of the base of the retaining wall which the City used in its initial illustration.

[49] The standard rear angular plane measurement, as illustrated in the Mid-Rise Study, starts at the rear property line and then moves to a point that is set back 7.5 m. The calculation of the angular plane would begin at that 7.5 m point but at a height of 10.5 m. In the case before the Tribunal, the measurement would start from a height of 14.1 m, being 10.5 m plus the 3.6 m height at the rear property line.

[50] The Tribunal has found that a nine-storey building is, in principle, both reasonable and represents good planning for the Subject Site from the perspective of the analysis of height in the context of the front façade and relationship of the proposed building to Eglinton Avenue West.

[51] The Subject Site is a shallow and, therefore, somewhat constrained site.

[52] There is no transition between OP designations that occurs at the front of the proposed building. Appropriate transition is necessary at the rear of the building. In this case, the transition between the Mixed Use designation and the Neighbourhoods designation is simply a shorter way of saying that compatibility demands mitigation between a proposed new building and existing residential units.

[53] The Tribunal acknowledges that the application of a 45° angular plane may not result in a nine-storey building. The Tribunal wishes to be clear: rear step backs of the residential floors are necessary for the Tribunal to make its finding that adequate privacy for the residential units to the north is provided. And a finding that the built form meets the OP requirement of adequate privacy is necessary for the Tribunal to make its overall finding of conformity with the OP.

[54] The City's initial analysis showing a possible 45° angular plane also showed some protrusions into this angular plane. The Tribunal recognizes that while a 45° angular plane may be a starting point, the parties may be able to agree on design details that may result in some intrusions of balconies or parts of the building into the angular plane while still respecting the need for step backs from the northern property line. The Tribunal leaves these discussions to the City and Terranata. If no agreement on intrusions is reached then the 45° angular plane from the rear property line, as set out above, applies.

[55] The Tribunal expects Terranata and the City to approach this directed re-design process in good faith and in a timely manner such that the results will inform properly the impacted site-specific performance standards of the planning instruments before the Tribunal in this matter.

#### **Rear Yard Setback:**

[56] The 7.5 m rear yard setback assumes a lane dimension of 6 m for the travelled portion and 1.5 m for landscape buffering.

[57] The closest townhouse block sits a mere 0.3 m from the property line. The proposal contemplates a setback of 6.3 m. That dimension is sufficient for a 6 m travelled portion of the setback.

[58] Adjacent to the east is the main station entrance for the Avenue station on the LRT. The building for the main station entrance is set back from its rear property line

and would connect to the rear setback on the Subject Site. There is no landscaped buffer included in the station entrance setback. Instead, there are two parking spaces. The evidence before the Tribunal is that these parking spaces are the result of a commercial arrangement entered into by the City.

[59] Given the configuration of the Avenue station setback, and given the grade differential to the height of the rear retaining wall on the Subject Site, the Tribunal sees no useful purpose in requiring a larger setback to provide space for a landscape buffer.

[60] The Tribunal finds that the proposed 6.3 m rear yard setback is sufficient and appropriate.

#### **Front Façade Step Backs:**

[61] By-law No. 1030-2014 requires a front step back at the height of 13.5 m, the equivalent of about four storeys. The proposed development has front façade step backs at slightly higher points, equivalent to about the five-storey mark.

[62] The evidence before the Tribunal is that the step back at 13.5 m was selected by the City in part to maintain a consistent street wall condition along Eglinton Avenue West related to the development the City expects to occur. As noted above, the City's witnesses did not point to redevelopment that had already occurred on Eglinton Avenue West to which these standards must be maintained to ensure future consistency. The Tribunal was not persuaded that there is anything about the specific site that would require a step back at 13.5 m rather than a design that emphasized a slightly higher point.

[63] The Mid-Rise Study called for buildings to be stepped back from the street wall of the building at the 80% of the street ROW height. For the Subject Site, this would be at about the 21.5 m height. A step back at this height, which initiates the 45° angular plane on the front façade, was supported in the Mid-Rise Study as providing both adequate sunlight on the pedestrian realm as well as a sensitive response to pedestrian

perception of height.

[64] While the proposal provides front façade step backs at the upper levels of the proposed building, the proposal does pierce the 45° angular plane. Since the building is on the north side of Eglinton Avenue West, the Tribunal finds that there is sufficient sunlight on the pedestrian realm. The Tribunal further finds that the Terranata proposed front façade step back is sufficient to respond sensitively to pedestrian perceptions of height.

### **Public Realm**

[65] The City seeks a 1.4 m front setback to accommodate a 4.8 m sidewalk. This sidewalk width is intended to provide a pedestrian clearway while also accommodating elements such as street trees.

[66] Street trees are important and desirable additions to the public realm. There is ample room in the sidewalk width to accommodate street trees and a full pedestrian clearway just to the west of the Subject Site. The City is proposing to install a left turn lane in front of the Subject Site for eastbound traffic turning north on to Avenue Road. It appears that this left turn lane has the effect of reducing the sidewalk and necessitating the additional 1.4 m front setback.

[67] The Tribunal is persuaded that the additional 1.4 m setback is appropriate and desirable for pedestrian use of the sidewalk, whether the sidewalk at the front of the Subject Site has street trees or some other appropriate element to enhance the pedestrian experience at this otherwise busy intersection.

### **Parking and Traffic**

[68] The Eglinton Connects study specifically considered parking requirements for developments, recognizing the role of higher order transit. The Subject Site is in Parking Area 3, which has a reduced parking standard that recognizes an area near higher

order transit. For the proposed development, that standard would result in 57 spaces. Terranata proposes 30 spaces, including a reduction in the number of accessible parking spaces.

[69] The analysis in support of the reduction to 30 spaces was based on the assumption that the Subject Site was in Parking Area 4, which has a higher parking requirement than Parking Area 3. This assumption was corrected at the hearing but Mr. Bumstead continued to express the professional opinion that the parking standard for Parking Area 3 did not take sufficient account of the fact that the Subject Site location is adjacent to a main station entrance to a higher order transit service. While this evidence dealt with the general reduction in the parking standard, the Tribunal finds that no persuasive evidence was presented in support of the proposed reduction in the number of accessible parking spaces.

[70] Several Participants raised concerns about traffic in the area generally and traffic generated by the proposed development specifically. The City did not raise traffic as an issue.

[71] Any development of the Subject Site to a mid-rise building will bring some additional traffic to the area. Terranata's proposed reduction in the parking requirement appears to complement the Participants' concerns regarding traffic increases: fewer cars, less traffic generated.

[72] The Participants also expressed concern about the manner in which vehicles would enter and leave the building and the possible impact this might have on vehicles stacking along the vehicular access routes. Specifically, the Tribunal was advised that the access to the parking in the building would be by way of a vehicular elevator that would bring incoming vehicles down to the parking level and outgoing vehicles up to the street level. The concern focussed on the estimated time of the cycle for the vehicular elevator to perform these tasks.

[73] Neither the City nor Terranata addressed this concern.



[74] If the City is satisfied with this mechanically-assisted approach to parking, then it appears to the Tribunal that the fewer vehicles to be parked, the less likelihood of vehicular stacking at the access routes. This concern appears, as well, to support a reduced parking requirement.

[75] Some Participants expressed the view that if there is inadequate parking provided on the Subject Site that the development's residents will still have vehicles and simply park them on adjacent streets instead of in the building.

[76] Insisting on having one vehicle in a household when there is no parking provided, or having two or more vehicles in a household when the residential unit has only one parking spot, is behaviour that is beyond the ability of the Tribunal to control.

[77] The Tribunal considers, instead, the location of the Subject Site in relation to higher order transit and to the Participants' concerns regarding an increase in traffic and possible vehicular stacking at access points to the building's parking area. Taken together, these considerations outweigh the City's analysis and higher parking standard for the proposal. On balance, the Tribunal is persuaded that the proposed reduction to the parking standard for the Subject Site is both reasonable and appropriate, save and except that the Tribunal finds that no reduction should be made in the number of accessible parking spaces.

### **Storm Water Management**

[78] The parties do not dispute the need for new development to consider and address the challenge of appropriate storm water management. This is the case in this circumstance, where storm water management may have a direct impact on the City's infrastructure. The City asks, and Terranata consents, to a pre-approval condition addressing this matter.

## STATUTORY REQUIREMENTS

[79] In reaching its decision on a planning matter, the *Planning Act*, R.S.O. 1990 c. P.13, (“Act”) sets out certain requirements to which the Tribunal must adhere.

[80] The Act contemplates applications for an OPA and zoning by-Law amendment, with the possibility of appeal to this Tribunal, as in this case. Under the Act that is applicable in this case, the test in the Act is not whether the in-force OP or the in-force zoning by-law meets the requirements of the Act. The test is whether the decision on the application meets the requirements of the Act.

### **Section 2 of the Act: Matters of Provincial Interest**

[81] In making a decision, the Tribunal must have regard for the matters of Provincial interest, identified in s. 2 of the Act. This section sets out, in summary form, the elements that characterize desirable growth. In this case, the Tribunal finds that the matters of Provincial interest that are most relevant are set out in the following subsections of the Act:

1. 2(h) regarding the orderly development of safe and healthy communities
2. 2(m) regarding the co-ordination of planning activities of public bodies
3. 2(p) regarding the appropriate location of growth and development
4. 2(q) regarding the promotion of development that is designed to be sustainable, to support public transit and to be oriented to pedestrians
5. 2(r) regarding the promotion of built form that is well-designed

[82] In each of these matters the Tribunal finds that the proposal before the Tribunal, with modifications directed by the Tribunal and as set out above, has appropriate regard

for and implements these matters of Provincial interest.

### **Section 2.1 of the Act: Regard to the Decision of the Municipal Council**

[83] Section 2.1 of the Act requires that the Tribunal have regard to the decision of the municipal council and to information and material considered by the municipal council in making its decision. The matters before the Tribunal are appeals of a decision of the City and appeals of non-decisions. The Tribunal has considered the decision and the non-decisions, as well as the reports and materials that were before the City Council as presented to the Tribunal in these proceedings.

### **Section 3(5) of the Act: Policy Statements and Provincial Plans**

[84] Section 3(5) of the Act also places responsibility on both the Board and the municipal council:

#### **Policy statements and provincial plans**

(5) A decision of the council of a municipality, a local board, a planning board, a minister of the Crown and a ministry, board, commission or agency of the government, including the Municipal Board, in respect of the exercise of any authority that affects a planning matter,

- (a) shall be consistent with the policy statements issued under subsection (1) that are in effect on the date of the decision; and
- (b) shall conform with the provincial plans that are in effect on that date, or shall not conflict with them, as the case may be.

#### **Provincial Policy Statement 2014:**

[85] Provincial policy has imposed a steadily increasing emphasis on transit and intensification as part of its overall emphasis on complete communities, environmental sustainability, healthy lifestyles and the importance of providing a full range of diverse housing opportunities for a diverse population. Intensification generally within the built boundary is encouraged where appropriate. One means to test appropriateness is to

examine compatibility of the proposed development within the context of its specific setting.

[86] The tribunal finds that the proposal before the Tribunal, with modifications directed by the Tribunal and as set out above, is consistent with the Provincial Policy Statement 2014.

### **Growth Plan for the Greater Golden Horseshoe 2017:**

[87] As set out above, it is the GGH 2017 that is the provincial plan that is applicable in this case. In addition to emphasizing transit-supportive development, the GGH 2017 calls for complete communities, efficient use of land and infrastructure and environmental sustainability.

[88] The mixed use development contributes to a complete community. Developing the Subject Site adjacent to a main station entrance on higher order transit, coupled with a reduced parking standard, responds to the directive for transit-supportive development and provides for an efficient use of land and infrastructure.

[89] The Tribunal finds that the proposal before the Tribunal, with modifications directed by the Tribunal and as set out above, conforms to the GGH 2017.

[90] I remain seized of these matters.

### **City of Toronto Official Plan**

[91] The Tribunal finds that the proposal before the Tribunal, with modifications directed by the Tribunal and as set out above, conforms to the OP.

### **ORDER**

[92] The Tribunal allows the appeals in part.

[93] The Tribunal directs revisions to the proposed development as set out above, with particular reference to the applicable parking standard, the 1.4 m front setback and the introduction of rear step backs based generally on the application of a 45° angular plane, measured as directed from the rear property line.

[94] The Tribunal withholds its final Order until it is advised by the City Solicitor that:

1. The directed revisions have been made;
2. The site-specific zoning by-law amendments and any associated amendment to By-law No. 1030-2014, if required, are in a final form satisfactory to the City Solicitor; and
3. The Owner has provided a revised functional servicing storm water management study and design plans, to the satisfaction of the Executive Director of Engineering and Construction Services and the General Manager of Toronto Water, which show that the development of the site will not result in an increase in post-development flows to the combined sewer system beyond pre-development levels, in accordance with Ministry of Environment, Conservation and Parks Procedure F-5-5.

*“Susan de Avellar Schiller”*

SUSAN de AVELLAR SCHILLER  
VICE-CHAIR

If there is an attachment referred to in this document,  
please visit [www.elto.gov.on.ca](http://www.elto.gov.on.ca) to view the attachment in PDF format.

**Local Planning Appeal Tribunal**

A constituent tribunal of Environment and Land Tribunals Ontario  
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