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# 1540 BLOOR STREET WEST THE OMB HEARING STATUS REPORT 2010-01-29

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This is an update on the "Giraffe" condo at 1540 Bloor Street West.

- If you are not familiar with the project, read **The background**.
- If you know the background and want to know more about the arguments presented at the recent OMB hearing, check the more detailed section on **What happened at the hearing**. The case is summarized in **Closing arguments**.
- If you want to know how long we will have to wait for the decision, check **When will we know the outcome**.

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## WHY IS THE HEARING IMPORTANT?

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City planners, residents and businesses worked hard to prepare a comprehensive Avenue Study and a new Avenue Bylaw governing the intensification of the Bloor-Dundas area, from Keele in the west, to the railway line in the east and from Glenlake in the north to Boustead in the south, including the Loblaws site.

If the site at 1540 develops as a 27-storey building with a density of 16 times coverage and a poor relationship to the main street, then it will set a new precedent that will be difficult to argue against when future applications are submitted.

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## THE BACKGROUND

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In August 2009, 1540 Bloor Street West Developments Ltd. (the "Giraffe" developer) appealed to the Ontario Municipal Board on the basis of unreasonable delay by the city in dealing with its application, originally filed in mid-2007. The original application by TAS DesignBuild was for a 29-storey, 293-unit condominium with two-storeys of retail/commercial at grade on the north-west corner of Bloor Street West and Dundas Street West, including an 8-storey wing running west roughly in the same position as the old Range Plaza. Just prior to the appeal, the developer reduced the number of units to 254 by eliminating the 8-storey wing, and dropping the height to 27-storeys (still slightly higher than the Crossways).

As part of its original application, the developer submitted an Avenue Segment Study. This was required under the Official Plan because the city had not yet completed an Avenue Study for Bloor and Dundas (both designated as Avenues under the OP). The purpose of an Avenue

Segment Study is to show how an Avenue would look if other opportunity sites in the area developed similarly to its proposal. The segment study for 1540 Bloor treated this site as unique in that no other opportunity sites were shown with similar tall building potential.

The city planning staff had many issues with the proposal because of its height, density and the failure of its built form to address its "main street" context. The TTC had concerns with respect to site access and the potential for delays to its streetcar and bus service and for interference with the flow of pedestrians into the Dundas West station. Many residents and businesses shared these concerns.

From mid-2007 to mid-2009, the city planning staff began its own formal review of the Bloor-Dundas area. Hundreds of residents and businesses took part in the **Bloor Vision Study** in 2007–2008 and in the **Bloor-Dundas Avenue Study** in 2008–2009. The Avenue Study resulted in a new bylaw in December 2009 specifying minimum and maximum heights along Bloor Street and additional height limits for specific sites, including 1540 Bloor Street West and the Loblaw-Zellers Plaza, among others. The general direction of the Avenue Study was for intensification using a mid-rise built form, with intensification being distributed across the area rather than concentrated at the Bloor-Dundas intersection.

Under the new bylaw, the height for 1540 Bloor is 6 storeys, with 10 storeys allowed as long as the developer agrees to contribute to community improvements (under section 37 of the Planning Act). If the site were to be consolidated with the three properties immediately to the west (these are the Bloor "frontages" to the old Range Plaza), the corner could be developed to 15 storeys, stepping down to 10 and 6 to the west.

The OMB set a pre-hearing date in early December 2009 with a three-day hearing to follow four days later. The developer argued that the Avenue Study and bylaw did not apply to 1540 Bloor and that the only issue for the hearing was height. The city and residents requested and received a longer hearing and presented these requests in advance of the pre-hearing. The OMB agreed to hear evidence about the Avenue Study and to determine its weight and relevance at the hearing to be held on January 19–21 and January 25–29, 2010.

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## WHAT HAPPENED AT THE HEARING?

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The hearing lasted for five days. At the very beginning of the hearing, we learned that the Traffic Planner for the city had resolved the traffic and parking issues with the developer by accepting a plan where all residential traffic would enter through the Dorval laneway at the rear west of the site and exit onto Dundas West with a right-turn only. The applicant also agreed to increase the underground parking. This meant that the city and the applicant would not present the traffic plan or express any issues about it at the hearing. Area residents and businesses were given approximately two hours as participants (not parties) to present concerns about the impacts of the traffic plan and the foreseeable difficulties with implementing it, in addition to speaking on other impacts of the proposal.

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## THE APPLICANT'S CASE

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The applicant presented evidence from two witnesses: Robert Glover, an urban designer and urban planner who reviewed and defended the plans prepared for the project; and Peter Walker, a land-use planner who prepared the developer's 2007 Avenue Segment Study.

### ROBERT GLOVER/URBAN DESIGN

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Glover argued that the proposal was a good fit for the site, because there was a pattern of more intense development around "transit nodes" across the city. He also argued that the presence of the Crossways, although it had some undesirable features, meant that a tall building on the opposite corner at 1540 would be within a suitable context.

### PETER WALKER/LAND USE PLANNING

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Walker argued that there were not significant differences between the findings in his Avenue Segment Study and the Avenue Study prepared for the city by Anne McIlroy, except that his study recommended a more intense and higher built form on the 1540 site. He felt that the height, built form and density of the proposal was appropriate, given the unique, "distinguishing features" of the site (close to transit, on a corner, at the intersection of two Avenues, opposite the Crossways, on a prominent site, separated from the Neighbourhood to the north by the subway line, at a future "Mobility Hub" of the Regional Transportation Plan).

Furthermore, the applicant's witnesses argued that the Avenue Study should not apply to the site because the original application was made in 2007, before the formal Avenue Study began (in March 2008).

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## THE CITY'S CASE

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The city presented four witnesses: Andrea Old, the urban designer for this area; Anne McIlroy, the consultant hired to prepare the Avenue Study; Corwin Cambray, the senior planner who drafted the new Avenue Bylaw, based on the Avenue Study; and Christopher Dunn, the Community Planner who dealt with the site application (successor to Kevin Edwards).

### ANDREA OLD/URBAN DESIGN

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Andrea Old presented graphic evidence supporting her position that Dundas West marks a definitive shift in the built form environment at Bloor and Dundas.

- East of Dundas, the lot sizes are large, because they are part of the historic industrial rail corridor. A building like the Crossways (although it would not be built today) is able to provide significant stepbacks for its tall towers (about 65 metres) and achieve a density of just under 5 times coverage, as it is built on a very large lot.
- West of Dundas, the lot sizes are small and the lot pattern is fine-grained, a typical "main street" frontage, especially on block from Dundas to Indian Road. The lot pattern breaks down somewhat toward Keele and that is where the majority of Opportunity

sites are located, not near 1540. Even where buildings are taller (e.g., 2333 at the southwest corner) the tower elements are stepped back significantly.

- Her review of TTC stations on the Bloor line west of Bathurst also showed that there is no foundation for the claim that transit nodes have taller buildings and higher density than elsewhere on Bloor Street.
- She showed that the density proposed was found only in areas designated Downtown and City Centres.
- She also demonstrated the effects of failing to step the building back from the street and the inadequate plan for stepping down to neighbouring properties to the west along Bloor.

### ANNE MCILROY/AVENUE STUDY

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Anne McIlroy described the process followed to prepare the Avenue Study, including the broad public participation. She also described in general the findings of the study.

### CORWIN CAMBRAY/CITY PLANNING POLICY

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Corwin Cambray explained the process of turning the Avenue Study report into a bylaw. Some of the points he covered were: how the bylaw dealt with opportunity sites; the setting of minimum heights as well as maximums, so that intensification is built in to the bylaw; the way corner sites are given additional heights and densities, creating "bookends" at Bloor/Keele and Bloor/Dundas; the requirement for appropriate transitions (the stepping down to lower built forms) especially to the west; and the identification of community services and facilities that should be provided or upgraded to support intensification.

The applicant's lawyer, Adam Brown, challenged Corwin on whether the new bylaw was realistic (would any of these opportunity sites ever be developed in accordance with the bylaw). He especially highlighted the fact that the approved 5 and 11 storey buildings on the used car lot north of the Crossways had never been built, as well as the unlikely event that the PetroCanada gas station would ever be closed so that there could be a 15 to 10 storey building on the combined 7-11/PetroCan site. Likewise the site at 1540 (with the additional properties).

During Corwin Cambray's testimony, there was some informative back-and-forth between the OMB adjudicator, the applicant's lawyer and the city's lawyer about how the Provincial Policy Statements (PPS), the provincial Growth Plan and the Official Plan relate to one another. Adam Brown's perspective was that as long as an application complied with the PPS and the Growth Plan (both at the provincial level), then the Official Plan should not refuse an application.

The city, of course, emphasized that the Official Plan is the implementing tool for the PPS and the Growth Plan, so an application has to comply with the Official Plan; it's not enough just to comply with the provincial policies. As Corwin remarked, if that were the case, municipalities would not need a planning department; they could just issue building permits! Corwin provided evidence from the Growth Secretariat (Ministry of Energy and Infrastructure) that the province

had reviewed the Official Plan and that it did comply with the provincial policies for intensification.

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### **CHRISTOPHER DUNN/CITY COMMUNITY PLANNER**

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Chris Dunn presented evidence about the site from a Community Planner's perspective. In his opinion, the site did not have unique "distinguishing features" as set out by Peter Walker. (This view had been substantiated by Corwin Cambray's review of the Avenue Segment Study, which had noted its concerns to the applicant about their study in May 2008). He confirmed the view of Corwin Cambray that the features identified in the Avenue Segment Study could be associated with almost any site in the Bloor-Dundas area, especially since almost any site could fall within a 500-metre radius of a TTC station. With respect to proximity to a Mobility Hub, Bloor-Dundas could be compared with Bloor-Jane (also a Mobility Hub) where a segment study prepared by Robert Glover had recommended mid-rise built forms.

During Chris Dunn's testimony, the city's estimate of \$850,000 in section 37 funds was argued forcefully. The funds would be spent on parkland improvements, intersection improvements, provision of community health and daycare facilities, etc.

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### **COMMUNITY IMPACT STATEMENTS**

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The board set aside part of an afternoon to hear from community members. (Our request for an evening hearing was denied.) In our presentations, we made a number of points important to the Bloor-Dundas community:

- that local residents advocated for the Bloor-Dundas Avenue Study and contributed to its findings from early in 2007
- that moving the higher density corridor from the former industrial sites east of Dundas to the west side is not desirable and contravenes good planning, as supported by the Bloor-Dundas Avenue Study
- that the scale of the building is inappropriate to a relatively tight main street corner lot
- that the project will create risky and unpleasant conditions for pedestrians, especially on the Dundas frontage, resulting from the inadequate stepping back of the 21-storey tower above the 6-storey podium
- that there is a risk to pedestrians of increased traffic from the site driveway on Dundas, and
- that there is the potential for conflicts in using the Dorval laneway as the main entrance for the building as agreed to by the city.

## CLOSING ARGUMENTS

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### APPLICANT'S CASE

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Adam Brown summed up the case for the applicant:

- The city accepted the application as "complete" in November 2007 and did not provide specific feedback on the Avenue Segment Study until May 2008. The design for the podium never came under formal critique. There were no objections to the building height for the usual reasons of shadowing, of privacy/overlooks, or wind, and no objection from the adjoining property owner. The traffic and site access issues were settled. Thus height is the only issue.
- The city's Avenue Study is flawed in that the Opportunity Sites identified are not likely to be developed in the foreseeable future and the sites at Dundas/Bloor and Keele/Bloor are unlikely to be consolidated. The primary purpose of the Avenue Study was simply to impose a lower height on the 1540 site. (This assertion was challenged by the city as unsupported by any evidence provided by the applicant.)
- Under the law, there are existing precedents for considering an application under the planning requirements that were in force at the time of the application, rather than under planning requirements passed at a later date. Also, the process must be fair and the applicant must be clearly informed of the decision of the municipality regarding the application and the reasons for the decision.
- The application meets all the requirements of the Provincial Policy Statements and the Growth Plan. Senior governments (the province) should take precedence over junior governments (the city). The Bloor-Dundas Mobility Hub is forecast in the Regional Transportation Plan to be the eighth busiest hub in the GTA with five transit lines interconnecting. Intensification should be allowed on this site.
- The amount of the section 37 request (\$850,000) cannot be justified or supported as the city has not included specific guidelines in the Official Plan.

### CITY'S CASE

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Stephen Bradley summed up the case for the city:

- The analysis by the city's urban designer showed very different lot patterns east and west of Dundas. This difference was reflected throughout the Avenue Study and incorporated in the new bylaw. The proposed height and massing would be detrimental to the public realm at Bloor and Dundas. Under the Official Plan, the Avenues are meant to be developed as "main street" environments, as opposed to the Downtown and the Centres, which have different functions and therefore different built form.

- The Crossways is put forward as a precedent for the proposed height. Since it was built in the mid-1970s, the city has had many opportunities to amend its zoning bylaws to treat it as a precedent but has never done so and should not do so now.. If the application for 1540 is approved, it would set a precedent which would be much easier to replicate than the Crossways. This is because the Crossways is on a very large site (density less than 5 times coverage) whereas the Giraffe is on a much smaller site (density more than 16 times coverage). As smaller lots prevail at Bloor-Dundas, the 1540 site would be a precedent for these much smaller sites.
- The Avenue Study should have significant weight. For budget reasons, the city can only complete two studies per year and these require significant investment of money, staff time and local input from residents, property owners and businesses. The Avenue should not be lightly put aside unless there are compelling reasons. In the city's view, the reasons (distinguishing circumstances) put forward by the applicant are not compelling. The passage of time does not make a bad proposal good.
- The Official Plan was in place in 2007 when the application was filed and the OP sets out the relationship between an Avenue Study and an Avenue Segment Study. The applicant had the opportunity to take part in the process and knew the direction of the report. The applicant chose to appeal a short time before the new bylaw came into force. Now that the Avenue Study is complete, it should be used to test the earlier segment study.
- Section 37 benefits can be set out in the context of an Avenue Study that is done in accordance with the Official Plan. The amount has been based on a similar negotiated settlement.

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### ADJUDICATOR'S COMMENTS

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The OMB Chair invited the parties to make written submissions to him on two cases – commonly known as the *Clergy* and *James Dick* cases - about the timing of the application for development and applicable municipal planning policy.

### WHEN WILL WE KNOW THE OUTCOME?

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The OMB decision will be made available in the latter half of March 2010. The adjudicator has to review all the evidence and decide how much weight to attribute to it. In addition, the sequence of events - when the application was made, when the Avenue Study was approved, when the appeal was filed, among many other aspects - will likely have a bearing on the final decision. We will keep you posted.

In the meantime, you may want to look at some of the opportunity sites in the neighbourhood, think about what would be appropriate developments for these sites, and how this decision might affect them.