

PL160081

ARGUMENT OF THE GARMENT DISTRICT NEIGHBOURHOOD ASSOCIATION

***1. THE ASSOCIATION'S APPROACH**

The Board heard that the Garment District Neighbourhood Association's catchment area runs from Spadina Avenue west to Bathurst Street, and from Queen Street south to King Street. The 452 Richmond Street West proposal is within this area.

The Board heard about the Association's history of involvement with neighbourhood developments. Ms. Eggertson gave four examples of development support: The Waterworks project on Richmond; Eva's Phoenix, a social service residential facility for young people now open on Richmond; the Dermot Sweeny condominium proposal at 502 Adelaide at Portland; and the Ace Hotel project underway at Brant and Camden.

The Board also heard about the Association's cooperation with other adjacent residents and business groups, including The Wellington Place Neighbourhood Association, the Draper Street Residents' Association, the Grange Community Association, the Toronto Entertainment District Business Improvement Association, and TEDRA, the Toronto Entertainment District Residents Association.

The revised issues of the Garment District Neighbourhood Association for this hearing consist of:

Vehicles and Traffic

1. Does the proposal represent good and appropriate urban design, having regard to:
 - (a) the impact of courier delivery and passenger pic-up/drop-off on the adjacent roadway and bicycle lane.
2. In the Board's opinion, is the situation which is described as acceptable and appropriate in the 11 May 2016 LEA Transportation Impact Study in the public interest?
 - (a) Will the proposed development support a functional and safe pedestrian environment?
 - (b) Does the proposed development locate and organize vehicle access and movement to minimize their impact on surrounding properties and the public domain?

Site Capacity

3. Can the site accommodate the proposed number of residents with regard to community services and facilities within walking distance?

At the outset of the hearing, the Association told the Board that we did not intend to concentrate on issues of height, density and built form. To present professional opinion witnesses on these matters was beyond our financial resources, but more importantly we felt that the issues of height, density and built form were already well covered as primary matters of dispute between the other Parties.

And indeed, the Appellant's team talked only about the perfection of the project, while the City's team talked mostly about its fatal deficits. Neither suggested how a building similar to the one proposed on this constrained site could, or should, be improved. What we concentrated on was how any site development, physically, could appropriately contribute to its neighbourhood context through its design at grade, and also how in this case a voluntary monetary contribution might be used to fill the gaps in the available community services and facilities that were detailed by Ms. Strapp.

The Association is concerned about how the proposal externalizes the costs of the building, especially in terms of vehicular access. The Board heard some ideas from Ms. Eggertson about a ground floor reconfiguration that would simplify the delivery of food and other packages as well as services, make moving in and out more convenient, and result in more easily accessible space for bikes, all to the benefit of future residents of the building.

We told the Board that we would offer relevant information from those who live near the Richmond Street site and know the neighbourhood first-hand. These matters would focus on (1) the context-at-grade, especially pedestrian, cycle and vehicular movements, and (2) nearby community facilities and services that contribute to neighbourhood livability. To that end, we prepared our own Issues List, Document Book, and Visual Evidence, and have also referred to the Joint Document Book and other documents and evidence of the City and the Appellant.

***2. LOCAL KNOWLEDGE**

The Association's intention has been to present local knowledge through community witnesses, thus adding to the information and the opinions of the other Parties, in a way that would be useful to the Board.

***3. STATIC AND DYNAMIC CONSIDERATIONS**

Given our overall approach, we emphasized the dynamic nature of the area, concentrating on moving vehicles, bikes and pedestrians, and contrasting our visual evidence to that presented by the Appellant. Both the Association's photographs [**Exhibit 9 and Exhibit 26**] and the Appellant's photographs [**Exhibit 5, the Bousfields Photo Book**] show pedestrians. The 37 photographs in the Appellant's Photo Book [**Exhibit 5**] show only one bike. Twenty-six of the Appellant's 37 photos show nothing moving at all.

The Board heard from Ms. Eggertson that photographs do not give a fair representation of the living neighbourhood, and her videos (**Exhibit 31**) and her visual evidence [**Exhibit 9**] and visual evidence addendum [**Exhibit 26**] demonstrated for the Board the dynamic character of the area.

***4. GROUND ZERO**

The Board heard and saw evidence about the part of Richmond Street between the parking entrance on the west face of the Morgan building (which none of the other Parties mentioned), across the front of the parking lot between the Morgan and the proposed site, and the proposed site itself, an area that altogether might be called movement Ground Zero.

This is an area that experiences blinding sun glare at predictable times of the year and the day, significantly in the evening rush hours. The Board heard how this glare impacts both vehicle drivers and cyclists.

The Board was shown that there are three existing curb cuts along Ground Zero: one fronts the Morgan parking entrance/exit [**Exhibit 5, page 7, photograph 7**], one fronts the parking lot [**Exhibit 9, photograph 10**], and a third fronts the proposal site [**Exhibit 9, photograph 12**]. Neither we nor the other Parties presented evidence that those existing curb cuts *per se* and the vehicular traffic over them have caused bicycle or pedestrian accidents – perhaps because drivers using them check oncoming bicycles by looking east, away from the sun not into it.

What does cause trouble at Ground Zero is vehicular stopping, standing and parking where it is illegal to do so. Ms. Eggertson showed the Board many examples of this [**Exhibit 9, photographs 4-7**] and suggested that this situation would be exacerbated if the Appellant’s proposal did not offer a convenient way for vehicles to come into the building rather than stopping, standing or parking in front of it, thus interfering with other vehicles or bikes.

Ms. Eggertson noted that, based on what she has observed and photographed [**video Exhibits 1 and 2; Exhibit 9, photographs 4-7**] traffic enforcement has been ineffective, and that a design solution rather than an enforcement approach was called for.

***5. WHAT THE BIKE LANE MEANS**

The Parties presented no evidence that a situation where cars crossed sidewalks and bike lanes to enter buildings from the street was actually dangerous, only the observation that it might be, and that it is undesirable in policy terms. The Association understands, but argues that such crossing is not undesirable *at this specific site in practical terms*. And even the policy directions, we argue, are suggestive but not mandatory, an issue we explored with Mr. Hatcher.

Parking and standing in and adjacent to bike lanes, on the other hand, is demonstrably hazardous for both bikes and cars, as our videos [**Exhibit 9, videos 1 and 2**] show, and we included a text and video report about “dooring” hazards from the *Toronto Star* as **Tab 5** of our Document Book.

The Richmond Street bike lane – at the point of the S-jog which the Association pointed out to the Board in the Appellant’s **Exhibit 4, page 2** – is the busiest in the City, according to the latest information from the City’s Open Data Team included in the Association’s **Exhibit 35**.

In 2016 the Richmond Street bike lane served an average summer weekday population of 3,474 cyclists, an increase of 90 % over 2015. The historical curve of increasing bike lane usage from its inception suggests that the 2017 and 2018 numbers will be even higher.

***6. FUNCTION FOLLOWS FORM (SIC)**

The City and the Appellant argue their positions from the size and shape of the building – in context. We argue from its function – in context.

The Board heard Ms. Eggertson say:

“I have been trained to observe and analyze business processes involved in the flow of goods, people and data. The principles apply to traffic. ... To arrive at an “internalized” solution to the (safety) problem (presented by the proposal) I see no other alternative than a drive-through as we’ve proposed. This has little to do with how the building looks, but how it functions in its context. In my opinion, some adjustment has to be made to the ground floor facade to allow vehicles to flow through the building rather than stop in front of it.”

***7. SAFETY AND GOOD PLANNING**

The Association argues that the building as originally proposed represents a predictable menace to safe pedestrian, vehicular and cycling movement, contrary to the legislated provincial and municipal policies of the *Growth Plan for the Greater Golden Horseshoe* and Toronto’s *Official Plan*.

- ***Growth Plan for the Greater Golden Horseshoe Policy 2.2.3.7(d) [support of walking and cycling for everyday activities];***
- ***Official Plan 2.2.1 Policy 11 [encouragement of safety to walk and cycle in the Downtown];***
- ***Official Plan 3.1.1 Policy 5(a)(i) [safe and efficient movement of pedestrians of all ages and abilities, cyclists, transit vehicles and users, goods and services vehicles, emergency vehicles, and motorists]***

A proposal like the one before the Board that does not sustain public safety cannot be said to represent good planning.

***8. BACK TO THE DRAWNG BOARD.**

The Association prepared preliminary floor-by-floor drawings for a redesigned building. We did not present these preliminary drawings because there might be other places to put the drive-thru or other alternatives altogether, so we presented at-grade schematic block diagrams instead, using the envelope of the existing building as a starting point.

We did not think it was appropriate, or our place via expert opinion evidence, to tell the Appellant how exactly to design his project, although the Board itself has done just that in **PL 140705** issued February 6,

2017, in a Decision by Mr. Chee-Hing about 170 Spadina Avenue; and **PL160264** issued April 5, 2017, in a decision by Mr. Jones about 203 College Street. The appellant's redesign of 203 College Street has been accepted by the City and is headed back to the Board for ratification; the redesign of 170 Spadina is expected to be acceptable among the Parties at a meeting tomorrow morning. We offered printed copies of these recent decision to the Board, and we invite the Board to consider them in dealing with the loading and servicing of 452 Richmond.

So, what to do with the building as proposed? To accommodate vehicles of all kinds at 452 Richmond Street, a tall, unobstructed, one-way south-to-north driveway through the west edge of the building could be inserted with minimal readjustment to the structure (by using a transfer beam, as suggested to Mr. Clewes, near the northwest corner of the building and somewhat reducing the size of the ground floor restaurant). This one-way driveway as presented by Ms. Eggertson [**Exhibit 9. Illustration 14**] would bulge at its midpoint adjacent to the residential lobby to form a lay-by. Throughout its length, it would require a mandated 3.5m minimum width [**City of Toronto city-wide Zoning By-Law 560-2013 Chapter 220.5.20.1 (1)(A)(i) – wording unchanged from the equivalent section in Zoning By-Law 438-86**] which is approximately 20% of the width of the building's facade at grade (about the width of one of the five proposed vertical bays). Substantial short and longer term loading and servicing space would thus be made easily accessible.

Speaking for the Appellant, Mr. Clewes said that – although he did not approve of the Association's solution – it *was* feasible.

***9 THE PRINCIPLE OF DOUBLE EFFECT**

The Principle of Double Effect is a philosophical concept having to do with weighing unintended consequences and/or evaluating the lesser of two evils. It evaluates the permissibility of acting when one's otherwise legitimate act may also cause an effect one would normally be obliged to avoid.

In cross-examination Mr. Hatcher was shown the elevation along the north side of Richmond Street in the City's **Exhibit 12 at page 16** and the Appellant's **Exhibit 5 at page 22** that demonstrated the Appellant's proposed route taken by servicing, loading and delivery vehicles or passenger pick-up and delivery services (Uber and taxicabs) after arriving at 452 Richmond. These vehicles would move west along Richmond Street, north up Augusta Street – nobody including Mr. Wallace, the Appellant's transportation witness, suggested that narrow McDougall Lane is an appropriate shortcut – then back east along Graffiti Alley to the rear of the proposed building.

Both the direct route into the building via a driveway and the circuitous route require crossing the bike lane (the Association's version crosses in front of the building, and the Appellant's version crosses at the non-signalized intersection of Richmond and Augusta). Mr. Hatcher, as a matter of planning policy, prefers the latter even though the applicable *Official Plan* policy does not *forbid* front-of-building entry from a major street but only discourages it. The Association prefers the former, and section 12 in this Argument gives a City-approved example.

Mr. Hatcher graciously acknowledged that a community consultation process in conjunction with staff efforts *always* results in a better building (if one is built), although in this case the City and the Association have different views about the desirability of the drive-through.

***10. POLLYANNA VS THE GRINCH**

The Appellant's optimistic witnesses say an unqualified yes to the proposal as it stands. The City's pessimistic witnesses say an unqualified no to the proposal as it stands. One might say that the Appellant feels the development glass is full, while the City feels the development glass is empty.

The Association reads the City's Urban Development Guidelines as a whole to mean that a joint responsibility falls on both the City and the Appellant for good planning. It's up to city staff to attend to appropriate in-force policies, and it's up to the developer to do the detailed work – which is why (even at the municipal level) policies and guidelines are not excessively prescriptive.

Fine-grained local knowledge – which neither the pessimistic City nor the optimistic Appellant claim to have – ought to be a critical part of a mix that results in good planning. Having heard all the evidence, we hope the Board will recognize that the Association's knowledge and analysis usefully supplements that of the Pollyanna-like position of the Appellant and the Grinch-like position of the City. (We note that in Dr. Seuss's story *The Grinch Who Stole Christmas*, the Grinch ends up a good guy.)

***11. COMMUNITY SERVICES AND FACILITIES**

The commentary sidebar on page 5-2 of Chapter 5 of the *Official Plan* is reproduced in the Association's Document Book [Exhibit 3, Tab 14 at page 151] and is also enlarged for emphasis as page 16 of our Visual Evidence [Exhibit 9]. The sidebar recognizes the importance of two matters (emphasis added below) of particular concern to the Association:

This Official Plan recognizes that planning issues related to a proposed development go beyond consideration of matters necessary to support that particular development. They include consideration of appropriate amenities and services in the local community within which the development is to be located. In other words, the planning issues may go beyond appropriate built form, use compatibility, direct impact, site planning, adequate servicing and the proper functioning of the development to include the adequacy of, for example, the green space system, community services and facilities, the bikeway network, arts and cultural facilities, the public transit system and other aspects of the public realm. These amenities and services are important in maintaining the quality of life in the City while accommodating intensification and thus may have a reasonable planning relationship to the new development.

As the Board heard, Ann Marie Strapp, the Association's witness on community services and facilities, served for 26 years with the government of Ontario in strategic planning, policy development and project management. Ms. Strapp lives at 477 Richmond Street – diagonally across the street from the

proposed site – in the Starwood Building, the size and shape of which was frequently referred to in evidence by the other Parties.

Ms. Strapp undertook an exhaustive analysis of Chapter 5.7 (“Community Services and Facilities”) and its Appendix A in the Bousfields 2015 *Planning and Urban Design Rationale* as described and supported in his evidence by Mr. Smith; the *Rationale* was required by the City as part of the Appellant’s “complete submission” package for re-zoning. The Rationale can be found here:

<http://app.toronto.ca/DevelopmentApplications/associatedApplicationsList.do?action=init&folderRsn=3826049&isCofASearch=false&isTlabSearch=false>)

Ms. Strapp showed (1) that the Appellant’s definition of “local area” was elastic, (2) that the inventory of community services and facilities was outdated, (3) that the population demand will have significantly increased by the time 452 Richmond is occupied, and (4) that competition for available services has, in many cases, already outrun the supply. In her oral testimony, based on her revised updated charts filed as **Exhibit 33**, she highlighted four areas of concern (daycare, schools, medical services, and parkland) and concluded, “The underestimate by Bousfields of concurrent development means their conclusion about the adequacy of services and facilities in the neighbourhood and immediate vicinity is questionable.”

Ms. Strapp’s evidence was uncontested.

***12 263 ADELAIDE**

At 2:40pm on Friday , June 2, 2017, during final cross examination just at the end of the present hearing, the Association was forwarded details about a city-approved settlement, previously confidential, that had been entered into regarding a rezoning application for 273 Adelaide Street West in the King-Spadina West Precinct.

This city-approved settlement includes a one-way 3.5m vehicular parking and servicing entry over the city’s second-busiest bike lane at the front of the proposed building (through a Heritage podium, no less!). The 263 Adelaide building also has access at the rear to the equivalent of a “laneway” – actually Pearl Street, a secondary street which at 4m wide is similar to Graffiti Alley – which is used for vehicle *exits* from the proposed building.

At Tab 8 of the Association’s document book in evidence as **Exhibit 3**, we offer the Board’s decision PL151191 accepting another rezoning that also requires vehicular passage over the Adelaide bike lane.

We now offer two new exhibits yet to be numbered. First is the email string detailing the Association’s late receipt of the city-approved settlement. Second is the previously confidential settlement itself. We ask the Board to give this new material whatever weight the Board decides is appropriate.

***13. SITE PLAN MATTERS**

The Association thanks the Board for listening attentively to local rezoning concerns.

The exclusion of neighbours from the site plan process has been highlighted in this hearing. The Board heard from Mr. Hatcher that it is the practice of the City and Appellants to negotiate site plan approval without outside input, even from other Parties. Ms. Kovar, Ms. Braun and Mr. Suriano all agreed that the preparation of the Site Plan conditions and associated bylaw amendments **[Exhibits 20, 21 and 22]** were none of the Association's business and were matters only between the City and the Appellant. The Association put to the Board that this is a matter of practice and not policy, either municipal or provincial, and no policy basis was cited by the other Parties. The Board in its decision might wish to comment on this situation, as well as including comments about improving the process in future as *The Board* evolves into *The Tribunal*.

In the meantime, the Association asks that the Appellant's voluntarily offered \$300,000 *be required* as part of the Board's decision.

***14. THE BOARD'S DECISION**

If the Board concludes that the Appellant's evidence in favour of the proposal is generally stronger than the City's evidence against it, and the Board is inclined to approve some version of the proposal, we ask that the Board, acting in the public interest, require the building at grade to be functionally improved generally along the lines that the Association's witness Ms. Eggertson has described **["Plan C" in Exhibit 9 at page 14]**.