

ISSUE DATE:

**Sept. 14, 2009**



PL080492

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

Top of the Tree Developments Inc. has appealed to the Ontario Municipal Board under subsection 22(7) of the *Planning Act*, R.S.O. 1990, c. P. 13, as amended, from Council's refusal or neglect to enact a proposed amendment to the Official Plan for the City of Toronto to redesignate lands at the westerly portions of the two blocks east of Duplex Avenue between Roselawn Avenue and Helendale Avenue, City of Toronto from Neighbourhoods to Apartment Neighbourhoods to permit a 25-storey residential apartment

Approval Authority File No. 07 249746 NNY 16 OZ

O.M.B. File No. PL080492

Top of the Tree Developments Inc. has appealed to the Ontario Municipal Board under subsection 34(11) of the *Planning Act*, R.S.O. 1990, c. P. 13, as amended, from Council's refusal or neglect to enact a proposed amendment to former City of Toronto Zoning By-law 438-86, as amended, to rezone lands municipally known as 34 to 70 Montgomery Avenue to permit a 25-storey residential apartment building containing 328 units at a density of 8.96 times the area of the lands

Approval Authority File No. 07 286783 NNY 16 OZ

O.M.B. File No. PL080493

**APPEARANCES:**

**Parties**

**Counsel**

Top of the Tree Developments Inc.

M. Flowers and  
N. Malaviya

City of Toronto

G. Whicher

**DECISION DELIVERED BY SUSAN de AVELLAR SCHILLER AND ORDER OF THE BOARD**

Top of the Tree Developments Inc. [Top of the Tree] wishes to develop lands in the northwest quadrant of the area centred on the intersection of Yonge Street and Eglinton Avenue in the City of Toronto. Top of the Tree applied to the City for both a site specific Official Plan amendment and a site specific Zoning By-law amendment, both of which were refused by the City of Toronto. Top of the Tree has appealed the matters to this Board.

The proposed Official Plan amendment would redesignate the lands from Neighbourhood to Apartment Neighbourhood. The Apartment Neighbourhood designation contemplates a much greater intensity of development than the Neighbourhood designation. The proposed Zoning By-law amendment would permit a 9 storey base building with a tower rising to 25 storeys on lands now occupied by six 2 storey semi-detached dwellings and one detached dwelling. The area subject to the proposed Official Plan amendment is about 4.5 times the size of the much smaller area that is the subject of the proposed Zoning By-law amendment.

## **Preliminary Matters**

### **Withdrawal of a Party:**

The Zucker Group [Zucker] owns two 3 storey apartments to the north of the site subject to the proposed Zoning By-law amendment but within the area subject to the proposed Official Plan amendment. Prior to the start of the hearing, The Zucker Group withdrew as a Party and took no further active part in these proceedings.

### **Participants Who Addressed the Board:**

Several individuals attended an initial pre-hearing conference and were added as Participants in these proceedings. In the end, the Board heard from only four Participants: Gleneden Property Service Corporation, Lytton Park Residents Organization Inc., Eglinton Park Residents Association; and Aaron Graben.

No Participant Statements were filed by, and the Board did not hear from, the following: Lampeter Investments Limited, Avenue Road Eglinton Community Association, Svetislav Danilovic, Irwin Sniedzins, C. Chou, Laura Common, David Barkham, Edith Wallace, Rinat Samuel, Tamara Minix, and David Swyers.

Ms Anita Hunter filed a letter which the Board accepted as her Participant Statement but she did not appear during the time set aside to hear from Participants.

Mr. Aaron Graben, also a named Participant, did file a Participant Statement and did address the Board. Mr. Graben is also a member of the Eglinton Park Residents Association and co-ordinated his presentation with the Association to avoid duplication.

**Withdrawal of Issues:**

The Procedural Order identified 23 separate issues, with a number of sub-issues, resulting in a total of 39 items put before the Board to answer.

With the withdrawal of Zucker, issues 14 through 23, representing 13 items, were withdrawn from the Issue List.

Issue 13, dealing with section 37 benefits, was deferred by agreement between the Parties until the Board's decision on the proposed Official Plan amendment and Zoning By-law amendment is made.

Issue 12.7 dealing with the design and operation of internal ramps and driveways has been deferred by agreement between the Parties for consideration at the site plan stage if the Board approves the proposed Official Plan amendment and Zoning By-law amendment.

The question of wind impacts, set out with a number of other matters in issue 12.2, was withdrawn by the City and referred to further wind analyses in the event the Board approves the proposed Official Plan amendment and Zoning By-law amendment. The rest of issue 12.2 remained on the Issue List.

The City withdrew issues 10 and 11 dealing with possible Holding provisions in the proposed Official Plan amendment and Zoning By-law amendment.

Issues 9.1, dealing with traffic, and 9.2, dealing with water, have both been withdrawn as a result of the meetings of the respective experts.

The City withdrew issue 7 dealing with the replacement of rental housing.

## **The Merits**

The central question in these proceedings is whether the lands subject to the proposed Official Plan amendment are suitable for residential intensification and, if so, whether the proposed redesignation to Apartment Neighbourhood is the appropriate vehicle to do so.

The Board heard from 11 expert witnesses:

- Peter Smith, Harold Madi, Mark Sterling, Robert Martindale, Neil Cresswell and Michael Wright, all of whom are full members of the Canadian Institute of Planners and Registered Professional Planners in Ontario. Mr. Madi is also a member of the Royal Architectural Institute of Canada, Mr. Sterling is also a registered architect, Mr. Martindale has a specialty in heritage planning, and Mr. Wright has a specialty in demographic analysis and projections.
- Sal Vitiello, a registered architect;
- Randy Grimes, a real estate economist with a specialty in demographic analysis and projections;
- Terry Wallace, a transportation planner and transportation engineer;
- Leo DeSorcy, an urban designer who authored the City of Toronto Tall Building Guidelines and the principal author of the City of Toronto Urban Design Guidelines;
- Dan DiBartolo, a heritage planner with the City of Toronto; and
- Christian Ventresca, a planner with the City of Toronto.

The Board also heard from several area residents:

- Gleneden Property Service Corporation is a named Participant, headquartered in downtown Toronto. Appearing on behalf of the Corporation was Arthur McIlwain, a resident of the area near the subject lands. Included in Mr. McIlwain's presentation were his personal perspectives as a resident intimately familiar with the area.

- Chris Murray, for the Lytton Park Residents Organization Inc.;
- Aaron Graben, a member of the Eglinton Park Residents Association who held individual Participant status but co-ordinated his presentation with the Association; and
- The following residents who appeared in a co-ordinated presentation on behalf of the Eglinton Park Residents Association:
  - Jordan Applebaum;
  - Christine Langlois;
  - Robert Warren;
  - Jacqueline Hennessy;
  - Jean-Pierre Boutros; and
  - Helen Oakes.

**Site Description Official Plan Amendment area:**

The Official Plan amendment area covers 1.39 hectares. Its boundaries are Helendale Avenue on the south, Roselawn Avenue on the north, Duplex Avenue on the west, and the rear lot line of properties that front Yonge Street on the east. Helendale Avenue is the second block north of Eglinton Avenue; Duplex Avenue is the first block west of Yonge Street.

The lands within the Official Plan amendment area are now designated Neighbourhood in the City of Toronto Official Plan and represent a relatively small part of the Yonge Eglinton Secondary Plan Area. The proposed amendment would redesignate the subject lands to Apartment Neighbourhood. While the Neighbourhood designation would permit some intensification, its form would tend to be low rise and the amount of intensification would be considerably less than contemplated by an Apartment Neighbourhood designation.

The properties to the east that front on Yonge Street are generally low rise in form. The City of Toronto Official Plan identifies this stretch of Yonge Street as an Avenue and designates it Mixed Use. As such, it is an area where the City expects and encourages intensification. Further to the east, between Yonge Street and Mount Pleasant Road and north of Eglinton Avenue to Erskine Avenue, is an area designated Apartment Neighbourhood. This area is already densely developed and continues to have additional applications to intensify various sites even further.

Lands to the south of the proposed Official Plan amendment area, between Helendale Avenue and Orchardview Boulevard, are already designated Apartment Neighbourhood. Lands between Orchardview Boulevard and Eglinton Avenue are designated Mixed Use.

Lands on the west side of Duplex Avenue, between Roselawn Avenue and Montgomery Avenue, are designated Apartment Neighbourhood. This designation includes the 34 storey building known as 500 Duplex. This Apartment Neighbourhood also includes a small 3 storey apartment building adjacent to and west of 500 Duplex. This building has a driveway entrance at 118 Montgomery Avenue but sits at the interior of the middle of the block between Roselawn Avenue and Montgomery Avenue. The Neighbourhood designation north of Roselawn Avenue generally goes west then south and back to Duplex Avenue to wrap around this anomalous island of Apartment Neighbourhood designation for 500 Duplex and 118 Montgomery. The resulting effect of including the 3 storey apartment building at 118 Montgomery in an Apartment Neighbourhood designation with 500 Duplex is that of a fat finger of Apartment Neighbourhood designation sticking out west into the interior of the surrounding Neighbourhood designation.

The area in and near the proposed Official Plan amendment exhibits little consistency in the way existing apartment buildings are currently designated in the City's Official Plan. While the 3 storey apartment at 118 Montgomery Avenue is designated Apartment Neighbourhood, two 3 storey apartment buildings to the north of Montgomery Avenue within the subject lands are designated Neighbourhood. Edith Drive is one block west of Duplex. Just west of Edith Drive is Eglinton Park. On Edith Drive, within the Neighbourhood designation that wraps around 500 Duplex and 118 Montgomery, is a 10 storey apartment building. No planner testifying in this matter,

including any City witness, could provide any clear planning rationale for the City's designation of the 3 storey apartment at 118 Montgomery Avenue as Apartment Neighbourhood while the two 3 storey apartment buildings on the subject lands and the 10 storey apartment on nearby Edith Drive carry the Neighbourhood designation.

**Site Description Zoning By-law Amendment area:**

The Official Plan amendment area is larger than the area covered by the Zoning By-law amendment, which is 0.31 hectares in size. The proposed Zoning By-law amendment only covers the properties on the north side of Montgomery Avenue, which is one block north of Helendale Avenue. The area subject to the Zoning By-law amendment is bracketed to the north and south by lands subject to the Official Plan amendment.

The western boundary of the Zoning By-law amendment area is Duplex Avenue and the eastern boundary is the rear lot line of properties fronting on Yonge Street to the east and now designated Mixed Use. The northern boundary is the rear lot line of the six 2 storey semi-detached dwellings and one detached dwelling that are on the north side of Montgomery Avenue and that form the area of the proposed Zoning By-law amendment. The proposed development only covers the area of the proposed Zoning By-law amendment. The Board has before it no proposal for any other development or Zoning By-law amendment within the proposed Official Plan amendment area.

Across from the subject site, the south side of Montgomery Avenue is generally made up of semi-detached and detached dwellings. Adjacent to the subject site on the east side is a fire hall in a building that has been listed, but not designated, as a heritage property. North of the development site is a six-plex and the two existing 3 storey apartment buildings. Across Duplex Avenue to the west is the 500 Duplex apartment property.

The proposed development is for a 9 storey slab base building that stretches east-west along Montgomery Avenue. A tower rises to 25 storeys on the eastern portion of the 9 storey base building. There is some proposed design treatment to emphasize the first three storeys along Duplex Avenue and along the north side of the base building, and some limited articulation that steps the base building back as it rises. The greatest articulation that steps the 9 storey base building back from the street occurs on

the west side that faces Duplex Avenue and the existing Apartment Neighbourhood of 500 Duplex. By contrast, there is very little in the way of articulation that steps the 9 storey base building back from Montgomery Avenue and the houses on the south side of that street. The site is fairly small, with its largest dimension being the east-west line along Montgomery Avenue. It is also very shallow, since the north-south dimension is simply the boundary of the lots for the existing houses. As a result, there is limited flexibility to enhance setbacks or substantially increase articulation from Montgomery Avenue while accommodating the proposed 300 plus units.

### **Consultation and the Planning Process:**

The refusal report, prepared by staff and ultimately adopted by Council, contains the following entry under the heading Community Consultation:

A formal community consultation meeting has not been held. However, the Ward Councillor hosted a meeting with a number of owners in the lands subject to the Official Plan Amendment application and City Planning staff attended this meeting.

Anyone reading this entry would reasonably infer that only one informal community consultation occurred and that it was hosted by the Ward Councillor. A further reasonable inference is that the proponent did not hold any community consultation sessions and did not reach out to the community for input. In fact, several residents expressed precisely this understanding and were sharply critical of the proponent for not reaching out and consulting with the community.

The evidence before the Board, acknowledged by the City's planning witnesses and known by them at the time of writing this report, is that the proponent made repeated efforts to reach out to the community and hosted three separate consultations. Invitations were sent to the City's Chief Planner to have one or more members of the planning staff attend. Invitations were also sent to the Ward Councillor to attend or be represented, along with a request for the Councillor to assist in identifying neighbourhood representatives who should receive specific invitations. The stated intention by the proponent was to work with the community to prepare urban design guidelines for an Apartment Neighbourhood designation that would, in turn, inform specific development applications within the proposed Official Plan amendment area.

This was a clear and deliberate attempt by Top of the Tree to engage the community in pre-application consultation with a view to determining if consensus was possible.

City planners were directed not to attend these sessions because a formal application had not yet been filed at the time of the initial invitation. Similarly, the Ward Councillor wrote an open letter to area residents encouraging them not to be involved in this process until a formal application is made to the City. In both of these cases, the Chief Planner for the City and the Ward Councillor were effectively saying that pre-application consultation was not acceptable.

Ironically, about a year after the proponent's unsuccessful attempts to convene an effective community consultation program, and a few months after the refusal report, the City adopted Official Plan Amendment No. 21 dealing with the planning process. That amendment states:

...Applicants are encouraged, but not required, to consult with the Ward Councillor, City staff and local community **prior to formal submission of a planning application**...[emphasis added by the Board]...

...A fair, open and accessible public process for amending, implementing and reviewing this Plan will be achieved by:

...(c) providing adequate and various opportunities for those affected by planning decisions to be informed and contribute to planning processes, including:

i) **encouraging pre-application community consultation**... [emphasis added by the Board]...

Shortly after the proponent was advised that no co-operation would be forthcoming to mount a community consultation process because a formal application had not been received by the City, the proponent filed a formal application for an Official Plan amendment. Even after the proponent submitted its application, the City either through the Ward Councillor or through the planning staff, took no steps to hold a formal community consultation itself or co-operate with the proponent to mount one. The Ward Councillor's informal meeting did not include any representatives of the proponent since the proponent was neither informed of nor invited to this meeting.

The residents' criticism of the proponent for failing to consult the community is both ill-informed, in light of the three sessions the proponent in fact held, and

misdirected in light of the actions of the Ward Councillor and Chief Planner. Engaging in a “fair, open and accessible public process” that includes community consultation should not be confused with an ultimate decision – by the community, by the planning staff or by the Council – to support or oppose any given application. The spirit of a “fair, open and accessible public process” that includes pre-application consultation was not met by the City in this case.

A second aspect of the planning process that came to the fore is the question of the appropriateness of a private application for an Official Plan amendment versus a City initiated amendment, and the appropriateness of a private application for an Official Plan amendment that is larger than the private application for a Zoning By-law amendment versus a City initiated amendment that is larger than a Zoning By-law amendment area.

In the course of the hearing, counsel for the City made clear that the City was not challenging the right of a private proponent to bring a private Official Plan amendment, whether larger than a proposed private Zoning By-law amendment area or not. In fact, as acknowledged by counsel for the City, the *Planning Act* specifically recognizes and contemplates the circumstance where a proponent will bring an application for an Official Plan amendment, and the *Planning Act* sets out certain matters that flow from such a private application. There is no requirement in the *Planning Act* that the boundaries of the proposed private Official Plan amendment be coincident with the boundaries of the proposed private Zoning By-law amendment.

Several residents were critical of the private Official Plan amendment, and the fact that this amendment covered an area larger than the proposed Zoning By-law amendment area. But area residents are not professional planners and the Board does not expect them to be well-informed regarding the purpose and content of the *Planning Act*. Professional planners, especially those tendered by a Party to give this Board expert opinion evidence on land use planning matters, are expected to be so informed.

Mr. Christian Ventresca was called by the City to provide expert opinion evidence on land use planning matters. In his written witness statement filed in these proceedings, Mr. Ventresca made repeated statements that suggest to this Board that he lacks an understanding of the *Planning Act*. Under the heading “An Undermining of

Municipal Planning Function”, Mr. Ventresca repeatedly criticizes the proposed Official Plan amendment because it is a private amendment rather than a City initiated amendment.

...[T]his private application is **dictating** the terms of municipal planning to the City via the **invention** of a high density neighbourhood...

...[T]his private application for Official Plan Amendment has taken an approach which **undermines** the municipal planning function. Without the full power of a City-lead [sic] planning process, it is my view that there is no way of insuring [sic] that orderly development proceeds...

...The municipal planning function is the **only** way that City-building objectives of the Official Plan can be identified and implemented...

...[H]aving a private appellant **dictate** the terms to which a large area of the City is planned is inappropriate...

And then in a section headed “Summary and Conclusions” Mr. Ventresca states:

...The appellant has effectively **hijacked** the process to rewrite the land use rules...

In making its application and bringing forward its proposed Official Plan amendment, Top of the Tree has exercised a statutory right set out in the *Planning Act*. No process has been hijacked. No terms are being dictated. The designation of Apartment Neighbourhood is not invented; it is a recognized and applied designation within the City of Toronto Official Plan. The 1.39 hectares of the proposed Official Plan amendment is not a large area of the City nor is it “...equivalent to a Secondary Plan Area...” as suggested by Mr. Ventresca in his witness statement. In fact, it is a small part of the Yonge Eglinton Secondary Plan Area.

What concerns the Board here is not whether Mr. Ventresca concludes that the private Official Plan amendment should be supported or opposed. What concerns the Board is that Mr. Ventresca’s language and assertions display a lack of understanding of the *Planning Act*, seek to misdirect the Board through a mischaracterization of the matters now before the Board in these proceedings, and lead the Board to conclude that there is a reasonable apprehension of bias displayed by Mr. Ventresca against an Official Plan amendment that originates as a private application rather than one that originates as a municipal amendment. As such, the Board finds that Mr. Ventresca’s

analysis has been tainted. The Board attaches little weight to Mr. Ventresca's evidence and opinion.

**Precedent:**

The City's position is that the redesignation of this Official Plan amendment area from Neighbourhood to Apartment Neighbourhood would be precedent setting and place at risk for redesignation several other neighbourhoods. Top of the Tree was able to identify one case where the City replaced Neighbourhood with Apartment Neighbourhood and was also able to identify other places where the City added exceptions to the Neighbourhood designation or redesignated a Neighbourhood to Mixed Use.

The *Planning Act* contemplates amendments to Official Plans. By their very nature, Official Plan amendments affect the designation of land in some way, including the possible redesignation from one category of use to another. Any application for redesignation must be considered in the specific context of the area for which it is proposed. For the reasons set out below in the section headed Integrating Land Use and Transportation, the Board is not persuaded that the particular context of these lands is easily duplicated elsewhere in the City.

**Need:**

The City placed on the Issue List the question of whether this proposed Official Plan amendment is required in order to achieve the goals of the Provincial *Growth Plan for the Greater Golden Horseshoe* or the City's Official Plan as they relate to population targets for the City to 2031. The issue arises in part from the City Official Plan itself, which contemplated most intensification to come from Mixed Use areas identified as Avenues, rather than from redesignation and redevelopment of Neighbourhood areas. The issue is also grounded in the City's assertion that it is on target for the provision of residential units to accommodate the population targets. Top of the Tree takes the position that the redevelopment of the Avenues has not achieved the expected yield of residential units.

The Board heard a great deal of evidence from Messrs Grimes, for Top of the Tree, and Wright, for the City, regarding population projections and net residential unit

yield from redevelopment of Mixed Use areas that have been identified for intensification as Avenues in the City of Toronto Official Plan. Both men brought high levels of expertise to these proceedings. While they differed on degrees of underreported population, the basis for extrapolation or forecasting population in the near term, and the amount and pace of net residential unit yield from the Avenue areas, the Board concludes the following from their evidence:

1. Toronto's population has continued to grow;
2. the demographic characteristics of that population suggest that a range of housing types will be needed;
3. Toronto possesses a range of housing types;
4. there has been some residential unit yield from the Avenues, which may or may not be as much as was forecast;
5. additional residential units have been created in other areas;
6. some residential units have been demolished in the course of creating new ones;
7. the proposed redevelopment, like any redevelopment that results in the net addition of residential units, would contribute to the City's efforts to meet its long term population and housing targets;
8. no single development, including this proposal, will determine whether the City meets its population and housing targets or not;
9. the critical time horizon is the 2031 date in the *Growth Plan for the Greater Golden Horseshoe*;
10. the City has more than two decades in which to review its performance on net unit yield and meet its population and housing targets.

Having regard to the foregoing, the Board finds that the question of need for the proposed development in the context of whether the City will meet its long term targets for population and housing is irrelevant to the planning considerations of whether the

proposed development is reasonable, appropriate and desirable. While it cannot be said that the City “needs” this single development to meet its targets, the Board finds that any net addition of residential units contributes to the City’s ability to meet those same targets.

**Heritage:**

There are three properties east of the proposed development that both Parties agree have heritage aspects. Diagonal to the proposed development, at the southwest corner of Montgomery Avenue and Yonge Street, is Postal Station K. Immediately adjacent to the proposed development is the fire hall that is Fire Station #28. Both of these properties are listed but not designated. East of the Fire Station is the old Town Hall/Police Station #12, which is a designated heritage property.

The urban design guidelines proposed by Top of the Tree include reference to a heritage precinct that is framed by these three properties. Top of the Tree suggests distinctive paving and possible street closings to use the area for various community events would assist in defining this suggested heritage precinct. While distinctive street paving, and other streetscape treatments, are desirable, they are beyond the limits of the subject site where development is proposed. Additionally, the Board has nothing before it to suggest that fire officials would agree to close the street in front of the Fire Station for community events.

While the proponent’s full ambition for the design of a heritage precinct might not be realized, the design of the proposed development has made specific provision to accommodate its place adjacent to the Fire Station.

Within the proposed development, adjacent to the Fire Station, is a covered vehicular entrance. The proposed development establishes a setback of the vehicular entrance cover from Montgomery Avenue adjacent to the Fire Station that aligns with the front of the Fire Station. The height of the covered entrance aligns with the height of the peak of the Fire Station. In addition, the proposed development includes terracing and building articulation that steps back from the east side of the development to emphasize and set off the Fire Station.

Mr. Dan DiBartolo was tendered by the City as its heritage expert. Prior to joining the City, Mr. DiBartolo had served as a planner with the City of San Francisco. In his capacity in San Francisco Mr. DiBartolo was not a member of the American Planning Association or of the American Institute of Certified Planners. Since moving to his position with the City of Toronto, Mr. DiBartolo testified that he has not sought membership in the Canadian Institute of Planners and has no intention of so doing. In addition, he has not sought membership in any professional heritage association.

Mr. DiBartolo expressed the view that the Provincial Policy Statement was not properly applied to protect the Fire Station. This view, expressed in his witness statement, was grounded in the understanding that listed and designated properties would receive the same consideration. Early in his evidence in chief, Mr. DiBartolo acknowledged that this was an incorrect reading of the Provincial Policy Statement and also acknowledged that the Fire Station is listed but not designated.

Mr. DiBartolo testified that he had reviewed the City's "Design Criteria for Review of Tall Building Proposals" but then acknowledged that he was unaware that this document included a section that specifically deals with the relationship of base buildings to lower scale heritage buildings.

The proposed Official Plan amendment and Zoning By-law amendment were circulated to Heritage Preservation Services, where Mr. DiBartolo is now assigned. Heritage Preservation Services recommended approval of the applications, subject to certain archaeological assessments. No mention was made of the Fire Station and no issue was raised regarding the relationship between the Fire Station and the proposed development. The staff refusal report of a month later made no mention of any heritage issues or concern for the relationship between the proposed development and the Fire Station. Mr. DiBartolo testified that he was unaware of the Heritage Preservation Services report on the proposed development.

The Board finds that the foundation for Mr. DiBartolo's opinion was incomplete and, in some cases, simply wrong. When a witness is tendered by a Party as being an expert in a field, the Board expects that, at a minimum, that witness will have both a proper and thorough understanding of base documents. In this case, the Provincial Policy Statement, the City's guidelines regarding tall buildings adjacent to lower scale

heritage buildings, and the report issued by Heritage Preservation Services are among the base documents for a witness called as a heritage expert assessing this development proposal. Given the lack of foundation and preparation, the Board attaches no weight to the evidence of Mr. DiBartolo.

**Parks:**

The northwest quadrant of Yonge and Eglinton, in which the subject lands sit, is considered to be well served in terms of parks. However, this conclusion is based on an analysis that includes the very large Eglinton Park within the calculation. As noted earlier, Eglinton Park is the western boundary of this community, located just west of Edith Drive. There is no dispute that the park is large, or that it includes excellent facilities. But Eglinton Park is not a neighbourhood park. The classification of this community as being park rich arises from the simple calculation of park acreage within a certain area without an analysis of park usage. The evidence before the Board is that the park is extensively programmed for organized activities on a regional or district basis. Residents testified that, while they enjoyed the nearness of the open space of the park, the extensive programming meant that the park was not often used for individual family purposes. One resident testified, for example, that the extensive and mature private landscaping around the high rise building at 500 Duplex, originally designed in the “tower in the park” style, often provided a more suitable place for a family with small children or seniors to relax.

The City’s position is that additional park space should be provided either on the site of the proposed development or should be identified within the proposed Official Plan amendment area. The City’s position is disingenuous.

Based on the calculations for the amount of park space to be provided by the proposed development if it were to be provided on site, the Board is satisfied that the relatively small size of the subject site would result in park space that would be too small and ill positioned to work effectively as a local park.

A possible site for a local park within the Official Plan amendment area might have been identified as part of the urban design consultations that informed the proposed Official Plan amendment. But the City refused to participate in any of these sessions so there was no one from the City in attendance to raise the issue. Since the

issue was not canvassed with other property owners in the Official Plan amendment area, and since the City has no suggestion for the location of a local park within the Official Plan amendment area, the Board has no basis on which to modify the proposed Official Plan amendment to include a local park site.

Top of the Tree suggests that public open space instead be either purchased from cash contributions made in lieu of parks or designed as courtyard spaces when other sites in the proposed Official Plan amendment area develop. The Board finds both suggestions wanting.

No witness was able to identify a location which might be purchased to create a local park in this already built community. As for courtyard spaces, this suggestion assumes that future development proposals in the proposed Official Plan amendment area will be of a size and configuration sufficient to accommodate a design with a courtyard accessible by the public. The Board has no reasonable basis on which to conclude that such would be the case. The stand alone proposal now before the Board, for example, is on a site that is too small and ill configured to accommodate a publicly accessible courtyard that would serve as a local park.

**Traffic:**

The traffic experts for both Parties agree that there are no traffic issues and that the existing road capacity is sufficient for the intended development on Montgomery Avenue. The residents dispute this conclusion, pointing to the fact that Montgomery Avenue is already an important connector with a signalized intersection at Yonge Street and that Duplex Avenue is a significant north-south alternative to Yonge Street. The Board had no expert evidence before it to challenge the conclusion that sufficient capacity exists on these streets.

**Urban Design and Transition:**

The work undertaken by Mr. Madi produced an extensive set of proposed urban design guidelines intended to inform development within the area of the proposed Official Plan amendment. The proposed urban design guidelines call for a height regime that steps down from Eglinton Avenue to Roselawn Avenue. Within this descending slope, the building heights would step up from both the east and the west to place the

greatest height at any given point in a swath that runs north-south roughly in the middle of the proposed Official Plan amendment area.

If one assumes that the entire Official Plan area is built out in accordance with these guidelines, the proposed massing and transition to adjacent areas is reasonable and appropriate. To the south of the proposed Official Plan amendment is another Apartment Neighbourhood, south of Helendale Avenue. To the east is the Mixed Use designation for properties that front on Yonge Street and identified as being in an Avenue and therefore suitable for intensification and redevelopment. For part of the west, the proposed Official Plan amendment area is across the street from the Apartment Neighbourhood designation for 500 Duplex. Transitions between Apartment Neighbourhoods or between an Apartment Neighbourhood and a Mixed Use designation present no difficulties.

The proposed guidelines also deal with the transition between the proposed Official Plan amendment area and the Neighbourhood designation to the west and to the north. To the west, across Duplex Avenue, the houses in the Neighbourhood designation are oriented north-south. The combination of proposed setbacks from Duplex Avenue, loading height toward a centre corridor of the Official Plan area, the width of Duplex Avenue, and the fact that the houses present a side yard toward Duplex Avenue, all soften and mitigate the impact of development in this proposed Apartment Neighbourhood to the existing Neighbourhood to the west. Similarly to the north, the houses would be separated from development within the proposed Official Plan amendment area with a transition that includes the width of Roselawn Avenue, the stepping down in heights as possible future buildings approach Roselawn, and appropriate setbacks from the south side of Roselawn Avenue by any development along Roselawn Avenue within the proposed Official Plan amendment area.

At first blush, then, the transition between development in the proposed Official Plan amendment area and adjacent areas appears appropriate. But these proposed guidelines have not been accepted by the City and, in any event, would merely be guidelines. At present, they are only suggested guidelines. Most telling, however, is that the Board does not have before it a comprehensive development proposal to fine tune actual impacts and ensure appropriate transition actually occurs.

Several other elements in the proposed guidelines are similarly more hopeful than real and none are on the proponent's small site: a heritage square at Montgomery Avenue and Yonge Street, a mid-block north-south connection between Yonge Street and Duplex Avenue, and a possible parkette or other additional public open space within the proposed Official Plan amendment area. All of these elements, including the height regime and possible massing, demonstrate both thoughtful and creative thinking about future possibilities. Future possibilities are not necessarily future probabilities, and do not equal specific, detailed development proposals.

There is no requirement in the *Planning Act* that the proponent bring forward a comprehensive development proposal coincident with the boundaries of the proposed Official Plan amendment area. In this case, the proponent has elected not to bring forward a proposal coincident with the boundaries of the proposed Official Plan amendment area. In the absence of such a comprehensive development proposal the Board is left with little short of speculation about the impact of a possible massing of buildings on land in disparate ownership, whose owners are not involved in these proceedings and who have not brought forward any development proposals of their own to be considered in tandem with the Top of the Tree development proposal for the proposed Zoning By-law amendment area, which is less than ¼ of the proposed Official Plan amendment area.

While the question of urban design opportunities and transition impacts remain uncertain for the proposed Official Plan amendment area as whole, there is no uncertainty about the transition impacts of the proposed development on existing adjacent residential structures to the north and south.

In both the north and south transition, the proposed development has been designed as if the transition is to an Apartment Neighbourhood and not to a Neighbourhood. This is reinforced by the candid characterization of these areas as remnants by the proponent's own witnesses, who were also reluctant in their support of the proposed development if the Board did not approve the redesignation of the full area as Apartment Neighbourhood.

With redesignation that is accompanied by a comprehensive development proposal, those coming into the area would be coming in with the understanding that the

area is designated Apartment Neighbourhood, not Neighbourhood, and would be coming in with knowledge of the additional proposed development. That is not the case here. No interest, either tenant or owner, came forward from the residential properties to the north of the proposed development or to the south to advise the Board of their support for the proposal and their satisfaction with the proposed transition in the event that the existing low rise residential units are not redeveloped as part of an Apartment Neighbourhood. Without this advice and with no comprehensive development proposal, the Board, in discharging its responsibility in the public interest, must look at the impact and transition between the proposed development and the existing development that is on the ground.

The south side of Montgomery Avenue is made up predominantly of 2 storey houses. The proposed development has a minimum setback to a 9 storey base building with a tower rising from it to 25 storeys. For approximately the eastern half of the 9 storey base building, the design pulls the building visually back toward Montgomery Avenue in an effort to establish a strong definition at the street and highlight the entrance to the proposed building. The houses on the south side of Montgomery face north-south. They present the front of the house to Montgomery Avenue, not the side yard condition that is presented to Duplex Avenue by those to the west.

To the north, the proposed development again has a minimum setback, although it is larger than the setback from Montgomery Avenue. However, there is no street separating the proposed development from the 2 storey six-plex and the two 3 storey apartments that are to the north. There is a common parking area for these buildings which does achieve some separation.

The evidence before the Board is that the proposed development site is just too shallow to achieve an appropriate height and setback transition to the north and to the south if those areas remain within the Neighbourhood designation. Even if the Board were to approve the proposed Official Plan amendment, the proposed site specific development on Montgomery Avenue fails to provide an appropriate height and setback transition in relation to the **existing** development to the north and south.

### **Integrating Land Use and Transportation:**

Section 2 of the *Planning Act* sets out areas of Provincial interest to which the Board must have regard when carrying out its responsibilities under the *Act*. Included in this list, at section 2(f), is "...the adequate provision and efficient use of ... transportation ...systems..." Then at section 2(q): "...the promotion of development that is designed to ... support public transit..."

Section 3 of the *Planning Act* requires decisions of this Board to be consistent with the Provincial Policy Statement [PPS]. The PPS emphasizes balanced communities and the efficient use of infrastructure through intensification. At section 1.1.3 the PPS states:

...1.1.3.2 Land use patterns within *settlement areas* shall be based on:

a) densities and a mix of land uses which:

1. efficiently use land and resources;
2. are appropriate for, and efficiently use, the *infrastructure* and *public service facilities* which are planned or available, and avoid the need for their unjustified and/or uneconomical expansion...

1.1.3.3 Planning authorities shall identify and promote opportunities for *intensification* and *redevelopment* where this can be accommodated taking into account existing building stock or areas, including *brownfield sites*, and the availability of suitable existing or planned *infrastructure* and *public service facilities* required to accommodate projected needs...

And then at section 1.6.5.5:

...Transportation and land use considerations shall be integrated at all stages of the planning process. ...

The City's Official Plan places considerable emphasis on the integration of land use and transportation. In section 2.2, the Plan states:

...1. This Plan will create a better urban environment, a competitive local economy and a more socially cohesive city by attracting more people and jobs to targeted growth areas in the City that are supported by good transit services and other infrastructure.

2. Growth will be directed to the *Centres*...[and]... *Avenues* ... in order to:

- (a) use municipal land, infrastructure and services efficiently;

- (b) concentrate jobs and people in areas well served by surface transit and rapid transit stations...

Eglinton Avenue and Yonge Street are two of the Avenues identified in the Plan. The Yonge Eglinton Centre is one of the Centres identified in the Plan. In addition to being an intersection of two major streets, Yonge and Eglinton is also the location of a higher order transit station. Along with the rapid transit subway, Eglinton Station is a hub for several transit bus routes. As part of its emphasis on expanding transit, the City intends to build the Eglinton LRT line that will be a major east-west line across the mid-section of the City. By the time the line reaches Yonge and Eglinton, it will be underground with a planned connection to the existing Eglinton subway station.

In addition to the Yonge Eglinton Centre and the Mixed Use designation that accompanies the identification of Yonge Street and Eglinton Avenue as Avenues, the City has designated several blocks of land in the area as Apartment Neighbourhoods. As described earlier, there are two Apartment Neighbourhoods within the northwest quadrant near the subject lands: one across Duplex Avenue to the west and one between Helendale Avenue and Orchardview Boulevard to the south. The northeast quadrant has a large area designated Apartment Neighbourhood that stretches from Yonge Street to Mount Pleasant Boulevard and north of Eglinton Avenue to Erskine Avenue. Older high rise apartments in the area were built in the “tower in the park” with landscaped open space around the building. The evidence before the Board is that this existing high rise neighbourhood has seen a number of approved applications for intensification and development within the spaces that surround the individual buildings. Public lands have also been intensified and redeveloped within this area.

Section 3 of the *Planning Act* also requires this Board to make its decisions in conformity with the *Growth Plan for the Greater Golden Horseshoe*. This Plan was issued subsequent both to the adoption of the City’s Official Plan and to the issuance of the in force PPS. Although the City’s Official Plan was adopted prior to the issuance of the *Growth Plan*, many of the elements of the Official Plan anticipated planning approaches reflected in the *Growth Plan*. Like the PPS, the *Growth Plan* emphasizes the importance of intensification, the efficient use of infrastructure and balanced communities. The *Growth Plan* calls for intensification in Urban Growth Centres and Intensification Corridors.

The Plan has identified a Yonge Eglinton Urban Growth Centre that includes, but is much larger than, the City's Yonge Eglinton Centre. The Urban Growth Centre boundaries are deliberately a bit soft, directing local municipalities to fine tune the boundaries. In the Yonge Eglinton area, the Urban Growth Centre includes all of the Apartment Neighbourhood to the east of Yonge Street and the Mixed Use areas that constitute the Avenues along parts of Eglinton Avenue and Yonge Street. The boundaries do not include the subject lands.

An earlier draft of the Urban Growth Centre boundaries went considerably farther west of Yonge Street in the northwest quadrant. This draft would have included the subject lands. The final report on Urban Growth Centre boundaries, however, showed a much reduced area that did not pierce the northwest quadrant beyond the Mixed Use designation along Yonge Street. As a result, the lands subject to the proposed Official Plan amendment are not within the Provincial Urban Growth Centre for Yonge and Eglinton.

Intensification Corridors are defined by the *Growth Plan* as:

...*Intensification areas* along major roads, arterials or *higher order transit* corridors that have the potential to provide a focus for higher density mixed-use development consistent with planned transit service levels...

Higher Order Transit is defined as:

...Transit that generally operated in its own dedicated right-of-way, outside of mixed traffic, and therefore can achieve a frequency of service greater than mixed-traffic transit. Higher order transit can include heavy rail (such as subways), light rail (such as streetcars), and buses in dedicated rights-of-way....

In the Yonge and Eglinton area, the City's Official Plan has anticipated the *Growth Plan's* call to identify Intensification Corridors. In the case of the Official Plan, the Intensification Corridors for Yonge Street and Eglinton Avenue are the Mixed Use designations coincident with the identification of *Avenues* that are intended for intensification and redevelopment. The subject lands are not within an Intensification Corridor.

In keeping with its focus on intensification to make efficient and effective use of transit investment and infrastructure, the *Growth Plan* calls for the identification of Major Transit Station Areas and defines them as follows:

...The area including and around any existing or planned *higher order transit* station... Station areas generally are defined as the area within an approximate 500m radius of a transit station, representing about a 10-minute walk...

Adopting a standard approach to measuring the 500m radius, the expert planners agreed that the subject lands are generally within a 500m radius of the higher order transit station represented by the convergence of subway, bus and planned LRT stations at Yonge and Eglinton. Taken independently of any other consideration, the location within the 500m radius would tend to favour the proposed redesignation to Apartment Neighbourhood. But this is not the only consideration. Within that same 500m radius are the Mixed Use designations along Eglinton Avenue and Yonge Street, the Yonge Eglinton Centre, the large northeast quadrant that is designated as Apartment Neighbourhood, and the smaller pockets of Apartment Neighbourhood already designated within the northwest quadrant. All of these designations contemplate intensification and high densities that recognize and support the existing and planned investment in higher order transit infrastructure that is centred on Yonge and Eglinton. In fact, the targets set by the Province for the Yonge and Eglinton Urban Growth Centre have already been met, and the area continues to intensify. The objective intended by the requirement in the *Growth Plan* to identify a Major Transit Station Area has already been met by the existing designations within, and beyond, the 500m radius of Yonge and Eglinton. It is within this very particular context that the City wishes to retain a variety of house forms, particularly in the northwest quadrant, with the current Neighbourhood designation.

Evidence presented by the residents is that this is a mixed, but stable, neighbourhood. Seniors are aging in place, with a number of options for higher density living both in the immediate community and in the broader Yonge Eglinton area. Within the immediate neighbourhood, the form of residential units ranges from singles to semi-detached to six-plexes to long standing apartments. Younger families with children are moving into the neighbourhood and investment is being made in renovation and

upkeep. The Neighbourhood designation in this community is achieving its planned function.

**Balance and Choice:**

Planning is about balance and choice. Based on the foregoing analysis and the particular circumstances of this case, the Board finds that the public interest in providing appropriate opportunities for intensification to support existing and planned transit infrastructure has been met with the existing Mixed Use and Apartment Neighbourhood designations. The Board further finds that the variety of designations that includes the Neighbourhood designation in the northwest quadrant assists in maintaining an appropriate and desirable range of housing and house forms along with a mix of community experiences that go from grade related single family homes to multiple occupancy high rises. Given the considerable extent of existing Apartment Neighbourhood and Mixed Use designations both within and beyond the 500m radius of Yonge and Eglinton that surrounds the subject lands and forms part of the planning context for those lands, the Board finds that maintaining the Neighbourhood designation on the subject lands is consistent with the Provincial Policy Statement, conforms to the *Growth Plan for the Greater Golden Horseshoe*, is reasonable, appropriate, represents the principles of good community planning and is in the public interest.

The appeals by Top of the Tree Developments Inc. are dismissed.

So Orders the Board.

“Susan de Avellar Schiller”

SUSAN de AVELLAR SCHILLER  
MEMBER