

ISSUE DATE:

Nov. 19, 2004

DECISION/ORDER NO:

1808



PL030819

Ontario Municipal Board
Commission des affaires municipales de l'Ontario

The Bank of Nova Scotia and the National Club have appealed to the Ontario Municipal Board under subsection 17(36) of the *Planning Act*, R.S.O. 1990, c. P.13, as amended, from a decision of the City of Toronto to approve Proposed Amendment No. 250 to the Official Plan for the City of Toronto to permit the development of a 68 storey mixed use building by increasing the gross floor area to allow a building consisting of 65,866.2 square metres
OMB File No: O030336

The Bank of Nova Scotia and the National Club have appealed to the Ontario Municipal Board under subsection 34(19) of the *Planning Act*, R.S.O. 1990, c. P.13, as amended, against Zoning By-law 587-2003 of the City of Toronto
OMB File No: R030183

APPEARANCES:

Parties

City of Toronto

ALON International Developments Inc.

The Bank of Nova Scotia

National Club

C.O.R.A.

Participant

J. Sewell

Counsel

R. Balfour

J.A.R. Dawson
M. Zwan (student-at-law)

M. Stewart

J. L. Davies

T. Mills

DECISION DELIVERED BY S.W. LEE AND ORDER OF THE BOARD

This hearing relates to the development proposal at 311 Bay Street in the City of Toronto. Located at the south-east corner of Bay Street and Adelaide Street, the currently vacant site is situated at the heart of the financial district, amidst skyscrapers and towering office complexes. The proposed development, known as Trump International Hotel and Tower, is a 70-storey mixed-use building designed for a complex of upscale hotel suites and residential condominium units. What is required is an amendment to the City's Official Plan and Zoning By-law. The City approved the requisite planning instruments. The Bank of Nova Scotia and the National Club subsequently appealed the City's decision to the Board.

In addition to the appellants, the proponent and the City, Mr. T. Mills and Mr. J. Sewell were granted party and participant status respectively at the prehearing sessions. At the commencement of these proceedings, the counsel for the two appellants advised the Board their clients had reached a settlement with the City and the proponent. They intended to, and in fact, did, withdraw from the proceedings. The only remaining objectors at the hearing are Mr. Mills and Mr. Sewell.

The City and the proponent proffered planning evidence before the Board to support the proposition that such a proposal is in keeping with the effective and applicable policies, and that the design, the mass and height would be responsive to the context of the area and the policy thrusts. Mr. Sewell and Mr. Mills are in disagreement with such a thesis. Mr. Sewell has misgivings about the site-specific density increase. In his view, the increase is far too excessive and incongruous with the past increase. He has concerns, as well, relating to the impacts ensuing from the construction. Mr. Mills focuses his criticism on the alleged lack of amenity at grade. He is also critical of the lack of linkage from the proposed building complex to the underground pathway.

The Board's findings are set out below:

Firstly, the Board finds the site appropriate for a building with such a height and intensity. A 70-storey tower with a total GFA of 70,458 sq. metres will fit in this vicinity. This is the financial centre within the City core. Bay and Adelaide is a strategic location

that should not remain under-utilized. Within the Official Plan context, the area is recognized as the City's office-commercial hub and where the intensively developed complexes are to be located. Map 4 of the City Plan identifies Lower Bay Street, which includes the subject site, as a prominent area and as an area where significant views for the skyline is to be enhanced, preserved and created. If there is an area where skyscrapers with wondrous architecture are to be showcased, this area is pre-eminently suitable. The Board also finds that the existing and approved fabric demonstrates that point tellingly. Within the immediate environ, there is the Scotia Bank Plaza with 68 floors located to the east. On the west side of Bay Street and opposite is the First Canadian Place, a complex with 72 floors. On the north side of Adelaide Street is the proposed Bay-Adelaide tower with an approved height of 272 metres.

Secondly, the Board does recognize the site is small and would have severe constraints. The evidence, however, is that immense design efforts have been invested to enable the project to co-exist in amity with its neighbors. We were told that access to parking facilities will be only from Adelaide Street and all parking and loading will be accommodated within the building. It is not without significance that a truce had been reached between the proponent and the two appellants, one of whom is the owner of National Club, a building of modest mass and height located to the south. The truce was achieved after intense and painstaking negotiations. These negotiations had been informed not only by the input from architects and planners from the proponents, but from the appellants as well. City staff had reported to Council on six separate occasions about this project. The Board would not cavalierly dismiss any concerns raised by City staff. None had been raised at the hearing or in any of the documents filed. Mr. Sewell pointed out that given the site's constraints, the construction difficulties must be immense. His point is quite valid. However, it is not a compelling argument to support the conclusion that the project must be defeated. There are means whereby diversion of traffic and mitigation measures can be made possible. The City and the proponent will have to work at these action plans assiduously. In this regard, all construction projects in the City core have disruptive consequences, including public infrastructure projects. As long as the short-term pains can be handled by the City and remedial actions in place to mitigate the disruptions, the disapproval of the project cannot rest on that ground alone.

Thirdly, the critique launched by Mr. Sewell on density, is in essence, philosophical in nature. Whether the matrix for development rights should be based on a site-by-site analysis or a pre-ordained regime has been a perennial debate. The Board does not have a doctrinal view on such matters except to observe that site-specific analysis does possess an advantage where rigid rules cannot ever be attained. It does not accept at face value any given height or density requirements; but view their provenance, continuity and utility with a skepticism, and rely mostly on empirical analysis of the proposal before coming to a definite conclusion. In this case, the proposed uses, the traffic operations and impacts, the microclimate, the shadow impacts, the costs-benefits to the City, the massing and height from the standpoint of urban designs, its contribution to the skyline, its conformity to the provincial policy statements and the Metro and City Plan have been evaluated rigorously and carefully and have not been found wanting. In giving his evidence, Mr. Sewell shows a detailed knowledge of the buildings of the City core as some one whose abiding love for the City is self-evident. However, beyond the concerns for the construction impact and beyond the concerns for the site-specific increase, his assessment of what may be wrong does not translate into quantifiable or definable results that could be used to impeach the project successfully. For instance, there is nothing to show, by way of concrete evidence, why a density of 48.8 times the lot area is *ipso facto* unacceptable and how a lesser density may bring about a more benevolent impact.

Fourthly, the Board finds both of Mr. Mills' concerns are misplaced. There would be retail uses at grade. However, it is Mr. Mills' view that because it is not expansive enough, the project is required to be re-evaluated. The Board does not find Mr. Mills' misgivings born out by the policies in the City Plan regarding the focus of retails or indeed, by common sense. As for the linkage to the underground pathway, we made the same applicable findings, albeit we have been told that in the evidence that the option for linkage has been built in the designs. City planner's testimony that with respect to this location, the primary focus should be at grade rather than underground has much resonance with this panel.

In short, the Board concludes that the project is suitably located and designed for the highest order of land uses applicable to this site. The artistic renderings show a

building with a base podium that takes its decorative motifs from the façade of traditional buildings nearby, and with the upper column that is at once sleek and ultra-modern. Along with other tall buildings, its topmost flourish will adorn the sky of the City. Whether or not one agrees that there should be pre-ordained density to which all must abide by unfailingly, the site analysis of the project has not yielded any signs of inappropriateness. The Board is also cognizant that the City is in full support of the development - a point that cannot be dismissed on a location of such strategic importance. In addition, the Section 37 Agreement that has been executed contains an impressive public benefit component.

The Board will therefore dismiss the appeals and Orders the amendment of the Official Plan and the Zoning By-law in accord with Exhibits 5: tabs 8 & 9 respectively.

S.W. LEE
EXECUTIVE VICE-CHAIR