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IRE-YONGE Developers Inc. v. Toronto (City)

IRE-YONGE Developers 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 neglect to enact a proposed amendment to the Official Plan for the former City of Toronto to redesignate the lands municipally known as 4155 Yonge Street to permit the development of an 10-storey mixed-use building

Approval Authority File No. 11 133752 NNY 25 OZ

O.M.B. File No.: PL120694

IRE-YONGE Developers 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 neglect to enact a proposed amendment to Zoning By-law 7625, as amended, of the former City of Toronto to rezone lands respecting 4155 Yonge Street to permit the development of a 10-storey mixed-use building

O.M.B. File No.: PL120695

In the Matter of subsection 41(12) of the Planning Act, R.S.O. 1990, c. P.13, as amended

Subject: Site Plan

Referred by: IRE-YONGE Developers Inc.

Property Address/Description: 4155 Yonge Street

Municipality: City of Toronto

OMB Case No.: PL120694

OMB File No.: PL121078

Ontario Municipal Board

R. Rossi Member

Judgment: June 7, 2013

Docket: PL120694

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Counsel: K. Kovar, S. Loiacono, for IRE-YONGE Developers Inc.

R.A. Robinson, for City of Toronto

I. Banach, for Yonge Ridge Homeowners Association

S. Tsuei (Agent), D. Smith (Agent), for MTCC1360, 1324, 1484, and 1758 (11, 18, 28, and 38 William Carson Crescent)

Subject: Environmental; Public

Environmental law

Municipal law

R. Rossi Member:

1 This was a hearing into an appeal by IRE-YONGE Developers Inc. ("Applicants"), pursuant to s. 41(12), 34(11) and 22(7) of the *Planning Act* ("Act") from Council's failure to make a decision regarding a zoning by-law amendment and an official plan amendment for its property situated at 4155 Yonge Street in the City of Toronto (the "City"). The zoning by-law amendment and Official Plan amendment were sought in order to permit development of a 10-storey mixed-use building. The appeal also includes a detailed Site Plan. A pre-hearing conference in mid-January 2013 and a mediation session failed to yield a resolution of the issues resulting in the need for a full hearing.

2 Prior to the hearing, St. John's Anglican Church (the "Church") reverted from party status to participant status. The Church provided a written statement to the Board opposing the development. At this hearing, the Yonge Ridge Homeowners Association retained its party status. The Board provided direction to David Smith, (representing four residential buildings farther north on William Carson Crescent) on party status. He is the condominium board president for one of the buildings. While granted party status at the earlier pre-hearing conference by a differently-constituted panel, the Board necessarily limited the extent of this status for the purposes of the proper functioning of the hearing process. Mr. Smith remained the agent for the four buildings. On consent, however, Mr. Smith was permitted to provide evidence in opposition to the proposed development during which time, another board director, Simon Tsuei, acted as agent during Mr. Smith's appearance. Lastly, and on consent, the Board allowed Mr. Smith to provide closing submissions for the four **condominium corporations**.

3 Urban design evidence from planner Robert Glover included helpful contextual evidence, an overview of the surroundings and an explanation of the proposed development, all of which are worth reciting below and derive from Mr. Glover's witness statement (Exhibit 3). Though lengthy, the information is necessary for the reader to have a full understanding of the context and location of the subject lands. The contents of Mr. Glover's statement contain factual information that is not in dispute.

Context

4 The subject site is known municipally as 4155 Yonge Street and is located at the southeast corner of Yonge Street and William Carson Crescent. The area, known commonly as Hogg's Hollow, contains a variety of

built forms of the mid-rise range variety. There are both commercial and residential uses although this would represent the first mixed-use building. Condominium residences north of the site and accessed from William Carson Crescent range in heights from six to eight storeys. They and the subject site are adjacent to the naturalized ravine edge and the subject site abuts the ravine. Atop the ravine sits St. John's Anglican Church.

5 The subject site is generally rectangular in shape, with a tail extending northward along the easterly limit of William Carson Crescent. The original site area, including the 1.44 metre strip along William Carson Crescent, is approximately 3,062.6 square metres with a frontage of approximately 23.63 metres along Yonge Street and an average depth of approximately 94.4 metres. The Board heard that the Applicants have recently entered into an agreement to purchase the 2.74 metre wide private lane, which abuts the south side of the site. This expands the site frontage along Yonge Street to 26.6 metres and the site area to 3,221.9 square metres.

6 Hogg's Hollow is bounded by wooded valley slopes to the northeast and southwest, which define the limits of the valley floor. The westerly one-half to two-thirds of the site fronting on Yonge Street is generally flat with an elevation of approximately 144 metres, while the easterly portion consists of a slope forming part of the valley wall. The elevation change from Yonge Street to the southeast corner of the site is approximately 16 metres.

7 The subject site is currently used for a commercial parking lot with 40 parking spaces, which occupies most of the flat lands on the westerly portion of the site. Access to the parking lot is from William Carson Crescent and is located approximately 35 metres east of Yonge Street. The paved area of the parking lot extends to or beyond the west and north property lines; the adjacent municipal boulevards consist of narrow grassed strips with immature street trees in the City road allowance. The portion of the site closest to Yonge Street is also subject to a 19.3 metre wide easement for the Yonge subway line, which runs below this portion of the site and according to Mr. Glover, results in a front yard setback of roughly 24.19 metres measured along the south lot line.

8 The easterly portion of the site is occupied by a sloped lawn portion to the east of the parking lot, while the upper portions of the valley slope are wooded and rise to the east. A concrete retaining wall is located on the east side of William Carson Crescent along the northerly tail of the site.

9 In 1989, site specific Zoning By-law No. 30952 was passed in order to permit a 5-storey office building on the site having a 0-metre setback to the north and south lot lines and a 0 metre setback to the east limit of the C1 (General Commercial) Zone. Although the building was never constructed, the zoning remains in force.

Surroundings

10 The surrounding area contains a mix of uses, including residential, office and commercial uses. The existing and planned built form character within the area is generally mid-rise along Yonge Street, with lower-rise building heights within the residential neighbourhoods to the east and southwest. With the exception of the Hogg's Hollow residential neighbourhood located on the valley floor within the southeast quadrant of the Yonge/York Mills intersection, the other low-rise residential neighbourhoods are generally located on the tablelands above the valley slopes.

11 To the north of the site, on the north side of William Carson Crescent, is a 5-storey office building with ground floor commercial space at 4211 Yonge Street. To the north of the office building at 10 William Carson Crescent is the City of Toronto's Fire Services Station #121.

12 Further north along William Carson Crescent is a mid-rise residential apartment building complex comprising three 8-storey buildings (18, 28 and 38 William Carson Crescent). To the south of the apartment building at 38 William Carson Crescent is a 6-storey residential apartment building with 110 units at 11 William Carson Crescent.

13 18 and 28 William Carson Crescent are located on the west side of the street and back onto Yonge Street, while 11 and 38 William Carson Crescent are located on the east side of the street and back onto the valley slope with retaining walls immediately to the rear of the buildings. Above these two buildings on the adjacent tablelands are detached dwellings fronting on Oakley Place and Old Yonge Street.

14 To the east of the subject site is the valley slope, which leads up to the tableland on top of the slope and atop which is sited a large institutional property — St. John's Anglican Church at 19 Don Ridge Drive. Vehicular entrance to the church grounds is via a long driveway from Old Yonge Street, with a secondary driveway access from Don Ridge Drive. The church sits on the crest of the valley slope approximately 20 metres above the grade level of the subject site. The church building is located to the southeast of the subject site, while the church's surface parking area is located to the north of the church building immediately east of the subject site.

15 The closest residential properties consist of detached dwellings on Don Ridge Drive to the northeast and York Ridge Road to the southeast, all of which are located further east beyond the St. John's Anglican Church property. The residential properties to the east (Don Ridge Drive) are zoned R3, which permits a maximum height of 8.8 metres or 2 storeys. The residential properties to the south (York Ridge Road) are zoned R1, which permits a maximum height of 9.5 metres or 3 storeys.

16 South of the 2.7 metre wide private lane being incorporated into the subject site is a 4-storey office building at 4141 Yonge Street, which also backs onto the valley slope. It has a retaining wall at the rear. South of this office building is a single detached house at 4111 Yonge Street which is designated under Part IV of the *Ontario Heritage Act*. To the south, a walkway and stairs lead up from Yonge Street to St. John's Anglican Church.

17 Farther south, at the northeast corner of Yonge Street and York Mills Road, is a 7- storey office building known as York Mills Centre (16 York Mills Road). The office building contains commercial space at the ground level and is connected to the York Mills Toronto Transit Commission ("TTC") subway station and bus terminal (4015 Yonge Street) as well as the GO Transit bus terminal.

18 To the west of the site, on the west side of Yonge Street, is an office complex known as the Yonge Corporate Centre. The complex consists of three 6-storey office buildings at 4100, 4110 and 4120 Yonge Street. Also within the complex lands is a two storey building at 4190 Yonge Street and two buildings listed on the City's Inventory of Heritage Properties. To the north and west of the office complex is the City-owned Don Valley Golf Course.

19 To the south of the office complex, at the northwest corner of Yonge Street and York Mills Road/Wilson Avenue, is the TTC York Mills parking lot (4050 Yonge Street). The lot is approximately 1.29 hectares in size and contains 260 spaces. The property was purchased by the TTC in 2010 for its new headquarters. The new office building, which was approved in principle by City Council in July 2011, will be 7-storeys in height with a total gross floor area ("GFA") of approximately 44,669 square metres, including 34,400 square metres of office space and 5,577 square metres of retail, restaurant and cafe space.

Proposed Development

20 The applicant proposes to construct a mixed-use residential building consisting of 140 units and 305 square metres of grade-related commercial space. The building will be 10 storeys with a height of 32.05 metres, not including the mechanical penthouse (36.55 metres including the mechanical penthouse) and will be stepped back above the ninth storey. The proposal will have a total GFA of 12,518 square metres with an overall density of 3.89 floor space index ("FSI"). The residential GFA will be approximately 12,213 square metres and the non-residential GFA will be 305 square metres. The proposed site coverage is approximately 40.14%.

21 On the ground floor, the retail space is located within the westerly portion of the building with entrances directly onto William Carson Crescent and the landscaped forecourt along the Yonge Street frontage. Loading and vehicular access have been consolidated within the east portion. The proposed development will provide a total of 120 parking spaces in a four-level underground garage. The lower two floors and a portion of the third floor at the southeast corner of the building are proposed to be built into the adjacent valley slope with the exterior wall of the building serving as the retaining wall.

22 The entire site is located within the City's Ravine and Natural Feature Protection Area, which applies to the valley slopes and valley floor areas along Yonge Street and William Carson Crescent. The presence of a natural feature on the subject lands and the Applicants' desire to build a mixed-use residential building necessitate rezoning of these lands. The presence of this natural feature was also a key consideration of the Board in this case. The undisputed challenge for the Applicants was to develop the property with its existing constraints: the subway easement on Yonge Street and the steep, wooded slopes of the valley corridor on the east side of the property. The former City of North York Zoning By-law No. 7625 zones the western portion of the site ("C1") as described earlier; the eastern portion is zoned Greenbelt ("G"). As identified, the proposed development would extend into a portion of the site currently designated *Natural Area* in the City of Toronto Official Plan ("official plan") and is part of the City's natural heritage system. To accommodate the proposed building, the boundary between the C1 and G zones would be revised and moved roughly 6.7 metres eastward along the south lot line and 14.6 metres to the east along the north lot line. The C1 provisions would also be amended to increase the permitted height and GFA standards and to introduce appropriate development standards as needed, all of which would be reflected in the official plan and zoning by-law amendments as proposed. The official plan amendment would change the designation from *Natural Area* to *Mixed Use Area*. Zoning amendments, if approved, would also provide re-designation of the site to a higher form of residential intensification in concert with the proposed mixed-use residential building.

Traffic

23 The traffic issue was raised by the **condominium corporations'** agent, David Smith. Before presenting its findings on this issue, the Board must first comment favourably on Mr. Smith's overall participation in the hearing to the extent that he researched and prepared himself for the role of a party. His affable manner, respect for the proceedings, exceptional supporting written and visual materials and the thoroughness of his observations contributed to this decision maker's assessment of his participation as exemplary. He is to be congratulated for all of his hard work in support of the residents of the William Carson Crescent condominium residences.

24 Notwithstanding this positive assessment, however, the Board was less enthusiastic with Mr. Smith's provision of only anecdotal evidence (pages 22-33 of his witness statement — Exhibit 15) to respond to the expert evidence of Transportation Engineer John Barrington, a senior associate of BA Consulting Group Ltd.,

which produced the "Transportation and Traffic Impact Study" (Exhibit 17) in response to the issue raised by the **condominium corporations**. Given that the Board had conferred collective party status on these four entities at an earlier pre-hearing conference to raise one of their central concerns — traffic, it was reasonable, therefore, for the Board to anticipate receipt of more probative evidence from the agent than personal observations, anecdotal evidence and provision of a hypothetical traffic congestion scenario (if an on-street passenger pick-up and drop-off area was approved). The Board contrasted this evidence with Mr. Barrington's expert and scientifically-based evidence, all of which was unshaken in every respect and accorded persuasive and ultimately determinative weight on the issue of parking.

25 The Board was in fact hard-pressed to understand how the issue of traffic impact generated by the proposed development was permitted to stand as a serious planning consideration from the outset. William Carson Crescent is a collector road running east from Yonge Street and was built to appropriate design standards. It is capable (from the expert evidence presented) of functioning without adverse impacts with the building designed and sited as the Applicants propose. The City took no issue with traffic and it called no witnesses or presented opposing evidence on this issue. It was clear to the Board that the issue as raised by the four **condominium corporations** unnecessarily burdened the Applicants with the expense of having to engage a transportation engineer to prepare a traffic study to respond to what is determined by the Board to be a non-issue.

26 A review of the transportation findings confirms the Board's assessment in this regard. Specifically, the subject site's proximity to both the highly-developed roadway system and excellent public transit service is noteworthy. Among Mr. Barrington's uncontradicted findings, the Board heard that the level of new traffic that would be generated by the proposed development would not contribute to a reduction in the level of service provided on the surrounding arterial road system and collector road intersection. New traffic volumes generated by the proposal during the critical peak hour periods are small and traffic activity level related to the subject development would be similar to those existing today. As for the focus of new traffic being on William Carson Crescent, this small collector road actually enjoys significant lane widths and is clearly capable of handling the insignificant number of additional net and new vehicle trips. No physical improvements would be needed at this intersection or on the area road network to accommodate site traffic.

27 As for the matter of locating the passenger pick-up and drop-off area on William Carson Crescent instead of on-site, no adverse impacts would be created. The official plan does not require new development to contain its pick-up and drop-off area on-site as the **condominium corporations** proposed. The new TTC building across the street was also approved with an on-street pick-up and drop-off area. As Mr. Barrington opined, conversion of the street in front of the Applicants' proposed building to a "No Parking" area would permit these short-term resident pick-up and drop-off activities, causing little or no impact on traffic operations on this street. By extension, the street is wide enough to accommodate this activity, with William Carson Crescent being approximately 12.7 metres wide; enough to accommodate one traffic lane in each direction and pick-up and drop-off or parking on both sides of the street. With on-site pick-up and drop-off activities also occurring on parking level P1, Mr. Barrington reported that no measurable impact on Fire Station #121 results and no hazards are created. To this end, the anecdotal suppositions of what might happen by locating future unknown retail services fronting onto William Carson Crescent and whether vehicles might park on the street are assigned little merit and do not warrant further consideration. From the standpoint of traffic, the other hypotheses of what traffic impacts might occur by locating the proposed mixed-use residential building at this site with frontage along William Carson Crescent are assigned little weight.

28 Mr. Barrington is a highly respected transportation expert who has appeared before the Board on numer-

ous occasions. His findings in this case were unassailable and provided highly persuasive evidence as to the successful functioning of the roadway with the presence of a mixed-use residential building. Having considered the unshaken expert evidence and the report's findings, the Board determines that the proposed development would function well in terms of traffic access, internal circulation and parking. Traffic volumes attributable to the proposed development would be accommodated reasonably on the existing area road network. Traffic volume changes on the Yonge Street and William Carson Crescent intersection would be small given the distribution of new development-related traffic across the area street system. Related intersection impacts would be small and would not change noticeably current operating conditions. The Board determines that this issue was addressed satisfactorily by the proponents.

Board Findings Exclusive of Environmental and Natural Heritage Considerations

29 The Board received comprehensive information from the urban design and land use planners both in support of and against the proposed development. The Board evaluated the evidence regarding this proposal in the context of the relevant land use planning policies which the parties referenced in the course of their presentations. The Board read and considered all of the documents, planning instruments and expert witness statements proffered to support the parties' respective positions. At this juncture in the order, the Board must provide its favourable findings that support the Applicants' proposed development and facilitating amendments as they relate to broad planning and urban design considerations, but exclusive of the applicable environmental and natural heritage policies.

30 First, in respect of the overall design, the Board has considered the proposed development in the context of the relevant planning directives and policies of the 2005 Provincial Policy Statement ("PPS"), the 2006 Growth Plan for the Greater Golden Horseshoe ("Growth Plan") and the urban design and built form policies of the City of Toronto Official Plan with reference to various supporting materials like the City's Avenues & Mid-Rise Buildings Study ("Mid-Rise Buildings Guidelines"). The Board finds persuasive the direction given in these upper-tier and local planning instruments that support the type of development the proponents envision through their design concept. Based on a comprehensive reading of the evidence of land use planner Peter Smith and urban design planner Robert Glover and their supporting rationales, the Board finds that the Applicants have designed and proposed a built form that is representative of the type of contemporary, mixed-use residential development occurring across the City.

31 Considered in the context of the nearby condominium residences at the upper end of William Carson Crescent, the proposed building offers equal or better materiality and fenestration than that incorporated into those older buildings built more than a decade ago; naturally so, given the contemporaneity of building methods, materials and design. Considered in the context of the immediate built form with the mix of residential and commercial buildings, the Board finds the proposed building design to fit within the existing and planned context of the area. As stated, this finding is based on the highly persuasive evidence of the two planners cited above, whose expert evidence was in all respects unshaken as it related to the planning merits (exclusive, however, of Mr. Smith's opinion on the natural heritage policies which the Board discusses below). Their reading of the planning instruments and their reference to the policies contained therein to rationalize the development was central to the Board's decision to look favourably on the proposed planning instruments from a purely planning perspective that excluded the environmental and natural heritage considerations.

32 On the matter of fit and context, a great deal of contrasting evidence was presented by the expert witnesses. The Board was asked to consider the generally uniform mid-rise development along this as well as the

longer section of Yonge Street to the north and south. The opposing witnesses spoke of the negative planning aspects associated with permitting a 10-storey building in the context of the site's proximity to the ravine and ridge. They argued it will create views that will intrude into the sight lines of residents who live atop the ridge. They argued its mechanical penthouse will thrust upward above a free-flowing line of rooftop development (illustrated through pictorial modeling) that characterizes development along this stretch of Yonge Street. They argued that the building will not fit into the area context and they asked the Board to consider what currently exists to be the planned context as well.

33 The Board assigns little weight to the opposing witnesses' assessment of the existing and planned context or to the extent of the alleged impacts this building might create vis-à-vis height and massing, and the opposing witnesses would have the Board look at what currently sits on the ground. Yet, new development cannot be impeded because it does not mirror adjacent and nearby built form structures. The opinions of the supporting expert witnesses — Messrs. Glover and Smith — were not only informed by the type of development that has occurred in the area but also by the current planning regime that guides development today, which supports new and innovative forms of development and intensification at greater heights as the City grows. In this regard, what the Applicants envision for the site is appropriate from planning and urban design perspectives. The proposed design does not create adverse impacts on the fit and planned context of the area.

34 The existing context indeed derives from previous developments whose heights have remained below the top of the ridge to the east. Yet, there are no current or previous planning instruments that assign specific height limits. The York Mills Office Centre Secondary Plan, since repealed, offered nothing more than preservation of the amenity of adjacent residential development, directing that development not exceed various elevations above sea level and that the height of all buildings to be erected in the area would be restricted so as not to obstruct sight lines across the valley from top of bank to top of bank. Site-specific zoning by-laws were also enacted to limit the maximum height of developments along this section of Yonge Street while respecting the character of the valley and views from the top of the bank. In the current planning regime, views are no longer protected and the Board was not persuaded from a planning perspective that the relationship between existing buildings and the abutting valley wall should remain consistent. Height restriction, in the Board's view, finds no expression in the contemporary planning regime and is unreflective of the current pattern of new development in the City. In this context of the current planning regime, the Board would not have been averse to considering greater heights along this stretch of Yonge Street had the Applicants not run afoul of the direction of the applicable environmental and natural heritage policies.

35 For example, one need only look across the street and south of the subject lands to learn that the City has approved a new TTC building that is higher than what the Applicants propose to construct. That 7-storey office building at 4050 Yonge Street will be approximately 39.2 metres in height to the top of the solar chimneys; 30.15 metres to the main roof; and 32.9 metres to the clerestories. The York Mills Centre office building and the 10 Old York Mills Road condominium building are approximately 29 metres in height. These examples appear to demonstrate a mixing of both the existing and planned context, framing the proposal against the mid-rise development of the area while recognizing the City's approval of taller buildings of which at least one exceeds the top of the nearby ridge. Further, the "Existing and Planned Contexts" sidebar of the official plan's built form policies, referenced by Peter Smith, provides helpful guidance as to how to deal with this issue: "In instances of apparent inconsistency between existing and planned contexts when interpreting the built form policies as they relate to height and density, the planned context will prevail."

36 Currently, there is nothing in the official plan that prohibits any applicant from presenting a design with

height that might exceed the height of the top of bank. As stated, the City's approval of the new TTC building at 4050 Yonge Street, components of which the City deemed to be acceptable to exceed the top of bank albeit at a greater distance away from the slope than the subject site, is reflective of this contemporary reality. The City's approval is also indicative of the practical necessity of accepting new and innovative designs that respond to the need for development and intensification without altering significantly the varied geographic and topographic landforms of this city. In this context, the proposed residential building is an appropriate expression of modern built form development that is found adjacent to and near the subject lands.

37 From a land use policy perspective and from an urban form and design perspective, the Board reiterates its finding that Messrs. Smith and Glover respectively provided the most persuasive rationales for giving primacy to today's planning context to justify the proposed height. In the Board's determination, the proposed 10-storey height and massing are appropriate and are in keeping with the mid-rise built form that predominates along this stretch of Yonge Street. At this height, the Board also determines that in the context of the Mid-Rise Building Guidelines, the 10-storey building height at 32.05 metres to the top of the main roof is in fact a mid-rise height. The Board does not consider the proposed height of this building at 10 storeys on Yonge Street to be an issue worthy of dispute.

38 The proposed building setback from the current property line along William Carson Crescent is 2.2 metres. The setback would be reduced to approximately 0.76 metres after a required 1.44-metre road widening would be conveyed to the City. The building would feature "animated frontages" located parallel to and along both the Yonge Street and William Carson Crescent frontages with the residential lobby facing north and retail entrances facing west toward Yonge Street and north toward William Carson Crescent. The Board heard no persuasive evidence that the reduced setback on William Carson Crescent would destabilize or impact adversely the functioning of the site or the street realm and is determined, therefore, to be an acceptable setback distance.

39 The Board also finds that the proposed building would create no adverse shadow impacts on William Carson Crescent. It is noteworthy that there is a commercial building across the street and no residences upon which shadow impacts would be felt. As for walking on the sidewalks north of the new building where shadows will be cast, the length of time one might walk in shadow cast northward can be measured in seconds. This can hardly be called an adverse impact in the Board's view. The only impact statement regarding shadows worthy of mention in this order was that made by resident and **condominium corporations'** agent David Smith, who opined that replacement tree seedlings destined for the east side of the property as part of the Applicants' stewardship plan would likely germinate in shadows most of the day. This aspect of impact will be linked to the Board's subsequent review of this proposal (later in this order) in the context of the relevant environmental and natural heritage policies of the various planning documents.

40 Thus, from a land use planning perspective comprising the broad directives for orderly development and intensification and supported by highly persuasive urban design evidence, the Applicants' proposal achieves the direction of the current provincial and municipal policies and goals exclusive of the natural heritage considerations. Further, as designed, the building fits perfectly well and harmoniously within the existing and planned context. Its materiality and fenestration are mirrored in numerous such mixed-use and multi-residential developments occurring throughout the City. Accordingly, it flows logically that under this limited scenario of land use and urban design policies alone, the proposed development and the implementing official plan and zoning by-law amendments would be worthy of approval.

Natural Heritage Impact Study and Stewardship Plan

41 Turning next to natural heritage matters, the evidence established that the Applicants were mindful of the environmental challenges they faced with the Greenbelt ("G") zoning of the eastern portion of their lands; the *Natural Areas* designation of those lands in the official plan; the presence of a natural heritage feature on and next to their lands; the associate Natural Heritage System demarcation over the property (depicted on Map 9 of the official plan); as well as the fact that the entire site is located within the Ravine and Natural Feature Protection regulated area. The Applicants hired the environmental research firm LGL Limited, of which expert witness and biologist Barry Myler is a principal, to produce a Natural Heritage Impact Study ("NHIS") (Exhibit 20) to fulfill the environmental policy requirements of the official plan, the natural heritage policies of the PPS and the Toronto Region Conservation Authority ("TRCA") guidelines related to natural areas in order to evaluate the site and to support the proposed development of the subject site. A Stewardship Plan (Exhibit 21) was also produced and submitted in order to guide restoration of the vegetation community on the east-lying ravine slope through a phased and coordinated approach to minimize "temporary disruption of the slop habitat and soils while replacing non-native vegetation with native tree, shrub and plant species." The plan was intended to provide net natural heritage benefits by improving habitat quality.

42 The NHIS established the natural feature on site — a treed portion of ravine slope which is part of a contiguous natural heritage feature east of the identified drip line. In seeking to fulfill its mandate for this project, the NHIS also cites various official plan policies such as Policy 3.4.1, which speaks to "protecting and improving the health of the natural ecosystem; protecting, restoring and enhancing the health and integrity of the natural ecosystem and preserving and enhancing the urban forest."

43 The study references the TRCA's Regulation, "Toronto and Regional Conservation Authority: Regulation of Development, Interference with Wetlands and Alterations to Shorelines and Watercourses", made under the authority of s. 28 of the *Conservation Authorities Act* (Ontario Regulation 166/06), which establishes Regulated Areas within the TRCA's jurisdiction. Under this regulation, any proposed development within these areas requires a TRCA-issued permit (the Applicants placed great weight on the fact that despite the TRCA staff report's recommendation to refuse the issuance of a permit for this development, the TRCA Review Board ultimately issued the permit subject to a condition of removing invasive tree species and the planting of native tree species).

44 The NHIS also identified on-site development constraints, which Mr. Myler categorized in terms of high, moderate and low constraint and sensitivity. The Board determined this NHIS-specific methodology to be acceptable and to have portrayed accurately the types of constraints and sensitivities experienced on the subject site. Specifically, Mr. Myler's placement of the eastern portion of the subject property in the "moderate" category resulted in findings that the Board determines to consistent with the established sensitivity of the natural feature.

45 The Applicants propose to remove what the Board also determines to be a significant amount of natural feature, comprised of slope land and trees from the natural area within the property. Specifically, they propose to remove the lower half or approximately 33 metres of the forested valley landform to accommodate the building. Figure 9 of the Tree Inventory, Protection and Restoration Summary report (Exhibit 24) provides an aerial photograph provided by LGL Limited with cross-hatching overlaid to depict the extent of the loss of the *Natural Area*. The G zone area would lose 343 square metres or 19.88% of the *Natural Area* within the property. The C1 and G zone areas together would lose 788 square metres (correcting the visual exhibit's figure of 718 square metres) or some 46% of the *Natural Areas* within the property. In the Board's view, and supported by the opposing expert opinion, this represents a significant intrusion into a designated *Natural Areas*.

46 Martin Rendl, the planner for the Yonge Ridge Homeowners Association, referenced the hearing issue regarding the appropriateness of the proposed setbacks at this location and whether they represent acceptable and appropriate planning and urban design. For the front of the building and its setback from William Carson Crescent as already stated, the Board finds this setback to be an acceptable one. From a natural heritage perspective, however, Mr. Rendl opined that the intrusion of the eastern portion of the building into the eastern valley slope is an unacceptable one — an opinion the Board finds to be highly persuasive. This is because the proposed building would extend significantly into the *Natural Areas* and slope to the east and the building incorporates no setback from the toe of the valley slope to buffer the natural feature from the building — something that the TRCA calls for on a consistent basis to protect the natural heritage system. As Mr. Rendl explained to the Board and as confirmed in the TRCA documents, a setback of 10 metres from a building to a natural area is normally applied in such a setting. TRCA planner Mark Rapus also referenced this fact in his oral presentation. This evidence was unchallenged by the Applicants' two counsels. In this case, there is no setback from the natural feature as the Applicants propose rather to remove a little less than half of the landform, thereby encroaching into any setback and into the sensitive area itself. Also, the lack of an eastern setback to buffer the building from the natural area and vegetated slope would diminish, in the Board's determination, the character of this natural setting, reduce the natural amenity and would be detrimental to the natural functions of the natural heritage system as a result of the building's intrusion into the natural heritage system and removal of the vegetated slope.

47 The Board finds persuasive the expert opinion of TRCA planner Mr. Rapus, who confirmed for the Board that landform removal such as that proposed by the Applicants leads to greater cumulative loss of natural heritage landform features as well as supported wildlife. In the Board's determination, the building site's eastern protrusion is inappropriate and does not provide an appropriate setback.

48 The Applicants' Stewardship Plan for the wooded valley slope that remains after the removal of the valley landform is intended to accommodate introduction of the building's footprint into the slope. It is intended to guide restoration of the slope that remains after the removal of the valley slope to accommodate the proposed building, but the Board finds persuasive Mr. Rendl's opinion that this plan as presented fails to deal with the more fundamental concerns expressed by both City and TRCA staff with respect to the adverse impacts and appropriateness of removing a significant portion of the forested slope on the subject lands to accommodate development.

49 In justifying the removal of trees to facilitate construction, the Applicants' NHIS reported the reduction in forest canopy to be a "minor reduction" in the number of larger trees and the loss of some smaller trees, shrubs and some ground cover vegetation. It also observed that, as a large proportion of the area at the toe of slope is not in a natural state, the area to be removed comprises only 1% of the total natural cover along the east side of the Yonge corridor. The retained vegetation on the property would maintain the vegetated corridor and the building envelope would not create a pinch point in canopy cover. The proposed development would encroach into a small portion of the treed slope identified as part of the Natural Heritage System in the official plan. The NHIS evaluates that portion of the site's natural feature that is proposed to be developed as being of poor quality, albeit forming part of the total natural heritage system between York Mills Road and Highway 401.

50 As cited, the Stewardship Plan calls for a tree removal process to be undertaken. Figures for the precise number of trees were not always clear to the Board at the hearing as various witnesses referenced different (but not significantly so) numbers of trees. Suffice to say, however, that a large number of trees are proposed to be removed. The aforementioned Tree Inventory, Protection and Restoration Summary report proposes the removal of some 125 trees (of which 106 are non-native species) from the site and the preservation of 126 on-site trees.

The Applicants would plant seven new, City-owned seedlings and (according to the Applicants' co-counsel Kim Kovar in her submissions), up to 722 new trees in addition to new grasses and shrubs, thereby improving the ecological condition and biodiversity of the natural heritage system. To compensate for the extent of the tree removal process, the NHIS proposes to retain the property's eastern slope as natural habitat, to be restored over time by the removal of exotic trees and replaced with the direct seeding of native trees. Compensation for tree loss within the subject property would be planned to occur primarily within the valley slope and within the developed portion of the property.

51 The study concluded with its finding that only a subset of the ecological features and functions of the larger Don Valley corridor extend to the study area and subject property. It reported that restoration as detailed in the Applicants' Stewardship Plan would result in improvement of the ecological functions of the natural feature; further, the encroachment into the valley wall would not negatively impact the integrity or function of the surrounding *Natural Areas*.

52 The City's urban forestry planner, Yaroslav Medwidsky, criticized the proposal and he expressed his concern with the NHIS findings and its proposed permanent removal of almost half of the natural feature on-site — a significant amount because of what he called "the large area to be lost". He opined that the quality of the natural area could be improved significantly by retaining the slope feature from the start, thus retaining the planting medium and growing space, removing and managing the invasive species and replacing them with native tree, shrub and herbaceous plantings that are ecologically appropriate for the site. Of particular note was his opinion that, although the Applicants propose to improve the quality of the remainder of the *Natural Areas* through the implementation process set out in their Stewardship Plan, almost half of the existing potential stewardship area, and most importantly the planting medium and growing space, would be lost to the footprint of the proposed building.

53 In contrast to Ms. Kovar's closing submission on this point, Mr. Medwidsky's expert opinion was that the ability to improve significantly the quality of biodiversity and ecological function of the existing *Natural Areas* would be diminished because about half of the trees and shrubs that could potentially be planted can no longer be planted because the planting area would be reduced. Despite the proposed removal of invasive species of trees and the NHIS determination of existing low ecological function overall, Mr. Medwidsky stated nevertheless that the trees and other vegetation in this natural area, even with their comparable lower biodiversity and ecological function, still provide greater ecological benefit than a building with a green roof (as the Applicants' plan proffers) could provide. It was an uncontroverted fact that natural areas of poorer quality still provide mature tree canopy cover and associated benefits such as urban wildlife habitat, food source and migration corridors, storm water infiltration, protection from surface erosion and improvement of air quality.

54 From this urban forestry planning perspective, the proposed official plan amendment and zoning by-law amendment cannot be supported because they facilitate development that results in the permanent loss of some 788 square metres of natural area along with a large number of existing trees, other vegetation, forest soils and potential planting area. Such loss is significant in Mr. Medwidsky's opinion and cannot be practically recovered. The proposed development would result in the net loss of the amount of *Natural Areas*. In reviewing the comments of TRCA staff on the proposal (Exhibit 1, Tab 18), the Board determines that the NHIS does not address sufficiently how the proposed development is consistent with the relevant provincial, municipal and TRCA policies. As Mr. Medwidsky wrote: "Slope issues aside, the protection of the woodlands on this site would be on the basis of general urban forest and natural heritage protection issues, rather than from any specific significance at this site."

55 Mr. Medwidsky's opinions echo these concerns throughout. He referenced the Stewardship Plan's proposed compensation for the loss of growing space through the proposed implementation of green initiatives such as permeable paving and a green roof. He expressed his concern that these initiatives might be beneficial from a storm water management perspective but they do not provide a suitable medium for growing trees. He opined that the official plan and zoning amendments are not in keeping with the City's Ravine and Natural Feature Protection By-law's purpose to promote the management, protection and conservation of ravines and natural and woodland areas and to prohibit and regulate the injury and destruction of trees, filling, grading and dumping in defined areas. Further, paving and structures reduce available room for the development of tree root systems.

56 Lastly, if approved, the proposed official plan amendment and zoning changes would support development that would result in the permanent loss of a large portion of the property's *Natural Areas* including growing space and infiltration area, significant loss of canopy coverage and removal of a significant number of trees located on the subject property.

57 Mr. Medwidsky's evidence is highly significant in the Board's determination as to the inappropriateness of an application such as this that proposes permanent removal of natural feature. Mr. Medwidsky's expert opinion was unshaken in cross examination and is considered by the Board to be highly persuasive of the demonstrated shortcomings of the NHIS from an environmental perspective and its failure to protect the *Natural Areas* from development intrusion such as that contemplated in this proposal.

58 Agent David Smith, for the four **condominium corporations**, expressed a concern that Mr. Myler (his firm authored the Applicants' NHIS) had referenced a 30% loss of the overall feature between 1988 and 2011 during construction of the four William Carson Crescent condominiums. Yet, Mr. Myler had failed to note that during the same period, 75% of the natural heritage feature on the Applicants' site had been reduced to approximately 50% with the creation of the parking lot. Mr. Smith noted in his closing statement that if approved, the proposal would remove nearly half of the natural feature again through this development, meaning that the site would reduce from 75% coverage in 1988 to approximately 25% after development. Mr. Smith was not challenged by the Applicants' co-counsels on this point of concern or on his opinion that this reduction of the natural heritage feature on a site-by-site basis has the effect of nibbling away at the natural feature. In the Board's view, such site-specific and invasive development activities as the Applicants propose, no matter how confined to a site's boundaries, do in fact constitute a chipping away at the overall natural heritage system and would have the effect of reducing the natural heritage feature overall.

59 Like Mr. Medwidsky, Mr. Smith also expressed concern with the Applicants' Stewardship Plan, which seeks to eradicate non-native and/or invasive species and will implement a seed planting proposal. He questioned the likelihood of success given the existing shadow impact of the current vegetation in harmony with the new shadow impact of a building that extends right up to the tree line. He also questioned whether the seedlings would germinate given that most of the day they would be shaded.

60 The Yonge Ridge Homeowners Association hired field ecologist Linda Liisa Sober to peer review the NHIS (her Environmental Peer Review is Exhibit 33). She was as critical of the NHIS as were the aforementioned opposing witnesses. Ms. Sober opined that the proposed development is inappropriate because it results in a greater net loss of ecosystem services. Ms. Sober expressed her concerns with the potential cumulative effects of this development on the valley system. While the Board accepted as persuasive Ms. Kovar's submission that Ms. Sober's starting point (that no development is permitted) is somewhat extreme, this witness nevertheless outlined legitimate concerns with the loss of natural feature that are buoyed by the other opposing expert wit-

nesses. Echoing concerns of Mr. Medwidsky related to the proposed green roof in the Stewardship Plan (paragraph 55 above), Ms. Sober opined that the proposed efforts as set out to plant trees on a condominium roof and to seed trees on the remaining bank are insufficient compensation for the ecosystem loss proposed. While the Stewardship Plan identifies ways in which components of the existing conditions will be improved, when considering the proposal as a whole, the Board finds persuasive the opposing witnesses' evidence that this development will result in a net loss of ecosystem services.

61 The Board considered the NHIS, the Stewardship Plan and all of the opposing evidence carefully. The Board's central criticism of the Applicants' NHIS stems from the starting premise of the study which, in the Board's determination, runs counter to the direction espoused by the relevant official plan and TRCA policies discussed below. As Mr. Myler explained in his witness statement, LGL Limited's initial assignment included preparation of the Terms of Reference for the NHIS and completion of the study as well as the exploration of "opportunities to enhance remnant slope habitat by exotic species suppression and native species reintroduction to achieve a balance of natural heritage conservation for the project." The Stewardship Plan, also prepared by the same firm, outlines the clearing of non-native plant species and reintroduction of native plant species that was specified as a condition of TRCA Review Board approval. In the Board's determination, this approach is not consistent with the well-stated premise in the official plan's environmental policies and various TRCA documents (cited below) that natural features must be protected and preserved first before one begins to "restore" and "enhance." (Board emphasis added) The Board's reading of these policies is that the existing natural feature must be protected and preserved from the outset, with efforts to restore and enhance the natural feature second, and certainly not to espouse a plan that creates permanent loss in order to facilitate development. There is no policy before the Board that provides such flawed direction. Insofar as this proposal is concerned, and in the context of the sensitivity of the City's ravine and natural heritage features, the Board heard no evidence that what the Applicants propose to build through this design was the only type of development possible. Planner Peter Smith responded to a question from the City's counsel that it would be "challenging" to build something on this very constrained site that did not intrude into the natural feature but the Board did not hear that development was not impossible. In this case, and in the context of policy direction, it was the Applicants' onus to show how development could proceed by protecting what exists; not by removing it and then seeking to restore a feature later. That consideration comes — logically — after one adheres first to the City's goal of retaining what natural features are already present before demonstrating how they could do it differently. The Applicants did not meet the onus in this regard.

Environmental and Natural Heritage Policies Context

62 The process of defining the limits between the developable area and the natural features to be protected for the long term (as opined by planner Peter Smith) are based most appropriately on site-specific evaluation and detailed analysis in accordance with Policy 2.1.1 of the PPS. This is a defensible opinion that finds expression in the direction provided in the official plan sidebar entitled "The Natural Heritage System and Inventory" in Section 3.4; the Natural Environment section. Through the NHIS, the Applicants' biologist was able to establish the limit of the natural feature to be protected and maintained. The NHIS did not, however, provide either an appropriate rationale or planning justification for first building into the *Natural Areas* and permanently removing this portion of the natural heritage system — a landform that merits protection in all of the policies reviewed at this hearing.

63 By extension, the City considers its natural heritage system to be "an evolving mosaic". It directs that when development is proposed on or near lands shown as part of the natural heritage system, the proposed de-

velopment's impact on the system is to be evaluated and an impact study may be required. As part of the evaluation, the natural heritage features on or near the property in question and their location will be defined more precisely. It is for these reasons that some of the City's maps must remain without indicating precise boundaries (the Board benefited from the presence of several City staff charged with creating these maps). Rather, these boundaries are to be determined through on-site evaluations. For example, Map 2 (Urban Structure) shows the valley slopes to the east of William Carson Crescent and Yonge Street but the width of the system is not specified. The previously cited Map 9 (Natural Heritage System) notes that "boundaries are schematic" and "for information purposes only". This direction is provided with good reason as discussed in these reasons, among which the definite limits of the natural boundaries will be achieved through site-specific study.

64 However, where the proponents commenced their evaluation by first electing to remove permanently a significant portion of the subject site's natural feature and then constructing new natural feature boundaries through restorative measures, the City's policy direction is offended in the Board's determination. It was interesting to the Board that none of the Applicants' witnesses or the lead co-counsel in her closing submissions challenged this premise or addressed the rationale, which, in the Board's view, represents a significant departure from the direction given in the official plan and TRCA documents. It was apparent to the Board that in the mindset of the proponents and their supporting witnesses, this was an acceptable approach — to start from the premise that one can remove and permanently lose a portion of the site's existing natural features, then restore and enhance the area in order to facilitate the development. The Board determines that this approach rendered the Applicants' NHIS flawed from the outset as discussed. The Board finds persuasive the City's position, relayed through the City's expert witnesses that the NHIS does not adequately describe the impacts of the loss of trees, forest canopy and *Natural Areas* generally or justify the proposed development with respect to a net benefit with regard to natural heritage. Proceeding from the position of first removing the natural feature and then proposing restorative measures is inconsistent with official plan and TRCA policies and directions as the Board reads and interprets these policies.

65 Where the official plan policies and TRCA guidelines speak to the protection of natural features from development, as stated, the NHIS starts from the assumption that a loss of natural feature is acceptable if comprehensive restorative work occurs and results in a net improvement to habitat quality and ecological function when compared to existing conditions. And, if the loss is "very small" in proportion to the local extent of the Natural Heritage System and will not affect the corridor function of the ravine slope, then the permanent loss of natural feature can be supported. As stated, no evidence was presented at this hearing to support the position that one is permitted to first encroach upon the natural heritage feature — to remove a portion of the existing natural feature forever in order to facilitate development — and then offer mitigating measures to address any impacts. The planning regime very clearly does not support such an approach.

66 In the Board's view, this is a significant flaw in the NHIS as written. Its findings and the implementation/management processes outlined in the Stewardship Plan (the latter a by-product of the NHIS), cannot be accorded any serious weight by the Board. The fact that the TRCA Review Board found merit in the Applicants' NHIS to issue a permit for construction was not lost on the Board, but it is not so persuaded by the alleged merits given its reading of the policies before it. In the circumstances of this case, the TRCA Review Board's issuance of a permit to allow for the alteration of grades so as to permit the construction of the proposed building — particularly given the TRCA staff's recommendation not to issue a permit based on their evaluation of the proposal's impacts on the *Natural Areas* — showed how, in this decision maker's determination, the TRCA Review Board clearly failed to accord sufficient weight to the direction and central premise of the City's official plan policies that natural heritage features should not be removed. Moreover, the Board also finds that the Review

Board also failed to safeguard and uphold the guiding principles of the TRCA's own policies to protect the valley and stream corridors from development that can cause permanent loss to natural features.

67 The TRCA staff position, however, which was to oppose the development and the facilitating amendments, supports the Board's position in this regard. Indeed, given the Board's great familiarity with TRCA-related reports as presented in numerous hearings, the fact that the TRCA Review Board found favour with this development in light of the glaring inconsistency of the development with the general protection and preservation policies as well as TRCA staff's opposition to the development are the curious facts of this case. Having considered the NHIS study to be flawed from the outset in terms of proposing permanent loss of a portion of the natural feature where official plan policies and TRCA policies run counter to this premise, the Board places little weight on the TRCA Review Board decision to issue the permit and instead the Board assessed the proposal and the facilitating amendments in the context of the planning instruments before it.

Other Environmental and Natural Heritage Policy Considerations and Board Findings

68 On what basis does the Board determine that the proposed development and its implementing amendments cannot be supported? Separating policies from one another to permit or refuse a particular development proposal would constitute a misreading of the official plan policies in the Board's view and indeed, the official plan directs that all of its policies are to be read together. In that context, a cursory reading of the overall planning and urban design evidence inclined the Board to look favourably on the proposed official plan and zoning by-law amendments (as the Board indicated earlier in this decision). However, the Board was mindful to assess the evident positive planning aspects and attributes of the proposed development against the backdrop of the environmental and natural heritage considerations so prominently featured in the upper tier and official plan natural heritage policies as well as in the TRCA materials. In short, a comprehensive reading of the entire policy regime was necessary for the Board to assess the merits of these appeals objectively. Having done so, the Board determined that by virtue of the presence of the natural ravine and valley features on and juxtaposed with the subject lands and the proposed permanent loss of natural feature, a far different perspective on the attractiveness of this proposal has resulted and a less favourable determination reached in respect of these appeals. A review of these appeals in the context of the environmental and natural heritage policies is required and confirms this determination.

69 In respect of issue 1 and whether the proposed development, official plan amendment and zoning by-law amendment are consistent with the purposes of the *Act* as set out in s. 1.1, the Board determines that the proposed development is inconsistent with the *Act's* purposes, which include promotion of "sustainable economic development in a healthy natural environment within the policy and by the means provided under this *Act*". This policy considers the balance between economic development and healthy natural environment. This balance is not achieved with the proposal since the development will not appropriately conserve the valley landform. It removes portions of the natural feature first and seeks only to conserve that which is replaced. Further, the *Act* guides us to integrate matters of provincial interest into provincial and municipal planning decisions. In this regard, the Board is not satisfied that ecological matters have been adequately considered as part of the Applicants' proposal.

70 Section 2 of the *Act* speaks to matters of provincial interest wherein jurisdictional parties "shall have regard to, among other matters, matters of provincial interest such as (a) the protection of ecological systems, including natural areas, features and functions. The Board finds that the proposed development and its supporting planning amendments offend the direction contained therein. The proposed building would extend into the *Nat-*

ural Areas. Removing a large portion of the natural feature on the site does not accord with this direction.

71 The Board is not satisfied that this project promotes development that is designed to be sustainable from an environmental perspective or that construction in the valley to the extent the Applicants propose is either warranted or appropriate. The Board was also concerned with the paucity of information contained in the Applicants' materials related to the ongoing stewardship of the affected and newly-planted areas, leaving much of the future stewardship maintenance and protection matters to anticipatory management by the future **condominium corporation** once the building is registered. In the Board's view, the lack of a well thought out plan for future stewardship beyond the Applicants' period of responsibility is illustrative of the questionable effectiveness of the Applicants' plan to simply turn over responsibility of the long-term management of the reconfigured natural feature to the new **condominium corporation** — an action that will also imply ongoing future maintenance and expenditure implications for the building residents. This proposal undermines the long-term protective language of the applicable policy documents and in no way satisfies the municipal, upper-tier or TRCA policies that seek to protect, preserve, restore and enhance the natural features for the long term, given that their starting point is to remove natural feature from the site first and only protect that which replaces the original natural heritage system. This lack of appropriate planning for the longer term is, in the Board's view, insupportable.

72 Mr. Rendl provided some of the most persuasive planning evidence at the hearing insofar as protection of the natural feature is concerned. In providing his evidence in respect of issue 3 and whether the proposed development and the requested amendments are inconsistent with the PPS pursuant to s. 3 of the *Act*, Mr. Rendl opined that the proposed development is not consistent with Policy 1.1.1, which directs that healthy communities be sustained by avoiding development that may cause environmental concerns. This development removes a significant amount of vegetation and valley slope, which is currently located within a protected natural heritage system. Natural features and areas should be protected for the long term in his view; one shared by ecologist Linda Sober and one reflected in the official policies. Removing approximately half of a valley landform does not meet this PPS policy in the Board's view. Neither Mr. Rendl nor Ms. Sober were satisfied that the Applicants' proposed mitigation measures adequately compensate for this loss of valley landform. The other opposing witnesses echoed these same concerns.

73 Section 2.1 of the PPS contains the natural heritage policies. Of note is Policy 2.1.1's direction that natural features and areas shall be protected for the long term. The Board observed that the Applicants' Stewardship Plan for the affected lands does not protect the natural features for the long term. It references the restorative nature of planting native species over the long term but it downloads the ultimate responsibility for ongoing maintenance and stewardship on a future entity, a **condominium corporation**, which will create financial obligations related to upkeep. Details are absent from the Stewardship Plan in this regard and fail to address the goal of protection of the natural features and areas for the long term. The proposed development in fact removes lands permanently from the natural feature. This upper-tier document sets the tone for development considerations in areas such as this where a portion of the site contains natural heritage features and is already designated through zoning and the official plan with supporting overlaid ecological designations. In that context, the removal of this extent of wooded protected natural area on the site and the removal of a large number of trees from the site cannot be considered as actions that protect or maintain the natural features of the site in the Board's view. This significant degree of alteration to the protected natural features of the site is not consistent with policy 2.1.1.

74 Policy 2.1.2 directs that the diversity and connectivity of natural features in an area and the long-term ecological function and biodiversity of natural heritage systems should be maintained, restored or, where pos-

sible, improved. While there is a restorative component to the Applicants' Stewardship Plan, something called for in this policy, there is no maintenance of the *Natural Areas* from the outset but rather, removal of a significant portion of that feature on the subject lands as the starting premise to facilitate the development. Mr. Rendl opined that the proposal is not consistent with this policy as it fails to achieve any of its goals. To the Board, the word "maintained" sets the tone for protection and preservation first, followed by "restored" and "improved." There is no upper-tier or lower policy that supports removal of lower-form features in order to re-plant and enhance with higher quality species. Rather, the existing natural heritage systems are to be preserved. This proposal offends the direction of this policy.

75 Policy 2.1.6 states:

Development and site alteration shall not be permitted on adjacent lands to the natural heritage features... unless the ecological function of the adjacent lands has been evaluated and it has been demonstrated that there will be no negative impacts on the natural features or on their ecological functions.

76 While undertaking a comprehensive evaluation of the ecological function of the affected lands, the Applicants have not demonstrated to the Board's satisfaction that there will be no negative impacts on the natural features or on their ecological functions. The Applicants' NHIS involved a scientific review of the functioning of the site and the level of sensitivity of its site vis-à-vis natural features and connectivity. However, as stated exhaustively already, the negative impacts created on the existing natural features and their functions are total: the latter would be permanently removed to facilitate development. This policy is also not supported by this proposal.

77 The PPS policies are equally instructive for the Board in determining the weight to be placed on the relevant natural heritage policies of the official plan. Policy 4.5 directs that the official plan is the most important vehicle for implementation of the PPS. Policy 4.6 states that PPS policies represent minimum standards; planning authorities and decision makers are not prevented from going beyond the minimum standards established in specific policies (unless doing so would conflict with any policy of the PPS). There was no evidence offered by any party to this hearing to suggest that the City's official plan policies conflict with the upper-tier policies. Further, the Board finds that the City's policies are to be accorded significant weight as buoyed by the direction found in Policy 4.5 of the PPS.

78 Section 4.2.1 of the Growth Plan contains the Natural Systems policies. Policy 3 encourages planning authorities to identify natural heritage features and areas that complement, link or enhance natural systems. In respect of the PPS and provincial plans, the Growth Plan instructs us that "the direction that provides more protection to the natural environment...prevails." The same direction is given for the Greenbelt and other environmentally-based plans.

79 The City of Toronto Official Plan provides the most restrictive direction regarding building adjacent to these natural heritage areas. Section 2.3.2 of the official plan states that Green Space System (this site is part of that system) is comprised of those lands with a *Parks and Open Space Areas* designation which are large, have significant natural heritage or recreational value and which are connected. This section directs that it should be protected, improved and added to whenever feasible. Policy 2.3.2.1 calls for the improvement, preservation and enhancement of the Green Space System and 1(c) includes restoring, creating and protecting a variety of landscapes. It does not call for the permanent removal of natural green space as the Applicants would do in order to develop the site, only thereafter following a process of "restoring, creating and protecting" that which they re-

plant. What they propose to remove would be lost permanently. The proposal offends the direction of this policy.

80 The Natural Environment section of the official plan (Section 3.4) advises that the natural environment is complex and does not recognize boundaries, noting that there are limits to the stresses resulting from human activity that it can absorb. "To be good stewards of the natural environment we must acknowledge that it has no boundaries and we must respect its limits." And: "Our natural heritage features and functions require special attention." The official plan policies on this subject are replete with themes of protection, restoration and enhancement of the natural features and functions. The Natural Environment section notes that the protection of Toronto's natural environment and urban forest should not be compromised by growth, insensitivity to the needs of the environment, or neglect.

81 These goals find expression in the natural environment policies. Policy 3.4.1 a) vi) speaks to minimizing the release and proliferation of invasive species and mitigating their impacts. While the Applicants propose to replace invasive tree species with native species, they are actually proposing to permanently remove an area of the existing *Natural Areas* to accomplish this — something that the official plan policies do not contemplate.

82 Policy 3.4.5 is restrictive, directing that "Development is prohibited within the floodplain." Policy 3.4.8 directs that development will be set back by at least 10 metres or more if warranted from the top-of-bank valleys, ravines and bluffs. The Applicants do not propose to respect the City's traditional request to protect its features with a 10 metre buffer.

83 All parties' witnesses referenced Policy 3.4.10, which is an important policy for this proposal and is reprinted herein:

Development is generally not permitted in the natural heritage system illustrated on Map 9. Where the underlying land use designation provides for development in or near the natural heritage system, development will:

- a) Recognize the natural heritage values and potential impacts on the natural ecosystem as much as is reasonable in the context of other objectives for the area; and
- b) Minimize adverse impacts and when possible, restore and enhance the natural heritage system.

84 The opposing witnesses have established that the proposed development fails to minimize the adverse impacts by proposing removal of natural feature at the outset.

85 Policy 3.4.12 requires all proposed development in or near the natural heritage system to be evaluated to assess the development's impacts on the natural heritage system and identify measures to mitigate negative impact on and/or improve the natural heritage system, taking into account (among other things) the consequences for: c) significant physical features and land forms. The Applicants submitted their NHIS but as stated, the Board is not satisfied that the requisite level of protection has been offered where the starting premise is that the natural heritage area is to be removed in order to facilitate development. Therein lies the flaw in the entire exercise in the Board's determination.

86 Chapter 4 of the official plan designates the eastern portion of the site as *Natural Areas*. These policies are found in Section 4.3, *Parks and Open Space Areas*, which state that "Development is generally prohibited"

within these areas. Policy 4.3.3 states that natural areas will be maintained "primarily in a natural state" while allowing for conservation projects and recreational, cultural and educational uses. The Applicants envisage none of these through the proposed development. The Board finds highly persuasive City planner Guy Matthew's opinion that removal of a significant portion of the natural feature on this site to accommodate the proposed development is not consistent with the zoning, the official plan land use designation or official plan policies respecting the Green Space and natural heritage systems. Even allowing for Policy 4.3.7 whereby *Parks and Open Space Areas* that are not publicly owned and that seek to develop can be considered on the basis of its consistency with the official plan's policies, the Board finds the other policies that discourage removal of natural heritage features like this site proposes to be instructive, more persuasive and to discourage development in the manner sought by the Applicants. As the Implementation section of the official plan states in Section 1.5, How to Read the Plan: "...everything is connected to everything". The Board has read the official plan as a whole and determines that the proposed development and the implementing amendments do not comply with the natural environment policies or the *Parks and Open Space Areas* policies.

87 Read in the context of all of the aforementioned upper-tier and municipal planning instruments, the proposed development and its facilitating amendments offend virtually all of the relevant and most restrictive of the environmental and natural heritage policies espoused and commented upon at this hearing. Two other documents received the Board's careful consideration and are listed below.

The City of Toronto Natural Heritage Study-Final Report ("City NHS")

88 It is well known that the TRCA is the City's partner in managing Toronto's natural heritage system to create a healthy and sustainable integration of natural ecosystems with human communities. The City NHS of December 2001 (Exhibit 10, Tab 11), was a co-produced mapping exercise of the City and the TRCA that informed the creation of the aforementioned Natural Heritage System Map (Natural Heritage System Map 9 as already cited). Among other things, this study informs the development of natural heritage policies in the City and provides a tool to identify a natural heritage system within a functional framework designed to address biodiversity and ecosystem needs while recognizing urban context and multiple-use values.

89 The subject site has been identified as *Natural Areas* through that process and the report provides the framework in support of the natural heritage policies of the official plan. The subject site's natural feature is included in that map and is what Mr. Matthew termed a "distinguishable ravine feature." The Board notes that the Applicants' biologist Mr. Myler also staked the toe of slope with TRCA staff and identified the location of this feature. The limit of the existing zoning for the eastern portion of the site — "G" (Greenbelt) under former City of North York Zoning By-law No. 7625 — was created to allow a commercial building to be built on the site with the G-zoned portion intended to remain as landscaped open space or to have low density residential (which is permitted).

90 Mr. Matthew noted that not only is the current G zoning consistent with the relevant PPS, Growth Plan and official plan policies, it implements these policies that speak to the protection of the existing natural feature. The study also speaks to the impact of urbanization on natural features. There is no question in the Board's mind that the corridor of natural heritage features that flows from the larger natural heritage feature to the west as mapped encompasses the lands to the east of Yonge Street and the subject property. This natural heritage corridor is tied into the larger natural heritage feature to the west and was referenced by nearly all of the witnesses. In examining this landform, the Board notes that the study defines natural heritage systems as "a network of protected significant features." Some features are continuous and provide varying degrees of habitat and ecological

function. These patches of natural habitat tend to be convoluted rather than simple in shape by virtue of most of these being restricted to valley and stream corridors. The study notes that "the urban matrix surrounding habitat patches suggests considerable negative pressures, which lead to habitat disturbance and degradation."

91 Mr. Robinson, counsel for the City, referenced the NHS position on habitat fragments. These are "subject to disturbance and degradation by humans" and the study lists numerous impacts that urbanization causes to these habitat fragments. The study is also important because it speaks pointedly to the suggestion that only the best of the natural areas should be protected. This approach "will not in itself preserve biodiversity or ecosystem health." Section 2 of the study (page 176) references landscape scoring and speaks directly to the subject site given the latter's topographical similarities to what the study describes:

The lowest scoring sites, not surprisingly, are small, narrow remnant habitat patches that are completely isolated from other natural areas and are surrounded by urban development. Species composition and condition of these sites reflects this situation....[T]hey tend to support only common species and may be quite degraded.

However, if maintained and improved, these patches can make a substantial contribution to the natural heritage system in terms of their ability to act as stepping stones or stopover areas for animals on the move. If poorly scoring patches were to be removed because they were considered to be insignificant, this would change the matrix influence on nearby patches, possibly reducing their total score....Lower quality sites also have the potential to have their quality improved through site management.

92 The study also notes that *Natural Areas* in the urban setting area also prone to a high degree of human use and pressure. These areas tend to be more disturbed and lower in vegetative quality than their rural or wilderness area counterparts.

93 Toronto's remaining habitat is extremely valuable from the standpoint of maintaining and increasing biodiversity in this region. The value of all remaining habitats should be recognized by planning policy, as should the need to increase total cover and to regenerate the system. Existing habitat values should be maintained and improved wherever possible. As Mr. Rapus told the Board, the City's current representation of the natural heritage system stands at 20% whereas the goal is to increase the system to 40%. The study recommends that the City's official plan identify this system as a minimum and the official plan policies should protect and restore these system components. In the context of this proposal, there is no persuasive evidence to show how removal of lands from the natural heritage system contributes to the City's objectives in this regard. Mr. Rapus also emphasized that encroachment is a slow and incremental factor that inhibits habitat quality and protection. Encroachment includes attrition at habitat edges through development by adjacent property owners. The Board determines that the proposed development on this habitat fragment would undermine the report's direction, disturb and then remove permanently natural features and erode instead of protect the natural heritage system.

94 The *Natural Areas* and related policies of the official plan direct that lands so designated are intended to remain in a natural state. The Board finds Mr. Matthew's recommendation persuasive that the lands should be improved rather than approving a building whose footprint results in a loss of a significant portion of the site's natural feature. As cited already, the official plan policies call for the protection, preservation, improvement and enhancement of the Green Space System. This proposal seeks to develop in an area where the type of development is determined by the Board to be too intrusive into the natural heritage feature, permanently removing a portion of it first in order to facilitate development and only offering restorative actions in the context of per-

manent loss of the feature thereafter. Both the *Natural Areas* section of the official plan and the overall direction of the City NHS are offended by this development.

The 1994 Valley and Stream Corridor Management Program ("VSCMP")

95 The VSCMP (Exhibit 28) is instructive as to the type of direction the City takes in respect of valley and stream corridor management. The City's and the TRCA's principles and objectives for such management are laid out plainly in this document. The Board places significant weight on the overarching direction of protection in this document. Although not elevated to the level of formal policy, it nevertheless provides a clear statement on the direction of protection and management of the valley and stream corridors — of which the subject site is part — and is reflective of the City's current approach to development in these sensitive areas.

96 For example, Principle 3 notes that the conservation of valley and stream corridor systems requires the protection of the corridor landforms and watercourses. Principle 4 notes that these corridors are vulnerable to the incremental and cumulative effects of land uses and land use changes.

97 Policy 2.2.2 directs that environmental protection and prevention of new hazards is, among other things, to "A) establish the boundaries of valley and stream corridors as the limit of new urban development and B) to prevent development that negatively impacts on the natural landform, functions and features...within valley and stream corridors."

98 Policy 4.1.1. A) directs that new urban development shall not be permitted within valley and stream corridors, except in areas of existing development as set out in Section 4.2. The VSCMP acknowledges in this latter section that development has historically occurred within these corridors and has occurred in isolation in low concentration. Ms. Kovar, co-counsel for the Applicants, put the content of this section to TRCA planner Mark Rapus; specifically:

The Program recognizes that where development has occurred within valley and stream corridors, increased flexibility for valley land management is required. To this end, the Authority's policies and criteria for existing development within these areas permit higher levels of risk associated with flooding, erosion and slope instability, and recognize that environmental rehabilitation is more limited. Inherent in these policies is the objective to minimize, reduce or eliminate these risks and also achieve environmental protection and rehabilitation to the fullest extent possible.

The application of these policies will also have regard to the characteristics of the adjacent corridor reach; therefore, opportunities for development and redevelopment of any site will be consistent with, and dependent upon, the extent and nature of existing development on the subject site and with development patterns within the corridor reach as a whole.

99 Mr. Rapus responded that the proposal does not achieve the objectives set out in this section of the VSCMP as the proposed development limit would extend significantly beyond the existing limit of development on the site (the eastern edge of the asphalt parking lot) and well beyond the limit of development (the office building) that exists on the adjacent property to the south. He emphasized that natural valley landforms cannot be recreated as such and compensation of the same is not possible. Representing the TRCA staff view, Mr. Rapus opined that the partial removal of the slope on the subject property represents a permanent loss of the natural landform.

100 The Board sees no inconsistency in the provision for development in this portion of the document and the limits placed on corridor development overall. The starting premise is that protection and preservation of the natural heritage system is vital. On a site so completely constrained on a number of sides — the Yonge subway easement to the west, the overall narrowness of the site and the natural feature to the east — the Applicants' approach is to develop first and restore second. This is inconsistent with the purpose of the VSCMP as cited and cannot be used as a means to justify the proposed removal of the natural feature. Moreover, in her Environmental Peer Review, Ms. Sober observed that the NHIS did not identify the Valley and Stream Corridor Management Program, which she called an important component of evaluating projects of this type. She also stated that a large portion of the valley landform would be removed in part for building walls. This is inconsistent with Section 2.2.2 B of the VSCMP and several elements of the program's objectives for overall protection of the valley and stream corridor.

101 Set in the context of the aforementioned VSCMP's direction regarding protection of the natural heritage system from the outset as identified, the Board finds that the proposed development offends the direction of the VSCMP. The Board assigns little weight to the Applicants' NHIS concluding statement that "on balance, the development will not negatively impact the ecological functions of the NHS, and that those features and functions will be maintained and enhanced by the development." As the Applicants' starting point is permanent loss of the natural feature with restorative measures established thereafter, the development and the implementing amendments cannot be supported in light of their offense of so many germane and relevant environmental and natural heritage policies as referenced herein.

102 The Board also finds persuasive the statement of TRCA staff that the proposed development creates a significant loss of trees within the valley and a significant loss of the valley slope landform which cannot be recreated. This alteration to the valley would create a loss to its overall habitat value and would contribute to the cumulative loss of natural cover in Toronto.

103 The Board places significant weight on the VSCMP with its guiding principles for protection of the valley and stream corridor and notes that the Applicants have failed to address satisfactorily its principles and instructive policies. For the foregoing reasons related to loss of natural feature as per issue 9, the proposed official plan amendment to redesignate a portion of the subject site from *Natural Areas* to *Mixed Use Areas* is not appropriate by virtue of the aforementioned policies. The Applicants' proposal to implement a scheme resulting in permanent loss of a significant portion of that feature is not appropriate. The *Natural Areas* designation on the site is part of a much larger vegetated valley landform that extends beyond the site and is referred to as the West Don River Valley. As part of the City's Green Space System, such landforms and natural areas are to be protected and improved as provincial and municipal policies direct. It should not be lost to a *Mixed Use Areas* designation to facilitate development that removes permanent natural feature.

104 Development of the type and scale proposed by the Applicants is generally prohibited in designated *Natural Areas* since the intent is to maintain such areas primarily in a natural state. In addition, the official plan states that growth should not compromise protecting Toronto's natural environment and urban forest.

105 In respect of issue 10, the Board determines that the proposed development, official plan amendment and zoning by-law amendment are inappropriate and do not have regard to the policies of the official plan related to *Parks and Open Space Areas*, Natural Environment, Green Space System and Implementation Plan. The proposal does not offer a 10 metre setback from the natural feature; rather, it removes a portion of the landform without providing a setback.

106 As explained, the proposed development falls within the Natural Heritage System where development is generally not permitted. Generally speaking, the official plan's Natural Environment policies speak to improving the health and integrity of the natural ecosystem. The Board finds that the natural ecosystem will not be improved through removal of a large portion of it by the Applicants notwithstanding their proposed mitigation efforts for all of the reasons given.

107 Removing a substantial part of the West Don River Valley landform is a direct impact through loss. The proposal does not support the linking of elements of the City's Green Space System. The proposal does not adequately protect, enhance or restore the natural heritage features and does not respect the physical form of the site. It was incumbent upon the Applicants to show how the elements of the *Natural Areas* of the subject site would be protected and preserved first. Instead, the proposed alteration of a significant portion of these lands would result in the permanent loss of natural feature. The Applicants have offered no valid reasons to override the important environmental and natural heritage policies to facilitate this development and its implementing amendments. If approved, this development would serve only to perpetuate incremental and cumulative loss of the existing natural heritage feature in the valley and stream corridor.

Order

108 In light of the foregoing issues and evidence, the proposed development and amendments do not represent good planning and the Board's approval of these is not in the public interest. Notwithstanding the Applicants' proposed mitigation efforts for the site, the starting premise of their NHIS — to remove natural area first and then seek to restore — runs counter to the themes of protection of the natural heritage system in the City's and TRCA's policies and is, therefore, flawed and assigned little weight by the Board for the reasons given. Approval of this proposal would result in a net loss of ecosystem services and the permanent removal of natural feature that cannot be recovered. Accordingly, the appeals are dismissed.

END OF DOCUMENT