

Ontario Land Tribunal
Tribunal ontarien de l'aménagement
du territoire



ISSUE DATE: August 19, 2021

CASE NO(S): PL110316
PL200313

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

Applicant and Appellant: Ghods Builders Inc.
Subject: Application to amend Zoning By-law No. 7625 and 569-2013 - Neglect of Application by the City of Toronto

Existing Zoning: Commercial (C1(5)) and Residential (R4) (Zoning By-law 7625)
Commercial Residential (CR(x2565)) and Residential Detached (RD(x5)) (Zoning By-law 569-2013)

Proposed Zoning: Remove the property municipally known as 5959 Yonge Street from the Former North York Zoning By-law 7625 and rezone the entire Zoning Amendment Site to Commercial Residential Exception Zone (CR(XXXX)) in the Toronto Zoning By-law 569-2013.

Purpose: To permit the development of 7 high-density mixed use towers and townhouse units

Property Address/Description: 5945-5949 Yonge Street, 5959 Yonge Street, 1 & 2 Doverwood Court and 48 Cummer Avenue

Municipality: City of Toronto
Municipality File No.: 10 304240 NNY 24 OZ
LPAT Case No.: PL110316
LPAT File No.: PL110316
LPAT Case Name: Ghods Builders Inc. v. Toronto (City)

PROCEEDING COMMENCED UNDER subsection 22(7) of the *Planning Act*, R.S.O. 1990, c. P.13, as amended

Applicant and Appellant: Ghods Builders Inc.
Subject: Request to amend the Official Plan - Failure of the City of Toronto to adopt the requested amendment

Existing Designation: Mixed Use Areas and Neighbourhoods

Proposed Designated: Mixed Use Areas
 Purpose: To permit the development of 7 high-density mixed use towers and townhouse units
 Property Address/Description: 5925-5931, 5935A, 5945-5949, 5959, and 5995 Yonge St, 11, 15, 17, 19, 21, 23, and 25 Wedgewood Drive, 1-8 Doverwood Court, and 42, 44, 46, 48, 50, 52, and 54 Cummer Avenue
 Municipality: City of Toronto
 Approval Authority File No.: 16 121334 NNY24 OZ
 LPAT Case No.: PL110316
 LPAT File No.: PL160921

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

Applicant and Appellant: Ghods Builders Inc.
 Subject: Application to amend Zoning By-law No. 7625 and 569-2013 - Neglect of Application by the City of Toronto
 Existing Zoning: C1 – General Commercial Zone (ZBL No. 7625)
 C1 (5) (ZBL No. 7625)
 R4 – Residential Zone Fourth Density (ZBL No. 7625)
 CR 1.0 (c1.0; r1.0) (ZBL No. 569-2013)
 SS3 – Standard Set 3 (ZBL No. 569-2013)
 SS2 – Standard Set 2 (ZBL No. 569-2013)
 CR 1.0 (c.1; r1.0) – Commercial Residential (ZBL No. 569-2013)
 RD (f15.0; a550) – Residential Detached ZBL No. 569-2013)
 Proposed Zoning: Site specific to permit proposed development
 Purpose: To permit the development of 4 high-density mixed use towers and townhouse units
 Property Address/Description: 5945-5949 and 5959 Yonge Street, 1 and 2 Doverwood Court, and 48 Cummer Avenue
 Municipality: City of Toronto
 Municipal File No.: 16 121334 NNY 24 OZ
 LPAT Case No.: PL110316
 LPAT File No.: PL170924

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

Applicant and Appellant: Yongwood Limited

Subject: Application to amend Zoning By-law No. 569-2013 - Refusal or neglect of City of Toronto to make a decision

Existing Zoning: Commercial Residential: CR 1.0 (c1 .O; r1 .0) SS3 (x260)

Proposed Zoning: Site Specific (To be determined)

Purpose: To permit a forty storey mixed-use building with a height of 126.9 metres.

Property Address/Description: 5995-5997 Yonge Street

Municipality: City of Toronto

Municipality File No.: 19 251072 NNY 18 OZ

LPAT Case No.: PL200313

LPAT File No.: PL200313

LPAT Case Name: Yongwood Limited 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: Yongwood Limited

Subject: Application to amend Zoning By-law No. 7625 - Refusal or neglect of City of Toronto to make a decision

Existing Zoning: General Commercial Zone (C1)

Proposed Zoning: Site Specific (To be determined)

Purpose: To permit a forty storey mixed-use building with a height of 126.9 metres.

Property Address/Description: 5995-5997 Yonge Street

Municipality: City of Toronto

Municipality File No.: 19 251072 NNY 18 OZ

LPAT Case No.: PL200313

LPAT File No.: PL200314

Heard: May 11, 2021 by video hearing

APPEARANCES:

Parties

5959 Yonge Street Limited
("Ghods")

Yongwood Limited ("Yongwood")

Counsel*/Representative

Ira Kagan*
Jason Park*
Michael Cook*

John Dawson*
Matthew Schuman*

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| City of Toronto (“City”) | Ray Kallio* Gabe Szobel* |
| Aldo Di Felice (“Di Felice”) | Daniel Artenosi* Michael Cara* |
| 5799 Yonge Street Limited Partnership (“M2M”) | Michael Foderick* |
| Silverview Community Association (“SCA”) | Anne Brooke |
| Richard Greening | Self-represented |

DECISION DELIVERED BY STEVEN COOKE AND T. PREVEDEL AND ORDER OF THE TRIBUNAL

[1] The matter before the Tribunal was a hearing of the merits for PL110316 and PL160921, appeals under s. 34(11) and s. 22(7) of the *Planning Act* (the “Act”) from the City’s failure to make a decision within the statutory timeframes on an application for a Zoning By-law Amendment (“ZBA”) and Official Plan Amendment (“OPA”) by Ghods Builders Inc. (Ghods).

[2] The Tribunal also heard at the same time PL200313 an appeal under s. 34(11) of the Planning Act (PA) from the City’s failure to make a decision within the statutory timeframe on an application for a ZBA by Yongwood Ltd. (“Yongwood”), also with respect to lands located on the southeast corner of Yonge Street and Wedgewood Drive.

[3] The subject lands of the two appeals are adjacent properties. At a Case Management Conference (“CMC”) for PL110316 and PL160921, held in March 2020, the Tribunal directed that the appeals would be heard together subject to certain conditions. Those conditions were satisfied, and the hearing of the cases together was confirmed at a CMC for PL200313 held in November 2020.

[4] A further CMC was held on April 28, 2021 for the Parties to provide a status

update to the Tribunal, further scope the issues, and finalize a hearing workplan.

[5] During this CMC, counsel for the City raised a concern regarding the filing of the Reply Witness Statements (“RWS”) from both of the Appellants, stating that revisions made at the last minute to the proposals this close to the hearing date should be considered unfair and prejudicial to the City. Counsel for the City requested the Tribunal make an order striking the revised proposals or request more time to review the proposals and seek instructions.

[6] Counsel for both Ghods and Yongwood took the position that the revised proposals were only responding to the City’s witness statements. They stated that the revised proposals did not include fundamental changes and effectively resulted in compromising to address some of the stated concerns expressed by the City.

MOTION FOR ADJOURNMENT

CITY’S MOTION

[7] The City submitted a Notice of Motion (Exhibit M-1) to the Tribunal on May 6, 2021, requesting:

- a) An adjournment of the hearing for no less than three months, so that the City may adequately respond to the revised proposal provided by the Appellants in the RWS, including retaining external expert witnesses, as necessary, so that City staff can comply with City Council direction in these matters.
- b) In the alternative, that the revised plans filed by the Appellants in their RWS on April 27, 2021 be struck and replaced with the plans that are the subject of the appellants' witness statements, filed on April 9, 2021.
- c) Such further or other relief as counsel may advise and the Tribunal may

permit.

[8] Counsel for the City referred to paragraphs 20 and 21 of the two Procedural Orders (“PO”) set in place for the hearings. In both cases the paragraphs are identical and read as follows:

If an Appellant intends to seek approval of a revised proposal of the hearing it shall provide copies of the revised proposal, including all revised plans and drawings to the other parties. After January 26, 2021, the appellants may not revise their respective proposals as described in the plans to be led in evidence in this proceeding except to address comments or Witness Statements from the other parties, except with the consent of the parties or leave of the Tribunal. In the event of a dispute, the Tribunal may be spoken to.

[9] The City proffered that, after the January 26, 2021 deadline, the Appellants proceeded to make a series of significant changes to their respective proposals through their RWS, which were exchanged on April 27, 2021. This was the first time that City staff was made aware of these changes.

[10] The changes made to the applications in the RWS are summarized by the Appellants in Attachments 1 and 2 of the Tribunal’s most recent decision issued on April 30, 2021. Counsel for the City contended that it was highly prejudicial and unfair to the City and that staff needed more time to evaluate the revisions.

RESPONSE FROM THE APPELLANTS:

[11] The Appellants submitted Responses to the City’s Motion in advance of the hearing requesting the Tribunal to dismiss the City’s motion for adjournment.

[12] Counsel for Ghods further requested that leave be granted to the Appellants for the filing of their RWS on April 27, 2021. It was their position that the motion was unfounded and the RWS fully complied with paragraph 21 of the Ghods PO.

[13] Counsel noted that the paragraph in the PO, noted above, was also included in

the Yongwood PO dated January 8, 2021. Both PO were issued on consent of all Parties, including the City. No objection was made by the City of the inclusion of the words “except to address comments or Witness Statements from other Parties” in these provisions.

[14] Counsel for Ghods went on to state that the revised proposals addressed comments or Witness Statements as suggested in the PO, and that the revisions are a step in the right direction. The revised proposals for both Appellants provide a reduction in tower floorplates, a reduction in tower heights, a reduction in podium heights, a slight increase in tower setbacks, reduction of the height of the proposed townhouses, and relocation of two access driveways to address the City’s concerns.

[15] Counsel for Ghods went on to state that none of the above revisions made matters worse or raised new issues. In fact, City staff in their Sur-Reply Statements, acknowledged that some of the issues had been resolved, and although there were still some outstanding concerns, the gap had been narrowed.

[16] Counsel on behalf of Yongwood, noted that the City’s motion did not request an amendment to either of the two POs. It was the position of Yongwood that the only matter before the Tribunal is the interpretation of paragraph 20 or 21 respectively and the restriction regarding filing of revised plans set out in these paragraphs.

[17] Yongwood Counsel further proffered that the evidence establishes that the City witnesses were not prejudiced. In the Sur-Reply Witness Statements of the City, there is no suggestion by the City’s witnesses that they were hampered in any way in providing their respective opinions. Nothing in the record suggests that City witnesses have been prejudiced.

MOTION RULING OF THE TRIBUNAL

[18] After careful consideration of the written and oral submissions, the Panel made the following ruling.

[19] With respect to Paragraphs 20 and 21 of the respective PO's for this hearing, the Tribunal agrees that the January 26, 2021 date noted is not a "line in the sand". The Tribunal was convinced by the written and oral submissions of the Appellants that the revisions to the applications were appropriate in order to address comments from the City's Witness Statements.

[20] With respect to the revisions made to the applications by the Appellants in their RWS, the Tribunal finds that there were no new issues arising from the amended applications. Instead the Tribunal finds that the changes that were made serve to "narrow the gap" and further scope the issues for this hearing.

[21] The Tribunal notes that the City did in fact file Sur-Reply Witness Statements on May 5, 2021, indicating that staff and/or expert witnesses had sufficient time to review the RWS and respond to them.

[22] The Tribunal further notes that no evidence has been provided that supports any prejudice to the City.

[23] The Tribunal's mandate is to provide a fair, expeditious and efficient hearing in the public interest. A further delay to this proceeding will result in expenditures of additional resources, further pressures on the Tribunal's calendar, and is not in the public interest. An adjournment would cause significant prejudice to the Appellants and further delay a decision about these applications.

[24] Having considered the matter, the Tribunal ruled to dismiss the motion for adjournment by the City and to allow the RWS of the Appellants to be introduced as evidence at this hearing.

EXPERT WITNESSES

[25] For the ease of the reader, the Tribunal qualified without objections the following individuals to provide expert witness testimony in their field of expertise.

[26] Witnesses for Ghods included the following experts: Urban Designer, Michael Spaziani, Shadow, Ralph Bouwmeester, Transportation, William Maria, Cost Sharing, Julie Bottos, and Land Use Planner, Michael Goldberg.

[27] Witnesses for Yongwood included the following experts: Urban Designer, Anne Mcllroy, Cost Sharing, Jeannette Gillezeau, and Land Use Planner, Tony Volpentesta. Appearing for Aldo Di Felice expert witnesses in Transportation, Kenneth Chan, and Land Use Planner, Tony Volpentesta.

[28] On behalf of the City, expert witnesses in Urban Design, Rong Yu, Parks Planning, Vitumbiko Mhango, and Land Use Planner, Guy Matthew.

[29] Richard Greening appeared as his own witness to give non-expert testimony as a local resident that will be directly impacted by the proposed development and ZBA.

AREA CONTEXT

[30] The overall site is bounded by Yonge Street to the west, Wedgewood Drive to the north, and Cummer Avenue to the south. The eastern boundary of the overall site is defined by the east lot lines of 25 Wedgewood Drive, 7 and 8 Doverwood Court and 54 Cummer Avenue.

[31] In addition, 10 and 12 Doverwood Court have been added to the overall site but are not included in the OPA application.

[32] Along Cummer Avenue, starting in the southeast corner of the subject site, travelling west toward Yonge Street, are seven single detached dwellings of one and two-storeys. These dwellings include 42-54 Cummer Avenue.

[33] This stretch of Cummer Avenue includes the Di Felice properties 40 Cummer Avenue, a vacant lot used for surface parking, and 42 Cummer Avenue, a single detached dwelling.

[34] West of 40 Cummer Avenue are the combined corner properties 5933-5937 Yonge Street. These corner properties are (2) two-storey commercial storefronts with second floor commercial uses, and a single storey building used as a restaurant.

[35] 5949 Yonge Street is the Sedona Place Co-Op an "L"-shaped property occupied by a 15-storey apartment building. Ghods has entered into an agreement with Sedona Place Co-Op to redevelop the rear portion of this property currently used for parking. The parking for Sedona Place Co-Op will be accommodated within the underground parking of the Ghods' development. In the interim, temporary parking will be provided in either of Phase II or Phase III of the development.

[36] 5959 Yonge Street are the Ghods' lands, a former car dealership that is now a vacant presentation centre with a considerable amount of surface parking surrounding it.

[37] 5995 and 5997 Yonge Street are the Yongwood lands. These lands are currently vacant and are used as a surface car storage area.

[38] The single-family homes along 17-25 Wedgwood Drive are owned or controlled by others. This includes the property of Mr. Greening.

[39] Along Doverwood Court, Ghods owns or controls addresses 1, 2, 4, 5, 6, 7, 8, 10, and 12 and has an agreement with the owners of 3 Doverwood Court to submit the OPA application including their property. Doverwood Court is a cul-de-sac, travelling west from Tobruck Crescent. The subject site includes the lands surrounding the bulb of the cul-de-sac.

THE SURROUNDING AREA

[40] To the immediate west of Yonge Street from the subject lands are two (2) two-storey commercial buildings with surface parking. Further south on the west side of Yonge Street are two residential apartment buildings including a 17-storey slab-style

apartment building known as Connaught-Yonge Square and a (6) six-storey residential building.

[41] To the immediate north of the subject site, on the east side of Yonge Street, is a commercial plaza with surface parking. Further north is an elongated 19-storey slab style apartment building with ground floor retail known as Wedgewood Place.

[42] East of the subject site is a low-rise residential neighbourhood.

[43] South of the subject site, along Yonge Street, is an approved development, referred to as the M2M site, that is currently under construction that will replace the former Newtonbrook Plaza. The approved development includes four residential towers ranging in height from 34 to 40-storeys with a new park on the eastern fringe.

Official Plan Amendment

[44] The lands subject to the proposed OPA application include all the lands as noted in the Area Context above. These include lands owned by Ghods, Yongwood, Sedona Place, De Felice, and private properties on Wedgewood Drive and Cummer Avenue.

[45] The effect of the proposed OPA is to expand the *Mixed Use Areas* designation on Map 16 of the City's Official Plan ("OP") to include the entirety of the lands noted above and to include site-specific policies for the subject lands. It should be noted that the Yongwood lands are already designated mixed-use.

[46] The OPA lands are approximately 3.4 hectares ("ha") with approximately 195 metres ("m") of frontage along Yonge Street and an approximate west-east depth from Yonge Street of 190 m.

Zoning By-Law Amendments

[47] Both Yongwood and Ghods have made two separate ZBA applications on the

subject lands.

[48] The Ghods' ZBA lands comprise approximately 2.7 ha in area with approximately 55 m of frontage on Yonge Street and a west-east depth from Yonge Street of approximately 190 m.

[49] The Yongwood ZBA lands are approximately 0.28 ha in area and have an approximate frontage of 40 m on Yonge Street and 64 m on Wedgewood Drive.

[50] The effect of the combined ZBAs is to allow the development of seven individual residential buildings ranging in height from three (3) to 14-storeys at the eastern edge of the subject site, and 38 to 44-storeys along the western edge of the subject site closer to Yonge Street.

THE YONGWOOD PROPOSED DEVELOPMENT

[51] The Yongwood proposal features a high-rise mixed-use building with a total height of 38 storeys. The proposed development contains 438 dwelling units comprised of a mix of studio, (1) one-bedroom units, (2) two-bedroom units and (3) three-bedroom units.

[52] The proposed development features an L-shaped podium that has retail spaces located along the Yonge Street frontage and grade-related residential units are located along the Wedgewood Drive frontage.

[53] The podium of the building is setback 6.5 m along Yonge Street, providing a (10) ten-metre public realm from curb to face of building. The podium setback is 3.5 m along Wedgewood Drive, with a (7) seven-storey street wall stepping down to (6) six and (4) four storeys as a transition to the existing residences to the east.

[54] The tower portion of the building is 38-storeys which equates to 119 m to the top of the roof and 125 m to the top of the mechanical penthouse.

[55] The tower provides appropriate separation distances to adjacent properties. Specifically, the tower is setback 14.5 m from Yonge Street, 6.5 m from Wedgewood Drive, 18.4 m from the east property line and 12.5 m from the south property line. The floor plate of the tower, above level 7 is 750 square metres (“sq m”) and is consistently rectangular in shape with architectural indents.

[56] The proposed development includes 911 sq m of indoor amenity space and 888 sq m of outdoor amenity space, which meets or exceeds the typical City requirement.

[57] A total of 30,793 sq m of gross floor area is proposed, resulting in a density of 10.99 times the area of the lot.

THE GHODS PROPOSED DEVELOPMENT

[58] The Ghods’ site is considerably larger in overall area and includes a proposed north/south public road which is planned to ultimately connect with Wedgewood Drive to the north, although for the interim basis, it will end with a cul-de-sac bulb at the north limit of the Ghods’ site. The future extension of this road will depend on the redevelopment of all, or a combination of, the remaining houses on Wedgewood Drive within the proposed OPA area.

[59] A private east-west street off Yonge Street accesses the Ghods’ lands approximately midpoint between Cummer Avenue and Wedgewood Drive. An existing municipal sewer easement traverses the site in an east-west direction and travels beneath part of this proposed private street.

[60] The Ghods’ proposed development of four residential towers, between Yonge Street to the west and the new public road to the east, range in height from 31 to 44 storeys.

[61] On the east side of the new public road and fronting on Cummer Avenue is a mid-rise residential building with a height of 14-storeys at the western edge and

stepping down in two-storey increments to (2) two -storeys at the eastern edge providing a transition to the existing residential neighbourhood to the east. To the south of the Doverwood Court bulb is a proposed (3) three-storey townhouse block.

[62] The total number of residential units is approximately 1890.

[63] A park is proposed along the north side of Doverwood Court, with frontage on the new public road. The proposed park would extend onto 10 and 12 Doverwood Court. These two properties are additional proposed parkland that are under the control of Ghods but are not subject to the OPA or ZBA. The total park area is approximately 3,400 square metres, representing an over-dedication of approximately 200 sq m .

[64] The location of this park is a key concern raised by the City, as staff prefer an alternate location fronting on Cummer Avenue east of the new public road in the location of the proposed 14-storey building.

THE ISSUES

[65] The issues before the Tribunal require a determination of whether the proposed OPA and the proposed ZBAs have sufficient regard to the Provincial interests listed in s. 2 of the Act, are consistent with the Provincial Policy Statement (“PPS”), 2020, conform to the Growth Plan for the Greater Golden Horseshoe, 2019, conform to the City’s OP, and in general, represent good planning and are in the public interest.

[66] As the evidence was presented over the course of the hearing, it was noted by the Tribunal that the key concerns raised by the City were the proposed park location, building height, urban design/built form issues as they related to the Ghods’ towers and shadow impacts on the potential parks and neighbourhood.

[67] Counsel for Di Felice stated that his client’s concerns related to the issue of access to the new public road and the proposed treatment of the intersection with Cummer Avenue. Although Di Felice does not object to the scale of development, they

introduced the concept of a Block Context Plan to guide development of the new public road, private access points, and would be proposing some modifications to the OPA as well as some pre-conditions through the evidence of Mr. Volpentesta.

[68] Counsel on behalf of M2M, stated their interest was very limited and did not believe there would be an issue now that the proposed new public road on the subject site has been shifted to align with the approved new public road south of Cummer Avenue through the M2M property.

[69] The SCA expressed their concerns to the Tribunal regarding privacy issues for the existing residences to the east, shadow impacts, and the general infringement on a stable residential neighbourhood.

[70] Mr. Greening reiterated the concerns of the SCA but also stressed the direct personal impact to his property that the OPA and ZBA would cause. In particular, what Mr. Greening feels would be an undesired raise to the property taxes under a reclassification of the zoning.

[71] At the onset of the hearing, Mr. Kagan told the Tribunal that in an effort to scope and narrow the issues, Ghods had accepted the proposed revisions to the text prepared by Mr. Volpentesta regarding cost sharing in the draft OPA prepared by Mr. Goldberg. This results in one less issue to be resolved between Ghods and Di Felice. Mr. Arsenosi consented to this and no other Parties objected.

YONGWOOD ISSUES

Built Form

[72] In the testimony of Ms. McIlroy, the revised proposed development set forth by Yongwood addresses the City's concerns regarding built form in general. In particular, the proposed tower height was reduced from 40-storeys to 38-storeys, the podium height along Yonge Street was reduced to (7) seven-storeys, the podium height along

Wedgewood Drive was reduced to (7) seven-storeys stepping down to (6) six-storeys and (4) four-storeys towards the residential neighbourhood.

[73] The tower floor plate was reduced to 750 sq m , and the depth of balconies has been reduced and they have been set back from the tower corners.

[74] This was confirmed to the Tribunal through the written and oral testimony of Ms. Yu from the City, who indicated that all the City's built form concerns have been satisfied.

Transportation

[75] With respect to the provision of adequate parking, the Tribunal was advised that Yongwood and the City have reached a settlement on a parking supply ratio of 0.41 parking spaces for each dwelling unit, and 0.1 parking spaces per dwelling unit for visitor parking spaces. Counsel for Yongwood with consent from the City asked the Tribunal that should the ZBA be approved, the order be withheld until this agreement is confirmed.

Growing Up Guidelines

[76] With respect to meeting the City's Growing Up Guidelines, both Ms. McIlroy and Mr. Volpentesta provided testimony explaining to the Tribunal how several studio or one-bedroom units of the proposed tower have been identified as potential conversions to three-bedroom units.

[77] It was the opinion of Ms. McIlroy that the proposed development has regard and meets the general intent of the Growing Up Guidelines. Particularly she highlighted that the residential storeys are currently designed with different unit layouts meeting the general intent of s. 3.0 The Unit of the guidelines.

[78] Mr. Volpentasta informed the Tribunal that one of the objectives of the Growing

Up Guidelines was to seek a minimum goal of 25% multi-bedroom units comprising of 15% two-bedroom and 10% three-bedroom units. The current design of the proposed development would include 45% multi-bedroom units that is made up of 38% two-bedroom and 7% three-bedroom.

[79] Mr. Matthew indicated his support regarding the above possibility of converting some of the units into potential three-bedroom units but wanted to make sure it can be secured. It was the position of Mr. Matthew that should the Tribunal approve the ZBA he was confident that Mr. Volpentesta and himself could work together on the draft clauses into the ZBA. He recommended that the final Order be withheld so that in the event an agreed upon draft can not be reached the Tribunal may be spoken to.

Affordable Housing

[80] In paragraph 18 of his Witness Statement, Mr. Matthew reviews matters of provincial interest identified in s. 2 of the Act, including “The adequate provision of a full range of housing, including affordable housing”. He goes on to state that the proposal from Yongwood does not have “appropriate regard for matters of provincial interest” as “no affordable housing is being proposed”.

[81] Mr. Volpentesta stated to the Tribunal that the City’s OP does not require that every development include a full range of housing including affordable housing, and he made particular reference to Policies 3.2.1(1) and 3.2.1(9) of the City’s OP. The Yongwood development is substantially smaller than (5) five hectares, thus Policy 3.2.1(9) does not even apply to this site.

[82] Ms. Gillezeau, in her testimony, further emphasized that all new residential development in the City contributes towards the provision of new affordable housing through the payment of development charges. The Yongwood development will contribute approximately \$1.2 million for the development of new subsidized housing and \$200,000 for the development of new shelters. The opinions expressed by both Ms. Gillezeau and Mr. Volpentesta are that the development proposed by Yongwood does

have appropriate regard for matters of provincial interest and that the City's existing and emerging land use planning and development charge policies do in fact provide for the development of new affordable housing in the City.

Parkland Dedication

[83] Ms. Mhango, opined that the City's preference is to obtain an off-site parkland dedication from Yongwood, and she makes reference to s. 3.2.3 of the City's OP. Based on Yongwood's revised proposal, the parkland dedication requirement is 276 sq m.

[84] Ms. Mhango provided Yongwood with three preferred options for off-site parkland dedication, which would require the applicant to acquire one of the three residential properties identified.

[85] Both Mr. Volpentesta and Ms Gillezeau in their respective Witness Statements and oral testimony, did not agree with the City's position, and explained to the Tribunal that Ms. Mhango relies solely on the provisions as set out in s. 3.2.3(7) of the OP, effectively opining that in Yongwood's case, an on-site dedication is not feasible.

[86] Ms. Gillezeau observed that Ms. Mhango did not refer at all in her testimony to s. 415-24 or 415-25 of the Toronto Municipal Code which sets out in explicit detail how the City can use cash-in lieu funds for the acquisition or improvement of new parkland. A payment of cash-in-lieu of parkland by Yongwood would allow the City to decide the best way to use these funds.

[87] Mr. Volpentesta further opined that, in the case of off-site parkland dedication, Policy 3.2.3(7)c) explicitly makes the substitution subject to the proviso that "both the City and the applicant agree to the substitution". Yongwood has not so agreed.

[88] Mr. Volpentesta stated to the Tribunal that Ms. Mhango's recommendations rely solely on one particular section of the OP and do not consider all sections of the OP and

Municipal Code as a whole. In this way, he opined that this did not represent good planning as it renders the process arbitrary and empowers private landowners inappropriately as the owner of the “target” parkland could effectively prevent the development simply by refusing to sell.

[89] On Day 10 of the Hearing, Counsel for Yongwood advised the Tribunal that Yongwood and the City had reached a mutually agreeable settlement with respect to the parkland dedication and that this issue could now be removed from the Issues List.

GHODS ISSUES

Built Form

[90] Ms. Yu acknowledged the efforts of Ghods to reduce the heights of Buildings ‘A’ and ‘C’ from 46 storeys to 44 and 42 storeys respectively. However, it is still her opinion that these two buildings are too high to fit into the overall planned context.

[91] Ms. Yu compares the Ghods proposal with the already approved M2M development south of Cummer Avenue, which has maximum heights of 107 m, 124 m, 105 m and 110 m respectively for the four proposed towers.

[92] Ms. Yu also raises concerns regarding the heights of Buildings ‘B’ and ‘D’, and she relies on the uncertainty of the proposed Cummer Avenue subway station. She gave testimony that if the Cummer Avenue subway station is built, she would then be of the opinion that taller buildings would be appropriate provided that regard was had for appropriate massing and transition in the neighbourhood to the east.

[93] Ms. Yu expressed her concerns to the Tribunal regarding the proposed orientation of Building ‘B’ and the 11-storey podium to the south and east of the structure.

[94] With respect to the proposed stepbacks of the two towers closest to Yonge

Street, she is of the opinion that these should be increased beyond the minimum requirement of (3) three m.

[95] With respect to the proposed Building 'E', although the massing was revised to provide a more appropriate transition to the east, she opined to the Tribunal that the revised height and massing was not appropriate to fit into both the existing and planned context. She further opined that she agreed with Ms. Mhango's opinion that the new park should be located where Building 'E' is proposed.

[96] Ms. Yu had no issues with the proposed townhouse block, being Building 'F'.

[97] Mr. Spaziani, in his testimony, disagreed with Ms. Yu's comments with respect to the tower heights of Buildings 'A' and 'C'. He opined that the reduced tower heights fit well with the pattern continued to the north with the Yongwood tower at 38 storeys, effectively defining a trio of three towers descending in height towards the north, creating an appropriate urban structure perception moving away from a height peak at the node at Cummer Avenue. The overall massing and height of the proposed towers have been further reduced as the mechanical penthouses are now incorporated within the upper floors of these towers. It should be noted that the viability of recessing the mechanical penthouse will have to be reviewed from an engineering perspective as the project proceeds.

[98] The above concept of reduced tower heights moving north from Cummer Avenue was further reinforced during Ms. Yu's cross-examination with the introduction of a massing plan prepared by the City to examine shadow impacts from a potential Di Felice tower at 44 storeys at the northeast corner of Yonge and Cummer.

[99] Mr. Spaziani further stated that, in his opinion, the height reduction of the towers improves the scale relationship to the east neighbourhood by bringing all the buildings well below the 45-degree angular plane.

[100] With respect to shadow impacts on the surrounding neighbourhood and the two

contested park locations, based on his expert opinion, he concludes that the Ghods park performs better than the southern City alternative, especially during the December timeframe. Mr. Spaziani pointed out to the Tribunal that the shadowing of the proposed Ghods park is similar to the City approved M2M park south of Cummer Avenue, namely (6) six hours of full sun followed by late afternoon periods of partial shadow and sun, to an appropriate condition meeting the City's OP policy and guideline direction.

[101] Mr. Spaziani concluded that, given the consistency of shadow approach between the M2M and Ghods' sites, and the fact that the Ghods' site performs better during the winter solstice, the proposed Ghods' site is superior, contrary to the opinions of both Ms. Yu and Ms. Mhango.

[102] In her written and oral testimony, Ms. Yu makes frequent reference to the Yonge Street North Planning Study ("YSNPS"). Although noting that the YSNPS is still a work in process and not formally adopted by the City, Ms. Yu does recognize a fundamental policy direction of the YSNPS, stating "The directions for the 2014 draft YSNPS support the highest intensity developments and highest heights along Yonge Street in proximity to the subway stations, with the highest buildings on Yonge Street at Drewry/Cummer Avenue and at Yonge Street and Steeles Avenue. Under this direction, the draft YSNPS has stated maximum building heights at 125 m and 11 m for the subject site. In addition, buildings will be lower in height than the distance it is from the boundary of the Yonge Street North Secondary Plan ("YSNSP") and abutting Neighbourhoods designations, or in other words, are not to exceed a 45 degree angular plane measured from the boundary of the YSNPS."

[103] Under cross-examination, Ms. Yu agreed that the proposed eastern boundary of the draft YSNPS coincided with the proposed eastern boundary of the OPA.

[104] Mr. Spaziani informed the Tribunal that the revised Master Plan has included new reduced heights for Buildings 'A' and 'C', closer to the recommended heights on the YSNPS of 125 m. He also provided clear evidence that all built form on the Ghods site conforms with the 45-degree angular plane.

[105] Mr. Spaziani opined that Buildings 'B' and 'D' at heights of 32 and 31 storeys also conform to the 45-degree angular plane. These buildings have been revised in the latest plans to eliminate the 14-storey "shoulders", replacing them with a lower podium element at 11 storeys, which are lower than the eastern podium heights at 12 storeys as approved for the M2M development.

[106] With respect to Building 'E', Ms. Yu stated her concerns regarding the proposed 14-storey height of the western portion of the structure. Mr. Spaziani took the Tribunal to the YSNPS, which indicates an 11-m height restriction on the eastern portion of the subject parcel and a 125-m height restriction on the western portion. He provided evidence that the 11-m height restriction only applies from the eastern boundary of the OPA to 39 m westerly, as per Map X-4 Maximum Height Limits of the YSNPS. Beyond the 39-m limit, the maximum height increases to 125 m.

[107] Mr. Spaziani provided evidence that the Building 'E' land parcel has a total frontage of just over 91 m on Cummer Avenue. Based on this dimension, only about 43% of the land parcel lies within the 11-m height limit, while the remaining 57% lies within the 125-m height limit. He opined that this dual YSNPS policy direction was used as a design mandate to create a hybrid building form that spans the two height permissions and provides an appropriate transition to the east. He proffered that as a hybrid-built form, it could be evaluated as a low-rise, a mid-rise and a tall building. He also stated that a 45-degree angular plane was used to limit heights in relation to the east boundary.

[108] With respect to the stepback concerns stated by Ms. Yu, Mr. Spaziani referred to the wind study prepared by RWDI dated January 27, 2020. This wind study predicted severe wind speeds at the west end of the Private East-West Road, however the study has not been updated to reflect the current design revisions which include modifications at the west end with 5 m by 5 m insets at grade at these prominent corners. He stated that the revised plans include a 2.5 m stepback along the private drive and 3 m along Yonge Street. The configuration of balconies has not yet been finalized but will be

informed by the wind study mitigation recommendations when updated, and that these issues are typically addressed as part of a site plan application.

[109] In their testimony, both Ms. Yu and Mr. Matthew stated their concerns regarding the impact of shadows of the tall buildings on the existing stable neighbourhood to the east.

[110] Mr. Spaziani pointed out that the shadows imposed by the proposed Ghods towers move rather quickly and thus the impacts on the existing neighbourhoods are adequately limited. This was confirmed in the testimony of both Mr. Goldberg and Mr. Bouwmeester.

[111] Mr. Goldberg pointed out that the Yongwood tower will have similar shadow impacts on the same neighbourhood and this was not contested by the City.

Transportation

[112] There were three scoped issues with respect to transportation during the Hearing: the proposed alignment of the new public road, the proposed intersection functional design at Cummer Avenue and the provision of appropriate access to the Di Felice lands.

[113] From the start, it was agreed by all parties that the alignment of the proposed public road south of Cummer Avenue as part of the M2M development has already been established and approved by the City. In fact, the road work has been tendered and construction is expected to proceed.

[114] The expert evidence provided by Mr. Maria with respect to the Traffic Impact Study related to the Ghods site was uncontested.

[115] Mr. Maria explained to the Tribunal how the proposed driveway access for Buildings 'B' and 'D' was moved further north on the revised plans to ensure there was

no conflict with a potential future driveway access to the De Felice lands and also to comply to the City's concern regarding not locating a driveway access on a curvature. The revised driveway access achieves both objectives.

[116] Mr. Maria then described to the Tribunal his proposed functional design for the intersection of the new public road with Cummer Avenue. The public road south of Cummer Avenue has already been approved and is currently designed as a tee intersection with two lanes on the south side. There is currently no dedicated left turn lane going north from the M2M site to Cummer Avenue. Mr. Maria's functional design aligned the road right-of-way of 23 m north of Cummer Avenue to the already approved and similar width right-of-way to the south.

[117] Mr. Maria's design proposes a three-lane cross-section on the north side, allowing for a southbound left turn lane. His design assumes no proposed changes to the "about to be existing" road geometry to the south.

[118] Mr. Chan, on behalf of De Felice, proposed a different functional design which would result in widening the throat of the road to the south in order to better align the opposing lanes and reduce driver/cyclist potential conflicts.

[119] On cross examination, Mr. Chan was adamant that his design was better but admitted that it would involve "throw away" costs in reconstructing the southern intersection throat. When questioned by City Counsel, Mr. Chan also admitted that these types of mis-aligned intersections were not rare in the City, and that lane markings could be used as a mitigating measure to improve safety.

[120] During Mr. Chan's testimony, there was much discussion about how the public road right-of-way would be "nailed down". Mr. Volpentesta suggested several modifications to the proposed OPA document and several preconditions for the Tribunal to consider, which would involve the preparation of a Block Context Plan, an additional Transportation Study and the adoption of the intersection design prepared by Lea Consulting Ltd.

[121] On Day 9 of the Hearing, the Tribunal was advised that De Felice and Ghods had reached a settlement regarding their outstanding issues. Ghods will agree to file a draft plan of subdivision confirming the alignment of the public road right-of-way as a pre-condition prior to a final order of the Tribunal. All other modifications to the OPA language, save and except for the revisions to the cost sharing language and all other pre-conditions, with the exception of the requirement for a draft plan of subdivision, as noted in Mr. Volpentesta's sur-reply will be removed.

[122] Counsel for Ghods stated that this settlement does not bind the City. City Counsel consented with this settlement, and counsel on behalf of M2M was supportive.

Parkland Dedication

[123] Based on the revised Ghods submissions, Ms. Mhango stated in her testimony that the required on-site parkland dedication was 3187.94 sq m based on the alternative rate as outlined in the OP and the City's Municipal Code. This is not contested by Ghods.

[124] Both Mr. Spaziani and Mr. Goldberg opined that the proposed Ghods park is a larger park than the proposed City park by approximately 208 sq m . It also has greater expansion opportunities as it could be increased in size to the north and east with potential future development. It could also become larger if in the future the City were to decide to connect Doverwood Court to the New Public Road as the existing bulb would no longer be required.

[125] The main issue was whether the on-site parkland dedication should be in the location proposed by Ghods, or in the City's preferred location along the north side of Cummer Avenue. Most of the evidence lead by the City related to shadow impacts and the existence of the storm sewer easement, which staff considered as an encumbrance.

[126] Ms. Mhango also stated that, in her opinion, the proposed City Park location is preferred as it provides better accessibility and linkages to other existing or proposed

parks in the general vicinity. She noted that in the May 10, 2021 presentation material for the YSNPS, there had been a shift in operational focus resulting in the new preferred park location along Cummer Avenue as opposed to previous locations along the north side of the Doverwood Court bulb.

[127] While the Tribunal agrees that the red “star” icon indicating the preferred location of a future park in the southeast quadrant of the subject lands, the referenced presentation material is very conceptual in nature and the actual difference between where the icon is situated and where the proposed Ghods park is located is not significant from a planning perspective. Mr. Spaziani pointed out to the Tribunal that all previous planning studies for Yonge Street North had indicated the preferred park location at the north end of the Doverwood Court bulb.

[128] There was much debate over the impacts of shadowing on the two park locations. In order to better assess the impact of shadow, an additional exhibit was introduced by the City and later by Ghods which included a future tower on the De Felice site.

[129] The evidence of Mr. Bouwmeester, Ghods’ Shadow Analyst, was heavily relied upon to analyse the shadow impacts on both the proposed park location and the City’s preferred site. It was Mr. Bouwmeester’s clear evidence that although both park locations were good from the viewpoint of shadow and having the appropriate balance of sun and shadow, he preferred the Ghods’ park location as it was a larger park and therefore had more area of sun overall.

[130] Mr. Bouwmeester also identified substantial errors in the City’s shadow studies calling into question their reliability.

[131] Ms. Mhango conceded, during cross examination, that the Ghods’ proposed park location was less impacted by shadow than the City’s preferred location during the month of December.

[132] The revised shadow study introduced as Exhibit 31, prepared by Mr. Bouwmeester, considered the potential shadow impacts of a proposed development on the De Felice lands on both park locations. This revised study was not contested by the City.

[133] Mr. Bouwmeester, in his testimony, demonstrated to the Tribunal that both park locations enjoy six continuous hours of sun exposure until approximately 3:18 p.m. during the months of March, June and September. When shadow does begin to fall on the proposed park, it does so in a manner very similar to the shadow patterns on the M2M park which was deemed acceptable by the City.

[134] During cross examination, Ms. Mhango was taken to other examples of City accepted park locations in the area that experienced similar or greater amounts of shadow impacts.

[135] With respect to the existing storm sewer easement located on the southern portion of the proposed park, in cross examination it was demonstrated that the easement is in favour of the City and that such easements have been determined by City staff in the past to not in fact be considered an encumbrance. One notable example was demonstrated during the cross examination of Andrea Bake in the recent Rail Deck Park hearing, which was introduced as an exhibit during Ms. Mhango's cross examination and indicated that City staff have accepted parks with encumbrances.

[136] Mr. Spaziani provided evidence that the Ghods' park also has the distinct advantage of being more accessible for residents in the neighbourhood to the north and east as it is accessible via Doverwood Court. He also stated that the proposed park would be safer for children playing as it does not front on a busy road, and that the resulting impacts of noise from traffic are minimized. This evidence was re-enforced by both Mr. Goldberg and Mr. Volpentesta.

[137] Mr. Goldberg further opined that the size and configuration of the Ghods' park will enable the City to program it for park purposes appropriate for its size and intended

function.

Avenue Segment Study

[138] Mr. Matthew critiqued the Avenue Segment Study prepared in 2016 in support of the Ghods' application. One of his conclusions was that "the Applicant did not take a comprehensive approach to planning for the block or the Avenue segment." He stated that Policy 2.3.3.3 of the City OP raises the concept that an Avenue Segment Study should address the potential to set a precedent for the form and scale of reurbanization.

[139] Mr. Goldberg reminded the Tribunal that in fact two separate Avenue Segment Studies have been prepared and are referenced in the Joint Document Book. He stated that the Yongwood study, prepared more recently by Ms McIlroy, recognizes the Ghods OPA application and raises no concerns with it. Mr. Goldberg told the Tribunal that the City had no concerns with the Yongwood study.

Yonge Street North Planning Study

[140] Mr. Matthew opined that the rationale for moving the Mixed-Use Areas to the east was largely premised on work undertaken by City staff on a draft Secondary Plan from 2014 which was a result of the YSNPS. Mr. Matthew further stated that this document has not been approved by Council and therefore is not the intent and vision of City Council.

[141] Mr. Matthew was also of the opinion that by moving the Mixed-Use Areas designation boundary to the east, the developer is relying on other landowners to assist in providing a transition to the Neighbourhoods Area.

[142] Mr. Goldberg reminded the Tribunal that the OPA proposes to redesignate a portion of the Neighbourhoods to Mixed-Use, as was also envisioned in the YSNPS. The eastern limit of the OPA is a defined boundary delineating the Mixed-Use area from the Neighbourhoods area. Furthermore, the proposed new public road delineates the

boundary between higher building heights to the west towards Yonge Street and lower heights to the east forming an appropriate transition to the existing homes.

[143] The Tribunal notes that if the eastern boundary of the proposed OPA was moved westerly, the Yongwood Tower, which is not being opposed by the City in its present built form, would pierce the 45-degree angular plane.

[144] Mr. Goldberg in his oral testimony reminded the Tribunal that the YSNPS has undertaken considerable analysis and public consultation since its inception in 2014, and as recently as a public meeting on May 10, 2021, the evening before the start of this Hearing. He opined that collectively, this body of planning and urban design work, together with the considerable planning analysis undertaken by the experts on behalf of Ghods and Yongwood comprehensively address the planning considerations being canvassed at this Hearing.

[145] Mr. Goldberg also noted, as did the other experts at this Hearing, that the YSNPS and the draft Secondary Plan consistently showed the eastern boundary of the Mixed-Use Areas designation in the location currently being proposed for the proposed OPA.

[146] In his testimony, Mr. Matthew quoted Policy 4.6 of the PPS stating that the most important vehicle for implementation of the PPS is the OP. He opined that the Applicants had not undertaken a comprehensive, integrated and long-term approach and this would best be done by the City through a consultative process.

[147] Mr. Goldberg countered by stating that, although Mr. Matthew took the Tribunal to Policy 4.6 of the PPS, he excluded other parts of this policy direction which stated that “planning authorities shall keep their official plans up-to-date with this PPS.”

[148] Mr. Goldberg gave evidence that this OPA application was in fact a Act means of keeping the City’s OP up to date with the current PPS. The City has been examining and considering the YSNPS over the last ten years and the work continues, but the

timeframe of its completion is unknown.

[149] Mr. Goldberg further opined that applications such as the Ghods' OPA and ZBA need to be reviewed through the lens of the current PPS and Growth Plan. The City's OP has not been updated since its original adoption in 2002, the subject OPA was filed in 2016 and the YSNPS has been ongoing for a decade. He opined that all of this are strong indicators of the out-of-date nature of the current City OP as it affects the OPA lands.

[150] Mr. Goldberg strongly disagreed with Mr. Matthew's suggestion that if a development application fails to conform with the City's OP, then it automatically fails to be consistent with the PPS and fails to conform with the Growth Plan.

Major Transit Station Area

[151] It was the opinion of Mr. Matthew that the subject site was not within a strategic growth area and no higher order transit currently serves the site. Mr. Matthew went on to state that the site is not within a Major transit station area.

[152] Mr. Goldberg took the Tribunal to the Growth Plan definitions of strategic growth areas, higher order transit and major transit station areas.

[153] A Strategic Growth Area is defined as being within settlement areas, nodes, corridors or other areas that have been identified to be the focus for accommodating intensification in a more compact built form. Strategic Growth Areas include, among other things, major transit station areas.

[154] Higher Order Transit is defined as generally operating in partially or completely dedicated rights-of-way, outside of mixed traffic, and therefore can achieve levels of speed and reliability greater than mixed-traffic transit.

[155] A Major Transit Station Area is an area including and around any existing or

planned higher order transit station. They are generally defined as the area within an approximate 500 to 800 m radius of a transit station, representing about a (10) ten-minute walk.

[156] Mr. Goldberg stated that both the Yongwood and Ghods' sites are within the 800-m radius from the Finch subway station. Although the City has not yet delineated this particular major transit station area as per the requirements of the Growth Plan as far back as 2006, Mr. Goldberg opined that this site fits totally within the definition of a Major Transit Station Area.

[157] Mr. Goldberg opined that the Yongwood and Ghods' proposals are based on the fact that they are within the Major Transit Station Area of the Finch Station, albeit that the City has yet to formally designate this. The Tribunal also notes that the Yongwood and Ghods sites are also within a (1) one kilometre walk from the future Steeles subway station.

SECTION 37 COMMUNITY BENEFITS

Yongwood:

[158] Mr. Matthew has suggested that, should the Tribunal allow these appeals, that a cash contribution of \$6 million from Yongwood and \$25 million from Ghods would be appropriate in order to provide a reasonable amount of community benefits related to the proposed height and density.

[159] Both Ms. Gilleneuve and Mr. Volpentesta on behalf of Yongwood and Mr. Goldberg on behalf of Ghods questioned the origin of this request, as Mr. Matthew had not provided any factual basis or calculation in his Witness Statement.

[160] Ms. Gilleneuve took the Tribunal to the implementation guidelines for s. 37 contributions, in particular Policy 5.1.1(6) which states "Section 37 community benefits are capital facilities and/or cash contributions toward specific capital facilities, above

and beyond those that would otherwise be provided under the provisions of the *Planning Act* or the *Development Charges Act* or other statute”.

[161] Both Mr. Volpentesta and Mr. Goldberg testified that Mr. Matthew’s Witness Statement did not identify a specific capital facility or specific capital facilities to be funded from the respective cash contributions he has deemed to be appropriate for the proposed developments.

[162] In the case of Yongwood, Mr. Volpentesta advised that the Appellant would be willing to agree to a provision in the Zoning By-law approving its proposed development (and any accompanying Section 37 agreement) which sets out that a specified sum of money would be paid to the City prior to the first above grade building permit to be allocated to specific capital facilities in accordance with s. 5.1.1 of the OP and the City’s guidelines.

[163] Counsel for Yongwood requested the Tribunal withhold its final order on the Zoning By-law Amendment until such time as it is advised by the City solicitor that a s. 37 Agreement which incorporates the crystallization of Yongwood’s parkland dedication obligation owed as being for cash-in-lieu in accordance with the City’s Parkland Dedication By-law in force as of the date of commencement of this hearing, unless the parties agree in their respective sole discretion otherwise, and a cash payment in a fixed amount to be calculated on the basis of four percent of the value of the Yongwood site, indexed, as is more particularly set out in Mr. Volpentesta’s reply witness statement.

[164] In his testimony, Mr. Matthew endorsed Mr. Volpentesta’s recommendation as an alternative to his original recommendation for \$6 million.

Ghods

[165] In addition to the comments noted above, Ghods’ counsel advised the Tribunal that the specific request of the \$25 million contribution must include a relationship to the

proposal. Finally, the use of s. 37 must be based on fair, clear, transparent, predictable and specific requirements.

[166] Accordingly, counsel respectfully requested that the Tribunal not impose a \$25M s. 37 requirement. Instead it should permit the parties to explore the two options that were discussed with Mr. Matthew in cross-examination. Mr. Matthew agreed that both options would ensure that Ghods makes a payment, either through the present s. 37 regime or the upcoming Community Benefit Charge regime. This will be reflected in the final Zoning By-law presented to the Tribunal when it is asked to issue its Order.

The Planning Act

[167] Section 2 of the Act identifies matters of public interest for which City Council and the Tribunal shall have regard to in consideration of an application. The relevant matters for this proposal include:

- h) The orderly development of safe and healthy communities.
- i) The adequate provision and distribution of educational, health, social, cultural and recreational facilities.
- j) The adequate provision of a full range of housing, including affordable housing.
- p) The appropriate location of growth and development.
- q) The promotion of development that is designed to be sustainable, to support public transit and to be oriented to pedestrians; and
- r) The promotion of built form that;
 - i) is well-designed,
 - ii) encourages a sense of place, and

iii) provides for public spaces that are of high quality, safe, accessible, attractive and vibrant.

[168] Mr. Matthew advised the Tribunal that these matters of public interest are all important planning principles and the PPS and the Growth Plan provide direction on how to achieve them. These goals are articulated within the PPS and Growth Plan and are implemented by the City's OP. The City has identified areas where growth and intensification are intended and expected and areas where significant growth is not expected.

[169] Mr. Matthew opined that the Applicants are proposing amendments to the OP and Zoning By-law which would allow for intensification of lands not intended for significant growth and at a level which is not appropriate. As a result, his opinion is that the proposal does not have appropriate regard for matters of provincial interest as set forth in s. 2 of the Act.

[170] Mr. Volpentesta and Mr. Goldberg provided clear and concise expert planning evidence that both proposals had appropriate regard for s. 1.1, and s. 2 of the Act.

[171] The evidence presented by the Appellant's expert witnesses to the Tribunal clearly demonstrated that the proposals had an adequate provision for a full range of housing, with Development Charge contributions toward affordable housing and shelters, was situated in an appropriate location for growth and development, was designed to be sustainable and to support public transit and to be oriented to pedestrians, and promoted a built form.

[172] Mr. Matthew also opined that in making its decision, the Tribunal should have regard for the position of City Council on the application. At its meeting of May 24, 25 and 26, 2017 City Council directed staff to oppose the application at the then Ontario Municipal Board which is a clear indication of its opposition. While it is not a decision under the Act, the position of Council is nonetheless something which the Board should take into consideration given the spirit of s. 2.1 of the Act.

[173] However, counsel for Ghods reminded the Tribunal that City Council did not refuse the proposed development and ZBA, these appeals are due to a non-decision of Council. The preliminary report was not adopted by North York Community Council and was referred to City Planning staff on February 5, 2020.

Provincial Policy Statement (2020)

[174] The PPS provides policy direction on matters of provincial interest related to land use planning and development as identified in s. 2 of the Act.

[175] The PPS sets the policy foundation for regulating the development and use of land. The key objectives include building strong healthy communities; wise use and management of resources; and protecting public health and safety.

[176] Mr. Matthew provided the Tribunal with his opinion that the proposals are not consistent with the PPS as they do not comply with all the policies in the City's OP.

[177] Mr. Goldberg and Mr. Volpentesta opined that the revised developments are indeed consistent with the policy direction of the PPS. The nature of this growth and the approvals in this area are evolving not by the City generally amending its OP but rather by the City and/or the Tribunal approving site specific OPAs. These site specific OPAs inform height and density permissions among other things. The subject site is within walking distance to an existing subway station, where higher levels of height and densities are anticipated and expected by provincial policy.

[178] Mr. Goldberg opined to the Tribunal that the proposed development of the subject site is an efficient use of currently under-utilized vacant land, with a more intense urban form that will cost-effectively and optimally utilize existing infrastructure and community facilities. He proffered that the proposed tall, high density compact form of development would be a complimentary fit with this part of Yonge Street.

[179] Mr. Goldberg also provided his expert opinion evidence with respect to s. 1.4

Housing and s. 1.7.1 Economic Prosperity. He opined that the proposals provide an appropriate range of housing mix and promotes density for new housing that efficiently uses land, resources, infrastructure and public service facilities, and supports the use of alternative transportation modes, such as walking and cycling, and public transit.

[180] With respect to s. 1.7.1 Economic Prosperity, Mr. Goldberg opined that the proposals are a natural and sequential expansion of the use and form of development taking place immediately south of the subject site. The additional residential units and commercial retail space will contribute to the economic viability and vitality and support the employment base of the area as well as the shops, services and restaurants located north and south of the subject site. The proposals increase the residential population in this part of North York by the equivalent of over 2300 residential units. This additional concentration of people contributes to maintaining and enhancing the vitality and vibrancy of Yonge Street.

The Growth Plan for the Greater Golden Horseshoe (2019)

[181] The Growth Plan provides a framework for managing growth in the Greater Golden Horseshoe. It is the provincial government's initiative to plan for growth and development in a way that supports economic prosperity while protecting the environment and helping communities achieve a high quality of life. It builds upon the PPS and provides additional and more specific land use planning policies to address issues facing specific geographic areas in Ontario

[182] The Growth Plan directs that growth within *settlement areas* is to be focused in:

- i. Delineated built-up areas;
- ii. Strategic growth areas;
- iii. Locations with existing or planned transit, with a priority on *higher order transit* where it exists or is planned; and

iv. Areas with existing or planned *public service facilities*.

[183] Mr. Goldberg explained that the Growth Plan aims to, among other things, revitalize downtowns to become vibrant and convenient centres, create complete communities that offer more options for living, working, shopping and playing, provide greater choice in housing types to meet the needs of people at all stages of life, curb urban sprawl, protect farmland and green spaces and reduce traffic gridlock by improving access to a greater range of transportation choices.

[184] The Tribunal heard planning evidence from Messrs. Volpentesta and Goldberg that the proposals are in an area that should be defined as a major transit station area and are near an existing subway station. They are also along a corridor defined as an “Avenue” in the City’s OP, where higher densities should be situated.

[185] The subject site is located within the area identified as “built up area” which encompasses the whole of the City of Toronto.

RICHARD GREENING

[186] Mr. Greening lives at 21 Wedgewood Drive and is directly affected by the proposals. He has participated in the appeal process since 2011, as well as ongoing public participation with respect to the Yonge Street North Planning Study.

[187] He is opposed to the OPA and the fact that it applies to his property as well. He also feels he will be negatively impacted by shadows resulting from the proposed tall buildings.

[188] If the proposed public road is ultimately connected to Wedgewood Drive, his property will be converted by default to a corner lot.

[189] In closing, Mr. Greening told the Tribunal he was not a willing participant to these proceedings and should the OPA be approved it would have a real and detrimental

impact on his quality of life.

SILVERVIEW COMMUNITY ASSOCIATION

[190] The primary concern of the SWA is the potential of intrusion that may occur from the proposed development on the stable residential neighbourhoods to the east, as well as the transition in heights from the tall buildings.

[191] It is the position of the SWA that the proposals were premature as there was no Secondary Plan currently in place, there is no commitment to a Cummer Station, there is no designated Major Transit Station Area and there is no node.

[192] The SWA participated throughout the hearing, asking relevant questions of experts but did not provide any expert witnesses or evidence to the proceedings.

ANALYSIS AND FINDINGS

[193] In determining this matter, the Tribunal accepts and adopts the land use planning evidence and expert opinions provided Messrs. Goldberg and Volpentesta. The Tribunal is persuaded by the evidence that the proposals promote efficient development of land that is transit-supportive, accommodates a range of appropriate mixed uses, intensifies uses within the urban settlement area, contributes to the range of housing options, in particular, with the increase in three-bedroom dwelling units as desired by the City, and meets the general intent of intensification that is desired along areas identified as "Avenue" in the City's OP.

[194] The Tribunal was persuaded by the testimony of the Ghods' expert witnesses that the proposed Ghods' park is appropriate for the Site. The Tribunal accepts the evidence that shadow impact from the proposed tall buildings are relatively short in duration and clearly respect the 45-degree angular plane and transitions to the east from Yonge Street.

[195] The Tribunal has considered the concerns raised by the SWA and Mr. Greening but was not persuaded that the concerns they have raised are either sustainable given the evidence offered in support of the planned developments.

[196] The Tribunal finds that the proposal is consistent with the policy direction established by the PPS, and conforms to the relevant directives established by the GP, and as maintained by the OP. The Tribunal is further satisfied that the proposal has due regard for matters of Provincial interest, is consistent with the principles of good land use planning and is in the greater public interest. More significantly, the proposal furthers the goals and objectives of the Provincial planning regime to increase housing opportunities.

ORDER OF THE TRIBUNAL

[197] The Tribunal Orders that the appeal by Ghods Builders Inc. regarding its proposed Official Plan Amendment is allowed in part, subject to the proposed revisions as brought forward during this Hearing, to be agreed upon in upcoming discussions between Mr. Matthew and Mr. Goldberg, and subsequent to those discussions that the City Solicitor confirms that the proposed Official Plan Amendment is in a form satisfactory to the City.

[198] That the appeal by Ghods Builders Inc. regarding its proposed Zoning By-law Amendment be approved in part, and that the final order be withheld pending confirmation that the following conditions are met:

1. The City Solicitor confirms that the proposed Zoning By-law Amendment is in a form satisfactory to the City;
2. the City Solicitor confirms that the owner has submitted a revised Functional Servicing Report and Stormwater Management Report, acceptable to the Chief Engineer & Executive Director, Engineering & Construction Services, to determine the storm water runoff, sanitary flow

and water supply demand resulting from the development and whether there is adequate capacity in the existing municipal infrastructure to accommodate the proposed development;

3. the City Solicitor confirms that the owner has designed and provided financial securities for any upgrades or required improvements to the existing municipal infrastructure identified in the accepted Functional Servicing and Stormwater Management Report, to support the development, all to the satisfaction of the Chief Engineer and Executive Director, Engineering & Construction Services, should it be determined that improvements or upgrades are required to support the development, according to the Functional Servicing and Stormwater Management Report accepted by the Chief Engineer and Executive Director, Engineering & Construction Services;
4. the City Solicitor confirms that the owner has made satisfactory arrangements to provide space within the development for installation of maintenance access holes and sampling ports on the private side, as close to the property line as possible, for both the storm and sanitary service connections, in accordance with the Sewers By-law Chapter 681.10;
5. the owner has submitted to the City a complete application for Draft Plan of Subdivision respecting the creation of the proposed public road; and
- 6 .the City Solicitor confirms that a satisfactory arrangement has been agreed to between the City and Ghods regarding the Section 37 contribution.

[199] The Tribunal orders that the appeal by Yongwood be approved in part, but that the order be withheld until the Tribunal :

- (a) is provided with a draft zoning by-law, satisfactory to both the City and Yongwood, based on the statistics and drawings in Exhibit 2 at pages 775-789 inclusive, except that parking statistics and drawings P1-P4 should be removed and a parking ratio of .41 spaces per dwelling unit for residents and .1 spaces per dwelling unit for residential visitors be employed (with up to 15 of the required spaces off-site on lands the closest point of which is no further than 50 metres from the Yongwood lands); and
- (b) is advised by the City solicitor that a Section 37 Agreement which incorporates the crystallization of Yongwood's parkland dedication obligation owed as being for cash-in-lieu in accordance with the City's Parkland Dedication By-law in force as of the date of commencement of this hearing, unless the parties agree in their respective sole discretion otherwise, and a cash payment in a fixed amount to be calculated on the basis of four percent of the value of the Yongwood site, indexed, as is more particularly set out in Mr. Volpentesta's reply witness statement in Exhibit 2 at Tab 17, page 1004, paragraph 9.
- (c) The Tribunal further orders that the Yongwood development does not require any services or access from Ghods and therefore will not be subject to any request or demand to share costs pursuant to the OPA policy on that topic.

[200] The Tribunal may be spoken to should any issues arise.

“Steven Cooke”

STEVEN COOKE
MEMBER

“T. Prevedel”

T. PREVEDEL
MEMBER

Ontario Land Tribunal

Website: olt.gov.on.ca Telephone: 416-212-6349 Toll Free: 1-866-448-2248

The Conservation Review Board, the Environmental Review Tribunal, the Local Planning Appeal Tribunal and the Mining and Lands Tribunal are amalgamated and continued as the Ontario Land Tribunal (“Tribunal”). Any reference to the preceding tribunals or the former Ontario Municipal Board is deemed to be a reference to the Tribunal.