

Ontario Land Tribunal
Tribunal ontarien de l'aménagement
du territoire



ISSUE DATE: August 27, 2021

CASE NO(S): MM200020

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

Applicant:	Widmer Residences Corp. and Widmer-Adelaide Corp.
Subject:	Determination of the value of land
Property Address/Description:	8-30 Widmer Street
Municipality:	City of Toronto
OLT Case No.:	MM200020
OLT File No.:	MM200020
OLT Case Name:	Widmer-Adelaide Corp. v. Toronto (City)

Heard: July 19, 20 and 21, 2021 by video hearing

APPEARANCES:

Parties

Widmer Residences Corp. and
Widmer-Adelaide Corp.

City of Toronto

Counsel

Ian Andres

Brendan O'Callaghan

DECISION DELIVERED BY R.A. BECCAREA AND ORDER OF THE TRIBUNAL

INTRODUCTION

[1] This is an application pursuant to s. 42(10) and (12) of the *Planning Act* ("Act") by Widmer Residences Corp. and Widmer-Adelaide Corp. ("Applicants") with regard to the

valuation of their property by the City of Toronto (“City”) for cash-in-lieu of parkland purposes.

[2] The Applicants’ seek a determination of the value of the lands known municipally as 8-30 Widmer Street (the “subject lands”) in order to calculate the correct amount of cash-in-lieu of parkland to be paid in respect of the redevelopment of the subject lands.

[3] The Tribunal was advised that the subject lands are located in the popular area known as “Downtown West” where the condominiums are the most expensive in the City and where there is “quite a demand and quite a supply”. The subject area was described as unique and where the two proposed developments would have an average density of 19.82 square feet.

[4] The statutory valuation date of September 3, 2020 is agreed upon and is the day before the first building permits were issued for their redevelopment.

[5] The Parties agree that the highest and best use of the subject lands is the high-density mixed-use redevelopment permitted by site-specific zoning By-laws Nos. 74-2019 and 75-2019, which were approved by the OMB/LPAT on September 28, 2019 in Case Nos. PL151191 and PL161031.

[6] On July 30, 2020, the City’s Manager Appraisal Advisory Services, Peter Cheng, pursuant to s. 42 determined and so notified the Applicants that the total amount of the Parks Levy Payment (including an appraisal fee and HST) respecting 8 Widmer Street to be \$7,819,421.80.

[7] On July 30, 2020, Mr. Cheng also notified the Applicants respecting 30 Widmer Street that the total amount of Parks Levy Payment to be \$5,701,117.15.

[8] Both of Mr. Cheng’s July 30, 2020 letters provided no detail as to how the City arrived at its determination of the Parks Levy payable, other than quoting s. 42 of the

Act, By-law No.1020-2010, the City's Parks Levy Appraisal Fee Structure, City By-law No. 136-2014 and Toronto Municipal Code, Chapter 441.

[9] Mr. Cheng's letters also stated "...the above amount was based on a development assuming a total site area 1,882.95 square metres and the proposed GFA of 29,038 square metres, as well as a current valuation date" (respecting 8 Widmer) and "a development assuming 1,194.75 square metres and a GFA of 31,296 square metres" (respecting 30 Widmer).

[10] No additional detail was provided to the Applicants or the Tribunal until the hearing of this matter was scheduled.

[11] On September 3, 2020, the Applicants paid the City the combined amount of \$13,520,539.95, advising it was pursuant to s. 42(10) and (12) of the Act under protest.

[12] The Applicants made this application to the Tribunal on October 2, 2020.

[13] The Applicants are seeking a total refund of \$4,707,860.33 by way of a Tribunal Order.

[14] KPMG according to the evidence of its appraiser, Yvonne Whyte, charged the City \$9,157.52 (inclusive of HST) for its appraisal fees for both parcels. The City billed the Applicants \$18,843.60 (inclusive of HST). Accordingly, the Applicants are seeking a refund of \$9,636.08.

SECTION 42 (10) – PLANNING ACT

[15] Section 42(10) states:

In the event of a dispute between a municipality and an owner of and on the value of land determined under subsection (6.4), either party may apply to the Municipal Board to have the value determined and the Board

shall, in accordance as nearly may be with the *Expropriations Act*, determine the value of the land and, if a payment has been made under protest under subsection (12), the Board may order that a refund be made to the owner. (emphasis added)

[16] The legislation requires the Tribunal to determine the value. Each Party must justify its own position and the Tribunal will then determine the value.

CONTEXT

[17] The approved site plan drawing for the subject lands depict a 49-storey tower on the southerly portion (100% residential) of 8 Widmer; and a 48-storey tower on the northerly portion which includes 50% residential and 50% hotel at 30 Widmer, fronting on Adelaide Street West.

[18] The two towers step down to an 11-storey podium. There are six existing heritage townhouse dwellings on the east side that face Widmer and are to be retained.

[19] According to the Applicants' MPR appraisal report (discussed later), the southerly hotel and condominium tower at 8 Widmer will contain 352 hotel suites and 216 residential condominium dwelling units.

[20] The tower at the northerly 30 Widmer property is to contain 424 residential condominium dwelling units.

[21] Four levels of underground parking are proposed to be provided for both towers from an adjacent lane to the south.

THE EVIDENCE AT THE HEARING

[22] Consistent with the Tribunal's Procedural Order issued on March 18, 2021, the Parties provided the Tribunal with a Joint Document Book (Exhibit 1).

[23] The Applicants called two expert witnesses: Peter Norman, a qualified economist with Altus Group and Mark Penney, a qualified real estate appraiser and land use planner with MPR Advisors Inc.

[24] The City called two expert witnesses: Ms. Whyte, a qualified real estate appraiser with KPMG; and Robert Dragicevic, a qualified land use planner with RD Land Plan Consultants.

[25] All four witnesses provided written Witness Statements and written reviews of their opposing witnesses' evidence.

[26] None of the witnesses made any meaningful concessions to their opposing witnesses' opinions. What the appraisers did agree on are the following:

1. The Direct Comparison approach is the correct methodology.
2. Adjustments of 10-20% were reasonable for sales that did not yet have requisite planning approvals in place.
3. Upward adjustments should be applied to properties which sold without having planning approvals in place.
4. Typically, it takes at least 12-18 months to complete the re-zoning process and 12-18 to complete the site plan process and possibly 18-24 months.

[27] The most contentious area of disagreement was the contradicting opinion evidence as to what are the appropriate, if any, percentage adjustments that should be made in arriving at the market value of the subject lands. As Mr. Andres said in his opening remarks, it is the "manner" as to how the appraiser arrived at their values that is at issue.

POSITION OF THE PARTIES

[28] Both Mr. Penney and Ms. Whyte have expressed their opinion as to the market value of the subject lands on the basis of a price per square foot of gross floor area ("PSF of GFA").

[29] The Applicants are seeking a decision from the Tribunal which would confirm Mr. Penney's determination of market value for the subject lands based on a unit rate of \$170 PSF for both the residential and non-residential components of the two towers.

[30] The City is seeking a finding based on Ms. Whyte's evidence, that the market value of the north tower (30 Widmer) is worth a unit rate of \$190 PSF for the commercial GFA and a unit rate of \$300 PSF for the residential GFA, which is to be constructed over top of the proposed hotel complex.

[31] The City is seeking a finding that the market value of the south tower (8 Widmer) is worth a unit rate of \$255 PSF of residential GFA.

THE APPLICANTS' EVIDENCE

[32] The Applicants' evidence stressed the importance of the timing of the September 3, 2020 valuation date, which was about six months into the COVID-19 pandemic province-wide shutdown. They submit that the COVID pandemic caused significant uncertainty in the real estate market that a willing buyer and seller would have considered and factored it into the price.

[33] Mr. Penney applied a 12.5% discount or downward adjustment to the comparable sales prices negotiated prior to the onset of the pandemic.

A. The Evidence of Peter Norman

[34] The Tribunal heard from Mr. Norman, an economist and Vice President at Altus Group Limited. He was retained in April 2021 to provide an analysis and opinion on economic matters related to the land value of the subject lands as a result of the pandemic and on the Toronto real estate economic market between March 11, 2020 and September 3, 2020.

[35] In the course of his retainer, Mr. Norman had discussions, among others, with Mr. Penney and had reviewed Mr. Penney's May 27, 2021 "Retrospective Appraisal Report" (Exhibit 1, Tab 7).

[36] Mr. Norman in his Witness Statement (Exhibit 1, Tab 8) set out his economic observations and findings covering 10 pages. He was not contradicted in his opinion that it would be reasonable to estimate a 10-15% decline in land value attributable to the pandemic for condominium properties within the City's downtown core as of September 3, 2020, as Mr. Penney had estimated. The City is simply taking the position that a "COVID adjustment" should not be made.

[37] To that extent, Mr. Norman concluded that an impact in that direction and of that magnitude was reasonable and consistent with the observed market trends he outlined in his report.

[38] Mr. Norman was even handed in his approach to Mr. O'Callaghan that the pre-sales of the subject units throughout the pandemic continued to go up before the pandemic and continued thereafter through the pandemic.

[39] Mr. Norman said prices flattened considerably but did not fall. He did, however, comment in his Written Statement (Exhibit 1, Tab 8, p. 297) "that sales patterns over the 6-month pandemic period demonstrably showed a strong surge in demand for single family new homes and away from condominium apartment homes and a

demonstratable strong surge in demand for homes outside of the core of Toronto and towards other parts of the GTA”.

[40] Mr. Norman was not shaken in cross-examination as to his opinion that Mr. Penney’s conclusions as to the pandemic effect was reasonable and consistent with his market observations.

B. The Evidence of Mark Penney

[41] Mr. Penney provided the Tribunal with his May 27, 2021 Retrospective Appraisal Report (Exhibit 1, Tab 7) in which he estimated the market value of both of the subject lands to be \$111,660,000 based on a value of \$170 PSF of GFA.

[42] Mr. Penney selected 5 comparables which included pre-sales of the subject property in June 2018 (8 Widmer), June 17 and 27, 2018 (30 Widmer). He summarized those sales in Table 5 (Exhibit 1, Tab 7, p. 255) of his report.

[43] After adjusting for time/market inflation at a rate of 8.5% per annum; the sales ranged from \$173 to \$235 PSF of GFA with an overage range of \$192 PSF.

[44] Mr. Penney summarized the 7 adjustments he made to those comparable sales in Table 6 (Exhibit 1, Tab 7, p. 257) which returned an average price of \$183 PSF of GFA.

[45] After determining that his comparable 3 was influenced by the COVID-19 pandemic, Mr. Penney stated that a rate ranging from \$190 to \$200 PSF of GFA was supported by the comparable sales.

[46] Mr. Penney then stated the rates ranges required a further adjustment of either i) a downward adjustment for the impact of the COVID-19 pandemic; or ii) a downward adjustment for the subject pre-sales, which were primarily completed in a “prior market”.

[47] Mr. Penney estimated a 10-15% decline in value of high-density residential development land because of the pandemic. He based this on a declining trend for rental rates, as well as condominium prices and the perception of greater risk going forward which requires a higher investment yield, resulting in lower land value.

[48] Mr. Penney applied a discount including comparable 3 at the midpoint of the decline, or 12.5%. This resulted in an adjusted range in value for the subject lands of \$160 to \$175 PSF of GFA or a mid-point of \$170 PSF of GFA.

[49] Mr. Penney also looked at an adjustment for a pre-sale discount but did state that there is a potential for the remaining units to sell for a greater amount post the effective date. He stayed with the 12.5% adjustment in arriving at his opinion of market value, using the \$170 PSF of GFA.

[50] Mr. Penney provided aerial photographs of the subject lands and the “immediately” surrounding lands (Exhibit 1, Tab 7, p. 199 and 200) in support of his application of a 7.5% adjustment what he termed a “View/Shadow encumbrance”. He stated purchasers pay less for encumbered views and their absorption takes longer as a result. He said the adjustment “isn’t much” and “modest”.

[51] Mr. Penney used both a quantitative and qualitative approach to his analysis of the comparables as opposed to Ms. Whyte who used a qualitative analysis.

[52] Mr. Penney advised the Tribunal that his approach also provided full explanations and precise quantifications whereas he said, Ms. Whyte’s provided in using a qualitative analysis (similar, inferior, superior) only vague characteristics.

[53] The comparables used by Mr. Penney were:

1. The subject lands;

2. 263 Adelaide Street West;
3. 137 John Street and 241 Richmond Street;
4. 224, 230, 236, 240 Adelaide Street West;
5. 355 Adelaide Street West and 46 Charlotte Street.

[54] Map 6 (Exhibit 1, Tab 7, p. 256) shows the comparables Mr. Penney used, which are in close proximity to the subject lands.

[55] Mr. Penney applied both the Quantification Adjustments and the Qualification Adjustments to the 5 comparables (Exhibit 1, Tab 7, Table 6, p. 257).

[56] He concluded that the average time adjusted price to be \$192 PSF of GPA buildable and with the Quantification Adjustments the average to be \$183 PSF of GFA buildable.

[57] In cross-examination, one of the main criticisms Mr. O'Callaghan put to Mr. Penney was his valuation of 30 Widmer as a single valuation as opposed to Ms. Whyte who viewed and valued that property as two separate parcels, one for the residential GFA at \$300 PSF and one for the commercial GFA at \$190 PSF.

THE CITY'S EVIDENCE

[58] The Tribunal heard from both Ms. Whyte and Mr. Dragicevic, who were qualified to provide their expert opinions.

A. The Evidence of Yvonne Whyte

[59] Ms. Whyte initially prepared a narrative appraisal report dated July 10, 2020 for the City, which was addressed to Mr. Changming Guo. Ms. Whyte advised the Tribunal that the July 2020 report was used as part of the City's determination of the cash-in-lieu

calculation. Mr. Cheng (earlier referenced) peripherally referred to it as a “review of the real estate market” (Exhibit 1, Tab 2).

[60] Ms. Whyte then on May 25, 2021, prepared her appraisal report addressed to Mr. O’Callaghan that was used as part of the City’s evidence before this Tribunal.

[61] Ms. Whyte valued 30 Widmer at \$82,300,000 and 8 Widmer at \$80,500,000 totaling \$162,800,000. Mr. Penney’s total was \$116,660,000, a difference of \$46,140,000 as at September 3, 2020.

[62] Ms. Whyte used 5 comparables for the Residential component of her analysis (Exhibit 1, Tab 6, p. 118).

1. 263 Adelaide Street, West;
2. 224-240 Adelaide Street West;
3. 241 Church Street;
4. 5 St. Nicholas Street and 586 Yonge Street and 6-10 Wellesley Street West;
5. 89 and 97 Church Street.

[63] Ms. Whyte used the Qualitative Adjustment technique in her analysis of the comparables she chose, whereas Mr. Penney used both the quantitative and qualitative techniques as stated earlier.

[64] Ms. Whyte’s approach drew specific criticism from Mr. Penney in his Review Report (Exhibit 1, Tab 12) in that it did not provide any quantitative price adjustments.

[65] Concern was raised by both Mr. Andres and the Tribunal, who wanted all the best evidence available as to the adjustments that Ms. Whyte admitted she used but were not provided.

[66] The Tribunal stood down and later at the resumption of the hearing on July 20, 2021, Ms. Whyte filed her Adjustment Grid for the comparables which were marked as Exhibit 2.

[67] Exhibit 2 sets out the comparable adjustments contained in Ms. Whyte's July 10, 2020 Appraisal Report and the adjustments contained in her May 25, 2021 Appraisal Report.

[68] Ms. Whyte made no specific adjustment for the COVID Discount. Instead, she prefaced in her report under the heading "Extraordinary Limiting Conditions". The following at page 83 of her May 25, 2021 Report (and her July 10, 2020 Report) states:

The outbreak of the Novel Coronavirus (COVID-19) declared by the World Health Organization as a "Global Pandemic" on March 11, 2020, has impacted global financial markets. Market activity is being impacted in many sectors. As at the valuation date (retrospective effective date), we consider that we can attach less weight to previous market evidence for comparison purposes, to inform opinions of value. Indeed, the current response to COVID-19 means that we are faced with an unprecedented set of circumstances on which to base a judgment. Consequently, less certainty - and a higher degree of caution - should be attached for valuation than would normally be the case.

[69] Mr. O'Callaghan, in his closing argument submitted that the facts of this case do not support a COVID Discount of 12.5%. Support for the City's position is detailed later.

[70] Ms. Whyte used 5 comparables which she numbered 6 to 10 (Exhibit 1, Tab 6, p. 129) for the non-residential component for her analysis respecting 30 Widmer, which a portion of it is proposed as a hotel:

6. 25 Liberty Street;
7. 689 King Street West;
8. 197 King Street East;
9. 280 King Street East and 25 Ontario Street;

10. King Street East and Colborne Street assembly.

[71] With respect to the residential component of her analysis, Ms. Whyte at p. 128 of her May 25, 2021 Report stated, “after considering all of the relevant factors” allocated, the most weight to comparables 1, 2, 3 which she said indicated an unadjusted range of \$144 to \$199 PSF of buildable GFA. She said comparables 4 and 5 were less desirable and were not given much consideration. She did indicate that the range did not consider the planning approved nature of the subject lands on the day before the issuance of the building permits.

[72] It was not until the production of Exhibit 2, titled “Respecting the Residential Sites Adjustments” that the Applicants and the Tribunal learned that Ms. Whyte applied a 10% adjustment for comparables 1 and 2 and a 20% adjustment for comparables 2, 3, and 4 for the fact that they did not have Land Use and Approval Status. Ms. Whyte did make a locational adjustment to comparable 3 of 15% and a 5% and 15% locational adjustment to comparables 4 and 5 which she said were less desirable.

[73] Ms. Whyte’s adjustments then resulted in an adjusted unit price for comparable 1 from \$199 to \$219; for comparable 2 from \$144 to \$201 and for comparable 3 from \$198 to \$267.

[74] In her actual May 25, 2021 Report at p. 128 she stated, “after adjustment for the identified known factors, the preferred indices No. 1, 2 and 3 indicate a range of adjusted rates between \$220 and \$280 per square foot of building gross floor area”.

[75] With respect to the non-residential component of 30 Widmer, Ms. Whyte concluded at p. 130 of her report “after consideration, these indices indicated a range of \$165 to \$190 per square foot of building gross floor area respectively”.

[76] It is noted that the Index Chart at page 129 of the May 25, 2021 Report had those indices ranging from \$88 to \$155 PSF of GFA after excluding comparable 8 which she advised the Tribunal, with a PSF of GFA at \$515 was not to be considered.

[77] Ms. Whyte attributed to comparables 6 and 7 the most weight, stating that their identical unadjusted rate was \$155 PSF of GFA at page 130 of her report.

[78] No Adjustment Grid for the commercial component was provided similar to Exhibit 2 to assist the Tribunal in how Ms. Whyte made the adjustment from \$155 PSF of GFA to \$165 to \$190 PSF of GFA to support her conclusion at p. 132 of her report that “a unit rate of \$190 per square foot is most appropriate” for the commercial component of the north tower.

[79] In Ms. Whyte’s conclusion, she said she used a “blended until rate” for 30 Widmer made up of \$190 PSF of GFA for the non-residential and \$300 PSF of GFA for the “smaller residential as if fully approved on the day before the issuance of the building permit”.

[80] In calculating her opinion as to market value at p. 133 of her report, she used a “blended rate” of \$245 PSF of GFA for 30 Widmer for the combined residential component and non-residential component to arrive at a market value of \$82,332,700 rounded to \$82,300,000.

[81] In calculating her opinion as to the market value of 8-30 Widmer Street, Ms. Whyte applied the rate of \$255 PSF of GFA to arrive at a value of \$80,464,485 rounded to \$80,500,000.

[82] Ms. Whyte’s conclusions were subject to the extraordinary assumption earlier quoted.

[83] No where in her May 25, 2021 Report (Exhibit 1, Tab 6) can the Tribunal find the rationale for using the \$300 PSF of GFA referenced. The only reference to such an amount for a residential adjusted unit price is contained in Exhibit 2 under the column for comparable 5 which has a reference of \$309, on a property which Ms. Whyte termed as being “in much less desirable areas than the subject properties and had more dated components”.

B. The Evidence of Robert Dragicevic

[84] Mr. Dragicevic was retained by the City to provide a review of both Mr. Penney and Ms. Whyte’s appraisal reports and specifically to comment on the list of comparables provided in their respective reports from a “land use planning perspective”.

[85] Mr. Dragicevic did not offer an opinion as to which is the appropriate market value that either appraiser has asked the Tribunal to support.

[86] Dealing specifically with the comparable sites identified in Mr. Penney’s MPR Report, Mr. Dragicevic stated that none of them were “shovel ready” as in the case of the subject lands.

[87] At the time of valuation, for the purposes of a cash-in-lieu payment for parkland pursuant to s. 42 of the *Act*, Mr. Dragicevic stated that all municipal approvals would have been in place and any private development interest would weigh the factor of certainty, cost, and time in bringing a site to a point of ready construction.

[88] As such, Mr. Dragicevic did not believe adjustments needed to be made, since in his opinion, in this case, “nothing was left to be done, nor were there any stones unturned”.

[89] In his opinion there was no sign of a slow up in the King and Spadina area which he termed the “hottest areas of the City”.

[90] Mr. Dragicevic did agree with Mr. Andres; however, that shadows and views are different from strictly planning issues and could affect how much a condominium unit could sell for and that they are relevant market value considerations.

[91] Mr. Dragicevic did indicate that while matters of shadows and views were raised as impacting value in the MPR Report of Mr. Penney from a planning perspective, the City would have taken these issues into account when it approved the respective building permits, as were the scale and design of the proposed buildings and development.

REPLY EVIDENCE

[92] Mr. Penney in his Review Report (Exhibit 1, Tab 12) specifically commented on Ms. Whyte's conclusion of a value of \$300 PSF of buildable GFA. He pointed out that this value is "substantially" higher than any of the comparable sales listed by Ms. Whyte.

[93] The value of \$300 PSF of GFA is a net upward adjustment of 60% from the average of all of Ms. Whyte's comparable sales and a net upward adjustment of 66% from her preferred comparables 1, 2, and 3 which Ms. Whyte said she relied on the most.

[94] The Tribunal agrees with Mr. Penney when he said that "a 66% upward adjustment is an extraordinarily and extreme adjustment" and calls into question if the sales selected are truly comparable and more importantly the rationale to support for "upward adjustments of such a significant magnitude", without a detailed explanation with supporting evidence.

[95] It is to be noted that on 30 Widmer, Ms. Whyte adjusted for the residential on that site at \$196 PSF of GFA; Mr. Penney adjusted at the same site at \$170 PSF of GFA.

[96] With respect to the COVID Discount, Ms. Whyte in her Review Report (Exhibit 1, Tab 10) states that while she does not disagree that the pandemic created “some” uncertainty over the short run to the downtown condominium market from individual buyer perspective, the question is what is the appetite of developers. It is, she said, a normal practice for developers to seek out sites that they would consider prime for development well beyond the time frame that they would obtain a return on profit. She points out that even the sales in the MPR Report showed an increase for each year.

[97] With respect to Mr. Penney's discount for pre-sales, Ms. Whyte notes pre-sales occur typically prior to the issuance of a building permit. She termed these sales as being sold in inferior markets. Sales prices increase between the construction commencement and the final dates of sell out in an “improving market”, which she said she believed existed.

[98] Mr. Penney in his MPR Report titled “Section 16 Direct Comparison Approach” at p. 268-270 identified in detail the impacts of COVID-19 pandemic at the effective date and reconciled a 12.5% downward adjustment to account for its influence.

[99] Mr. Penney in his Reply evidence advised that while the 12.5% adjustment may seem high, he said after making a time adjustment of 4% that the real number could be considered a net of 8.5%.

ANALYSIS AND FINDINGS

[100] Messrs. Andres and O’Callaghan provided written summaries respecting their closing submissions, which the Tribunal has also thoroughly considered.

[101] The Tribunal does not support the positions taken in the City’s closing argument of Mr. O’Callaghan.

[102] The City's case could have been more transparent. It did not provide material factual disclosure until the Tribunal either asked for it or ordered it during the hearing.

[103] The Tribunal would normally have been expected to hear directly from Mr. Cheng, wherein he could have particularized the details of By-law No. 1020-2010, the Parks Levy Appraisal Fee Structure that the City Council adopted, the Toronto Municipal Code, and the details of the real estate market that he provided to the Applicants' representative (Exhibit 1, Tab 2), especially when the City is demanding that the Applicants pay over \$13,500,000 in order to get two building permits.

[104] Mr. Cheng, who at times observed the hearing, could have advised the Tribunal as to whether it can legally require payments based on items over and above what is determined to be the subject properties' market value. Since he was not called, the Tribunal's duty is to determine the amount of Parks Levy solely on the basis of the two appraisers' opinion of market value based on the subject lands highest and best use in accordance with the *Expropriation Act*, and also as supported by the accompanying evidence of Messrs. Norman and Dragicevic.

[105] It is to be noted that on July 10, 2020, the City obtained one appraised market value 3 months before the valuation date of September 3, 2020, and then on May 25, 2021, a different appraised market value was provided to the City, some 11 months after Mr. Cheng took his position on July 30, 2020.

[106] Mr. Cheng charged the Applicants for the two properties and an Appraisal Fee of \$16,675.76 exclusive of HST; then during the hearing, only after the Tribunal asked Ms. Whyte what she charged the City, did she advise that she charged the City \$4,950.89 for each of the properties, exclusive of HST.

[107] The City in closing argument took the position, despite providing no evidence as to the reason it so charged the Applicants, stated that the Tribunal does not have the jurisdiction to order an appraisal fee refund.

[108] The City said the Applicants would need to make an application under s. 69 (3) of the *Act*, despite the fact that the Tribunal, without the City appealing in its November 27, 2012 decision (*Pinnacle International Ltd. v. Toronto (City)*, 74 O.M.B.R. 435 (File No. MM120013)) (“*Pinnacle*”) did so, as well as ordering interest.

THE COVID DISCOUNT

[109] There is a significant difference of opinion related to the effect of COVID-19 pandemic on the market value of the subject lands. The Tribunal finds that the position of the Applicants is the most supportable one. The Tribunal does not find that the City simply advising that it is not supportable by the fact that the pre-sale of the subject units throughout the pandemic continued to go up was a sufficient answer.

[110] While Mr. Norman confirmed that the current recession has been much gentler on the housing market than any other recession, terming it as a “V-shaped recovery”, he did at p. 11, paragraph (vi) indicate that land values respond to factors such as market and risk.

[111] Mr. Norman stated that the noticeable slow down in condominium apartment sales and prices during the pandemic period would reasonably be expected to have a negative effect on land values. Further at the time of the valuation (September 3, 2020), the uncertainty over construction costs introduced an elevated level of risk on new condominium apartment projects that were reasonably expected to have a negative effect on land values.

[112] The pandemic according to Mr. Norman, which was not disputed by the City’s witnesses, stated that there was a change in the market trends with more buyers wanting to locate in the suburbs, and in some cases outside the GTA.

[113] Mr. Dragicevic outlined at Appendix B of his report why he believed that the subject lands, because of their better or “shovel ready” status were superior to the comparables used by the Applicants. He was, however, careful to not advance a position as to their market values as provided by either Ms. Whyte or Mr. Penney.

[114] The Tribunal has carefully considered the techniques and data used by Mr. Penney to support his opinion that the market value of the lands based on a \$170 PSF of GFA buildable to be a total value of \$111,656,510.

[115] Another significant area of disagreement is respecting the valuation of 30 Widmer, whether it is to be preferred that it be valued as residential and commercial components separately or as a single component entity.

[116] Ms. Whyte valued 30 Widmer’s 336,052 square feet at \$82,300,000. She averaged a \$190 square foot for the commercial component and \$300 square foot for the residential, arriving at a blended rate of \$245 square foot to arrive at her suggested market value.

[117] Mr. Penney did not value 30 Widmer in separate components and determined that the rate of \$170 square foot was appropriate. If the Tribunal uses the 336,052 square feet that Ms. Whyte calculated while Mr. Perry did not do so separately, his market calculation for 30 Widmer would translate into a value of \$57,128,840.

[118] Isolating 30 Widmer from the total valuation of both appraisers, accounts for a difference of opinion as to its evaluation of \$25,171,160.

[119] The difference is accounted for by the adjustments made to Ms. Whyte’s comparables by Ms. Whyte using the qualitative technique and Mr. Penney using the adjustments made to his comparables using both his qualitative and quantitative technique.

[120] Another adjustment that could have accounted for the differences in the opinions respecting market value, was Ms. Whyte not accounting for View/Shadow encumbrances that Mr. Penney adjusted for at 7.5%.

[121] Mr. Penney's negative 7.5% adjustment in his opinion is supportable because the subject lands once developed would have greater view encumbrances than his comparable sales.

[122] Ms. Whyte conceded that the subject lands as developed would be a "tight site" but she did not support the quantum of Mr. Penney's adjustment. Mr. Dragicevic acknowledged that from a marketing point of view, units with an unobstructed view may generate a higher price from a willing buyer.

[123] While the Tribunal supports previous Tribunal findings that there "is no right to a view", the Tribunal finds and agrees with Mr. Penney that his adjustment is modest, reasonable, defensible and ought to be accepted.

[124] After considering the very considerable differences of opinions and positions advanced by the Parties, the Tribunal finds the market value of the subject lands at 8-30 Widmer Street to be \$111,660,000.

[125] Further, the Tribunal can find no support, policy or evidence as to why the City charged the Applicants \$18,843 inclusive of HST, an amount admitted to be in excess of what it did pay KPMG for the work performed on its behalf by Ms. Whyte.

[126] To require the Applicants to go to the additional expense of applying under s. 69(13) of the *Act* when the City did not require it in the *Pinnacle* decision (earlier referred to) is not reasonable, taking into consideration the considerable expense it has already been put to.

ORDER

[127] Pursuant to s. 42(10) and (12) of the *Planning Act*, the Tribunal Orders that the City refund Widmer Residences Corp. and Widmer-Adelaide Corp., the sum of \$4,698,173.95 for the amount it paid-in-lieu of the conveyance of parkland for the subject lands as claimed.

[128] The Tribunal further Orders that the City pay the Applicants' \$9,686.08 inclusive of HST for the overpayment of the total appraisal fees charged by KPMG, as identified by Ian Andres in his closing written submission, for a total refund of \$4,707,860.33.

[129] There has been no claim for interest or costs raised by Ian Andres in his closing submission, so the Tribunal will make no such Order.

"R.A. Beccarea"

R.A. BECCAREA
MEMBER

Ontario Land Tribunal

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The Conservation Review Board, the Environmental Review Tribunal, the Local Planning Appeal Tribunal and the Mining and Lands Tribunal are amalgamated and continued as the Ontario Land Tribunal ("Tribunal"). Any reference to the preceding tribunals or the former Ontario Municipal Board is deemed to be a reference to the Tribunal.