

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



**ISSUE DATE:** February 13, 2017

**CASE NO.:** MM140018

**PROCEEDING COMMENCED UNDER** subsection 42(10) of the *Planning Act*, R.S.O. 1990, c. P.13, as amended

**Applicant:** One York Street Inc. and Harbour Plaza Residences Inc.  
**Subject:** Determination of the value of land  
**Property Address/Description:** 1 York St. and 90 Harbour St.  
**Municipality:** City of Toronto  
**OMB Case No.:** MM140018  
**OMB File No.:** MM140018  
**OMB Case Name:** One York Street Inc. v. Toronto (City)

**Heard:** September 21, 22 and 23, 2016 in Toronto, Ontario

**APPEARANCES:**

**Parties**

**Counsel**

One York Street Inc. and Harbour Plaza Residences Inc.

J. Park and S. Lampert

City of Toronto ("City")

B. O'Callaghan

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

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[1] This case is about the valuation of lands at the northeast corner of Harbour Street and York Street, known municipally as 90 Harbour Street and 1 York Street ("subject lands"), in the City of Toronto ("City").

[2] One York Street Inc. and Harbour Plaza Residences Inc. (together “Applicants”) made a parkland dedication payment of \$8,626,894.82 (or \$8,617,855.82 without appraisal fees or HST) to the City, as required by the City. The Applicants dispute the City’s valuation of the lands, which underlies the City’s required payment.

[3] The Applicants have brought this case to the Board under s. 42(10) of the *Planning Act*, R.S.O. 1990, c. P. 13 (“Act”) to have the value of the lands determined by the Board.

## **BACKGROUND**

### **Witnesses Heard**

[4] The Board heard from four expert witnesses whom the Board qualified to provide independent expert opinion evidence in these proceedings.

[5] The Applicants called an appraiser who is also a land use planner. The Applicants also called an appraiser with the City, who appeared under summons to deal with certain very limited matters.

[6] The City called two witnesses, an appraiser and a land use planner.

### **Matters Not in Dispute**

[7] Several matters have been agreed to by the experts and are not in dispute between the parties.

[8] The correct valuation date is January 29, 2014.

[9] The amount of developable area, the amount of gross floor area and the split between residential and non-residential development on the site are not in dispute.

[10] The subject lands, net of road widening conveyances, are less than one hectare. This results in an applicable rate of 10% for the residential component.

[11] There is no dispute on the value of the commercial component.

[12] The direct comparison approach, time adjusted, is the correct approach for this valuation.

[13] The highest and best use of the site is the Applicants' mixed-use development on the site.

### **Key Dates**

[14] The subject lands were designated Regeneration Area in the City Official Plan and were zoned Mixed-Use under Zoning By-law No. 438-86.

[15] The subject lands were owned by the Ontario Realty Corporation ("ORC") in 2007. The ORC had retained a firm of expert land use planners to provide the ORC with a highest and best use analysis of the lands. The result suggested the lands could yield densities of 8.7 to 12.0.

[16] In July, 2010, a request for proposals ("RFP") for the lands was issued. The marketing materials for the RFP simply repeated the densities from the 2007 analysis, which was not updated to reflect changing circumstances.

[17] The Board did not find any of this evidence either helpful or germane to the question of the determination of the value of the subject site.

[18] The Applicants waived all conditions for the acquisition of the subject lands in April, 2011. In October, 2011, they submitted a development proposal to the City with a density of 19.13.

[19] A final City staff report was issued in September, 2012, that recommended approval of a mixed-use development of two residential towers and an office tower.

[20] City Council, in turn, approved the proposed development in November, 2012 and adopted both an official plan amendment and a zoning by-law amendment to implement the proposed development. At 19.04, the density for the approved development was virtually the same as the density initially sought.

[21] It took only 20 months from the time conditions were waived to the approval of the proposed development and 13 months from application to approval of that development. This short period of time reflects the high correlation between the densities sought in the application and the extent to which planning visions for the area had already advanced by the time of the acquisition of the site.

## **ISSUES, ANALYSIS AND FINDINGS**

[22] The Board finds three notable differences in the appraisals between the Applicants' appraisal and the City's appraisal.

[23] The first difference deals with the use of Toronto Real Estate Board ("TREB") data.

[24] The Applicants' appraiser used sale and resale data from TREB. This data provided a general market inflation rate which, when considered in the context of specific comparables, resulted in a time adjustment rate of 4% for the subject site.

[25] The City's appraiser did not consider the data from TREB and did not look at the general background market inflation. The City's appraiser defended this difference by expressing the view that the market for the resale of existing units, included in the TREB data, is different from the market for new, not yet existing units.

[26] The Board accepts that there may be some difference between these two markets but did not have persuasive evidence of the extent of any real difference that might otherwise lead the Board to conclude that considering in the analysis overall market inflation rates from TREB data should not be used. Rather than considering the TREB data along with specific comparables, the City's appraiser relied on specific comparables and assessed the increase for time adjustment based on those comparables. For the subject site, that time adjustment is 24%.

[27] The second difference was the extent to which the impact of matters specific to each comparable were taken into account when considering the value of that comparable. These matters include the degree to which planning permissions for the development had advanced, assembly or site configuration challenges, relative desirability of the immediately surrounding area and changes in the determination of the highest and best use of the comparable site. The City's appraiser did not factor these differences into his analysis for certain key comparables.

[28] For the advancement of planning permissions, the Board is not persuaded that the City took appropriate account of the significant advancement of planning for the subject site at the time of acquisition that is evidenced by the tight time frame from application to approval, noted above. This circumstance would contribute to a lower time adjustment rate for the valuation of the subject site.

[29] The third difference was the City's use of sale registration dates for certain comparables that occurred after the valuation date for the subject site. Rather than discounting the percentage for time adjustment, the City's appraiser continued to include price escalation that occurred after the valuation date. In doing so, his time

adjustment factor for certain comparables inappropriately included price escalation that should not have been part of the valuation.

[30] The Board finds that the appraisal analysis presented by the Applicants is more reasonable, credible and persuasive.

[31] On the evidence of the Applicants' appraiser, the Board determines the value of the subject site to be one hundred million dollars (\$100,000,000). As such, a refund to the Applicants of \$1,633,157.72 is appropriate.

[32] The Applicants are seeking an interest rate of prime plus 1% on the refund amount. The City suggests that the prime rate should be sufficient. The Board is not persuaded that anything above the prime rate is appropriate. Interest on the refund is to be calculated at the prime rate.

## **ORDER**

[33] The Board determines the value of the subject site to be one hundred million dollars (\$100,000,000) and orders a refund to the Applicants of \$1,633,157.72, subject to interest at the prime rate.

*"Susan de Avellar Schiller"*

SUSAN de AVELLAR SCHILLER  
VICE-CHAIR

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### **Ontario Municipal Board**

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