|  |  |
| --- | --- |
|  |  |
| **Local Planning Appeal Tribunal** |
| Tribunal d’appel de l’aménagement local |

|  |  |  |  |
| --- | --- | --- | --- |
| **ISSUE DATE:** | September 11, 2018 | **CASE NO(S).:** | PL171227 |

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

|  |  |
| --- | --- |
| **PROCEEDING COMMENCED UNDER** subsection 34(11) of the *Planning Act*, R.S.O. 1990, c. P.13, as amended | |
| Applicant and Appellant: | Westbank Projects Corp. |
| Subject: | Application to amend Zoning By-law No. 438-86 - Neglect of the City of Toronto to make a decision |
| Existing Zoning: | Reinvestment Area (RA) |
| Proposed Zoning: | Site specific to permit proposal |
| Purpose: | To permit a mixed-use project containing residential, office, and retail/commercial uses |
| Property Address/Description: | 489-539 King Street West |
| Municipality: | City of Toronto |
| Municipality File No.: | 16 159483 STE 20 OZ |
| OMB Case No.: | PL171227 |
| OMB File No.: | PL171227 |
| OMB Case Name: | Westbank Projects Corp. v. Toronto (City) |

|  |  |
| --- | --- |
| **Heard:** | August 7, 2018 in Toronto, Ontario |

|  |  |
| --- | --- |
| **APPEARANCES:** |  |
|  |  |
| **Parties** | **Counsel** |
|  |  |
| Westbank Projects Corp. and Allied Properties REIT | E. Costello |
|  |  |
| City of Toronto | M. Crawford |
|  |  |

MEMORANDUM OF ORAL DECISION DELIVERED BY RICHARD JONES ON AUGUST 7, 2018

1. Counsel for Allied Properties REIT and its agent, Westbank Projects Corp., collectively described as Allied/Westbank, and the City of Toronto (“City”) informed the Tribunal of their settlement discussions and requested that the Pre-Hearing Conference be converted to a Hearing to allow for the provision of planning evidence in support of settlement discussions, which although positive, are still on going. The Tribunal assented to the request. The appeal by Allied/Westbank was made pursuant s. 34(11) of the *Planning Act* arising from the City’s failure to make a decision on the rezoning application.
2. The subject property consists of seven buildings, 489, 499, 511, 519-529, and 539 King Street West. 495 King Street West which is located in the rear portion of the subject property does not have frontage on King Street West
3. Counsel further requested the Tribunal to withhold its final order regarding the draft zoning by-law amendments to By-law No. 438-86 (Exhibit 6) and By-law No. 569-2013 (Exhibit 7) which are appended as Attachment 1, pending completion of items identified by City Council resolution TE34.31 dated July 23, 2018 (Exhibit 5) regarding shadow impacts, setbacks, the completion of various agreements, parking provisions etc. The list of remaining items is not inconsiderable and will take additional time to resolve according to Counsel and those matters, which are still outstanding, are also noted in paragraphs 3 and 4 on pages 265 to 268 inclusive of Tab 10, Exhibit 3a. The Tribunal notes that the City’s planning staff is supportive of the settlement initiative.
4. The application proposes a large rectangular building that would extend over the subject property and which includes an interior courtyard. The building is proposed to step back from King Street West in a “pixelated” architectural fashion and features a series of peaks with a maximum height of 16 storeys involving two peaks at the southeast and southwest of the site. The middle peak has a maximum height of 15 storeys and the peak on the northern side of the subject property proposes 14 storeys.
5. The designated heritage building at 489 King Street West together with the listed heritage building at 495 King Street West will be retained intact, and the front of the designated heritage building at 511 King Street West and the listed heritage buildings at 519-529 King Street West will be integrated into the new building complex. 539 King Street West will be demolished.
6. Office uses will occupy the second, mezzanine and third floors with retail activities proposed for the first and second floors, the mezzanine levels and the underground first level. 496 residential units are proposed in addition to two floors of underground parking.
7. The Tribunal granted participant status to 462 Wellington Inc. represented by counsel, Mary Flynn-Guglietti. Her client owns property of that same address which adjoins the subject lands. Originally 462 Wellington Street Inc. had intended to seek party status, but is now content with participant status given current intentions to settle the appeal.
8. The Tribunal heard planning evidence from John Gladki, a professional planning consultant who was qualified to provide opinion evidence in land use planning matters. The planner has been associated with the application for quite some time.
9. Mr. Gladki opined that the application addressed current planning policy in accordance with the following matters:

• The application was consistent with the Provincial Policy Statement 2014 because the development was proposed within a settlement area, and proposed a development form that was compact, fully serviced and supportive of public transit while also recognizing the important heritage value of several of the properties.

• The application conformed with the Growth Plan for the Greater Golden Horseshoe 2017 because it promotes an innovative intensification action on an underdeveloped site while providing a mix of employment and housing uses.

• The application conforms with the City of Toronto Official Plan (“OP”) because it promotes growth in the City’s Downtown and Central Waterfront where development is encouraged, while increasing opportunities for walking and cycling, social interaction, economic activity and the reduction of greenhouse gas emissions. Further, as the subject lands occupy one of the acknowledged Regeneration Areas (Map 18 of the OP), the application encourages re-use of buildings and new investment in older areas. Moreover as part of the Downtown, it proposes improvements to the public realm including streets, parks and open spaces. In accordance with Chapter 3 of the OP, the application promotes a high quality built environment by virtue of its architecture, landscaping and urban design. The design ensures that building facades will be parallel to the street; that building entrances are accessible; that ground floor uses will have views on the street and that vehicular access minimizes impacts on adjoining properties. Finally, the built-form will minimize shadowing and wind impacts; allow future residents to have access to private and common amenity spaces and further ensure that improvements to sidewalks and pedestrian safety are implemented as planned.

• The application conforms to the King-Spadina Secondary Plan by providing investment in new residential, commercial and retail uses within a building form which is inclusive of new park space and protective of existing built heritage resources. The application also has regard for the King-Spadina Urban Design Guidelines (2004) and the City Wide Tall Building Guidelines with respect to massing, setbacks and the orientation of the heritage buildings in a manner which will not unduly impact the nearby mid-rise mixed-use buildings on the King Street West and Wellington Street West road corridors.

• The draft zoning by-law amendments of Attachment 1, created in consultation with City staff, reflect the highly pixelated nature of the built form, and articulate specific zoning provisions on a floor-by-floor basis to ensure, in addition to other matters, that the highest elements of the development are appropriately shifted into the interior of the subject property to minimize impact on neighbouring land uses.

**FINDINGS**

1. The Tribunal found it apparent that settlement discussions to date, pursuant to the uncontested planning evidence, had collectively achieved a revised development form which promoted the public interest in compliance with the numerous policies and documents which define that interest. The parties were commended for those efforts and the Tribunal is confident that the remaining items identified in this Memorandum will be resolved over time.

**INTERIM ORDER**

1. The Tribunal orders that the draft zoning by-laws described in Attachment 1 are approved in principle being representive of sound planning practice and in the public interest.
2. However, the final Order is withheld pending notification by the City to the Tribunal that all outstanding matters identified by City Council Resolution TE34.31 dated July 23, 2018 (Exhibit 5) and in paragraphs 3 and 4 on pages 265 to 268 inclusive of Tab 10, Exhibit 3a have been completed. This Member remains seized.

“Richard Jones”

RICHARD JONES

MEMBER

If there is an attachment referred to in this document,

please visit www.elto.gov.on.ca to view the attachment in PDF format.

**Local Planning Appeal Tribunal**

A constituent tribunal of Environment and Land Tribunals Ontario

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