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PL120109

Ontario
Ontario Municipal Board
Commission des affaires municipales de l'Ontario

IN THE MATTER OF subsection 34(19) of the *Planning Act*, R.S.O. 1990, c. P.13, as amended

Appellant: Tony Michel
Appellant: Gay Stinson
Appellant: Christoph Zürcher
Subject: By-law No. By-law 2011-463
Municipality: City of Ottawa
OMB Case No.: PL120109
OMB File No.: PL120109

Uniform Urban Developments Inc. has appealed to the Ontario Municipal Board under subsection 22(7) of the *Planning Act*, R.S.O. 1990, c. P.13, as amended, from Council's neglect to enact a proposed amendment to the Official Plan for the City of Ottawa to redesignate land at known municipally as 335 Roosevelt Avenue by changing Schedule C of the Secondary Plan by removing the "4-6 Storeys" designation and replacing it with "10 Storeys or more" to permit 2 residential towers with 194 residential units.

Municipal File No.: D01-01-12-0011
OMB File No.: PL130203

Uniform Urban Developments Inc. has appealed to the Ontario Municipal Board under subsection 34(11) of the *Planning Act*, R.S.O. 1990, c. P.13, as amended, from Council's neglect to enact a proposed amendment to Zoning By-law 2008-250 to rezone lands respecting 335 Roosevelt Avenue from industrial to residential to allow for the construction of two apartment building towers

Municipal File No.: D02-02-12-0078
OMB File No.: PL130205

APPEARANCES:

Parties

Counsel/Agent*

Uniform Urban Development Inc.

J. Bradley

City of Ottawa

T. Marc

Gay Stinson
Christoph Zürcher
Tony Michel

Westboro Community Association G. Ludington*

Westboro Beach Community Association M. Wellman*

DECISION DELIVERED BY M.C. DENHEZ AND ORDER OF THE BOARD

INTRODUCTION

[1] This dispute, over an Official Plan Amendment (“OPA”) and Council rezoning, was about the shape of a project in the City of Ottawa (the “City”).

[2] It was proposed by Uniform Urban Developments Inc. (the “developer”), in the Westboro district, where height has been analysed and debated for years, resulting in a number of changes to planning documents.

[3] In this dispute, the issue was not the amount of density (undisputed), but about whether to deploy it mainly horizontally (“midrise”) or mainly vertically (“highrise”). The developer proposed a vertical design – a pair of residential towers of 14 and 16 storeys, whereas the Official Plan (“OP”) listed a “maximum” of “4 - 6 storeys”. City planning staff was nonetheless supportive, and in 2011, Council rezoned, via By-law 2011-463. The By-law would permit the new proposed height; it would also decrease the permissible footprint dramatically (except on the north side, where it was increased substantially).

[4] Nearby owners, Gay Stinson and Christoph Zürcher, appealed to the Ontario Municipal Board (the “Board”). Ms. Stinson spoke for them both. Another owner, Tony Michel, filed his own appeal (the Board refers to them as “the neighbours”). Professionally, they were all in the public sector, familiar with other branches of public policy. They said that, according to the Richmond Road / Westboro Community Design Plan (“CDP”, largely incorporated into the City’s OP), the density should be deployed more horizontally – i.e., with less height, even if it meant a larger footprint.

[5] Board proceedings on these appeals began in 2012. Partway through, the Board was presented with a Motion to address a “threshold” issue, about whether the proposed height complied with the OP, and the possible need for an OPA. On that Motion, this Board Member made two findings:

- That the OP specified a “maximum” of “4 - 6 storeys”, and heights of 14-16 storeys did not “conform therewith”, as required by s. 24(1) of the *Planning Act* (“Act”). No such project could proceed without an OPA.
- The Board then repealed that rezoning By-law, in a 10-page decision issued on June 12, 2012.

[6] The developer, with the support of the City, then filed a request, under s. 43 of the *Ontario Municipal Board Act*, for the Board to review that decision. They said they "accepted" the first conclusion, about the need for an OPA, but not the second, about repeal. This Member, they said, should have given the City the chance to correct the matter, via an adjournment to (a) allow a new OPA to be adopted; (b) if any appeal arose therefrom, to permit that appeal to be consolidated with this hearing; and, further, (c) to have this original Member then continue to hear the matter.

[7] A different Panel of the Board granted that request, by decision issued on January 17, 2013. In the meantime, on July 31, 2012, the developer duly filed an application for the relevant OPA – plus (shortly thereafter) an application for a new rezoning By-law, to mirror the previous rezoning By-law 2011-463, which had been under appeal. The Board calls this draft the “mirror By-law.”

[8] Council did not vote on either, within the relevant statutory timeframe, because the City’s planner on the file put them “on hold.” The developer then filed further appeals with the Board, in support of its proposed new OPA and rezoning. At the ensuing hearing, the City supported the developer. The matters were all heard together.

[9] Two incorporated community associations (the “associations”) also became parties, namely the Westboro Community Association, and Westboro Beach Community Association. They opposed the OPA and rezoning, preferring a midrise scenario.

[10] At the current hearing, the developer and the City were each represented by counsel. The developer was supported by Kathleen Willis (planner), and Barry Hobin (architect). The City was supported by its planner on the file, Douglas James.

[11] The neighbours and community associations were self-represented. However, the neighbours were supported by the City's former planning director, Dennis Jacobs, and by Rhys Phillips (journalist on architectural and urban design). The Board also heard from participants, Jim Everts and Cathleen Bryden.

[12] The Board has now carefully considered all the evidence, and the submissions of both sides. On consent, the Board also conducted an unaccompanied site visit. The Board makes a number of findings:

- a) The Board agrees with the City and the developer that existing planning documents are inconsistent, on the number of allowable storeys. There are mixed signals, ranging from 4 storeys to 9. The only common denominator is that those figures are categorized by the OP as "midrise."
- b) The Board also finds, however, that the "midrise" category is the result of extensive planning study.
- c) That does not make it immutable. However, there is an expectation that if it should be changed, the policy merits will be considered in the normal course.
- d) Here, the Board was not satisfied with the City's underpinnings to the change in skyline. Though staff addressed many *individual* components of the project, the rationale for changing the midrise skyline itself was not just flawed; it was non-existent. That slate was blank; and although it could have been corrected at the hearing, it was not.
- e) Indeed, there was essentially no visible indication that existing OP policies about height, or their own rationale in the CDP, had even been considered by City planning staff, or were made available to Council.
- f) On specifically evidentiary grounds, the City and the developer therefore did not persuade the Board that the 16/14 storey scenario was logically consistent with the overall thrust of the OP.
- g) The Board concludes that, although the City and the developer are correct that the OP should be changed, the Board does so only to the extent of addressing the incongruities. The "midrise" category remains.
- h) As for the zoning, there was no dispute about increasing the building footprint on the north side. The Board agrees that this warrants a Zoning By-law amendment, on the understanding that the footprint will diminish

elsewhere (notably at the centre of the site, to create a split), so that the allowable total footprint remains roughly the same, though redistributed.

- i) The Board finds that the visual character of the vicinity is dominated by the large neighbouring building of 7 storeys. The Board acknowledges that for the sake of “visual interest”, a “compatible” building could be built with projections that extended to 8 storeys.

[13] The Board amends the OP in accordance with its findings above. The Board also directs the City to amend its zoning provisions accordingly. The details and reasons are set out below.

GEOGRAPHIC CONTEXT

[14] 335 Roosevelt Avenue (the “subject property” or “site”), is some two blocks long. These 1.3 acres face a half-kilometer of the City’s bus trench for the Ottawa Transitway. One would have expected Winston Avenue to cross the site at right angles, about halfway along that two-block distance, but that right-of-way is closed, and forms part of the subject property, along with three lots. The irregular site width ranges from 20 metres to 55 metres. The site used to have a longstanding industrial use (non-conforming), called Fendor Glass and Aluminum.

[15] The trench, along a former railway line, measures some 15 metres; a parallel bicycle path separates it from the site to the south, and spans another 15 metres.

[16] No major roads abut the site. The closest is Scott Street, a block east. However, within walking distance, there are two Transitway stations along the trench – Westboro Station to the east, and Dominion Station to the west.

[17] With certain exceptions, the neighbourhood is lowrise, characterized mainly by 2-storey dwellings. This includes the buildings to the immediate north, west, and south.

[18] Others are “midrise” (defined, by the planning documents, as up to 9 storeys). The most visible is the 7-storey Taiga Building, immediately east. When proposed in the 1990’s, planning staff commented favourably: “Rather than opting for a narrower building reaching 10 or 12 storeys in height, the mass of the building is more evenly distributed over the lot, thus allowing for a moderate sized building to be achieved.”

[19] The Taiga Building was now said to illustrate what was buildable under current zoning. The Taiga is called slab-shaped: “slabs” are characterized by length, and rely for internal access on a central corridor, in contrast to “towers”, characterized by height, with relatively little corridor space beyond each floor's elevator lobby.

[20] There have been other recent projects, between the site and Westboro Station to the east – one across Scott Street from the station (5 storeys), another on the next block (4½ storeys), and a new commercial building announced for the corner of Scott and Churchill Avenue (5 storeys). In the other direction, heading west toward Dominion Station, one recent project has 3 storeys, and another under construction appears to have 3 - 4 storeys.

[21] However, slightly further from the site than Dominion Station, two buildings fall into the “highrise” category (10 storeys and up). The Barclay Building has 14; another, slightly further, has 21. Both were built a generation ago, and are separated from the subject property by two blocks of lowrise development. There is eventually a third highrise in that direction, behind the Barclay and out of sight.

[22] The area had been addressed in a multiplicity of planning documents:

- As of the early 1990's, the zoning at the site generally limited height to 18.3 metres (with minor exceptions).
- In 1997, the property was generally zoned for 19 metres, though there was a corner at 21 metres (19 metres accommodates about 6 storeys, though a project might reach 7, if ceilings were low enough).
- The OP at the time (1991) referred to the "lowrise" character of the area.
- The CDP process, adopted by Council in July 2007, recommended “6 storeys,” and provided a corresponding illustration of the recommended building envelope.
- The CDP was non-binding, but Council followed with two further documents in 2008. The first was comprehensive Zoning By-law 2008-250, again limiting height here to 19 metres.

- The other was Official Plan Amendment No. 70 (November 2008), called the area's Secondary Plan. Its "Schedule C" listed a "general maximum building height range" of "4 - 6" storeys.

[23] In short, over time and also in the recent past, the area was designated and zoned for lowrise and midrise development – and that is the development that occurred. There are no highrises in the vicinity, other than the two built a generation ago, several blocks away.

THE PROPOSAL

[24] The developer's proposal was not in the category of "intensification", i.e. greater density. On the contrary, existing zoning could produce up to 250 units, whereas the proposal was for less (traffic studies were computed on 220). At 20,410 square metres (220,000 square feet), the proposed floor area would comply with existing zoning.

[25] However, there was a marked contrast in shape. The first of two staff reports to Council (November 16, 2011) called it "the realignment of the allowable density in a different form." The differences would affect height, and open space at grade.

[26] For a rough example of what was feasible under the status quo, one could look to the neighbouring "slab" Taiga Building. Existing zoning would allow the subject site to be similarly developed as one or two similar midrise "slabs", parallel to the trench. The Board was told that the existing By-law would allow a building 230 metres long - the length of two football fields. Development might be split in the middle (to mitigate the "wall affect"), though not necessarily. For illustration, a "form study" portrayed a pair of new slabs identical to the Taiga Building. Existing zoning would also allow a substantial footprint, though subject to setbacks in all directions (including a 7.5 metre setback from the City's 15-metre wide bicycle path). The developer's planner said that if all required setbacks were factored in, lot coverage would be about 59%, leaving 41% open space.

[27] In contrast, by projecting density upward, the developer said 71% of the ground area would be freed for landscaping and other surface treatment (including some parking), with space between the two towers ("a plaza"), to frame the north end of Winston Avenue. The developer would also landscape City land beside the bicycle path. For good measure, the developer would make a substantial payment to the City.

[28] The City's planner on the file, Mr. James, sent Council a 24-page report (November 16, 2011), saying that comprehensive Zoning By-law 2008-250 should be amended accordingly. Council adopted By-law 2011-463 (now under appeal) for that purpose, permitting height of 53 metres (16 storeys) and 47 metres (14 storeys). The same measurements appear in the mirror By-law which the developer later applied for.

[29] Those provisions would also expand most setbacks – except on the north (trench) side, where the setback would be reduced from 7.5 metres to zero. Neither the neighbours nor their witnesses challenged that change. This overall configuration, said the developer, would produce a “phenomenal amount of landscaped space.”

[30] The developer argued that this tower format would be far more satisfactory than a slab-type development. In the words of its architect, “this site deserves more than mediocrity.” Counsel for the developer added that “it would be a shame to do a Taiga building on this site.” “These (proposed) buildings will provide a landmark.”

[31] The neighbours and the associations disagreed, citing shadow, oversight/privacy, and the use of side streets for road access. They said the trade-off for more open space at grade was not worth it: the vicinity already had substantial public open space, and this private space, whatever its merits, was an inadequate *quid pro quo* for the intrusion of a “jagged-tooth” skyline. Most importantly, they said, the City – and notably planning staff – had disregarded the fundamental tenor of the CDP, and of the Secondary Plan (and hence OP) in which CDP provisions had been entrenched, all to the effect that there was a height policy against highrises here. The project, they said, was hence an inconsistent digression from the thrust of the OP, for which no sufficient policy justification had been advanced. Ms. Stinson, Mr. Zürcher and Mr. Michel appealed to the Board, in the Board's file PL120109.

[32] The architect's response was that a large slab building could be significantly more unsightly than what he proposed: “The community doesn't understand the impact of a 7-storey building”. At the hearing, he twice referred to the CDP's projected building envelope as a “cartoon.” He said he had reviewed four alternative development options for the site (though all four were highrises). On cross-examination, he insisted that it would not be possible to build a quality building in the midrise category.

[33] However, before the substantive merits could be fully debated on appeal, the Board was presented with the threshold Motion about the number of storeys, and the

Board ruled that an OPA was a prerequisite. The developer duly applied to amend Schedule C of the Secondary Plan (to permit “10 storeys or more”), and applied for a mirror Zoning By-Law. The latter was a precaution, presumably in case there was controversy that the new OPA was being asked to validate By-law 2011-463 retroactively.

[34] Procedural aspects then became more unusual. Council had approved a consultative process for such applications, entitled “The 12 Steps of the Development Application Review Process”. The City’s planner did not follow it here. The process involves notice (of prospective OPA’s and rezoning) to the community, which the planner chose to forego – not only for the community, but for the other litigants. As late as February 2013, there was no mention on the City's website, contrary to normal practice. In his words, he decided to put the entire matter "on hold". He said his rationale for withholding this information, and digressing from the 12-point process, was that the matter “was still before the Board.”

[35] That assertion was plainly incorrect:

- The requirement for a new OPA was not still before the Board, having already been decided, and not challenged in the s. 43 Request;
- and the draft OPA itself was not before the Board at the time.

[36] Furthermore, even if public notification were unnecessary (because the matter was purportedly still in litigation), that did not explain why he did not advise the other litigants. They learned of the applications only after the statutory timeframe for a Council decision had expired, when the developer appealed to the Board.

[37] The developer's proposed OPA and mirror Zoning By-law never were put to a Council vote. The developer therefore filed both:

- an appeal under s. 22(7) of the Act, calling on the Board to approve its OPA (Board File PL130203), and
- an appeal under s. 34(11) of the Act, calling on the Board to enact its new draft By-law (Board File PL130205). Prior to the current hearing, it was decided that these matters would be heard together.

[38] After those new appeals had been launched, the planner submitted a report (his second) to Council's Planning Committee (April 17, 2013). He stood by his original opinion, adding that Council should take a position at the hearing supporting the developer. On the basis of that recommendation, a majority of Council agreed to support the developer's position.

[39] Mr. Jacobs, the neighbours' planner (and the City's former Director of Planning Policy), said the failure to follow Council's approved procedure should lead the Board to reject the OPA and By-law on principle. "There was no engagement of the community.... The community was disenfranchised in this decision." The City and the developer replied that the neighbours could and did address the Planning Committee on the subject of supporting the applicant's position, and in any event, this situation constituted no legal ground on which the Board could reject the By-law.

[40] Most of the parties presented all-or-nothing scenarios. The developer, and particularly its architect, argued that if his 16/14 storey proposal were rejected, development would follow the pattern of the Taiga Building, with negative effects. Mr. Jacobs rejected that argument as "disingenuous." The neighbours and the associations opposed the OPA and By-law because, in Ms. Wellman's words, "we want the squished down version."

[41] Ms. Stinson, however, argued that although the OPA and rezoning should be rejected, the Board might wish to consider scenarios other than either a highrise or clones of the Taiga Building. As a fall-back, she suggested the following "principles":

- it should be midrise, not exceeding 9 storeys;
- some 40% of the space should be left open;
- there should be a public easement allowing access through a split in the development, at the middle of the property;
- there should be as much landscaping as possible;
- the abutting bicycle path area should be landscaped as part of the process;

- residential parking requirements could be changed, in consultation with the community;
- traffic calming should apply not only to Roosevelt Avenue, but also Winston Avenue and Wilmont Avenue.

ANALYSIS

Ambit

[42] This case was not about intensification, but about shape. In the words of the architect, "It's entirely about form." At the risk of oversimplifying, the issue was presented like an equation: whether to choose a project with half the height but twice the girth, or vice versa.

Footprint

[43] The Board will first address the footprint. The developer argued that unless it could build to the requested height, important positive attributes at ground level might be unaffordable, notably the open "plaza" between the towers, connecting Winston Avenue to the bicycle path. Counsel for the developer said that the "urban design and architecture proposed will significantly allow the project to implement goals and objectives of the OP and the Secondary Plan. It's much better than a large slab of seven storeys that the existing documents would provide."

[44] On closer analysis of this either-or scenario, the Board finds that a clarification is in order. Though setbacks would indeed be expanded around most of the project (to achieve a figure of "71% open space"), there was a major exception on the north side, where setbacks from the bicycle path would be reduced from 7.5 metres to zero.

[45] That change was not challenged by the neighbours or the associations. Indeed, they had insisted elsewhere that there was already enough open space in the area. The Board finds no reason or evidence to disagree with that aspect of the proposed By-law, widening the footprint by 7.5 metres (almost 25 feet) along a distance of almost two blocks. That expansion of the north side's buildable area is dramatic.

[46] However, that changes both the equation and the either-or scenario.

[47] The developer had argued that, unless it also built to a greater height, it would lack the flexibility to create amenities like the plaza. The Board is unconvinced: such a large expansion in buildable footprint in one location (north) should provide the developer with ample flexibility to create space in other locations (like between buildings), without reducing one centimetre of total allowable footprint as permitted today. It simply allows the buildable area to be redistributed more appropriately.

[48] An added advantage of redistributing the footprint is that by reallocating space to the centre of the project (a split between buildings), one can discard the prospect of a new 230-metre long variation on the Taiga Building. The Board was not persuaded that if the 16/14 storey scenario were rejected, the alternative would necessarily be a Great Wall of Westboro, or otherwise be as bleak as portrayed.

Height

[49] The Board now turns to the contentious question of height itself. The Board is guided by the planning documents. The Board finds that for some aspects, those documents were disjointed; in others, they were unequivocal.

[50] There was no shortage of them in evidence – successive Official Plans, Zoning By-laws, the CDP, and the Secondary Plan, not to mention their respective preparatory studies and consultations. Over the past two decades, this neighbourhood has been arguably among the most intensively studied in Ontario.

[51] The City's planning documents typically equate "midrise" with up to 9 storeys. However, as planning witnesses testified, Official Plans seldom enter into specific measurements, preferring to leave the latter subject to zoning.

[52] Exceptionally in this case, however, the OP documents did indeed cite specific numbers. Unexceptionally, so did the zoning. However, the cited number was sometimes 6 storeys, sometimes 7 storeys, or something else. The CDP recommended "6 storeys"; the Secondary Plan, which purported to apply the CDP, instead listed "4 – 6 storeys." Meanwhile, at the same time as that those documents were being written, a corner of the subject property had already been zoned (1997) for 21 metres (7 storeys) – which is also the zoned height of the large building next door, which dominates the field of vision. The 2008 comprehensive Zoning By-law was back to 19 metres (6 storeys). The Board was offered no explanation for those discrepancies.

[53] As mentioned, Official Plans do not need to specify the exact number of storeys; but if they insist on doing so, then one might expect a coherent policy rationale (as with anything else in an OP), and a consistency of message. The Board found neither. The Board is compelled to agree with the City and the developer that this was not an optimal OP situation for the long term.

[54] However, regardless of whether the exact number of storeys should be 6 or 7, there was no doubt about the OP intent concerning the overall midrise character, as opposed to highrise. In this case, the Board's previous decision on the Motion detailed how the collective policy thrust of the existing documents was unmistakable. The Secondary Plan said projects must "conform" to a height "maximum". Those provisions were declared to have a "unifying vision", which "focuses" on "building scale", based on the "guiding principle" that one should "preserve the scale" of "existing neighbourhoods". The intent to limit height and regulate the skyline was unambiguous. The Secondary Plan added that projects should "conform" to the "built form" recommended in the CDP.

[55] If the City were now to embark upon a different direction, the above is what it would be digressing from. In weighing the merits of charting a new course, the above is what a planning analysis could be expected to address and, if necessary, put aside.

[56] Instead, Mr. Hobin and Mr. James opted to downplay the relevance of height limitations specified in previous planning documents. Mr. Hobin called the CDP's illustrated building envelope a "cartoon". Mr. James, for his part, denied that doubling permissible heights even constituted a significant change of approach, because "it's a change to a Height Schedule, not a policy."

[57] He added: "The Height Schedule is not the be-all and end-all of this document.... That's myopic." The inference was that, although maps might provide an immediate and readable portrayal of planning intent, a planner remained at liberty to reach a different (and sometimes opposite) conclusion, based upon his/her subjective balancing of a profusion of further textual references. In particular, it was suggested that when there were multiple pages of text – less straightforward than the map – then the planning intent must have been more ambiguous than the map suggested, and the map could be discounted accordingly.

[58] Mr. Michel replied that this approach was "Kafkaesque."

[59] The Board cannot agree with planning staff's approach to the governing documents, or the role of maps. Section 1.1(d) of the Act specifies that it is a purpose of that statute "to provide for planning processes that are fair by making them open (and) accessible...." If the purpose of "planning" is for municipalities and stakeholders to know what is expected of them, then it is the antithesis of that purpose to suppose:

- that readers of normal intelligence are incapable of reading a map,
- that official documents do not mean what they say,
- or that predictability is impossible without resorting to the subjective interpretations of a handful of insiders.

[60] That is not "planning", as understood in either the Act or the PPS. The Board did not attach weight to staff's opinion on that issue.

[61] That was not the only topic on which the Board had misgivings about staff's approach. There was also the undisputed digression from the City's 12-point procedure. The question again was whether it was determinative. Parts of that procedure are imposed by Provincial statute; and parts are self-imposed by municipal policy. If there had been noncompliance with the statutory components, then in certain specific cases, that could raise questions about the jurisdictional feasibility of the OPA and the rezoning; but the Board's attention was not drawn to any such statutory digression. As for strictly municipal procedures, and notwithstanding the eloquence of Mr. Jacobs (and of the participant Ms. Bryden on that point), the Board was not shown that it had authority to reject the OPA and rezoning specifically on that ground.

[62] That finding, however, should not be misinterpreted as an endorsement of staff's "on hold" approach.

[63] On another front, the Board does understand that, independently of planning merits, aspects of the proposal would be enticing to the City. Not only would the developer landscape a sizable expanse of City land along the bicycle path; a significant amount of money would also change hands.

[64] The academic and professional literature has called such payments the source of much debate and disagreement, for allegedly putting municipalities in a conflict of interest, and compromising the credibility of their planning process (and the objectivity

of their staff), by purportedly selling upzoning. This is not the place for a treatise on that subject; but it cannot be repeated often enough that, at law, planning decisions in Ontario must be led by policy. That is clear from both the Act and the PPS. It is also consistent with the repeated assertions of the Courts and of this Board, that when interpreting these planning documents, the focus must be on their underlying purpose.

[65] This brings the Board to the central difficulty with this OPA, and the related rezoning. It is the analysis of policy and purpose.

[66] Normally, that would be in the paper trail. Section 2.1(b) of the Act directs the Board to have regard not only for decisions of Council, but also the "supporting information and material" that Council considered in its decision. Granted, Council here did not technically make "a decision under the Act" concerning this OPA (because staff put that question "on hold" until expiry of the statutory period); but the staff reports are nonetheless relevant.

[67] They address many of the routine *individual* topics – shadow, privacy/oversight, traffic, compatibility etc. (with appropriate references to OP policies on such specifics). Several of those questions were ultimately addressed at length at the Board hearing, with arguments pro and con, but which the Board finally did not find determinative, with the exception of the character/compatibility argument, mentioned later.

[68] What was not addressed in the reports, however, was the underlying policy purpose of the height provisions themselves, as the Board will outline. One could say that there was analysis of the trees, but not the forest.

[69] Parenthetically, the Board is not suggesting that such municipal analyses must be encyclopaedic. They need not even show any particular deference to previous planning arrangements. Indeed, notwithstanding the PPS direction that planning be "long-term", the Province did not provide any mechanism for plans to have any staying power. That elicited some surprise among the neighbours, who argued that if "long-term plans" could be amended spontaneously, that would defeat their basic purpose, namely predictability. In Ontario, however, a municipality may undertake a multi-year revision of its OP, with volumes of research and consultations with thousands of residents – and even after appeals have been dismissed, any owner can still demand that the municipality change that OP at any time (with an appeal to the Board, if it does not do

so within a specified time). That is how the government of the day designed the system many decades ago, and it has not changed.

[70] Nonetheless, the PPS calls for plans to be "integrated"; OP's and OPA's are expected to exhibit some logical consistency. Furthermore, a "policy-led" system presupposes attention to the policy purposes of plans, present and future.

[71] As mentioned, the existing policies were clear, about "preserving the scale." The Secondary Plan added that projects should "conform" to the "built form" recommended in the CDP. In terms of compliance with those instructions, neither the developer's planner nor the City's planner even mentioned the 92-page CDP in their respective reports, let alone describe how the proposal "conformed" to it. It is as if that important document had never existed.

[72] Furthermore, despite the first staff report's length (24 pages, notably about positive features), it did not once mention any of the above policy statements themselves. It is as if those height provisions in the governing documents never existed either.

[73] Indeed, the entire subject of height – the major distinguishing characteristic of this project and the core of the proposed OPA – was addressed by the staff report in only two oblique references; and even those were problematic:

- Staff said there were other highrises in the area (mentioning the same two buildings as the Board alluded to) – plus "the 32-storey Metropole by the Westboro Transit Station." The latter statement was puzzling: the Metropole is not "by the Westboro Transit Station", but at least 200 metres east of it, on the opposite side of the trench from the subject property, in what the Board considers a different neighbourhood altogether.
- On the basis of the above, the staff report concluded that "apartment buildings, including high-rise apartment buildings, are characteristic of the community." In an overwhelmingly lowrise community where no highrise has been built in 40 years, the Board is puzzled by that characterization.

[74] However, there is a more important point than omissions in policy and questionable characterizations. The Board finds that those staff comments disclose no

substantive attempt to address any policy dimensions of the height limitations in the existing planning documents. This was not even an attempt at a purposive analysis.

[75] Matters did not improve from there. Staff's second report to Council (April 2013) similarly omitted any reference to the previous planning provisions addressing height.

[76] Furthermore, that second report again (a) omitted any reference to any underlying policy, and (b) repeated that the height question was purely "technical":

As noted previously, the report dealing with the initial rezoning fully vetted all of the relevant circumstances to arrive at a conclusion that higher buildings for the subject property was [sic] indeed appropriate and that the proposal was fully in accord with the overall policy directions of the Primary Plan related to development for lands designated General Urban Area and also fully in accord with the policies of the Secondary Plan for the Westboro area. The amendment as required by the OMB to Schedule "C" is in many ways considered technical in nature....

[77] Mr. Jacobs strongly disagreed. The Board, for its part, would have expected the planner to have read the Board's previous findings (in its decision on the original Motion), quoting the plethora of planning provisions about height; the Board would have expected any reader to infer that it did not treat this matter as merely "technical."

The Hearing

[78] However, beyond questions about the paper trail, the larger issue pertains to the evidence at the hearing itself. Whatever the shortcomings of a paper trail, hearings do provide an opportunity to set the record straight, and outline a complete planning case.

[79] That is not what happened here. Not only did the City's planner continue to refer to the OPA as "technical"; when asked on cross-examination whether the OPA should have involved a re-thinking of the policy objectives of existing height limitations, he dismissed the idea, adding that "planning is about managing and dealing with change."

[80] That is unsatisfactory. It provided no evidentiary basis to conduct a purposive analysis.

[81] That was not the Board's only concern. Substantively, a skyline is one of the most important character-defining elements of a neighbourhood or City; and few municipalities have traditionally been more sensitive to that fact than Ottawa. In particular, Westboro has seen a multitude of consultations and planning documents on

that very point, including the CDP and Secondary Plan. As mentioned, this neighbourhood has accommodated no highrises in decades; and recent nearby projects (some still underway), by other developers, are similarly in the lowrise to midrise category. In short, there is (a) a clear public policy, (b) an established practice, and (c) a resulting character which has been imprinted on this neighbourhood. The Board heard no compelling evidence supporting the compatibility of this proposal with that character, as required by the OP generally.

[82] The Board is not suggesting that plans are immutable. On the contrary, a Council has the right to change its mind, and to launch into new directions concerning the vision for an area. If there had been evidence that Council intended to do so here, matters might have turned out differently. However, there was no such evidence of Council intent, let alone of any conscious change of vision.

[83] If one proposes to replace some provision, then, as a matter of usual due diligence, it is customary to acknowledge its existence. One may even consider why it was there, and suggest reasons for changing it. However, a planning process cannot be "policy-led", if those involved display no awareness that there is a policy dimension in the first place.

[84] In summary, the Board was not persuaded that, in this lowrise and midrise area, there was sufficient evidence to introduce highrise buildings of 16 and 14 storeys.

CONCLUSION

[85] The Board agrees that there is an incongruity in the OP designation citing "4 - 6" storeys, when (a) other planning documents pointed to 7 storeys, and (b) the visually overwhelming building next door was already at 7 storeys. The developer's appeal should be allowed in part, to correct that situation.

[86] The Board is unprepared to allow the developer's OPA appeal in full, to increase the permitted height to "10 storeys or more".

[87] The Board agrees with rezoning, to redistribute the buildable area, while keeping that overall total mathematically similar to the status quo. The Board therefore agrees to reducing the north setback to zero, in return for space elsewhere, notably in the vicinity of the proposed central "plaza", to split development into two separate buildings, east and west. That space should align approximately with the northward projection of

Winston Avenue. The existing zoning foresees lot coverage of 59%; so the expectation is that lot coverage can continue to be up to 60%. The Board is mindful of the undertaking, by the developer and the City, to provide for an easement over that plaza.

[88] On height, the Board is prepared to amend the City's comprehensive Zoning By-law, in accordance with a general 7-storey limit. In light of the undisputed evidence about the importance of visual interest at the roof line, the Board will include a reference to projections (to 8 storeys), on the understanding that such projections visibly represent the exception, and not the rule. The Board does not believe that accommodation of such projections would depart significantly from an overall visual impression of a 7-storey structure.

[89] The Board is not otherwise prepared to amend the zoning at this time. The City and the developer are at liberty to discuss fine-tuning other aspects of the Zoning By-law, as architectural plans evolve.

[90] Parenthetically, Ms. Stinson had argued that, if a revised version of the project were to proceed, it should also be subject to other conditions (e.g. traffic calming, new parking arrangements, landscaping etc.). However, despite their merits, those topics are outside the normal ambit of OPA and rezoning appeals, and are for another venue.

[91] In conclusion, this case involved three appeals: the original appeal (by the neighbours) of By-law 2011-463, the developer's appeal of Council's non-decision about its proposed OPA, and the developer's appeal of Council's non-decision about its proposed Zoning By-law to mirror By-law 2011-463. In essence, all the appeals are being allowed in part, as more fully described in the Order below.

ORDER

[92] The Board disposes of this matter as follows:

1. The draft Official Plan Amendment for the City of Ottawa, proposed by the developer in Board File PL130203, is modified as set out below:
 - Instead of the draft's phrase "10 storeys or more", the Official Plan Amendment shall use the phrase "up to 8 storeys."

As modified, the above Official Plan Amendment is approved.

2. The Board directs the City to amend its comprehensive Zoning By-law 2008-250 as follows:
 - a) The setbacks from the north property line shall be reduced to a minimum of 0.0 metres.
 - b) Lot coverage shall be a maximum of 60%.
 - c) The height maximum shall be set at 7 storeys (or metric equivalent). Exceptionally, provision shall be made for the height of parts of the complex to reach a maximum of 8 storeys (or metric equivalent), provided that the footprint of the 7-storey portion of a building shall represent at least 60% of that building's footprint.
3. The appeals are otherwise dismissed.

"M.C Denhez"

M.C. DENHEZ
MEMBER