

Ontario Municipal Board
Commission des affaires municipales
de l'Ontario



ISSUE DATE: October 15, 2015

CASE NO(S): PL140555

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

Applicant and Appellant: Aragon (Wellesley) Development (Ontario) Corp.
Subject: Request to amend the Official Plan - Failure of City of Toronto to announce a decision on the application

Existing Designation: Mixed Use Areas, Site and Area Specific Policy 155

Proposed Designation: Removal of subject property from Site and Area Specific Policy 155

Purpose: To permit the development of a 28-storey mixed-use building with grade-related commercial uses

Property Address/Description: 81 Wellesley Street East
Municipality: City of Toronto
Approval Authority File No.: 13 225676 STE 27 OZ
OMB Case No.: PL140555
OMB File No.: PL140555
OMB Case Name: Aragon (Wellesley) Development (Ontario) Corp. 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: Aragon (Wellesley) Development (Ontario) Corp.
Subject: Amendment to Zoning By-law No. -- Failure of City of Toronto to announce a decision on the application

Existing Zoning: CR T3.0 C2.0 R3.0, CR 3.0 (c1.7; r3.0) SS1 (x2545)

Proposed Zoning: Site Specific (To be determined)

Purpose: To permit the development of a 28-storey mixed-use building with grade-related commercial uses

Property Address/Description: 81 Wellesley Street East
Municipality: City of Toronto

Municipal File No.: 13 225676 STE 27 OZ
 OMB Case No.: PL140555
 OMB File No.: PL140556

Heard: April 20-24 and May 6-8, 2015 in Toronto, Ontario

APPEARANCES:

Parties

Aragon (Wellesley)
 Development (Ontario) Corp.

City of Toronto

Counsel

E. Costello and L. Dean (student-at-law)

R. Kallio

Participants

Michael Adams
 and Maurina Gomes

Self-represented

**DECISION DELIVERED BY JUSTIN DUNCAN AND KARLENE HUSSEY AND
 ORDER OF THE BOARD**

[1] This was a hearing in the matter of appeals by Aragon (Wellesley) Development (Ontario) Corp. (“Appellant” or “Applicant”) from the failure of the City of Toronto (“City”) to render a decision within the statutory time frame on applications filed on August 23, 2013, to (a) amend the City’s Official Plan (“OP”), and (b) amend the former City of Toronto Zoning By-law No. 438-86 and the City-wide Zoning By-law No. 569-2013, which is under appeal and not yet in force. The Appellant filed appeals to this Board on June 13, 2014.

[2] The Appellant’s applications relate to the property municipally known as 81 Wellesley Street East (“Subject Property”), for the purpose of facilitating the development of a 28-storey mixed-use building that would consist of 181 residential units ranging from studios to three-bedroom units, a commercial space at grade, and a publicly accessible courtyard with art fronting on Wellesley Street East.

[3] In order to proceed with the proposal, the Appellant requires a site-specific Official Plan Amendment (“OPA”) that would remove the Subject Property from Site and Area Specific Policy 155 (“SASP 155”). Additionally, the Zoning By-law Amendments are required to permit the proposed height, residential density, setbacks, parking and loading standards, and alternative amenity space.

[4] For the reasons that follow, the Board allows the appeals.

ISSUES

[5] There were 16 issues identified on the City’s issues list but in essence, the disagreement between the parties came down to the following questions:

1. Is the proposal contrary to the intent of SASP 155 and would removal of the Subject Property from SASP 155 affect the stability of the Church Street area?
2. Is the proposal excessive in height and density? Does it represent overdevelopment of the site that would set a negative precedent and create impacts especially with respect to transition, sky view and shadowing?
3. Is the amount of the s. 37 contribution proposed by the Appellant appropriate?

CONTEXT

[6] The Subject Property is located approximately 35 metres (“m”) east of Church Street on the south side of Wellesley Street East, two properties in from Church Street. Church Street is characterized by its low scale buildings, its house-form structures, and dwelling units, some abutting the commercial uses, and some located above the shops.

It has been a traditional shopping street, which SASP 155, and its predecessor policies, have been successful in preserving for over 30 years.

[7] Adjacent to the Subject Property to the west is a four storey H-shaped building which fronts on Church Street, and the building directly to the east is nine storeys. Directly across the street to the north is a 13-storey apartment building and directly to the south, across the laneway to the rear of the Subject Property is an 18-storey apartment building that fronts on Maitland Street.

[8] The area is well served by public transportation: there is a bus route on Wellesley Street that runs past the Subject Property; the Wellesley subway station is located approximately 250 m to the west of the Subject Property at Yonge Street, while the Bloor-Yonge *Gateway Mobility Hub*, centred on the Bloor-Yonge subway station is located approximately 700 m to the northwest and so the Subject Property is within the catchment area of the Bloor-Yonge gateway mobility hub designated under the policy document *Big Move – Transforming Transportation in the Greater Toronto and Hamilton Area* (the “Big Move”), prepared in accordance with the *Metrolinx Act*. The area is therefore identified for intensification that is intended to support transit use.

[9] In reference to the City’s *Downtown Tall Buildings: Vision and Supplementary Design Guidelines* (“Downtown Tall Building Guidelines”) document, the location of the Subject Property is identified as a High Street with recommended heights of between 20 and 35 storeys.

[10] The Subject Property is approximately 981.4 square metres (“m²”) with frontage of 19.47 m on Wellesley Street East, and a depth of 33.58 m. There is a laneway behind the Subject Property running both east and south that provides access to Maitland Street which runs parallel to Wellesley Street. There is an L-shaped piece of land adjacent to the southwest corner of the Subject Property over which the Appellant and other adjacent property owners have access rights.

[11] The development is proposed to have an articulated podium with a tower that gradually steps back from Wellesley Street. The gross floor area of the proposed development is 14,929 m² including approximately 70 m² of non-residential floor area on the first floor. The total height of the proposed development is 28 storeys, or 95.7 m to the top of the mechanical penthouse. The front wall of the ground floor would align with the existing street wall of the adjacent residential buildings to the east.

[12] Matters of parking and transportation have been resolved. Residents would access parking on the site from Wellesley Street and exit by way of the rear laneway in a one-way fashion, thereby preserving the sidewalk public space. Loading and deliveries would be done at the rear of the building with access from the laneway. By virtue of the Subject Property's location, private automobile use would be de-emphasized by limiting the number of parking spaces available and increasing bicycle parking on site to promote usage of nearby cycling infrastructure, including a new bike lane on Wellesley Street. The expert opinion evidence before the Board on these matters was uncontested as the City no longer took issue on the questions it had previously raised in relation to parking and transportation.

[13] A three-storey structure known as the Odette House was previously situated on the Subject Property which was very much in keeping with the scale and character of the buildings on Church Street. In 2011, a permit was issued by the City to a previous owner of the Subject Property for the demolition of the Odette House. Since then, the Subject Property has remained vacant.

The Relevant Planning Documents

[14] The Growth Plan for the Greater Golden Horseshoe ("Growth Plan") and Provincial Policy Statement ("PPS") must be considered by the Board in reaching its decision: the decision must conform to the Growth Plan and must be consistent with the PPS.

[15] It is clear from the evidence and submissions of the parties that there remains no dispute that the proposed development is consistent with the PPS and conforms to the Growth Plan. These provincial policy documents clearly promote redevelopment and intensification in this area of the City where the Subject Property is located. The Board finds that the proposal has appropriate regard for matters of provincial interest, including the objectives of the Big Move.

[16] The other planning instruments applicable to this proposal are as follows:

a. The City of Toronto Official Plan (2006)

[17] The Subject Property is identified on Map 2 of the City's OP as being located in the "Downtown and Central Waterfront". It is designated as "Mixed Use Area". The Areas immediately to the north, east and south of the Subject Property are designated as "Apartment Neighbourhood". It is within an area designated for specific transit-related policies.

[18] Since 1982, the Subject Property has been designated under various OP policies as part of a specific planning area intended to protect the character of the Church Street area. The area of Church Street between Alexander and Gloucester Streets is currently designated by SASP 155 under the City's OP. It is in an area known as the Church Street Village Character Area in the not-yet-in-force Official Plan Amendment 183 ("OPA 183"), which was adopted by City Council on November 15, 2013 but which remains under appeal to the Board. OPA 183 expands the boundaries of the SASP 155 area north to Charles Street East and south to Wood Street.

b. Zoning By-law Nos. 438-86 and 569-2013

[19] Under Zoning By-law No. 438-86, the Subject Property is zoned CR T3.0 C.2 R3.0 H18, which permits a range of residential and non-residential uses, up to a total density of 3.0 Floor Space Index and height of 18 m. The new City-wide Zoning By-law

No. 569-2013, which is under appeal and not in force, carries forward the same zoning standards with respect to uses, height and density.

- c. *Tall Building Guidelines (City of Toronto Tall Building Design Guidelines; Downtown Tall Buildings: Vision and Supplementary Design Guidelines; City's North Downtown Yonge Urban Design Guidelines)*

[20] The Subject Property is identified in the City's Guideline documents as a "High Street" with recommended heights of between 20 and 35 storeys. Among the relevant suggested performance standards in the Guidelines that are applicable to the proposal are: Siting, Fit and Transition in Scale; Sunlight and Sky view; Prominent Sites and Views from the Public Realm; Building Placement and the Pedestrian Realm. Many of these performance standards mirror OP policies and Zoning By-law standards.

Section 37 Proposal

[21] In support of its application, in a letter dated April 18, 2015, the Appellant proposed a contribution to the City under s. 37 of the Act in the form of public space and public art contributions, further details of which are set out below.

Analysis

[22] The Board heard expert opinion evidence from six witnesses tendered by the Appellant and the City. In addition, one of the participants who lives at a neighbouring property, testified on the impact he expects to experience from the proposed development.

[23] The City argued that the development does not conform to the City's planning and urban design policy framework, specifically to policies relating to the public realm and built form (transition, fit, massing); SASP 155 and OPA 183, and the City's Tall Building Guidelines.

[24] In support of the City's position Myron Boyko, Principal Urban Designer with the City, and Mark Chlon, Senior Planner, Community Planning in the City's Planning Division, opined that the proposed development is not appropriate and is not good urban design. Their evidence focused to a large extent on the intent of SASP 155 and the impact the proposed development will have on low scale character of the SASP 155 area.

[25] It was the City's position that although it takes no issue with the podium of the proposed development, the tower is excessive in height, lacks transition to the low scale character of Church Street and Wellesley Street East, and would set a negative precedent for future development in the area. The City argued that redevelopment at the Subject Property should have regard to the historical contribution to the character of the area, as was the case with the low scale Odette House, previously located on the Subject Property.

[26] The City argued that although the Subject Property fronts on Wellesley Street East, its proximity to Church Street has the potential of affecting the character of both streets. In particular, Church Street is characterized by a high degree of sky view in the SASP 155 area along Church Street and the proposed development would impede the sky view at the "gateway" of Church Street and Wellesley Street East. Further, although the City has often approved tall buildings at important intersections, it intended to do quite the opposite at Church Street and Wellesley Street East. The proposed development near the intersection would interfere with this character according to the City.

[27] The City argued that existing development in SASP 155 largely complies with the 44 degree angular plane in the in-force Zoning By-law No. 438-86 through transition and setbacks with the exception of some minor penetrations into the zoning envelop. The proposed development would penetrate the angular plane on Church Street by 39 m or 13 storeys, a much greater degree than any other development in the area. The City's evidence was that the 44 degree angular plane on Wellesley Street would be

penetrated by a significant amount as well: by 51 m or 17 storeys. The reason for this, according to the City is due to the small, narrow and deep nature of the Subject Property and the tower placement necessitated by the lot configuration. The City's position is that the angular plane is important since it helps to reinforce the built form and use, helps to foster the stability of the small mixed use SASP 155 area, and minimizes conflict between Church Street and the abutting apartment Neighbourhood on Wellesley Street East. Mr. Boyko, for the City, opined that although growth is encouraged along Wellesley Street, it should respect the angular plane provision.

[28] With regards to transition, it is the City's position that although the tower would be setback by 3 m from the podium, the 1.8 m deep balconies would encroach into this area, thereby providing only a 1.2 m setback. The proposed development would result in an overwhelming presence in scale relative to existing low scale built form context on Church Street and Wellesley Street East, as well as a reduction in sky view relating to excessive height and depth of the floor plate on the Subject Property. It was Mr. Boyko's opinion that the proposed development would be experienced as a slab building from Church Street despite its articulation and despite its floor plate size being similar to a point tower. Mr. Boyko explained that the proposed development would be as wide as half a City block between Wellesley Street East and Maitland Street setback at just 36 m from Church Street and opined that this configuration of the Subject Property compounds the problem of angular plane penetration.

[29] The Appellant submits that there is no sustainable or objective evidence of any impacts on the surrounding property or streets from the proposed development, either from the built form or the density of use. The Appellant argued that the proposed development responds to and enhances the immediate context by minimizing shadow, by responding to the low rise character on Church Street, by supporting the retail character on Church Street and contributing to the public realm with the introduction of the publicly accessible forecourt and public art. The Appellant further argued that the

principal objection of the City relating to loss of sky view is subjective, changing and imprecise and not grounded in any in-force OP policy.

[30] The Board turns to its analysis of the three main issues before it.

[31] The Board prefers the evidence presented by the Appellant's witnesses, Andrew Ferancik, land use planner; Mark Sterling, land use planner and urban design consultant; and Charles Gane, architect and principal designer for the proposed development, and based on their evidence the Board agrees with the position of the Appellant on the appeals.

Issue 1: Is the proposal contrary to the intent of SASP 155 and would removal of the Subject Property from SASP 155 affect the stability of the Church Street area?

[32] The Board finds that the proposal to remove the Subject Property from SASP 155 is appropriate and would not destabilize or detract from the remaining lands within SASP 155.

[33] The buildings that are directly on Church Street in the SASP 155 area are primarily low to mid-rise (two to five storeys). However, there are many tall buildings located in very close proximity to the SASP 155 area and to the Subject Property. There are tall buildings to the north and south of the SASP 155 area and to the west and east on Wellesley Street East between Yonge Street and near Jarvis Street. There is a 39-storey building just east of Jarvis and a recently approved 35-storey development close to Yonge Street, both on Wellesley Street East. The Subject Property, although within the boundaries of SASP 155, is located on a block not within the SASP area, on which there are existing residential uses with heights up to 23 storeys. These buildings are not offensive to the SASP 155 area and the Board is persuaded that this development would likewise not be offensive.

[34] The Board agrees with the Appellant that the clear intention of SASP 155 is to apply to development along Church Street and that inclusion of the Subject Property is anomalous. It is only one of four properties included in SASP 155 that have no frontage on Church Street. The other three properties include two semi-detached dwellings on very small lots and a four-storey commercial building on a small, narrow lot. Mr. Ferancik observed that the buildings which were previously on the Subject Property, were the Odette House at three storeys and a two-storey coach house. Mr. Ferancik opined that the low-scale nature of these buildings was the most likely reason for the Subject Property's inclusion originally in SASP 155. Since the demolition of those structures, the Subject Property has remained vacant and therefore has not contributed to the special character of Church Street as intended by SASP 155.

[35] The Board heard no persuasive evidence to support the inclusion of this vacant property on Wellesley Street East in the Church Street Special Character Area. The Board finds that its continued inclusion, following demolition, has done nothing to enhance the character of the SASP 155 area. Mr. Ferancik provided the Board with background information on what preceded the designation of the SASP 155 area as a special character area. He noted that a May 1981 study dealt only with Church Street as a retail area in need of preservation. It did not address the possibility of tall buildings on Wellesley Street East. The Appellant also noted that the original draft of OPA 183 of June 2013 had proposed to exclude the Subject Property and argued that approach ought to be followed.

[36] The Board agrees with the Appellant that rather than destabilize or detract from the remaining lands within SASP, the proposed mixed use development would serve to support the objective of the special area designation, that is, to enhance retail in the area by increasing the density on a property in close proximity to the Church Street Special Character Area. The Board is persuaded that the proposal represents an appropriate form of redevelopment of these underutilized lands that would animate and revitalize the area. It is a high quality design which would enhance the pedestrian

realm, provide an attractive, dynamic, highly useable and functional exterior and interior space for the new and existing community.

[37] The Board finds that this infill development in this area of the Downtown where the City's OP anticipates that intensification should be channelled, is an appropriate response to policies, both provincial and municipal, to use lands efficiently; to provide for an expanded range and mix of housing and employment; to support active transportation and public transit, and to minimize land consumption and servicing costs.

Issue 2: Is the proposal excessive in height and density? Does it represent overdevelopment of the site that would set a negative precedent and create impacts especially with respect to transition, sky view and shadowing?

[38] With respect to the height proposed, the Zoning By-laws establish a height limit of 76 m on the Subject Property, whereas the proposed development would be 135 m in height. This means that the 44 degree angular plane established under the Zoning By-laws would be penetrated.

[39] The evidence is that the location of Subject Property is identified in City Guidelines as a High Street with recommended heights of between 20 and 35 storeys. Mr. Ferancik testified that the height of the proposed development, at 28 storeys, is at the mid-point of this recommended range. Furthermore, the Appellant submits that the proposed development has appropriate regard for the relevant parts of the City of Toronto Tall Building Design Guidelines, including provision of a desirable built form that is appropriate for the area, enhancing the streetscape and visual interest of the surrounding area and minimizing potential impact associated with shadow and sky view.

[40] The Appellant submits that the careful attention to the architectural details mitigates the impact of this tall building. It provides a compatible human-scaled design that frames the important elements of the public realm and creates an appropriate

transition to the nearby mixed use property. The six-storey podium for example, respects the scale of the existing Wellesley Street East and Church Street context.

[41] The City did not disagree with the Appellant and acknowledged that although the podium at 20.6 m exceeds the Zoning By-law requirements it is acceptable in its proposed form, and from an urban design perspective it achieves good balance with regard to the objectives of the City's OP, SASP 155, OPA 183 and urban design related guidelines. The City also acknowledged that the podium will enhance the quality of the public realm by providing a two-storey, 7.5 m deep privately owned open extension of the public realm. The City's quarrel is with the tower component of the proposed development.

[42] The Board finds that the City's position in relation to height is not supportable. It has not convincingly established that unacceptable impacts associated with height will result. On the other hand, the Appellant demonstrated with shadow studies that the position of the building limits the effects of shadowing on the public realm on Church Street and Wellesley Street East; it creates no new shadows at Barbara Hall Park (formerly Cawthra Park) to the north; and the application of the 44-degree angular plane makes little if any difference to limit or minimize the shadow impact on the public realm. In essence, the area is marginally affected by shadowing because of the height of the proposal. Indeed, Mr. Boyko, for the City, acknowledged that he did not take issue with shadowing from the proposed development.

[43] Mr. Boyko did take issue with the loss of sky view from the vantage point of some locations on Church Street and Wellesley Street East. In that regard, the Board accepts that the SASP 155 area on Church Street is in part characterized by access to sky view as a result of the low and medium-scale of existing development on Church Street.

[44] However, the Board did not find the models used by the City as adequately representative of how one will experience sky view impacts from the proposal. In fact,

the Board found that the angles used in the models had the effect of exaggerating the visual impact of the proposed development in context.

[45] The Board also notes that sky view is not mentioned in any provincial policies and nor is any great emphasis placed on maintenance of sky view in the City's OP, SASP 155, Zoning By-laws or City Guidelines. In particular, OP Policy 3.1.2.4 merely states that:

New development will be massed to define the edges of streets, parks and open spaces at good proportion. Taller buildings will be located to ensure adequate access to sky view for the proposed and future use of these areas. [emphasis added]

[46] As acknowledged by the City's witness Mr. Boyko, neither the OP nor the Zoning By-laws provide a standard by which one can objectively assess what can be considered "adequate access to sky view".

[47] Mr. Boyko testified that the 44 degree angular plane in the Zoning By-laws provides some objective guidance in terms of the amount of sky view the City intends to maintain at the Subject Property. However, the Board finds that this evidence is somewhat in contradiction with Mr. Boyko's acknowledgement that a 17-storey building could meet the angular plane requirements. The Board finds that from the perspective of a pedestrian on Wellesley Street East or on Church Street, a 17-storey building would have similar impacts to the proposed development at 28 storeys.

[48] In assessing access to sky view therefore, the Board has considered the opinions of the experts in relation to sky view through the lens of what level of sky view loss is acceptable in this context. In considering the divergent opinions of the experts on this point, the Board is persuaded by the evidence that sky view in the area around the Subject Property is likely to be maintained as a result of the improbability that other properties close to the Subject Property will be redeveloped. Additionally, the Board finds that the loss of sky view in relation to Church Street is also mitigated as a result of the setback of the Subject Property from Church Street itself.

[49] Although access to sky view and shadow impacts are not entirely equivalent, the Board did find the shadow impact study conducted in support of the proposal to be helpful in revealing that impacts from the proposed development on Church Street and Wellesley Street East at various times during the year have been minimized.

[50] Furthermore, the Board finds that it cannot divorce its analysis of this particular issue from the overarching OP and provincial policies directed at intensification and redevelopment in this area which the proposed development supports. Adequacy must be assessed in the context of the other policy. One cannot expect that all sky views in the Downtown will be maintained in perpetuity in the context of needed intensification. In order to attain the goal of intensification one must anticipate some loss of sky view from certain vantage points.

[51] As a result, the Board finds that access to sky view in the area around the proposed development will be adequate.

[52] The City also opposes the proposal on the basis of lack of adequate setback from adjacent properties. The Board accepts the evidence that adjacent properties are unlikely to redevelop and it is notable that there are no objections from the adjacent property owners. Combining this with the design of the project, including its articulation and window placement aimed at ensuring privacy on adjacent properties, the Board finds that the setbacks provided by the proposed development are adequate to ensure that impacts to adjacent properties are minimized.

[53] In relation to transition, the City acknowledges that the podium is of a height that fits in terms of provision of transition between the building facing Church to the west and the apartment building to the east. Additionally, the Board accepts the evidence of the Appellant that the distinction between the podium and the tower components of the proposed development give the impression that the podium relates to the immediate area while the tower relates to the broader vicinity which includes taller buildings, thereby providing another mode of transition. Indeed, Wellesley Street East and the

Residential Apartment Area surrounding the Subject Property are characterized by buildings of widely divergent heights with many constituting tall buildings as defined by City Guidelines. The Board accepts the evidence of the Appellant that the tower portion of the development will be experienced as part of the background of tall buildings in the Residential Apartment Areas east of Church Street and that it fits with the surrounding area.

[54] The Board finds, specifically in relation to transition from Church Street, that the proposed development has been designed to reduce impacts to the adjacent building facing Church Street and Church Street itself. The horizontal separation of the Subject Property from Church Street and its articulation serve to provide transition and reduction of impacts that is consistent with OP policy, applicable Zoning By-laws and City Guidelines.

[55] The Board further finds that there are no unacceptable built form impacts resulting from the proposed development in terms of privacy or overlook because of the responsive design adopted for the proposed development. Additionally, the Board finds that the development potential on adjacent properties, which is unlikely given the location of the building to the west fronting on Church Street and the rental apartments located in the building to the east, will not be adversely impacted by the proposal.

[56] On the same basis as the findings above relating to the potential for impact, the Board also finds that the proposed development does not represent overdevelopment of the Subject Property and nor does it overwhelm the area in which it is to be located. To the contrary, the Board finds that the proposed development has been carefully designed in order to respond to the local context to ensure that it contributes positively and fits well into the area in a manner that will contribute both to the vitality of Church Street and to the Residential Apartment Areas that are located east of Church Street.

Issue 3: Is the section 37 contribution sufficient?

[57] The final issue that the Board must consider then is whether the s. 37 contribution proposed by the Appellant is sufficient.

[58] Under s. 37(3) of the Act, the City may require an applicant to enter into an agreement for the provision of facilities, services or other matters where, as in this case, an applicant seeks a Zoning By-law Amendment to permit an increase in density and height. Section 37(3) provides:

37. (3) Where an owner of land elects to provide facilities, services or matters in return for an increase in the height or density of development, the municipality may require the owner to enter into one or more agreements with the municipality dealing with the facilities, services or matters.

[59] The City's OP contains guidance on s. 37 contributions, including the form of such contributions at policy 5.1.1.6 which lists a myriad of potential contributions a developer may make.

[60] In this instance, the Appellant has volunteered a contribution constituting the publicly accessible 106 m² forecourt area and a public art installation that will be located in the forecourt. The Appellant has estimated that this contribution is equivalent to a contribution of \$93 per m² for the bonus density of 12,104.8 m² for the proposed development.

[61] Although Mr. Chlon, for the City, testified that he was of the opinion that this amount was low in comparison to contributions for other development in the area, the City did not lead any evidence on what the s. 37 contribution should actually be for the proposed development.

[62] As the Board outlined previously in *Sterling Silver Development Corp. v. Toronto (City)*, [2005] O.M.B.D. No. 1313, the City has the onus, where a developer is not

offering an additional voluntary contribution, to evince what the contribution should be and additionally, the nexus between the contribution sought by the City and the specific development being proposed.

[63] Here the City has not availed itself of the opportunity to lead such evidence before the Board. The Board is not willing to grant additional time for the City to seek to negotiate additional s. 37 contributions from the Appellant. To allow the City that opportunity would be unfair to the Appellant who rightly expects this appeal to be disposed of in its entirety at this time.

[64] Based on the foregoing, the Board is satisfied that the proposal is in the public interest; it represents good and appropriate land use planning in keeping with the City's and the Province's objectives. The Board is satisfied that removing the Subject Property from SASP 155 will not compromise but rather, will enhance the Church Street Special Character Area. Accordingly, the Board determines the following:

1. The appeal is allowed;
2. The Official Plan Amendment identified at the hearing as Exhibit 15a is approved;
3. Zoning By-law Amendments to Zoning By-law No. 438-86 and to Zoning By-law No. 569-2013 are approved subject to the parties' agreement on the form and content of said amendments;
4. Amendments to Zoning By-law No. 569-2013 are contingent upon Zoning By-law No. 569-2013 coming into full force and effect as it relates to the Subject Property; and
5. The s. 37 contribution proposed by the Appellant is approved subject to the parties' agreement on the language of the s. 37 contribution as approved.

[65] The Board will withhold its order for 30 days to permit finalization of the Zoning By-law Amendments and the language of the s. 37 contribution.

“Justin Duncan”

JUSTIN DUNCAN
MEMBER

“Karlene Hussey”

KARLENE HUSSEY
VICE CHAIR

If there is an attachment referred to in this document,
please visit www.elto.gov.on.ca to view the attachment in PDF format.

Ontario Municipal Board

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