

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



ISSUE DATE: January 03, 2020

CASE NO(S): PL171522

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: Lamb Bauhaus Inc.
Subject: Application to amend Zoning By-law No. 438 -86 & 569 - 2013 - Refusal of application by the City of Toronto
Existing Zoning: Reinvestment Area (RA)
Proposed Zoning: Site Specific (To be determined)
Purpose: To permit the development of a 30 storey mixed-use building containing 205 residential units & 177 sq. m of grade-related commercial uses
Property Address/Description: 284 King St E
Municipality: City of Toronto
Municipality File No.: 17 175826 STE 28 OZ
OMB Case No.: PL171522
OMB File No.: PL171522
OMB Case Name: Lamb Bauhaus Inc. v. Toronto (City)

PROCEEDING COMMENCED UNDER subsection 41(12) of the *Planning Act*, R.S.O. 1990, c. P.13, as amended

Referred by:
Subject: Site Plan
Property Address/Description: 284 King Street East
Municipality: City of Toronto
OMB Case No.: PL171522
OMB File No.: PL180593

Heard: September 16-20, 2019 in Toronto, Ontario

APPEARANCES:

Parties

Lamb Bauhaus Inc.

City of Toronto

Counsel

P. Harrington

R. Kallio and D. Abimbola

DECISION DELIVERED BY C.J. BRYSON AND ORDER OF THE TRIBUNAL

INTRODUCTION

[1] Lamb Bauhaus Inc. (“Appellant”) applied to the City of Toronto (“City”) for an amendment to Zoning By-law No. 438-86 (“ZBA”) and site plan approval to facilitate its proposed development of a 30-storey mixed use building at 284 King Street East (“Subject Lands”), which is west of Berkeley Street, east of Ontario Street, on the north side of King Street East and is currently occupied by a three-storey office building and surface parking lot. The City failed to decide upon either application within the timelines set out in the *Planning Act*, R.S.O., 1990, c. P.13 (“Act”) which led the Appellant to appeal those failures pursuant to ss. 34(11) and 41(12) of the Act, respectively.

[2] On July 25, 2018, the Tribunal postponed the appeal of the failure to decide upon the site plan application pending the outcome of the ZBA appeal. Since that time, the parties continued discussions which led to their desire to have both a revised ZBA and site plan adjudicated at the hearing and production of a draft consent order, entered as Exhibit 25, to be considered by the Tribunal in the event the revised proposal was approved. The Tribunal agreed to the request for both matters to be considered and notes the consent of the Appellant to have the Subject Lands brought into Zoning By-law No. 569-2013 through the draft order.

[3] The Appellant now proposes a 32-storey mixed use building of 100.95 metres (“m”) in height, excluding the mechanical penthouse, with an eight-storey or 29 m street wall set back 0.9 m from the front lot line on King Street East and a 24-storey tower step

backed 5.87 m from the façade of the podium for a total 6.77 m front set back. It is proposed to have a western side yard set back of 0 to 0.3 m and an eastern side yard set back of 5.5 m for the first eight floors with a slight step back for the tower from the western lot line adjacent to the site of a 14-storey Toronto Community Housing (“TCH”) building. The parking and bicycle parking are to be wholly underground and the loading space internal to the first floor. The proposal envisages 218 residential units, including 151 one-bedroom units (69.3%), 46 two-bedroom units (21.1%), 20 two-bedroom plus den units (9.2%) and 1 three-bedroom unit (0.5%). Several two-bedroom plus den units will be designed with demisable walls to allow for conversion to three-bedroom units. The combined residential and commercial gross floor area (“GFA”) is 15,898 square metres (“sq m”) and the proposed floor space index (“FSI”) is 15.62. The site is rectangular shaped, with a frontage of 24.54 m along King Street East, a width of 24.13 m along the rear lot line and a depth of 41.8 m, resulting in a site area 1,018 sq m.

[4] The Appellant produced Peter Smith to testify in support of its proposal. Mr. Smith was qualified without objection to provide the Tribunal with expert land use planning opinion evidence.

[5] The City opposed the revised proposal on the basis the Subject Lands are not a proper tall building site and that it represents overdevelopment in the King Street East context. Specifically, the City asserts the proposal is not in keeping with the emerging pattern of development in the Old Town of York, an Area of Special Identity (“ASI”) within the King-Parliament Secondary Plan (“KPSP”), which is made up of ten historic blocks bordered by George Street to the west, Adelaide Street East to the north, Berkeley Street to the east and Front Street East to the south.

[6] The City raised particular concerns regarding the height and set back of the street wall, the tower’s interference with sky view, sterilization of redevelopment and intensification potential at the neighbouring SAS Institute (Canada) (“SAS”) site directly to the west, and privacy impacts to the users of that building and the TCH building to the east, additional light and view impacts to the TCH residents, and maintenance of King

Street East as a “special street” identified within the KPSP. The City submitted a tall mid-rise building would be the suitable intensification on the Subject Lands, of no more than 14 storeys with a three or four-storey street wall and a greater front set back and tower step back.

[7] The City produced Myron Boyko and Thomas Rees in support of its position, who were qualified without objection to provide the Tribunal with expert urban design and land use planning opinion evidence, respectively.

[8] SAS, the owner and an occupant of the eight-storey office building directly west of the Subject Lands was granted participant status in the proceedings at an earlier pre-hearing conference. At the hearing, Christine Maisonneuve, the Manager of Corporate Services for SAS, read her participant statement into the record and a copy was entered as Exhibit 17. SAS, represented by Neil Smiley in the proceedings, did not oppose the proposed development. While it did have initial concerns with the compatibility of the proposed development with its and its tenant’s operations as a 24/7, 365 day per year data centre which requires significant computer cooling equipment and back-up generators subject to Ministry of Environment, Conservation and Parks (“MECP”) approval and regulation, SAS testified that those concerns have been addressed by agreement of the Appellant to pay for any necessary mitigation measures on the SAS site or the Subject Lands. That agreement has been incorporated into the draft consent order.

[9] The St. Lawrence Neighbourhood Association (“SLNA”) was granted participant status at the hearing without objection. The Chair of SLNA, Suzanne Cavanagh, read her participant statement into the record and a copy was entered as Exhibit 18. SLNA objects to the height of the proposal and the lack of community benefits to be provided in the form of a mid-block connection, POPS and or an improved streetscape.

[10] For reasons provided below, the Tribunal allows the appeals in part. It approves the draft Zoning By-law No. 438-96 and No. 569-2013 amendments found at Appendices G and H to the Witness Statement of Mr. Smith, which was entered as

Exhibit 2, in principle. It also approves the draft site plan entered as Exhibit 10 and subject of the conditions in the draft ZBAs and the Notice of Approval Conditions found at Appendix F to Exhibit 2, in principle. The Tribunal will issue its final order upon notification from the City solicitor that all conditions of the ZBAs and site plan have been met to the City's satisfaction.

SITE AND SURROUNDING CONTEXT

[11] The Subject Lands are within the Downtown and a Regeneration Area identified in the City's Official Plan ("OP"), are within an urban growth centre and a strategic growth area for purposes of the Growth Plan for the Greater Golden Horseshoe, 2019 ("Growth Plan") and are identified as an area for "significant growth" as within Regeneration Area "A" (Jarvis-Parliament) in the KPSP. The Subject Lands have immediate access to several streetcars and buses and come within the definition of major transit support area ("MTSA") under the Growth Plan as being well within the 800 m radius of proposed Downtown relief subway lines.

[12] The KPSP area, Regeneration Area "A" (Jarvis-Parliament) therein and the Old Town of York host diverse heritage resources and significant new development. The KPSP area extends from Jarvis Street east to the Don River, south of Queen Street East to Front Street East. It includes the Old Town of York, Corktown, the West Don Lands and the Distillery District on the east side of Parliament Street. The Old Town of York has experienced significant redevelopment in the past 15 years, including the approval and construction of several tall mixed use buildings to fill in vacant and underutilized sites. The ten historic blocks of the Old Town of York host a wide variety of building types, modern and heritage and a blend of the two, which have varying street walls, building heights and design features. In the immediate area of the Subject Lands, the City has recently approved a 24-storey office building at 25 Ontario Street and a mixed use development at 254-266 King Street East with planned 34 and 36-storey towers.

[13] SAS has an eight-storey office building directly to the west at 280 King Street

East. It is 39 m in height with a seven office storey street wall height of 29 m, which is then slightly stepped back at the top floor. Further west is a consolidated block bounded by King Street East, Ontario Street, Adelaide Street East and 157 Princess Street, which is to host the 34 and 36-storey mixed use towers at 254-266 King Street East. This development was approved by the Tribunal as a settlement (PL170298, January 23, 2019). The towers will have a podium height of 33 m and tower separation of 20 m. Further west is the Kings Court Condos at 230 King Street East, a 17-storey mixed use building at the northwest corner of King Street East and Sherbourne Street. That building has a six-storey street wall fronting King Street East and a 10-storey street wall fronting Sherbourne Street.

[14] To the east of the Subject Lands is the 14-storey portion of the TCH building running north south through the block from Adelaide Street East to King Street East. Further east is a single storey commercial building at 296 King Street East and then two, three-storey mixed commercial-residential buildings, which are listed on the City's heritage register. Continuing east, there are two-storey workers' cottages and another two-storey commercial building, which are also on the City's heritage register. Then, there is a 15-storey residential condominium building with a seven-storey street wall at the northwest corner of Parliament Street and King Street East.

[15] To the northwest of the Subject Lands is 25 Ontario Street, with the planned 24-storey office building approved by the City. It will be a height of 91.7 m or 105.18 m with the mechanical penthouse. It will have a 23-storey wall at its west end and will front onto Adelaide Street East, then extend down to King Street East where it will have a five-storey street wall.

[16] To the south, in the block bounded by King Street East, Berkeley Street, Front Street East and Princess Street, is the Globe and Mail Centre at 333 King Street East and 351 King Street East. It is a 17-storey office building of 83.5 m in height, 46,500 sq m in GFA with 1,860 sq m of retail services at grade. It is the largest office building east of Yonge Street, within the Downtown. It hosts a five office storey street wall facing King

Street East. Across Berkeley Street is a site for which a 19-storey mixed use building is under consideration. At the southwest corner of King Street East and Princess Street are the East Lofts Condos, a 12-storey residential mixed use building with a six-storey street wall and 7-storey frame. At the southwest corner of the block is a site to host an approved 12-storey office building. That site is now subject of an amended application for a 25-storey office building.

[17] The Subject Lands are approximately 1 km west of the King subway station on the Yonge University Line. They are serviced by the 501, 504 and 514 streetcars and various bus routes. They are also subject of the City's subway relief line project assessment, which seeks to connect the Bloor-Danforth subway (Line 2) to Downtown. The City approved the route from the Pape station to the Downtown via the Queen/Richmond corridor as its preferred relief line. This proposal would host a station at Queen and Sherbourne Streets (Moss Park), which is approximately 460 m from the Subject Lands. In April 2019, the Province announced a plan to build a relief line through central and east Toronto in place of the City's proposal, known as the Ontario Line. It is proposed to start at Exhibition Place and to terminate at the Ontario Science Centre, with a station near Parliament Street and King Street East (Corktown), which is approximately 175 m from the Subject Lands.

[18] The Subject Lands are zoned as a Reinvestment Area. That zoning prescribes a maximum height of 26 m plus a 5 m mechanical penthouse for the site and permits residential, office, retail services, institutional and light industrial uses. The zoning does not prescribe a density limit and only prescribes a 3 m step back above a street wall limited to 16 m in height, a side yard setback of 7.5 m for any portion of a building located further than 25 m from a streetline other than a public lane, and an 11 m setback from another building on the same lot. Several zoning by-law amendments have been approved of by the City in the Old Town of York area on a site-specific basis. Zoning By-law No. 569-2013 does not apply to these lands absent the draft order which is to apply to the proposed development.

GUIDING PRINCIPLES

[19] The Provincial Policy Statement, 2014 (“PPS”) and the Growth Plan support intensification in urban areas and strategic growth areas, supported by existing infrastructure and existing and planned transit. The Parties agree that intensification and mixed uses are appropriate for the site but disagree on the amount of intensification and its design in face of impacts to the public realm and neighbouring properties. It is therefore implementation of the OP and KPSP policies and the application of the City-wide Tall Building Design Guidelines (“TBDG”) and the King-Parliament Urban Design Guidelines (“KPUDG”) to the proposal that are in dispute in the appeals.

[20] The Tribunal does not accept the elevation of issues under these PPS and Growth Plan implementation tools to separate issues of consistency with the PPS and conformity to the Growth Plan, as submitted by the City. The matter subject of determination in the appeals is whether the tall building, mixed-use proposal, objectively assessed regarding its quantitative and qualitative impacts, is appropriate for the Subject Lands in the context of King Street East as identified as a “special street” and within the Old Town of York, the KPSP and the City’s Downtown.

[21] Although the City has not delineated an MTSA inclusive of the Subject Lands through a municipal comprehensive review, the Tribunal accepts the site comes within the definition of MTSA under the Growth Plan and that it will be within an MTSA once the final relief line plan is confirmed and the details of related MTSA’s are determined by the City.

[22] The Subject Lands are within the KPSP Regeneration Area “A” (King-Parliament), which is targeted for “significant growth”, in a manner that fits harmoniously within the existing and planned context of the KPSP. The KPSP policies prevail over reflective general OP policies in the case of conflict, per the OP implementation policies, and the same can be presumed about the primacy of KPUDG in face of reflective OP urban design guidelines. The City-wide TBDG apply to the proposal.

[23] The Downtown Secondary Plan is not applicable to the within appeals for its Policy 1.9 states that it does not apply to applications which were deemed complete prior to the Plan's provincial approval on June 5, 2019.

[24] OPA 352 and its implementing By-laws Nos. 1106-2016 and 1107-2016, which incorporate tall building setbacks as recommended in the Downtown TOcore Report and as were adopted by Council for the area bounded by Bathurst Street, Lake Ontario, the Don River and Rosedale valley, are under appeal and therefore not in force. If some regard is to be had to OPA 352 and its implementing by-laws while under appeal, the Tribunal accepts the opinion of Mr. Smith that the criteria for a reduced separation distance between the proposed building and the neighbouring tall mid-rise TCH building to the east are satisfactorily met in the context. Policy B(ii) of OPA 352 seeks to ensure a high quality public realm while considering the development potential of other sites within a block, adequate access to sunlight on surrounding streets and public and private open spaces, adequate natural light and a reasonable level of privacy for occupants of nearby tall buildings, and adequate pedestrian-level views of the sky between towers as experienced from the street and public and private open spaces.

[25] The City's Growing Up Guidelines remain in draft, as Council directed administration to continue to consult with design and development communities and to report back on those results before finalization. The draft Guidelines call for 25% larger units in large residential developments, with 10% three-bedroom units, 15% two-bedroom units and location of larger units on lower floors. Regardless of applicability, the proposal provides 30.7% of its units as two and three-bedroom units, with only one planned three bedroom unit but 19 two bedroom units that have demisable walls making them available for conversion to three bedroom units upon request. Given these Guidelines are not finalized, the call for larger units on lower floors will not be applied. The parties acknowledged that this particular issue is out for further consultation.

[26] The St. Lawrence Heritage Conservation District ("SLHCD") plan was endorsed by Council in 2015 but is currently under appeal. Given the lack of its final approval, the

City's removal of heritage issues from this proceeding and that the proposal exceeds the 5 m step-back recommended for towers within the SLHCD, it is not in issue. The proposal is located within the King-St. James sub-area of the SLHCD but its site does not host a contributing property to the SLHCD or a listed property on the City's heritage registry.

[27] The Tribunal does not accept speculation regarding the potential redevelopment of the SAS site directly west of the Subject Lands as a valid consideration in the appeals in the context of draft Growing Up Guidelines and a lack of any evidence suggesting redevelopment plans by the owner. SAS attended the hearing as a participant and was represented by counsel. It did not suggest any potential redevelopment plans or object to the proposal. SAS indicated only that it was satisfied that its concerns regarding MECP regulation of noise and air emissions were fully addressed through agreement and the proposed draft order.

[28] The City asserted a tall mid-rise building of up to 14 storeys would be appropriate for the Subject Lands. It did not however provide a detailed base case for such a development to demonstrate its relative impacts on neighbouring properties and King Street East.

[29] The City also asserted the risk of bad precedent in the Old Town of York if the proposal was allowed. There was no evidence provided by the parties however to demonstrate the potential for that negative precedent being brought to life through availability of similar sites that are bounded by other non-heritage buildings of significant height, which are vacant or hosting surface parking and or non-heritage buildings and available for such development.

[30] The draft consent order, entered as Exhibit 25, addresses issues removed from the Procedural Order Issues List for this hearing on consent, including those pertaining to s. 37 *Planning Act* community benefits, functional servicing and storm water management, and the environmental compatibility concerns of SAS.

OFFICIAL PLAN AND KPSP

[31] The proposal is within the Downtown and a Regeneration Area identified by the OP, both of which contemplate intensification in proximity to transit upon satisfactory assessment of a proposal's compatibility with neighbouring property and open space uses and the general surrounding context. New housing is encouraged in the Downtown to support Downtown workers and their families and to reduce the need of commuting. The OP also directs assessment of intensification proposals through applicable secondary plans.

[32] The KPSP of 1996, which was formally reviewed by the City in 2002, does not prescribe a limit on density. Its area and the Old Town of York area in particular have seen significant intensification in the past 15 years, with a move to tall mid-rise and tall buildings along the south side of Adelaide Street East, both sides of King Street East, the north side of Front Street East and along side streets within the Old Town of York's ten blocks. Many of these developments have been approved by the City. Despite the extensive intensification and development in the area and the continuing concerns of the City for this area as raised during the hearing, the City has not revisited the KPSP, the KPUDG or the ASI of the Old Town of York including its portion of King Street East to provide more policy and guideline direction for intensification and redevelopment in the area.

[33] The Old Town of York is in Regeneration Area "A" (Jarvis-Parliament) of the KPSP as depicted on its Map 15-1. KPSP Policy 15.8.1 targets this area for "significant growth". KPSP Policy 15.2.2 adds to this direction by identifying the King-Parliament area at large as one "targeted for growth of commercial, institutional, industrial, light industrial, entertainment, recreational, residential and live/work activities, all of which are mutually compatible and complement the existing built form character and scale of the area." The Old Town of York and the KPSP area at large are anticipated to host diverse uses and intensification, which necessarily include diverse street presences and building designs and heights.

[34] KPSP Policy 15.2.5 states: “The creation of a good quality working and living environment in King-Parliament will be encouraged.” Policy 15.2.6 continues: “King-Parliament’s physical character, including the structure of its public streets and open spaces, will be retained and where possible, enhanced.” There is no evidence of the proposal resulting in a negative impact on King Street East’s working and living environment or of it negatively impacting the undeniably diverse physical character of King Street East and its adjacent properties, the surrounding area, or of any open spaces, public or private. The site is occupied by a non-descript three storey commercial building and surface parking lot. It is surrounded by new development, which is common along King Street East within the Old Town of York, along with interspersed stand-alone and other heritage buildings that have been incorporated into new developments. The Subject Lands have no such resources to protect and the proposal has no negative effect on neighbouring heritage resources.

[35] KPSP Policy 15.2.8 reinforces the finding of the diverse character of its Regeneration Area “A”:

The King-Parliament area has a diverse physical character. As such: a) the portion of King-Parliament west of Power Street will be viewed as a Regeneration Area for a wide variety of land uses including commercial, retail, entertainment, compatible industrial development, live/work and residential land uses within both existing and new buildings.

[36] Regarding King Street East itself, KPSP Policy 15.3.1.2 states: “The unique physical characteristics of the ‘Special Streets’ in King-Parliament is recognized as shown on Map 15-1 including: ... c) King Street East which connects King-Parliament to the downtown.” Policy 15.3.1.3 continues: “The quality, role and character of these ‘Special Streets’ will be maintained and enhanced.” It is noted that the KPSP does not speak to sky view as an attribute of King Street East to protect. The most that can be discerned from Policy 15.3.1.2 and 15.3.1.3 and Map 15-1 is the diversity of characteristics of King Street East and its adjacent properties and its role as a connection through the KPSP area to the referenced downtown.

[37] Policy 15.3.1.4 then prescribes: “New development will implement urban design

policies adopted by Council to protect the Areas of Special Identity, namely The Old Town of York and Corktown as shown on Map 15-3 of this Plan.” For the Old Town of York ASI, Map 15-3 only depicts property edges, which are met by the proposal, and then terminal view points and mid-block connections, none of which are impacted by the proposal.

[38] The applicable KPUDG are equally brief and vague in nature to the policies of the KPSP, ASI and special streets therein. The KPUDG state the following regarding the Old Town of York: “presently, the area lacks a separate or distinguishing built form character, and as such, it is important that design guidelines are adhered to as shown on Map B.” Map B shows the same building edges as the KPSP Map 15-3. The only KPUDG statements regarding development within its area are as follows:

New development will respect the historical and urban design significance of the area. New buildings will reinforce the scale and continuity of street wall enclosure along the street. ... King Street East is the major east-west pedestrian street through the King-Parliament area and is part of both the Old Town of York and Corktown Areas of Special identity as shown on Map A.

[39] KPSP Policy 15.3.2 however is more specific regarding development considerations:

In order to ensure the maintenance and enhancement of public spaces that are attractive, pleasant, comfortable and inviting: a) new buildings will locate along front property lines in such a way that they define and form edges along streets, parks, public squares and mid-block pedestrian routes; c) the lower levels of new buildings associated with the pedestrian realm will be sited and organized to enhance the public natures of streets, open spaces and pedestrian routes; d) new buildings for any use will be sited and massed to provide adequate light, view and privacy for neighbouring properties; e) new buildings will achieve a compatible relationship with their built form context through consideration of such matters as building height, massing, scale, setbacks, step backs, roof line and profile and architectural character and expression; f) buildings adjacent to streets, parks or open spaces will be massed to provide appropriate proportional relationships and will be designed to minimize the wind and shadowing impacts on the street, parks or open spaces.

These policy considerations, which are addressed below, reflect the general urban design and tall building policies of the OP and the TBDG, which seek to ensure compatibility of new mixed use development with its surrounding context without

prescribing hard limits on density and height.

[40] KPSP Policy 15.5.3 continues:

to assist implementation of the policies of s. 2, 3 and 4 of this Secondary Plan: b) the removal of existing surface parking will be encouraged, with priority given to the removal of surface parking around heritage buildings in Areas of Special Identity. Parking for redevelopment is to be below grade where possible.

The proposal will remove surface parking within the Old Town of York ASI and replace it with underground parking for the residents of the development.

[41] These policies are reflective of the SLHCD plan under appeal which speaks to compatible infill in the “missing teeth” within the Old Town of York. The Subject Lands are a gap in the teeth of King Street East, currently occupied by surface parking and a small commercial building, which are open to consideration of compatible infill per the KPSP and reflective OP policies, and the KPUDG and TBDG.

[42] Finally, KPSP Policy 15.8.2 states: “Council regards the introduction of new residential uses, including live/work units, as complementary to King-Parliament’s roles as a business area, providing an incentive for the retention of existing buildings, especially those of architectural or heritage merit.” The proposal reflects this policy as providing new residential uses without negative impact on heritage properties or proposed district characteristics.

TALL BUILDING DESIGN GUIDELINES

[43] It is necessary then to turn to the TBDG to inform the compatibility assessment of the proposal with its surrounding context. Like the KPUDG, they call for a development to fit within its existing and planned context, to maintain adequate access to sunlight and sky view from the street and public realm and to maintain adequate light, view and privacy for nearby residents. They recommend a separation distance of 25 m between tall buildings and that base buildings or podiums relate directly to the existing or planned street wall context. They specifically call to align street walls where consistent, without

definition of the assessment area, and to place towers back from the public realm to reduce visual and physical impacts of towers, leaving the base to define the street. New tall buildings are recommended to have step backs of at least 3 m from the base building or podium. They then suggest that sites that cannot provide setbacks and step backs as mentioned in guideline 3.2.2 may not be appropriate for tall buildings.

[44] The KPUDG and TBDG guidelines are the primary basis of the City's position that the Subject Lands are not an appropriate tall building site, due to their inability to provide greater front and side yard set backs and tower step backs, to provide for greater sky view from King Street East, and to provide greater privacy for SAS tenants and greater views, sunlight and privacy for TCH residential units facing west.

[45] No claims were made by the City that the Subject Lands could support a POPs, mid-block connection or other public space in the context of the site and proposal or that of the City's suggested 14-storey building development in place of the within proposal.

[46] The proposal locates its base building facing King Street East as directed, with visible entrances, ground floor amenities and street level animation. It removes surface parking and reduces curb cuts, screens services and provides ramps to underground parking and garbage storage inside the building. Its tower step back complies with the ZB and the recommended step back of the SLHCD.

[47] The distance to the eastern side lot line in this case is 5.5 m, which would allow for a total of 11 m between the proposed tall building and the tall mid-rise TCH, as indicated by the ZB for such a combination on the same site, if the TCH building also had a 5.5 m side yard setback. The TCH building however is only 5.0 m from its western side lot line, so the proposed separation distance between the buildings on different sites is 10.5 m. The TBDG recommendation of a 25 m separation distance does not apply for the buildings are not both tall buildings. Further, the TBDG are not applied strictly by the City, which routinely mitigates separation distances in appropriate contexts, including in the case of the development of 254-266 King Street East, 25 Ontario Street, the Globe and Mail Centre and the MOZO project, established under the

KPSP and KPUDG.

[48] A more nuanced review of the evidence pertaining to the separation distance and related concerns of the City as presented and argued at the hearing is therefore required to determine the appeals.

HEIGHT - STREETWALL

[49] The KPSP does not specify a limit for base building or street wall height. It and the relevant built form OP policies speak only to a harmonious fit within the existing and planned context, directing that proposals integrate with adjacent buildings. The KPUDG and the TBDG similarly recommend the continuity of street wall heights in the immediate area and along the street.

[50] The City prefers three to four storeys of height for the street wall or podium portion of the proposed development per the existing ZB limit and the TBDG recommendation of 80% of the adjacent right of way in absence of any continuity of street wall heights along the street and within the surrounding context.

[51] The City asserts a lack of continuity of street wall height along King Street East within the Old Town of York which should then limit the street wall height to about four storeys or 16 m, per the TBDG calculation. The Appellant and Mr. Smith however submit a consistent street wall height exists along King Street East within the Old Town of York that is between four and eight storeys in height, with a consistent higher height in the east end of the area and in the immediate context of the Subject Lands. Accordingly, they submit that the TBDG calculation in relation to the right of way does not apply and that surrounding context is to be the sole consideration.

[52] The Tribunal accepts the opinion evidence of Mr. Smith that there is a consistent range of street wall height through the eastern portion of the Old Town of York, of four to eight storeys and that the height of street walls in the immediate context between Sherbourne and Berkeley Streets is at the higher end, especially on the north side of

King Street East. The SAS eight office storey building street wall comes in at a height of 29 m, the King East Centre across from SAS has a six office storey street wall of 26.6 m height, and the Globe and Mail Centre has a six office storey, 26 m street wall. The TCH to the east of the Subject Lands has a five-storey, 16 m street wall. Moving further away, 260 King Street East has a five office storey, 19.55 m street wall, 230 King St. East or King's Court has two and ten-storey street walls, MOZO has a seven-storey and 25.5-27 m street wall, and the East Loft Condos at 275 King Street East has a six-seven storey street wall of 25.5 m in height.

[53] The proposed street wall or podium height is harmonious within the surrounding context in the Old Town of York and along King Street East, which has seen similar development with the approval of the City, especially between Sherbourne and Berkeley Streets and before the Old Town of York transitions to Cork Town, a separate ASI with its own urban design guidelines.

HEIGHT - TOWER

[54] The proposed street wall set back is 0.9 m from the front lot line and 3.2 m from the curb while the tower set back from the front lot line is 6.77 m with a step back of approximately 5.87 m at the top of the proposed eight-storey street wall. Balconies would protrude into that step back, but that protrusion is permitted under the ZB without impacting the step back calculation and its compliance. The ZB only requires a three m step back from the podium or street wall as is also recommended by the TBDG. As noted above, the SLHCD recommends a minimum 5 m step back to the tower from its base, which is also met.

[55] The proposed tower rests upon a floorplate of 491 sq m due to the limited area of the Subject Lands and is well under the maximum floorplate of 750 sq m recommended by the TBDG. Mr. Boyko agreed in cross-examination that a reduced floorplate is an appropriate response to the smaller area of the site and the need to retain sky view that is admittedly already constrained by SAS, and the planned 25 Ontario Street and 254-266 King Street East tall building developments.

[56] Further, the model of the immediate Old Town of York ASI area, entered as Exhibit 5, clearly shows the height of the proposed tower is not out of keeping with those in the immediate context along King Street East, or within the Old Town of York to the north, west and south.

[57] The City's desire for less height and lower and greater step backs are therefore not of independent tall building policy or guideline concern but relate largely to more particular matters of adequate sky view for users of the public realm and of light, view and privacy for neighbouring tenants and residents.

SKY VIEW

[58] While the City strongly asserted the importance of maintaining a wide, deep valley of sky view from King Street East throughout the ten blocks of the Old Town of York, there are no KPSP or other policies or KPUDG or other guidelines in this regard. The governing policies simply refer to adequate sky view from the street and open spaces.

[59] Notably, the City and or the Tribunal has approved other impingements to the desired deep valley in the past decade as the Old Town of York has undergone redevelopment and infill development on underutilized lots pursuant to the existing PPS, Growth Plan, OP and KPSP policies and the KPUDG and TBDG, without any amendment to its applicable policies and guidelines.

[60] Exhibit 5 does demonstrate that the combination of the planned 25 Ontario Street development and the proposal would impinge sky view when looking from the west or the east, but there is no evidence of a precedent taking hold or that pedestrians at street level would be negatively impacted in their experience along King Street East, which is generally limited to the first few storeys. There is also no evidence of any nearby public or open spaces being impacted where the expectation may be greater than that of pedestrians along the street.

[61] Further, the City provided no evidence that its hypothetical 14-storey tall mid-rise building would provide a better sky view for pedestrians along King Street East or users of any nearby open spaces in the context of surrounding existing and proposed developments.

LIGHT, VIEW, PRIVACY

[62] The proposal calls for only a 0 to 0.3 m setback from the SAS building to the west. SAS however hosts an office building with a blank wall facing the proposed residential building for its first nine floors, where units are largely oriented north-south. The City's SAS impact concerns are therefore regarding the residents of the proposed ninth to eleven floors and the users of the adjacent SAS meeting rooms and outdoor terrace.

[63] The City suggested that parties hosted on the SAS terrace could lead to folks reaching across to units in the proposed building or vice versa. The Tribunal takes notice that the raucous office parties alluded to are no longer the norm, that no evidence was presented of activities at or concerns of SAS, and that limited windows and no balconies of the proposed building will face the SAS building. Further, the occupants of the proposed residential units would be fully aware of the SAS presence upon purchase. Finally, Mr. Smith provided a variety of examples of similar permitted circumstances throughout the Downtown, as found in Exhibit 9.

[64] TCH did not attend hearing. A letter from TCH was produced at the hearing but no direct evidence was called in that regard, which could be tested by cross-examination. Accordingly, the letter was given little weight relative to the detailed evidence of shadow and view studies and demonstrated policy, guideline and area context.

[65] The TCH building is 12 storeys along Adelaide Street East and 14 storeys from Adelaide Street East to King Street East, where it runs north-south through the block, with windows facing east and west. All parties agree the TCH building is a tall mid-rise

building which when approved by the City was contemplated to have a tall mid-rise neighbour on the Subject Lands in the future with an approximate 11.0 m separation distance between the buildings, in line with the ZB separation distance requirement for buildings on the same site. The City supported this concept throughout the hearing as acceptable intensification, providing adequate sky view and light, view and privacy for TCH residents. It argued, without providing a detailed base case, that such a proposal would result in significantly less impacts on the TCH neighbours.

[66] Although it was raised that the TCH residents on floors 12 through 14 of its north-south arm can now see over the SAS building to the west whereas the proposed building will block that sky view, there is no OP or KPSP policy or KPUDG or TBDG protecting sky view from residences. Further, the sky view of residents of the north-south arm is already significantly impacted by planned development to the northwest, the SAS building, and development to the southwest.

[67] Privacy in relation to direct views would be no more impacted by the proposed building than a 14-storey tall mid-rise building in its place. The Tribunal accepts the evidence of Mr. Smith that the assertions of intrusive overlook from higher proposed building units to those on the top floors of the TCH building are unjustified. For invasive overlook to occur, proposal residents would have to look directly down from pressing against their windows to activity just inside the windows of a lower TCH unit. This scenario is unlikely and not representative of how people utilize residential units.

[68] Regarding sunlight, the requisite shadow studies were entered as Exhibit 7. The City raised concerns regarding the addition of shadows on the lower north-south arm units of the TCH building for up to three hours in June. Upon a close examination of the shadow studies, which were not disputed as accurate, these impacts are found to be minor and often subsumed in or a minor addition to existing impacts from SAS and the planned developments at 25 Ontario Street and 254-266 King Street East. Mr. Rees also acknowledged under cross-examination that the impacts of concern are akin to those already posed by the planned 254-266 King Street East towers and by SAS and

that equinoxes are more typical of sunlight policy and guideline consideration, which are not impacted in this case. There was no evidence presented of any additional impact on the available sunlight for the street and nearby open spaces.

SIDEWALK

[69] Mr. Rees spoke to the City's desire for a 6 m set back for the proposed street wall, per the TBDG. The TBDG however note that such deep set backs are not always possible or favoured, when alignment with neighbouring setbacks is generally sought. The proposed set back from the curb will allow for street trees and bicycle parking required by Appendix F to Exhibit 2, the draft Conditions of Site Plan Approval, as are referenced in the draft consent order. It allows for seamless entrance to the retail and or commercial services on the first two floors of the proposed building and would be aligned with the TCH and heritage building set backs to the east and that of SAS to the west. While more front public space is perhaps desirable, there were no demonstrated policy requirements or negative impacts arising from the more common place and proposed alignment.

FAMILY UNITS

[70] The City's goal of larger units on lower floors of tall buildings in the Downtown is based upon the draft Growing Up Guidelines, which are subject to further stakeholder input and have yet to be finalized. Notably, the proposal allocates larger units or convertible units which seem to meet the breakdown for same posed by the draft Guidelines. While Mr. Rees remained concerned regarding what he felt was the need for larger units on the lower floors, near the outdoor amenity space, his evidence relied upon the draft Guidelines alone and did not incorporate evidence of a demand for such units or a demonstrable community benefit.

[71] The assertion of Mr. Rees that the "complete communities" and "full range of housing" policies of the Growth Plan and OP are violated by the lack of provision of larger units on the lower floors is without merit as they do not prescribe same and the

City is considering its options for implementation of those broad governing policies in the context of tall buildings throughout the Downtown.

OUTDOOR AMENITY SPACE

[72] Finally, the draft Growing Up Guidelines recommend 4.0 sq m of combined indoor and outdoor residential amenity space per unit when only 2.05 sq m of indoor and a total combined amenity space of 3.19 sq m per unit is proposed. Neither the KPSP nor its underlying policies and guidelines speak to the matter. Zoning By-law No. 569-2013, which does not apply to the Subject Lands, additionally requires at least 40 sq m of outdoor amenity space directly accessible from inside of the building.

[73] The proposal calls for 249 sq m of outdoor amenity space accessible from the second floor. The proposal therefore meets all the City's desired criteria for amenity space with exception of per unit outdoor amenity space. In this regard, the Tribunal accepts the undisputed evidence of Mr. Smith that such limited outdoor amenity space is not uncommon in the City's Downtown and routinely approved of by the City at first instance.

CONCLUSION

[74] Flexibility in policy and guideline application is a necessity in the City's Downtown. With no OP or KPSP policies militating against the proposal, its assessment is a matter of balancing its impacts in view of applicable guidelines with the clear policies and guidelines addressing intensification relating to MTSAs and as found within the KPSP and KPUDG for its Old Town of York ASI. The impacts evidenced by the analysis of the proposal in the hearing are reasonable in this context. The City's desires for a lower street wall, lower tower height and greater tower step back to protect sky view and the light, view and privacy of neighbours are largely subjective in nature and not well-supported by existing and applicable policies or guidelines or the evidence presented, especially in view of its stated acceptance of a 14-storey mixed use development in place of the proposal.

[75] Other tall buildings along King Street East within the Old Town of York are set back further and, in many cases, have a greater step back than that proposed for they incorporate heritage buildings at grade which front the street. There is no evidence however of the proposed set back and step back violating applicable policy or inflicting undue impacts on pedestrians, users of open spaces or neighbours for purposes of applicable guidelines. There is also no evidence of the proposal becoming a pattern along the acknowledged diverse King Street East within the acknowledged diverse ASI of the Old Town of York.

[76] This site does not host any heritage resources and the proposal does not impact any nearby heritage resources. It is also not identified under the KPSP or the Old Town of York ASI for a POPs, mid-block connection or protection of a view termini.

[77] Until the City adopts further policies for the KPSP and the Old Town of York ASI and King Street East therein and adopts further guidelines for tall building development within this area, there is no demonstrable impact basis upon which to deny the proposal which is supported by PPS, Growth Plan, OP and KPSP policy as well as the KPUDG and TBDG in the surrounding context of existing and planned transit and development.

[78] The Tribunal prefers the evidence of Mr. Smith on this basis and finds that the proposal is consistent with the PPS, conforms to the Growth Plan, OP and KPSP, and otherwise represents good planning in the context of the Subject Lands, their surrounding context and the applicable policy and guideline framework.

ORDER

[79] The appeals are allowed in part and the proposal is approved in principle per the terms of the draft consent order entered as Exhibit 25, substantially in the form of the draft Zoning By-law No. 438-86 and No. 569-2013 amendments found at Appendices G and H to Exhibit 2, and substantially in the form of the site plan entered as Exhibit 10 and subject of the site plan conditions found in Appendix F to Exhibit 2.

[80] If these Zoning By-law amendments and site plan conditions are not met to the satisfaction of the City within one year of this Decision and Order, the parties are directed to arrange a telephone conference call for a status update through the case coordinator.

[81] This Member may be spoken to and remains seized regarding difficulties arising in meeting the conditions of final approval and any need to reconvene the hearing of the proceeding on this basis.

“C.J. Bryson”

C.J. BRYSON
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 Tribunals Ontario – Environment and Land Division
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