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Ontario Municipal Board
Commission des affaires municipales de l'Ontario

Jack Newman, 978613 Ontario Inc., 459841 Ontario Inc., 973560 Ontario Inc., Ryerson Polytechnic University, Billman Investments Inc., Marvin Hertzman and Helen Hirshchorn, Chen & Sons Limited, 291 Yonge Street Holdings Inc., Islamic Education Centre International, and Riyad Twahir have appealed to the Ontario Municipal Board under subsection 34(19) of the *Planning Act*, R.S.O. 1990, c. P.13, as amended, By-law Nos. 1997-0194 and 1997-0195 of the City of Toronto;
OMB File No. R970179

Jack Newman, Billman Investment Inc., Marvin Hertzman and Helen Hirshchorn, Chen & Sons Limited, 291 Yonge Street Holdings Inc., Ryerson Polytechnic University, Islamic Education Centre International, and Riyad Twahir have appealed to the Ontario Municipal Board under subsection 17(36) of the *Planning Act*, R.S.O. 1990, c. P.13, as amended, Official Plan Amendment No. 92 of the City of the Toronto;
Minister's File No. 20-OP-1994-092
OMB File No. O970146

Jack Newman, Billman Investments Inc., Marvin Hertzman and Helen Hirshchorn, Chen & Sons Limited, 291 Yonge Street Holdings Inc., Islamic Education Centre International and Riyad Twahir have appealed to the Ontario Municipal Board under subsection 28(4) of the *Planning Act*, R.S.O. 1990, c. P.13, as amended, the Downtown Yonge Street Community Improvement Plan Amendment of the City of Toronto;
OMB File No. O970149

Jack Newman, Ryerson Polytechnic University, Billman Investments Ltd., Marvin Hertzman and Helen Hirshchorn, Chen & Sons Limited, 291 Yonge Street Holdings Inc. have appealed to the Ontario Municipal Board under subsection 34(19) of the *Planning Act*, R.S.O. 1990, c. P.13, as amended, against By-law No. 1997-0361 of the City of Toronto
OMB File No. R970246

A Joint Board has been appointed pursuant to the *Consolidated Hearings Act*, R.S.O. 1990, c. C.29 to hold a public hearing for consolidation of the expropriations approval process with the planning approval process already before the Ontario Municipal Board on an application by the City of Toronto.
OMB File No. J970005

C O U N S E L :

S. Waqué S. Gosnell P. Patterson	for	City of Toronto
J. Parkinson, Q.C. R. Doumani R.A. Maxwell	for	PenEquity Management Corporation and AMC Theatres of Canada
R. Beaman J. Wilker	for	Chen & Sons Limited (311, 313, 319 Yonge St.)
A.M. Heisey, Q.C.	for	291 Yonge St. Holdings Inc.
D. Shiller	for	Islamic Education Centre International and Riyad Twahir (100 Bond St.)
B.S. Onyschuk, Q.C. T.R. Hawkins	for	Billman Investments Inc. (285 Yonge St.) Marvin Hertzman and Helen Hirshchorn (1 Dundas St. East and 315 Yonge St.)
M. Steinberg E. Newman	for	Jack Newman (54-74 Dundas St. East)
N. Jane Pepino, Q.C.	for	Ryerson Polytechnic University
M. Melling	for	Optical Properties Inc.
B. Illion	for	Lick's Ice Cream and Burgers Inc. 704603 Ontario Limited
R. Angelow H. Kazman	for	John Mikrogianakis and Tom and Helen Perdikis (317 Yonge St.)
N. Stanoulis G. Stanoulis	for	Quam Developments 323 and 327 Yonge St.
B. Teichman J. Inglis	for	Governing Council of the Salvation Army

DECISION AND REPORT DELIVERED BY D.L. SANTO AND J.R. BOXMA

The intersection at Yonge and Dundas Streets in the City of Toronto has been labelled the "Main and Main" of the Community. During the 1950's and 1960's, Yonge and Dundas was "the" retail shopping strip, the people place, where the sidewalks were full of people, the retail stores, restaurants and movie theatres vibrant and successful. The character changed in the late 1970's with the opening of the Eaton Centre that virtually had the effect of acting as a vacuum cleaner, sucking the successful businesses and the people off of Yonge Street and internalizing them within the enclosed mall that covers the City block from Dundas to Queen. The Eaton Centre has been described as an ocean liner parked up against the west side of Yonge Street or the mall that has turned its back on Yonge Street. Notwithstanding the fact that the Eaton Centre is the single most successful tourist attraction in all of Canada and can boast that some 54 million people pass through it each year, the properties located between Queen and College, and fronting on Yonge Street, have not generally maintained the same level of vibrancy and attractiveness as they enjoyed prior to the Eaton Centre or in concert with the success of the Eaton Centre. To the contrary, some believe that Yonge and Dundas is the Mecca for panhandlers, drug dealers and vagrants and consequently it is perceived as an unsafe area, an area to avoid.

The City seeks to change its image into a retail shopping and movie-going centre, restore its vibrancy and vitality, and use the activity at the intersection as the catalyst to promote, spark and further economic activity and redevelopment in the Yonge/Dundas area. It chooses to effect this change through the approval of a Community Improvement Plan pursuant to Section 28 of the *Planning Act* with a corresponding Official Plan Amendment and a zoning by-law and through the redevelopment of the northeast corner of Yonge/Dundas into an Urban Entertainment Complex (UEC) and the southeast corner into a public square at grade over a structured below grade parking garage. To achieve

this “regeneration program”, expropriation, if acquisition was not otherwise attained, of 10 properties fronting on Yonge Street is required. Nine of these 10 property owners and one tenant bring the planning documents before this Board and request a hearing of necessity under the *Expropriations Act*. It is for this reason that the panel is constituted under the *Consolidated Hearings Act* to sit as a Joint Board of the Ontario Municipal Board and the Board of Inquiry.

The hearing encompassed some 38 hearing days and two days of legal argument for final submissions. The Board heard from 48 witnesses (excluding public night), accepted 296 exhibits and presided over a public evening session on March 25, 1998, attended by some 300 people at which sworn or affirmed evidence was given by 28 people. The Board undertook a site visit in the company of representatives of the parties and Detective McDonald with the itinerary predetermined on consent. There was an attendance by the Board in New York City on the May 1st weekend to view sites that had been referred to in the evidence and in the company of representatives of the parties.

The hearing concluded May 15, 1998 and the Board undertook to issue a timely decision given certain contractual features of the project.

The Board has no intention of replicating all of the evidence and submissions or of referring to each witness that it heard. The Board has carefully considered all of the evidence and has seriously assessed and evaluated the need to expropriate and the benefit to the public of the specific project brought forward by the City and the alternative proposals by the appellant land owners. All parties were ably represented and presented cogent evidence, submissions and legal arguments.

The Board has, as it undertook to do in its decision on a procedural matter on February 16, 1998, weighed both the private and public interest in this complex matter and appreciates that the taking of lands, privately held and against the wishes of its owner, is a matter of considerable public interest.

It has also seriously considered the use of expropriation and public moneys for, in

part, a private development.

It has also considered the process leading to this hearing given the allegations of secrecy and allegations that actions of the City bordered on impropriety. It is, for this reason, that the Board ordered extensive productions by the City.

The major issue to the landowners is full and fair compensation which includes the ability to develop the properties themselves. Many are long term owners who have suffered through the devastating impact of the Eaton Centre opening and then the recent recession. In a perceived rising market, it is unfair, they suggest, to take and assemble land at current value and flip it over to a private developer without giving them the opportunity of benefitting in the development scheme. Another issue is that they further suggest that the City's scheme is a bad deal for the taxpayers, another "Ataratiri" and will come to be known as "the mistake on Yonge Street". To this end, some of the property owners brought forward an alternative conceptual proposal to demonstrate that a mixed-use high density project is achievable. Proposed modifications to the City's documents have been put forward to achieve that potential alternative development scenario. Therefore, this Board had evidence put to it on the merits and financial viability of not only the City's project but the proposals put forward in the alternative.

All of the evidence is consistent in one regard. Yonge and Dundas is ripe for change and the time for change is now.

The Project

The following is a brief highlight of the project. More detailed descriptions of various aspects of it will follow.

The City's project consists of four components. The first component is a somewhat triangular shaped area south of Dundas to Dundas Square, east to Victoria Street, would be cleared of 4 privately owned properties and together with the municipally owned surface

parking lot will be redeveloped with an underground parking structure containing 250 spaces (Parcel D on Schedule “A”) and a public urban square at grade. The square would become a major centre of activity as is the case with Nathan Phillips Square and Mel Lastman Square. The evidence of Joe Berridge indicates that the City intends to host international, formal urban design competitions that he will supervise, to design the layout, treatment and landscaping and functioning of the square. The evidence of Jennifer Sprout, program director for Nathan Phillips Square, indicates that the City intends to control it through regulating the activities of the square and to program and promote activities in the square.

A “ticket wicket” is proposed for last minute purchase of theatre tickets, and other entertainment events, as well as the generous use of signage to promote excitement and revenue. The square is seen as necessary to provide “a sense of place” and encourage an increase of on-street pedestrian orientated activities.

The area north of Dundas (Parcel A on Schedule “A”) consuming 6 privately owned properties fronting on Yonge, a portion of O’Keefe Lane, a city property, and the air rights over the garage of the Ryerson Polytechnic University (Ryerson) to Victoria Street and Gould Street (a reversed “L” shape) would be redeveloped as an Urban Entertainment Centre (UEC) called “Metropolis”. The genesis of such megaplexes comes from the emerging trend in the United States to provide an exciting destination location for entertainment (cinema, stage (theatre), video games and other recreation), eating in theme restaurants (“eatertainment”) and shopping in a new vertical format retail environment that consists of multi-level, animated or artistically designed interiors, decorated to capture a sense of entertainment or fun in the shopping experience. For this reason, there is an urgency to capture this market change in this business cycle and before the market is penetrated with additional mega cineplexes.

The project co-ordinator, Ron Soskolne, described this unique window of opportunity for Yonge/Dundas as follows:

"The project presents a unique opportunity to attract to this publicly-important location a critical mass of highly desirable retail and entertainment operations which will effectively re-establish the street as a major destination for a broader range of citizens and visitors. The uniqueness of the opportunity stems from a variety of interrelated factors:

> The on-going evolution of the retail and entertainment business in major cities has produced a new format and scale of product - the flagship or super-store/category-killer/ megaplex (e.g. Chapters, Indigo, HMV, Niketown, Sporting Life, Crate and Barrel, Virgin Megastore, All-Star Cafe, Dave and Busters) which offer the consumer the "biggest and best" of the category in a single location and in a spectacular environment. These products tend to function as destination uses and do not need the critical mass of a shopping mall to successfully operate their businesses. Therefore they tend to be developed as free-standing structures and thereby are capable of being street related although this opportunity is often lost particularly in suburban settings.

A parallel trend is the evolution of the Urban Entertainment Centre. Existing entertainment districts such as Times Square are being dramatically revitalised, while in other places new entertainment districts, such as the Irvine Spectrum or Toronto's Entertainment District, are coming into being. These districts are growing to accommodate the increasing tendency of people to seek opportunities for an out-of-home multi-faceted recreational experience which includes entertainment such as movies, theatre, dining in an interesting restaurant, and browsing for small-scale, "impulse" purchases such as books, CD's, sports equipment, apparel, or gifts. Moreover, the essential characteristic of this experience is that it happens in a pedestrian mode - it is an urban phenomenon whether located in a suburban or downtown centre." (Ex. 55A)

The UEC will be developed by PenEquity Management Corporation (PenEquity). The City has a detailed agreement signed with PenEquity (Ex. 55 Tab D). The development scheme will consist of a multi-level facility, below and above grade. Some 386,000 square feet of area (Ex. 190) is to be built. The agreement requires the developer to attract a major cinema exhibitor as its anchor tenant and design and lay out the project to promote multi-level street oriented retail, termed vertical retailing, theme restaurants and

other entertainment facilities such as electronic virtual reality operations. The design and layout created by Baldwin and Franklin Architects has been accepted by the City and Ex. 118 is the draft approved site plan. PenEquity has an offer to lease from AMC Theatres of Canada (AMC) for close to 140,000 sq. ft. and the City has a signed agreement with Ryerson for the rights to build the theatres over the parking garage (Ex. 55, Tab E).

PenEquity will build for AMC, to its specifications, a 30 screen complex offering stadium style seating. Access to the cinema will be gained by escalators from Dundas Street rising through a glassed atrium arriving to the level above the present garage. The cinema will be on two levels. AMC, in turn, will improve the space with its own patented seats, state of the art projection and sound systems and viewing screens for each of the thirty theatres. It will provide for a 6,000 seat capacity. The type of seating offered is similar to, in size and shape, that which is offered in first or business class by the airlines. The emphasis is on quality and comfort.

In addition, through the Ryerson Agreement, AMC must provide the use of 12 theatres for classroom purposes during specified hours and dates for Ryerson's numerous programs including those related to the film industry. The cost to use these facilities is related to maintenance. Ryerson will retain its bookstore and is guaranteed the continued revenue from its parking garage. The side of the structure facing Victoria Street overlooking Devonian Park, and the main entrance to Ryerson, has been designed that would incorporate panels that contain works of art approved by Ryerson with intended input from its students enrolled in various artistic programs.

Parcel B to the scheme has been deferred. It was intended for a "landmark" hotel site. The majority of this site is in City ownership.

Parcel C is the present site of the Salvation Army. Redevelopment is proposed for restaurant use as a major expansion of the Senator's Restaurant. Parcel C will form the eastern edge to the Square with its orientation also toward the main entrance of the Pantages Theatre. The existing Salvation Army facility will be relocated by the City and

on that basis it excused itself from the hearing.

The project envisages the lavish use of exciting and lively signage and eclectic architectural design both in the public square and on the facades of all of the structures which provide edging to the Square and in proximity to it. These treatments will be regulated by the City to promote a sense of excitement. See Schedule "B", attached.

Since the announcement of this project, approval has been granted by the OMB, in a recent decision by Member D. Granger, for a media tower to be a part of the expansion of a renovated entrance to the Atrium off of Yonge on the west side, just north of Dundas. The media tower will offer signage opportunities similar to but on a smaller scale to those found in Times Square, New York City. A representative of the Hard Rock Cafe Corporation appeared before the Board on the evening set to hear unrepresented members of the public to advise the Board that should the project be approved, his company intends to carry out a major renovation and expansion to the second floor of the property they presently occupy, immediately to the south of Dundas Square. Its new signage will be compatible with the project and provide the southerly edge to the public square.

Schedule "B" is an artist's rendering of the project area. The architect, called as a witness for some of the appellant property owners, Harry Pellow, found the project "exciting" in that it would "create both a sense of place and sense of arrival".

Lands needed for the Project

Schedule "A" provides the location of the properties within the project area and photographs of the present use and condition. As can be seen, a significant portion of the area is in the ownership of the City or a public institution. The owner of property number 8 on Parcel D, 299 Yonge Street, does not object to the CIP.

As can be seen from the listing of counsel, most of the property owners were

individually represented. Three of the owners own multiple properties. Lick's, a tenant at 285 Yonge Street and separately represented, is opposed to the expropriation and the City proposal for a public square, however, it took no position to the alternate development proposal put forward by a portion of the appellants of which its landlord is a proponent.

The strip of properties are owned by individual business people who largely rent the premises to tenants. Notable exceptions are property 4 in which the part owner also owns and operates the franchise Harvey's from that location and Mr. Karim, a part owner of 291 Yonge, manages the office building and leases the ground floor for his Jewellery Exchange. Many of the properties have been held for many decades, such as the properties of Chen and Sons and the Hertzman/Hirschorn properties, while others were purchased just prior to the recession, in 1988, like the Stanoulis properties at 327-323 Yonge, at the height of the market. A number of properties have been improved for specific tenants and are well maintained and operated such as KFC, Harvey's, the Jewellery Exchange and Lick's. While some are in dire need of improvement, such as the Games Arcade, at 315 Yonge, others merely present a "tired" facade or a "tacky" presence to Yonge, such as the World's Biggest Jean Store. The Board heard in evidence from Mr. Gary Stanoulis, Mr. Karim, Mr. John Mikrogianakis and Norman Hertzman. In all cases the Board was impressed with their sincerity and their families' hard work and enterprise in acquiring these properties after immigrating to Canada.

Until the City's regeneration program for Yonge/Dundas was announced, these individual owners functioned independently of each other. Many have had to cope with the recession, frequent tenant turnovers, panhandlers, drug dealers and City taxes and yet some have maintained good tenants and well kept premises, mainly the fast food restaurants, because Yonge/Dundas still has considerable pedestrian traffic. Until this regeneration program was announced, the owners were content with the City's OP and zoning policies for Yonge/Dundas and no attempt was made to assemble these properties or to form a joint venture group.

Having said the above, no fault is ascribed. There appeared to the owners to be

no need to assemble. Expropriation was not contemplated or anticipated. The location at Yonge/Dundas, and the condition of the properties, would not have raised speculation that a major urban renewal or block clearing project was imminent given that in the former traditional renewal projects of past years, buildings were boarded up and virtually crumbling prior to expropriation for an urban renewal or Downtown revitalization project. The Board finds that these properties do not fit the description of dilapidation or deteriorization in their purely physical form so as to represent blight. The Board also finds that these property owners had no reason to expect that they would be expropriated.

Process Leading to the Yonge/Dundas Regeneration or Redevelopment Project

Prior to 1976, the City's Official Plan and zoning of the corners of Yonge/Dundas permitted 12x commercial density. The 1976 Central Area Plan for the City of Toronto (as it then was) reinforced the area of Yonge/Dundas as a Prominent Retail Street, a major shopping focus in the Toronto Centred Region context of that era. Even though the intersection was served with a subway station and was located one block north of the Financial District, a Low Density Mixed Use designation was applied, not a High Density Office Commercial or Mixed Use designation. The corresponding zoning by-law implemented that Official Plan. One of the authors of the 1976 Official Plan and a key witness at that OMB hearing, provided the Board with his recollection that none of the property owners affected by this application opposed the unique role ascribed to Yonge/Dundas.

An extensive Official Plan Policy review, including public meetings, the typical lengthy staff reports and requests for public input, preceded the adoption of "Cityplan '91" in 1993. It reiterated the 1976 designation for the Yonge/Dundas intersection, retaining its role as a Prominent Area, as a Priority Retail Street. The Plan maintained on the east side of Yonge/Dundas a Low Density Mixed Use designation.

None of the land owners affected by the project objected or appealed. However,

the T. Eaton Company did. At page 6 of Exhibit 49A, Mr. Lintern's witness statement, the following is recounted:

> "The T. Eaton Company Limited appealed Cityplan in 1993, on the basis of a concern that the 'objectives and policies (as adopted by Council) as they relate to the City's downtown, and in particular to retail uses in the downtown, do not provide a sufficiently strong commitment to maintaining and enhancing the downtown as the economic and symbolic centre of the City and Region. In particular, the Plan fails to demonstrate an adequate understanding of the critical role that the retail sector plays in the vitality of the downtown and does not articulate specific policies that are required to ensure that this sector is able to continue to play this'. (Tab F, Ex. 49A)
>
> Responding to this appeal, the Council of the City of Toronto (the "Council") modified the retail policies of the Official Plan, and these modified policies were approved by the Ontario Municipal Board. Among other matters, the modifications approved by the Board provide a broad policy basis for revitalization initiatives undertaken on Yonge Street:
>
> (a) Section 1.4 'Council will build upon past planning achievements by continuing to preserve, protect and strengthen the successful elements of the City's physical structure, including ... (f) Central Core, the region's pre-eminent concentration of activity and primary focus for a diverse range of specialized land uses, including offices, retailing, entertainment and cultural facilities, and major institutions;'
>
> (b) Section 9.2(f) 'further to Section 1.7, undertaking and supporting measures to strengthen the vitality of the Central Area and to enhance its role as a major international centre for business, culture, entertainment, shopping, research and design and institutions'.
>
> (c) Section 9.9 '.. it is the policy of Council to support the continued viability of its existing shopping districts, to reinforce the vitality of retail activity in the Central Core, to support the Core's role as the major shopping focus within the Greater Toronto Area, and to provide opportunities for new retail facilities provided that such facilities are compatible with adjacent Low Density Residence Areas and consistent with all other policies of this Plan'.
>
> In addition to requesting modifications to the Official Plan, the T. Eaton Company Limited also requested that the City establish a task force 'to monitor the economic and social vitality of the City's downtown and to develop and initiate a strategy to

> deal with real and perceived problems in the downtown'. In addition, the Planning and Development Department had been contacted by a growing number of downtown business representatives, property owners, residents and concerned citizens who had expressed grave concern about changes occurring in the downtown. The City was advised that studies by the T. Eaton Company Limited indicated that the downtown's market share of the consumer goods market in Greater Toronto Area had dropped to 6% in 1992 from 25% in 1971, and that an analysis by the City staff had also concluded that retail employment had contracted by 20% between 1989 and 1993."

The Board finds that this effort by Eaton's was the catalyst that led to the ultimate founding of the Yonge Street Business and Residents Association (YSBRA).

As approved, the present Cityplan designated the subject area of Yonge Street Low Density Mixed Commercial-Residential Area. The new zoning category implements the Plan and in effect today is CRT3, C2, R1-5, which permits a total density of three times the lot area, of which the commercial maximum is 2X and the residential maximum is 1.5X. The height limit remained at 18 metres.

In addition, to the above noted policies, Cityplan '91 articulated an expansive set of policies in Chapter 15 governing "Community Improvement". Given the relevancy of this set of approved Official Plan policies, the Board will quote extensively from Chapter 15: (Ex. 122A)

> **"15.1 GENERAL POLICIES AND ACTIONS**
>
> In order to enhance the social and economic well-being of its citizens, it is the policy of Council to maintain and improve the public amenities in the downtown, the waterfront and the residential neighbourhoods, to ensure the vitality of commercial areas of the City, and to retain, develop and strengthen the City's industrial base. Accordingly, Council shall initiate and develop programs and activities and make use of programs of other levels of government, its own funds and private sources of funding to encourage improvement and renewal in all areas of the City.

15.2 OBJECTIVES OF COMMUNITY IMPROVEMENT PROGRAMS AND ACTIVITIES

In improving the quality of life in the City for residents, workers and visitors, Council shall undertake community improvement programs and activities in accordance with the following objectives:

(a) to improve the amenity, appearance, safety, and environmental quality of all areas of the City;

(d) to provide and maintain a system of public open spaces that offers a broad range of outdoor social and recreational opportunities of both a passive and active nature;

(e) to promote and stimulate private sector initiatives which will create employment and generate an improved municipal tax base in ways which are consistent with the City's economic development strategy and other policies;

(i) to improve employment opportunities.

15.3 MEASURES TO BE USED BY COUNCIL

(a) use its capital budget to promote the objectives set out in Section 15.2;

(b) co-ordinate its land use planning and economic development activities with the implementation of improvement programs in all areas of the City;

(c) co-ordinate efforts to improve the City's physical and social infrastructures with ongoing efforts to optimize the use and comprehensive maintenance of existing services and facilities;

(e) undertake activities and programs in concert with other public, private and voluntary sector initiatives that would complement or supplement its own actions;

(f) where possible, utilize public, private, and foundation funding sources;

(g) seek the participation of affected parties in the planning and implementation of any improvement scheme;

(h) provide resources, organizational support and advocacy assistance for private and voluntary sector improvement efforts deemed to be in the municipal interest;

(k) designate community improvement areas and prepare community improvement plans, pursuant to Section 28 of the Planning Act, as amended or re-enacted from time to time, having due regard for Council's goals and objectives as set out elsewhere in Parts I and II of this Plan.

COMMERCIAL AREA IMPROVEMENT

15.7 OBJECTIVES

It is the policy of Council to encourage improvements in the general appearance and level of maintenance, the provision of public amenities, the efficient functioning and the economic viability of *Mixed Commercial-Residential Areas, Regional Commerce Centres* and *the Financial District* delineated on Map 1 of this Plan.

15.9 CONSIDERATIONS IN SELECTING AREAS AND PROJECTS

(a) the need for an improved appearance or increased public amenities

in the area;

(b) the efforts of local business associations to promote and upgrade the area;

(c) the opportunity for coordinating improvements with other capital programs such as, but not restricted to, sidewalk reconstruction and tree planting; and

(d) that priority be given to retail strips in improving public amenities and undertaking commercial revitalization measures."

No property owner of the subject area objected to these policies nor to the designation of Low Density Mixed Use. Given Section 16(1)(a) of the *Planning Act* that indicates the broad matters that Official Plans may contain, which include regard for economic and social matters and the approved policies in Chapter 15 quoted above, the Board finds that it is entirely within the City's jurisdiction and responsibility to initiate programs (projects) under Section 28 of the *Planning Act* that promote economic activity, encourage tourism, improve public safety and all of this is not limited to the curing of blight. This finding is of particular relevancy in the section of this decision related to the Board's jurisdiction and the interpretation of the Section 28 definition of a "community improvement project area". It also follows that the steps taken from the adoption of Cityplan '91 are consistent with the policy objectives of Chapter 15, as is the ability to acquire lands, spend public money, and co-venture with the private sector to achieve these objectives.

As a result of the concerns expressed by the T. Eaton Company Limited in its formal appeal letter, and other members of the business community through their councillor Kyle Rae, Council, in September 1994, approved the establishment of two Committees, a Yonge Street Improvement Committee and a Downtown Retail Revitalization Committee. These did not materialize.

The business community became more vocal but was not focussed or organized as the established Business Improvement Area (BIA) was *functus*. Groups started to form in an attempt to deal with street vendors, panhandlers and drug dealers and users who were interfering with and hindering the normal operation of business.

In March 1995, YSBRA was established. It was incorporated as a non-profit organization on July 6, 1995. Its founding members are listed in Ex 34. Support was considerable and the organization became very active. The City and YSBRA joined forces to initiate a program to promote the regeneration of Downtown Yonge Street. To that end, a CIP plan was adopted and approved, without objection or appeal, that established a community improvement area on both sides of Yonge Street, from Queen Street in the south to College Street in the north.

Concurrently, the Metropolitan Toronto Police Force, at the request of the City, put in place “Operation Broom”. This was a concentrated effort of undercover officers to sweep the area clean of drug dealers and pushers. The Board heard evidence from Detective McDonald who supervised the operation.

In addition, City planning staff continued their review of the Official Plan policies affecting the Yonge Street Strip. Of particular interest was the issue of density as a tool to spark redevelopment or regeneration. The staff concluded in a report, ultimately adopted by the Land Use Committee in March 1996, Tab O, Ex. 49A, that density restrictions should be relaxed in favour of built form and design guidelines and specific policy objectives for the strip. The adopted recommendation would have seen an Official Plan policy change for the area that would have provided for zoning at a 4x commercial density, as of right, with additional density permitted with a site specific rezoning application, subject to compliance with the built form guidelines and specific design policies. This recommended strategy did not go forward to Council, as would be the normal course of events, as the joint forces of the City and YSBRA decided to pursue the project presently before the Board. The Board finds that were it not for the pursuit of the

amendment to the CIP and the project that requires acquisition of the lands identified on Schedule “A”, the City would have enacted, in appropriate planning documents, the recommendation contained in the staff report of March, 1996. To that end, the lands in question would have enjoyed an as of right density of 4x commercial density with the ability to achieve greater density, subject to the built form policy requirements.

Aaron Barberian gave evidence as Vice-President of YSBRA and a founding and active member of that group. His family business, Barberian Steak House, is at 7 Elm Street. He advised the Board that his father opened the restaurant in 1959 when “Yonge Street was the premier street for shopping of all Canada”. He has survived the recession, mainly through diners attending the Pantages Theatre to see the “Phantom”. After discussions with Bob Sniderman, owner of the Senator’s Restaurant on Victoria Street, they decided that something must be done to return the vibrancy to the area, rid it of panhandlers and drug dealers and return economic success to encourage better than month to month tenancies and discount stores in the storefronts of Yonge Street. They held meetings with Kyle Rae, whom he characterized as “their cheerleader”, and senior executives of Eatons, the Bay, the Eaton Centre, the Atrium and members of the smaller businesses, including Orlando Garrido, a prominent licensed street vendor at Gould and Yonge. YSBRA was formed in March, 1995 with money raised from the business community. Exhibit 41 is its brochure. In Ex. 34, pg. 226-230, is the list of members, directors and donations. They immediately began to work with the City on a façade improvement program, street cleaning and the installation of designer trash cans (Ladybugs). It was instrumental with having the City and police commence “Operation Broom”. Given the appeal and request of Eatons, as quoted earlier, the City was receptive to work with the group.

It was Mr. Barberian’s evidence that he knocked on doors of most of the businesses on Yonge, left pamphlets and the brochure with the business operators and, through Kyle Rae, obtained the assessment roll to invite all owners/tenants to participate in revitalizing Yonge. Meetings occurred either on top of the Senators or breakfast meetings at his

restaurant. YSBRA met with David Crombie to gain insights from his extensive knowledge and experience with the City and regeneration programs. Out of that came the recommendation to retain Ron Soskolne as consultant to YSBRA. The City provided YSBRA with a grant ($150,000) to add to YSBRA's $100,000. In March, 1996, Ron Soskolne was retained and Mr. Barberian advised that he was retained "to come forward with a vision to revitalize the area". Mr. Barberian advised that Mr. Soskolne was given free range to come up with a scheme to "instill life and vitality to Yonge/Dundas as was done in Times Square". It was his opinion that the process was open to all to participate at this stage, flyers were circulated, and forums and Charettes held and the easterly neighbouring residents group, TEDRA, became involved.

Ron Soskolne was the City's Chief Planner at the time the Central Area Plan was formulated during the 1970's and he was the principal witness for the City at the OMB hearing for that plan. From 1979 to 1991 he was with Olympia and York Developments Limited and attained the position of Senior Vice-President, Planning and Development. His principal responsibilities in this position (Tab A, Ex. 55A) are described as follows:

> "Responsible for initiating major new mixed-use real estate development projects, including site selection, architect selection and supervision, development of concepts for design and use programming, management of design process including integrating all disciplines, negotiation of approvals with government agencies, preparation of comprehensive submissions in response to requests for proposals by government or private corporations, development of marketing concepts and materials."

Since 1991, through his own consulting firm, he has co-ordinated and managed projects for major development interests, some of which have led him into the field of urban entertainment projects.

Given his background and his knowledge of the 42nd Street Redevelopment Project in New York City (Ex. 228), the Board finds that the project started as his "vision" for Yonge/Dundas. He assembled the project team of consultants in whom he had

confidence. Throughout the process, leading up to the December 10th, 1996 public announcement, Mr. Soskolne had meetings with stakeholders, including existing retailers, real estate brokers, property owners, including the owners of some of the subject properties, potential retailers, and, potential developers. He formed a steering committee composed of representatives of YSBRA, the City staff (G. Wright) and Councillor Rae and made use of a confidentiality agreement. It was his evidence that the need for confidentiality arose out of his belief that it would provide fairness to the land owners on Yonge Street and not introduce unnecessary uncertainty to owners and retailers and in order to be able to undertake the planning work and analysis in the most stable of possible of circumstances until the project was determined and thereby eliminating speculation and uncertainty.

Many of the property owners found the use of a confidentiality agreement distasteful, given the fact that the City is a public body and no members of YSBRA had their properties expropriated. It is not unusual in many municipalities that, while a study is in progress and preparation that could have significant ramifications on property rights, densities and values, to not release or make available for public consumption the study in progress. The essential ingredient is that the study, if accepted, be made public at the earliest opportunity. The Board finds that the choice of December 10, 1996, when the project had received approval in principle by Council, was the appropriate time. The cloak of secrecy was of a short duration - June to December - and necessary in order to allow for the creation of such an unexpected vision for Yonge/Dundas which, without the detailed analysis of the components and viability of the total project, could have been summarily dismissed as fantasy.

In fulfilling the role for which Mr. Soskolne was retained, he assembled the constituent parts, both consultants and developers, which resulted in the project the Board has now before it. Pressed extensively in cross-examination, he consistently advised the Board that he always regarded expropriation as a means of last resort. If, however, expropriation proved to be necessary, it was his belief that the owners should receive full

and fair market value for their properties as compensation for the taking. The City councillor and the two City planners consistently echoed the same understanding.

One aspect of the process that is somewhat troubling and worthy of mention, given the undertaking by counsel for the City during argument, is the role of Bob Sniderman. He was an active member of YSBRA who initiated the regeneration project and became a member of the steering committee and privy to matters related under the confidentiality agreement. Once the project started to crystallize, which included the property adjacent to the Senator Restaurant which is owned by Mr. Sniderman, he resigned from his position on the steering committee. Through the Request for Qualification (RFQ) and Request for Participation (RFP) public process in 1997, Mr. Sniderman was successful in attaining the right for the development of Parcel C, as his proposal to expand and redevelop the Senator meets the City's requirement and goals for that site as part of the overall CIP objectives. The Board is satisfied that the RFQ and RFP process is fully transparent and open to competition by everyone interested in developing the site. Mr. Waqué undertook to assure the Board that the acquisition of Parcel C by Mr. Sniderman "will not be any less than it costs the City to acquire" from the Salvation Army.

Nature of the Applications before the Board

Having unanimously approved, in principle, the regeneration project and publicly announcing it on December 10, 1996, Council, on May 6, 1997, enacted an amendment to its Official Plan, an amendment to the CIP and a zoning by-law to implement the regeneration project and two specific by-laws related to parking. At a public meeting October 6 and 7, 1997, Council further amended the documents to reflect further refinements of the various block proposals.

By-law 1997-0193, Tab 1 of Ex. 56, is OPA 92. It deletes Section 11.7(b), the former policies affecting the area, and replaces it with Section 18.355 to incorporate policies governing the "Downtown Yonge Street Reinvestment Area", and provides for

specific “Built Form Principles”.

By-law 1997-0194, Tab 2, Ex. 56, as modified by Exhibit 30, does two things. Part I of the by-law incorporates the provisions of Section 37 of the *Planning Act* and increases the density of those properties previously limited to a 2x commercial to 4x and increases the height limits. This follows from Mr. Lintern’s evidence that the City is replacing some of its more rigid restrictions by adherence to specific built form provisions in OPA 92. Part II of the by-law applies specifically to the parcels A through D of the regeneration project to implement the project described earlier in this decision.

By-law 1997-0195 (Tab 3, Ex. 56) is a site specific by-law for 207 and 209 Yonge Street and sets a parking standard for those properties. This by-law was not contested.

By-law 1997-0196 (Tab 4, Ex. 56) amends the CIP to “incorporate the Regeneration Program into the Plan in order to facilitate implementation of regeneration strategies developed under the Regeneration Program.” In compliance with Section 15 of Cityplan, S.3.0, Rationale for Regeneration, it implements the objectives by providing as follows:

> “The regeneration of Yonge Street as a main shopping street with new retail and entertainment premises and the improvement of the environment of the street with improved public amenities is a key to maintaining the economic and social well-being of the downtown and the region.”

By-law 1997-0361 (Tab 5, Ex. 56) passed July 14, 1997 amends By-law 1997-0194 which is site specific to the 4 parcels in the Regeneration Project. It fine tunes various aspects of the by-law.

Alternative Proposals

Those in opposition presented to the Board two alternative proposals for redevelopment which, for ease of reference, will be referred to as “the Pellow scheme” and

"the Walker scheme". Both entailed the assembly and development of properties for high density, mixed use, with the Pellow scheme encompassing all ten properties and other lands, and the Walker scheme only the six properties north of Dundas Street and not including any lands owned by the City or Ryerson.

The Board ruled during the proceedings that if the City proposal was rejected by the Board and if it felt that it was appropriate to proceed with the OPA's proposed by both Mr. Sorensen and Mr. Walker, it would do so by reconvening the hearing to deal with the alternative proposals in a Phase II hearing. For this reason, the Board will only deal with the details of the Pellow scheme and the Walker scheme, and the accompanying planning documents, in general terms so that an accurate depiction of the alternative proposals is given but without any examination of them in detail. For the same reason, the Board does not propose to deal with any of the evidence given by the various real estate brokers it heard from nor the cost analysis of the Pellow scheme carried out by Donald McDougall and the evidence of Art McIlwain, as to the likelihood of the marketability of the alternative proposals.

The Pellow scheme was the most ambitious of the two alternatives. It called for the development of an office building on Parcel D, together with above grade and below grade retailing. Parcel A would accommodate 2 residential buildings and an office building, again with above grade and below grade retailing. Mr. Pellow envisaged the development proceeding in phases, with the Parcel D development likely proceeding first and the Parcel A development as a second phase. There were combinations and permutations of the proposal and Exhibit 206B set out 3 options. Using Option 2 as illustrative of the Pellow scheme, the building on Parcel D would be 19 storeys in height with a gross building area of 598,978 sq. ft., retail of some 48,560 sq. ft., office of some 406,168 sq. ft. and four levels of parking. The building on Parcel A would be 21 storeys in height with a gross building area of 1,446,484 sq. ft. with retail of some 162,410 sq. ft., office of 512,014 sq. ft. and 5 levels of parking. The two residential buildings would be 16 and 13 storeys, respectively.

The Pellow scheme was presented by Mr. Pellow as an architectural concept which had not been processed to the point of the fine tuning necessary in order to determine its compliance with various City standards and policies and which would necessarily occur if the alternative proposals proceed to a Phase II hearing. The planning document prepared by Warren Sorensen, Exhibit 200, Schedule "D", is drafted to reflect and permit the Pellow scheme, and is supported by David Butler.

The Pellow scheme requires the assembly of all 10 properties, as well as the inclusion of City owned lands (the lanes and the surface parking lot on Parcel D operated by the Toronto Parking Authority) and the demolition of the Ryerson parking garage. The floor space index (FSI) for Parcel D is 10x FSI and for Parcel A is 12x FSI.

The Walker proposal involved less properties than the Pellow scheme and would be accommodated within the existing boundaries of the 6 properties north of Dundas Street, fronting on Yonge Street. Exhibit 252 A, B and C, depicted the 3 options of Mr. Walker, with 2 having retail/office scenarios and the third a retail/residential scenario. The maximum FSI of any option was 7.8x and a maximum height of 10 storeys in Option 2 of the retail/office scenario and 12 storeys in the retail/residential scenario. Options 1 and 2 differed, by Option 1 having 2 floors above grade and one floor below grade of retail, while Option 2 shows 3 floors of retail above grade. Option 1 has a gross floor area (GFA) of 136,000 sq. ft., Option 2 a GFA of 129,000 sq. ft, and Option 3 a GFA of 136,000 sq. ft.

Those in opposition to the City proposal called three professional planners. Mr. Onyschuk called Warren Sorensen. Mr. Heisey called David Butler. Mr. Beaman called Peter Walker. All three of these gentlemen are planners of vast experience and expertise in the field of land use planning. The Board recognizes their collective expertise and agrees that the alternative proposals put forward, and supported by them, are an appropriate land use, based upon traditional land use principles for the treatment of a major intersection, a major node located at a subway stop, and one which was in keeping with the goals and policies of the City for this area prior to the adoption and approval of

the City's Official Plan in 1976. However, in order to obtain approval of the retail/commercial/residential development of the intersection, or any lesser combination of these land uses, two things, at least, must happen. Firstly, there must be a change to well established City policy, that designated Yonge/Dundas as a unique, pedestrian-oriented, retail/entertainment area. This could only be accomplished by overcoming a major hurdle presently existing of the City's policies and vision of the intersection. Secondly, there must be an assembly of the properties required.

The Board does not fault the alternate proposals based upon impact and compatibility if they meet all other goals, but an Official Plan Amendment would be necessary requiring a major policy shift, begun with the 1976 Official Plan, and reiterated in the 1991 Cityplan. Section 1.4, and Sections 3, 9 and 13, of the Official Plan (Exhibit 122A) gives Yonge Street a special status in Official Plan policies and recognizes a special nature and character of this part of Yonge Street, where it is emphasized as an area of special importance for retail uses.

The other major hurdle to overcome in existing City policies is to shift the direction that the City has taken, in its policies, for the extension of the Financial District. The City's evidence, through Mr. Lintern, is the fact that the Financial District is moving south and west into the railway lands of the City. With respect to the railway lands, the direction that the City has directed expansion should occur, significant public/private investment has already been made, and infrastructure barriers do not exist. He advised that the final piece required is the Simcoe tunnel. Office construction is under way in connection with the Air Canada Centre. The Official Plan makes it clear that the railway lands hold the future for the Financial District as they are close to Union Station and provide a critical link to the waterfront. The City argued, in this hearing, that there is no significant planning rationale which requires office density on this part of Yonge Street, before the Board, so as to risk the distraction from the retail distinctiveness of this part of Yonge Street. It argued that this shift could create a competition between office and retail and there was

no planning rationale for setting up the contest.

All of this goes to the question of timing. Convincing the City to change its policies, or requiring it do so if successful on appeal to the OMB, requires substantial time. This goes to the second issue of the timing required to achieve the alternative proposals. It was the evidence of Mr. Sorensen that the development of the intersection should be completed within this business cycle. It was also the evidence of Iain Dobson, a real estate broker, who did not express a preference for either the City's proposal or the alternative proposals, that what was essential was that the corner develop now. While the City's proposal can be achieved now, there are other significant hurdles to the alternative proposals in addition to the major policy changes described above.

In order for the Pellow scheme to develop, assembly of the 10 properties is required and for the Walker scheme 6 properties. Peter Walker gave evidence in this regard. Mr. Walker's practice has been involved with numerous development proposals over the years which has provided him with insights, knowledge and an understanding of what is required to carry out such a development and his opinion is one to which the Board pays heed. It was his opinion that what was required was a "friendly assembly". The evidence before the Board was that preliminary discussions had taken place amongst some of the property owners with the purpose of trying to establish a joint venture. The Board was informed that Mr. Walker's client was not part of this group. It had also retained Mr. Walker as a separate consultant to do a separate development proposal.

For the Pellow scheme, it will also be necessary to acquire the laneways and the parking lot from the City, which, as of today, would not be easily forthcoming. Also required would be the Ryerson parking garage. Ryerson was not called in support or opposition to the Pellow scheme. What the Board does know, however, from the evidence of the City on its project, is that Ryerson was not agreeable to the removal of the parking garage for the City project as it did not want the cash flow generated by the garage to be interrupted or lost and there was also the fact that below the garage are the remains of the first O'Keefe Brewery including large metal tanks or vats. The Board was advised by Mark

Franklin, the architect of the Parcel A development and who also happened to be the architect of the Ryerson parking garage, that the garage was built on spread footings, not caissons, and that “it would be very difficult to construct beneath it. To do so would be very costly, although not because it is an environmental problem, and it would be very dangerous.” He testified that in developing the PenEquity proposal, if the removal of the brewery and the garage could have been done, they would have done it. The Board finds, based upon all of the above, that circumstances do not exist presently that would allow for a “friendly assembly”.

For these reasons, the Board finds that the time frame given by Donald MacDougall of a minimum of 4 years to achieve Phase I of the Pellow scheme is optimistic, at best, and the above constraints are likely to push the time frame out to a longer period and therefore creating the possibility of pushing it out beyond the current business cycle and all professional witnesses agreed that the development of the intersection should be completed within the current business cycle.

The Walker scheme, while not requiring the same amount of assembly, still does require it, and the necessary changes in City policy are required, as well.

Why the Board Supports the City’s Project

The Board, having reviewed the City’s Official Plan, finds that the project is in conformity with the advancement of the unique treatment of this portion of Yonge Street as a Prominent Pedestrian oriented Retail Strip. The Board also finds that such policy treatment has been consistently applied since the 1976 Plan.

The project calls for public intervention through both land acquisition and the development of a public square and parking facility. The Project requires private investment through the development and leasing of the UEC. The combined initiative of public/private investment is put forward to improve the economic and social environment of the area as well as its physical condition, and, as such, is entirely consistent with and

in conformity with the policies in Chapter 15, titled Community Improvement, of the approved Cityplan.

The Board found Ron Soskolne, the project coordinator, an entirely credible witness whose conviction and commitment to the project was unshaken through rigorous cross-examinations. His vision for Yonge/Dundas was a UEC and public square which was necessary in order to create the catalyst needed to kick-start economic vibrancy for the area. Soskolne emphasized that a critical mass was essential and a UEC can provide that, while capturing a trend that has proven very successful in locations in the USA. He, however, cautioned the Board that while the market is ripe for such a facility in Downtown Toronto, such market is not infinite. It is critical that the UEC be located at Yonge/Dundas which will serve to regenerate the area and if not captured here, now, it will go somewhere else and take the associated retail opportunities with it. Flowing from that will be the further arrest of the recovery of Yonge Street. It was his view that as long as the project can be brought into being as soon as possible, and at a price that is viable, it will be an assured success. It was also his opinion that it was critical that it be developed in this business cycle. Soskolne's opinion was that "this is Yonge Street's opportunity to seize the moment." The Board accepts his opinions as its own.

In an urban context, it was Mr. Soskolne's opinion that there are three key factors leading to a successful UEC. The first is the need of a major cineplex or grouping of cinemas to act as an anchor. Another alternative is a very large concentration of live theatre, as, in his New York experience, the combination of a megaplex cinema and live theatre increases the anchor effect. The second is the choice of good quality theme restaurants that act as entertainment in themselves, labelled "eatertainment" in the new industry jargon. Examples are Planet Hollywood, Celebrity Sports restaurants and bars, and the Hard Rock Cafe. The third is the creation of a unique "sense of place" through public space and memorable architecture. The "place" must be pedestrian friendly but active. The public square must act as a draw and not break the rhythm of the retail environment. The artist's rendering, Schedule "B", was prepared to emphasize the eclectic

nature of the architecture needed to create a sense of excitement. The Board agrees with Soskolne that the 3 key elements are met by the project and adopt Pellow's opinion that it will create both a "sense of place and sense of arrival."

The Board heard from Glenn Miller, the Chair and CEO and 100% shareholder of PenEquity. PenEquity was founded by him in 1984 and pension fund management is his specialty and PenEquity is an asset manager for Canadian pension funds. It focuses its management by investing in retail development and the quantum of assets under its management is approximately $200 million. Prior to founding PenEquity, Mr. Miller founded Vanguard Trust in 1974 and then co-founded Council Trust Company in 1977. In both instances, Mr. Miller's involvement in the two companies ended when his shares were bought out.

PenEquity is the "developer of choice" for AMC and has 13 sites under active development with AMC including two under construction in Oakville and Kanata and one imminent for construction in Whitby. Mr. Miller advised the Board that PenEquity is "100% totally committed" to this project and the fulfilling of its signed agreement with the City found at Tab D, Ex. 55. The agreement with the City requires that the retail space be street related and of the new vertical format and accessed from the street and not to be developed as an internal mall. It is his view that it is most important that the development achieve a proper tenant mix and that, as a result of enquiries, he is confident that the demand exceeds the amount of project space. This leads the Board to conclude that not only will the project have sufficient choice but an excess demand will and should spill over into nearby properties promoting the catalytic effect envisaged.

It was put to Miller the feasibility of developing the project with the acquisition of 4 rather than the 6 Yonge Street properties north of Dundas. It was his considered opinion that the project would be placed in "significant jeopardy" as the reduced space would impact negatively on the loading area and reduce the ability of achieving full vertical retailing. He advised that the public square was an essential feature of the total project

to achieve the “exciting” sense of place and the needed turn around that has occurred in Times Square. In that regard, he advised that it was his information that for the $64 million of public money invested, some $4 Billion of private investment has occurred.

The Board, based upon Mr. Miller’s evidence, PenEquity’s agreement and the site plan agreement found in Exhibit 118, taken in total, has full confidence that the project will be achieved as envisaged.

The Board had in evidence the witness statement of Arthur Peckham III, Ex. 104, the President of AMC Canada Division. This statement was adopted by Clifford Narbey, a chartered accountant by profession, Controller and Director of Administration of AMC Canada Division, who gave evidence before the Board. For the past 24 years he has functioned as a financial analyst for cinema companies, Famous Players (1974-92) and now AMC since 1992. The performance of his duties has required him to undertake the financial analysis for new proposed sites, negotiate terms with landlords, forecast revenue and predict market response to new theatres. He undertook the *pro forma* for this project.

He advised the Board that AMC has been a pioneer in changing the “going to the movies” experience. AMC has the patent on the “Love Seat” and fully supports the need for stadium seating. Of the three major players in North America, AMC ranks third to Cineplex Odeon and Famous Players but is the largest cinema operator, based on revenues, and is the most profitable of those publicly traded. It was Narbey’s evidence that the total capital of AMC is just over $1 Billion U.S. and that 1996 revenues totalled some $750 million with a long term debt of $492 million. He advised that PenEquity’s lease is with AMC Entertainment International Inc. but is guaranteed by AMC on the lease covenant. The lease will require a $13 million capital investment to improve the cinema space to the standards AMC promotes. AMC is also committed to develop this site and earnestly desires a presence in the Downtown Toronto market, so much so, that if not achievable at Yonge/Dundas, its preferred signature location, it will endeavour to acquire rights in the Varsity Stadium Project on Bloor. When pressed in cross-examination, he firmly advised the Board that in all of his 24 years in the cinema business his employer has

never reneged on a lease that he recommended and he has recommended this lease to AMC.

Notwithstanding Mr. Garry Stamm's evidence, a well recognized and respected economist and market analyst, who was critical of the likely market success given his "Measles" map, Ex. 207A, that depicts the amount of existing and new theatre space in the Greater Toronto Area (GTA), the Board prefers the evidence of Mr. Narbey. Mr. Narbey's considerable experience has been directly related to the marketability and success of new cinema space and he is convinced that Yonge/Dundas is a superior location and will be a success.

Although Mr. Stamm forecasted the likelihood of the closure of several small movie theatres in the Toronto area, Mr. Narbey, as well as Mr. Stoffel, a marketing services expert, were convinced that such closures are likely to result, in any event, as the market tends to correct itself with the introduction of these new format cineplexes. The Board takes judicial notice that none of the other cinema operators were present at the hearing in opposition to this project and conversely the Board was advised that Sony, the new owners of Cineplex/Odeon, may be proceeding with a cinema megaplex of its own at Bay/Dundas in full knowledge of this project.

Mr. Stanoulis in his cross-examination of Narbey put to him the feasibility of the 4 property option. Mr. Narbey's response was that the removal of 2 properties and the resultant loss of 4 auditoria would compromise the entire scheme and while agreeing that the proposed design was not the only one that could be conceived, it was the best.

Mr. Jeffrey Seider of KPMG, a quantity surveyor by training and qualified to provide financial analysis for development projects, was initially retained by Soskolne and subsequently by the City. His analytic advice to the City was virtually from the conception of the project idea and formed part of the input to the Council decision of December, 1996. His extensive involvement continued through the RFQ and RFP stages, the review of the

PenEquity and Ryerson agreements, and in supporting the project before the Board. In arriving at his conclusions, he had the benefit of the work of John Seigel, on disturbance damages, David Atlin, on land values, Douglas Stewart, on expropriation premiums, Raymond Sipperley, on signage rights, Cameron Watson, on levies and Ross McGregor, on Square naming rights and resulting revenue. Mr. Seider's approach throughout the stages, and in his evidence to the Board (Ex. 54), was thorough, comprehensive, complete and solid. The Board was left with his conclusions, which it supports, that the financial risks have been addressed responsibly with a net benefit to the City and that the net benefit to the City from Parcels A and C will assist in the development of the public square. The cost of the below grade parking garage will be a capital cost to the Toronto Parking Authority and therefore did not form a part of his analysis. Maurice Anderson, President of the Parking Authority, confirmed the intent to recover the capital cost of the parking structure through the Authority and that it will earn a return entirely satisfactory to the Authority. The Board finds that approach acceptable.

Throughout the hearing, various witnesses attested to the fact of the lucrative revenues that are being realized with the advent of the new signage phenomenon that has hit Times Square and is being realized now in Toronto. Evidence of such phenomenon is the media tower proposed for the Atrium. New age signage is intended for the public square which should, in Mr. Seider's opinion, significantly contribute to public revenues. In addition, the Board was advised that considerable new age signage is proposed for the UEC, the Hard Rock Cafe and possibly the other edges of the square which will generate additional private and public revenues. As an example, Mr. Seider estimated that the revenue could be as much as $1 million a year for the signage on Parcel A.

Based on Mr. Seider's evidence, the Board adopts his opinion and finds that the project is "do-able", at minimal risk to the City.

The Board also heard evidence from Gary Wright, manager of East Section of the City Planning Division and Urban Development Services and who has been with the City for 23 years and was the co-ordinator of the project on behalf of the City (Ex. 105). His

role as co-ordinator was to steer the reports, analysis and recommendations through the Board of Management and, ultimately, City Council. He confirmed that the project satisfied Board of Management's directive to him that risk and exposure be minimized. The Board of Management, after detailed and extensive review, recommended it to Council, which approved it unanimously and it had the full support of all department heads.

The Board found it instructive and of assistance to hear of the acquisitions and expropriations that the City undertook on the south side of Queen Street in conjunction with the development of Nathan Phillips Square and New City Hall. In that regard, Mr. Wright advised it was done as an urban renewal scheme and done in order to improve and stabilize that part of the City. In turn, these lands were leased to the developer of the Sheraton Centre for private development. The Board notes this as an example of a public/private initiative.

The trip to New York City and, specifically, Times Square and the 42nd Street redevelopment project area was of considerable benefit to the Board in understanding the new trends in signage, vertical retailing and the concept of urban entertainment centres. It allowed the Board to observe, first hand, the interconnectedness of and vibrancy of the mixture of these uses and formats. While on a scale and intensity much greater than that proposed for or ever expected to be achieved at Yonge/Dundas, it was important to the Board to firstly understand the need of a critical mass of these uses in concentration and secondly to see, first hand, the considerable success that can be achieved through public/private initiatives. New York has been successful in re-establishing an area which previously had been an area to avoid, and which now has re-established Times Square with a strong sense of place and strong sense of arrival which exists in an atmosphere of tremendous vibrancy and excitement. The 42nd Street project was initiated specifically to revitalize the Times Square area and with full support of its Mayor. Dealing with the issues of panhandling, vagrancy, drug dealing, prostitution and other matters that label an area unsafe and undesirable, was part of its mandate. The redevelopment entailed the

expropriation and demolition of certain properties, not all of which were in a state of physical dilapidation. Public interest required that they also be taken in order to achieve the larger goal of revitalization of the entire area. The initiatives included the commitment by the City to have a strong police presence in Times Square, whose efforts are co-ordinated not only with the BIA (called a BID in New York) but with social services. The BIA has a very active and visible role in providing for extra security on the streets and the cleanliness of the streets. The panel's observations were that the streets were very clean and provided the pedestrian with a friendly, safe and unobstructed means of passage. The project was also instrumental in achieving the use of historic buildings for non-profit theatre. The Board finds that the 42nd Street project acted as a catalyst to achieve the social and economic rebirth of Times Square.

Mr. Waqué, in argument, put forward that the City was here with full support of the business and residential communities, other than appellant property owners, whose properties are needed to achieve the project. Members of the Toronto East Dundas Residential Association (TEDRA) and the McGill-Granby Residents Association appeared in full support of the City's project. The evidence received on the night reserved for members of the public is summarized in the following section. The Board directed that public notice be published in local newspapers to ensure that the evening set aside for the public was truly open to all who wished to make submissions, either in favour or opposed to the City's project.

Public Night

The Board held an evening session on Wednesday, March 25, 1998 at Toronto City Hall. The session was well attended with over 300 people occupying the Council Chambers and the Board heard from a total of 28 individuals. Of the 28 persons who spoke, 2 opposed the proposal. The first of these was Ms Gillian Durkin of Lacey & Company whose business is at 291 Yonge Street. The Board had previously heard

evidence from Ms Durkin's father and her evidence was a reiteration of the concerns he had expressed. The other person in opposition was Mr. Z. Uznansti, of Dovercourt Road in the City of Toronto, and his opposition was more broadly based as being in opposition to public money being spent on a proposal such as this.

The Board heard from two former mayors of the City and one retired councillor. All were very supportive of the scheme and all were anxious to see it proceed as soon as possible. David Crombie believed that Yonge Street is a benchmark of how well Toronto is doing and that it was necessary to undertake a proposal on a large scale in order to deal with a multitude of issues and that the time was now. Barbara Hall addressed the Board as a citizen of Toronto who believed the proposal would have a major, positive impact on the "main street of the town I live in".

The Board heard from retailers on Yonge Street - those who had stayed and those that had moved away. Mr. John Anderson had been at 327 Yonge Street but had now relocated further north. He cited problems of street vending and that many of the landlords in the area were "invisible" and it was his belief the buildings were in need of a lot of work and that without strong moves, the downtown was disappearing. Mr. Albert Morton of Studio 267, 267 Yonge Street, has been on Yonge Street for 37 years and he believes that a city has a "heart" and that Yonge/Dundas is it for Toronto. He believes that Yonge/Dundas has come to look like a third world country and he was of the opinion that while private money was essential, that alone would not turn the area around and he fully supported the proposal by the City. As well, representatives of the Bond Place Hotel and the Delta Chelsea Inn gave evidence. Both stressed the difficulties in perception the east side of Yonge Street at Dundas has for their guests. Representatives of TEDRA and the McGill-Granby Residents Association also addressed the Board.

Eberhardt Zeidler, the architect of the Eaton Centre, testified and supported the proposal and the public square and believed the square would provide a focal point, a "heart" for the downtown area.

Mr. Doug Johnson, a bus driver in Mississauga, appeared, he told the Board, because he follows very closely all developments in the GTA because of his love of urban design and development. He believed that the proposal was at the heart of the City which is, presently, "dying a slow, agonizing death" and it was his belief that there was an urgent need to focus something on the intersection of Yonge and Dundas.

The Board also heard from the owner of the Superior Restaurant and the director of cafe development for the Hard Rock Cafe. Mr. Tom Lexovsky, of the Superior Restaurant, was in support of the proposal and of the public square. He believed it was in the public interest to have a safe, attractive city. Mr. Oliver Munday, of the Hard Rock Cafe, was "excited" about the scheme. Entertainment, retail and dining were the focus of most downtown revitalization schemes that he was aware of and they were public/private ventures. As well, a representative of the Building Trades Council appeared in support of the proposal as one which would generate employment and his Council was in support of the project and the process. He believed that municipal government should play a lead role and this would "kick start" development in the area.

Michael McLelland, Vice-Chair of the Toronto Society of Architects appeared in support of the undertaking of "major initiatives" and was of the opinion that it was appropriate for the municipality to do it.

The Board heard evidence from Ms Kathy Kinnear of Cressford Developments who is developing the Merchandise Building on Dundas Street East and once developed there will be 450 live/work units in place. She was of the view that there was a need for significant public open space in the area and supported the proposal.

In summary, all 26 witnesses who spoke in support were excited by the proposal and were all of the belief in the urgency of something happening in order to turn matters around. There was strong support that the proposal would have a catalytic effect for the areas to the north and south and to the east.

Jurisdiction

The Board was exercising two different functions in these proceedings, hence the establishment of the Joint Board of the Ontario Municipal Board, to deal with matters arising pursuant to the provisions of the *Planning Act*, R.S.O. 1990, c. P.13, and the Board of Inquiry, pursuant to Section 7 of the *Expropriations Act*, R.S.O. 1990, c.E. 26 and this affects the jurisdictional issues that the Board must address.

The standard test of the Board in assessing matters arising pursuant to the provisions of the *Planning Act* is whether the proposal represents good planning and is in the public interest. The ability of the Board to make this determination and its power to approve, reject or modify the Official Plan Amendments and its power in a zoning by-law appeal to dismiss an appeal, allow an appeal, in whole or in part, or amend the by-law or direct its amendment were not questioned by any party. The jurisdictional issues that did arise, in the planning context, related to Section 28 of the *Planning Act.* In this respect, there were three issues arising from the meaning and applicability of Section 28. The first was whether the use of Section 28 was limited to being used in areas which were in such a state of physical dilapidation and deterioration to require the intervention of the municipality. The second issue was whether the section can be used, especially the acquisition (expropriation) right, to promote and further the economic and social growth and benefits of a “community improvement project area” and is not restricted to curing blight. The third issue was the ability of the municipality to assemble and acquire and transfer some of the assembled lands to a third party private development interest.

Section 28 of the *Planning Act,* and its predecessors, has had a long history dating back to 1952 which introduced the concept of a redevelopment area. The *Planning Act* was amended in order to introduce Section 16a to the Act. By its terms, a municipality which had an Official Plan, could designate an area within the municipality as a redevelopment area. It was to be redeveloped through the adoption of a redevelopment plan for the redevelopment area, which redevelopment plan required the approval of the Ontario Municipal Board. The provisions of the Act remained virtually unchanged until the adoption of the “new” *Planning Act* in 1983. With the 1983 Act, came the new

nomenclature. As well, it was made a Part, Part IV, of the Act and given the title of "Community Improvement". Although the words found in the definitions under the old and new Acts were virtually the same, the old provisions, by the use of the term "redevelopment" had focussed activities on the physical redevelopment of areas suffering from blight. The new Act now referred to the entire process as "community improvement" to reflect a broader range of activities than commonly associated with the term "redevelopment".

The 1983 Act also saw the introduction of a list of matters of provincial interest to which the Minister, in carrying out his responsibilities under the Act, was to have regard to. Under the provisions of the *Planning Act* now in force, and which applies to these proceedings, not only the Minister, but the Council of a municipality, a local board, a planning board, and the Municipal Board, in carrying out their responsibilities under this Act, shall have regard to matters of provincial interest such as the orderly development of safe and healthy communities (Section 2(h) *Planning Act*), the resolution of planning conflicts involving public and private interests (Section 2(n)) and the appropriate location of growth and development (Section 2(p)).

Another major change brought about by the 1983 *Planning Act* was the change in definition of an "official plan". Prior definitions required it to deal solely with the physical development of the municipality. The 1983 Act expanded that definition by providing that it was to contain objectives and policies established primarily to provide guidance for the physical development of a municipality while having regard to relevant social, economic and environmental matters. The present Act, while repealing the definition of "Official Plan", now provides in Section 16 that an Official Plan shall contain goals, objectives and policies established primarily to manage and direct physical change and the effects on the social, economic and natural environment of the municipality.

Section 28(2) of the *Planning Act* requires that a municipality's Official Plan contain provisions relating to community improvement in the municipality and when it does, Council may, by by-law, designate the whole or any part of an area covered by such an

Official Plan as a community improvement project area. Once passed, Council may provide for the preparation of a plan suitable for adoption as a community improvement plan (CIP) for the community improvement project area. The Act makes the procedures to be followed the same as those employed in the adoption of an Official Plan or an Official Plan amendment (Section 17(15) to (50) of the *Planning Act*). So, although not adopted as an amendment to the Official Plan, the Official Plan and its policies are a prerequisite to the adoption of the CIP. Therefore, the Board must look at the legislative description given to an Official Plan to determine whether or not the CIP is to deal solely with physical deterioration. In this regard, pages 13 to 16 of this decision, set out in detail the various Official Plan policies that govern the use of Section 28 in this City. The findings on that section must be read in conjunction with this analysis. Taken together, it is clear to the Board that there is sufficient jurisdiction to accomplish the City's project as proposed and with acquisition by expropriation.

The definition found in section 28(1) for a community improvement project area is as follows:

> "community improvement project area" means an area within a municipality, the community improvement of which in the opinion of the Council is desirable because of age, dilapidation, overcrowding, faulty arrangement, unsuitability of buildings or for any other reason."

The Board finds on the analysis of the legislative framework of the Official Plan and particularly the matters to which it is to have regard, that the use of the terms "age, dilapidation, overcrowding, faulty arrangement, unsuitability of buildings or for any other reason" are not to be narrowly restricted to the physical condition found on the street. However, the Board finds that because of age, faulty arrangement and unsuitability of buildings, the properties, individually, do not have the ability to respond to the demands of today to be able to effect a major change at Yonge and Dundas as is occurring in downtown urban areas throughout North America. The fact that those in opposition were not satisfied with the status quo, and had alternative development proposals that they

presented to the Board, is confirmation of the recognition that these properties are in need of improvement which cannot be achieved on a property by property basis.

Additionally, the Board finds that the City's proposal comes within the terminology of "for any other reason". The City's proposal is intended to attain the economic and social benefits that will come with the creation of the catalyst which is intended to lead to the "improvement" of the community so delineated in the CIP and the community improvement project area.

As a result, the Board finds that all of the above, taken together, cumulatively results in the appropriate use by the City of the provisions of Section 28 of the *Planning Act*.

Mr. Waqué, in his argument to the Board, stated the following in his written submissions:

> "The new legislative approach was to be more flexible and emphasize improvement and economic and social issues. Thus, Section 28 was to become understood as a tool for community improvements which was not limited to curing physical blight."

The Board agrees.

The Board has, in coming to these conclusions, given an interpretation to the words of the section that does not require it to employ the *ejusdem generis* rule of statutory interpretation in that it has looked at and applied the ordinary meaning of the words used in the section. The Board finds that the use of the adjectives "other" and "any" in the phrase "for any other reason" indicates that a broad interpretation was to be maintained and that, in any event, the proposal meets both, some of the "physical" criteria and the social and economic criteria delineated in the section as reasons for undertaking a CIP in a community improvement project area.

The Board, in arriving at this conclusion, has also applied the principle recently stated in Perez (Litigation Guardian of) v. Salvation Army (1998), 37 O.R.(3d) Part 6, p.

447. at p. 452, where Chapnik, J. states the following:

> "Every statute shall receive such fair, large and liberal construction and interpretation as will best ensure the attainment of its object according to its true, intent, meaning and spirit: Interpretations Act, R.S.O. 1990, c.I. II."

The issue of whether the municipality can acquire (expropriate) private interests and, in turn, sell or lease those interests to a private developer arose in both the context of Section 28 of the *Planning Act* and Section 7 of the *Expropriations Act* and will be dealt with in the following consideration by the Board of the provisions of the *Expropriations Act*.

The second test which the Board was required to examine in these proceedings is that found in Section 7(5) of the *Expropriations Act* whereby the Inquiry Officers are required to make a recommendation concerning whether a taking is "fair, sound and reasonably necessary in the achievement of the objectives of the expropriating authority". The Board has carefully considered the submissions it heard and makes the following findings:

1. The objectives of the public authority is not to be questioned by the Inquiry Officers. The objectives are presumed to have been appropriately determined by elected officials and the remedy for any complaint is to replace the policy-making elected officials at the ballot box.

   The Board, in these proceedings, is in the unique position of being the final decision-maker on the planning objectives of the City through its determination of all the planning documents before it.

   Walters v. Essex County Board of Education, [1971] 3 O.R. 346 at 347-348.

2. The decided cases on the interpretation of these words have found that the question to be determined by the Inquiry Officer is whether the expropriation is "reasonably defensible" in light of the objectives of the expropriating authority.

Walters v. Essex County Board of Education, ibid, at p. 349

Re Parkins and the Queen (1977), 13 L.C.R. 306 (Ont H.C.J.) at p. 315, aff'd. O.C.A. 1978, 19 O.R. (2d) 473 at 477.

3. Once the expropriating authority's objectives are placed beyond review, the question of whether there should be an expropriation is generally replaced with, where is the best location for the proposal.

Karn v. Ontario Hydro (1977), 11 L.C.R. 1(Ont. C.A.) at 8.

Re Grey County Hydro v. Ontario Hydro, 12 L.C.R. 193 (Ont. H.C.J.) at 195.

4. The Inquiry Officer only makes a recommendation to the approving authority and the ultimate responsibility for a proceeding, that is for accepting or rejecting the recommendation of the Inquiry Officer, lies with the approving authority, in this instance the City of Toronto.

Sections 6, 7, 8 *Expropriations Act*.

5. Four of the ten properties to be acquired are required for the public square beneath which there will be underground parking open to the public for short term use. Section 191 of the *Municipal Act* permits assembly for municipal purposes, which would include a public square, and, permits acquisition or expropriation as the reasons for carrying out the assembly. The City did not proceed on this basis because the evidence was that the City concluded that a public square without the development adjoining it on Parcel A, the northern block, might, in the current circumstances, have a negative, rather than a positive, impact on the area. Section 191 of the *Municipal Act* refers to acquisition and expropriation as alternatives without distinction. Section 28(3) of the *Planning Act* speaks of authority for land acquisition but does not expressly state expropriation. The Board finds that expropriation is an implementing tool which can be used for land acquisition which is governed by the *Expropriations Act* and its policies, which are the fair, sound and

reasonably necessary policies, that is, reasonably defensible. The *Planning Act*, by its terms, is not directly concerned with the method by which land acquisition takes place.

In argument, Mr. Waqué made the following submission:

> "The possibility of expropriation is always present. It is an element of land ownership. What is protected under our law is not freedom from expropriation, but the presumption is that if public acquisition takes place, full compensation is required."

The Board agrees and would add that full compensation is "required" by the provisions of the *Expropriations Act*.

6. The Board finds that both with respect to the *Expropriations Act* and Section 28 of the *Planning Act* that there is no prohibition to properties being acquired or expropriated by the municipality and then re-sold or leased to private interests. There is a history of development by private interests in a redevelopment plan, the predecessor of the CIP, and there is precedent for an expropriating authority to expropriate property which is ultimately to be used for commercial purposes.

Legoyeau Holdings Limited v. Windsor, [1994] O.J. 1350 (Ont. C.A.)

Conclusions and Findings

The Board finds that OPA 92, the CIP amendment and zoning by-laws before it represent good planning and are in the public interest as they will allow the development of the public square, parking facility and UEC at Yonge/Dundas. The Board finds that the development of the project will act as a catalyst in improving the economic and social conditions of the CIP area in specific but of all of Toronto in general. Although the Board is not able to say categorically that the media tower at the Atrium, the announcement of the Livent development at Shuter and the commencement of the extensive renovations of the Eaton Centre, which will see the "popping out" of retail stores and restaurants onto the

west sidewalk on Yonge, are directly related to the December 10th, 1996 announcement of the subject project, the Board can find that the timing of all these projects, including the subject's, is critical to the economic well being of Toronto. The Board will then dismiss the appeals and approve the documents subject to conditions which follow.

The Board finds that 6 properties are necessary for the achievement of a proper development of Parcel A.

The Board finds that it is critical to this project that the newly formed City of Toronto Council fully endorse its commitment and funding of the project. To that end, counsel for the City advised that the Board's Order should be withheld until August 31, 1998 to allow for such endorsement and the fulfilment of conditions and should such endorsement not be forthcoming by that date, the Board should dismiss the City's applications.

The Board finds that it is essential that YSBRA continue its efforts to ensure that the principles expressed in the CIP are fully realized. In this regard, the Board encourages its active participation in the maintaining of the area as a safe and clean environment which attracts the tourists and visitors and citizens of Toronto to Yonge and Dundas as has been accomplished by the BID in Times Square.

The Board finds, on the evidence, that the street entrance to the subway on the northeast corner of Dundas should be relocated to an internal access to the project and have an on-street access on the south side of Dundas as part of the public square. This was recommended by the Architect Franklin and the Board agrees. The Board also finds that the suggestions made by Mr. Pellow, with regard to the project, should be seriously considered and incorporated, if feasible.

The Board finds that expropriation is in the public interest to achieve the project that the Board has approved. In this regard and acting in its role as Inquiry Officers, the Board finds that "the taking of the lands is fair, sound and reasonably necessary in the achievement of the objectives" of the City. The Board makes this finding based on the commitments made by City officials in evidence that the expropriated owners will receive

full and fair compensation for the properties taken. By this decision, the Board, as Inquiry Officers, reports to the approving authority, in this case, the City of Toronto, that the application for approval has merit and should proceed.

Decision and Conditions

The Board, based on all of the above, dismisses all of the appeals, approves OPA 92 and the amendment to the CIP, By-law 1997-0196 as modified in Tab 1 and Tab 4 of Exhibit 56, and amends the by-laws as found in Tabs 2, 3 and 5 of Exhibit 56 as further amended by Exhibit 30. The Board's Order will not issue until the following conditions are met and the Board is so advised:

1. That the newly formed City of Toronto Council endorse the commitment to proceed with the project put before this Board and commit the necessary funding and confirm its intent to proceed with the expropriation. The Board imposes Mr. Waqué's timing that such commitment be made by June 30, 1998, and that plans of expropriation be filed within the first two weeks of July.

2. The formal lease between AMC and PenEquity and the terms of the agreements between PenEquity and the City be finalized and confirmed by July 15, 1998.

3. That the planning conditions filed as Exhibit 296 and attached as Schedule "C" shall be fulfilled on or before August 30, 1998.

Obiter Dicta

The Board offers the following observations and suggestions that arise out of hearing the matter. The Board was impressed with the comprehensive approach taken in Times Square with the co-ordinated efforts of the City, the police, the BID and the social agencies, to reclaim the streets so that they can be enjoyed by the general public in a safe, clean and unobstructed manner. The Board heard a great deal of evidence and complaints by the general public about panhandling, vagrancy and drug dealing and the need for the City of Toronto to take corrective action. The evidence of Detective McDonald

and a representative of one of the social agencies actively involved in this area was very persuasive and convincing. Both support the project but advised that many of the street people have adopted panhandling as an occupation to gain easy money to support their habits and is not essential to survival. Both recommended to the Board that the City should undertake an active program to educate the general public to say “no” to these people and, in the alternative, to buy them a coffee or a hot meal. In addition, the City could pass legislation modelled on the Winnipeg By-law and the City of Kingston By-law and the experience in New York, to take action to prevent undesirable uses of City streets that act as a deterrent to economic vitality. Having said this, the Board is cognizant of the fact that the Winnipeg By-law has yet to face a court challenge, expected in the fall.

With the exception of Mr. Illion, who represented Lick’s, no representatives of tenants unassociated with landlords, appeared before the Board. The Board believes that the reason for this is the fact that tenants have greater rights under an expropriation scenario than under a development scenario if their landlord has a demolition clause in the lease.

The Board well appreciates the sentiment of the landowners whose properties are to be expropriated. Part of that reticence is the underlying fear and suspicion of not receiving compensation that reflects their perception of the market rise or increase in value as a result of the project which requires their land but will benefit adjacent lands not taken. These perceptions may have hindered a negotiated acquisition. The Board, as part of the services it provides, can offer mediation on request, either by this panel or other Board members, to assist in trying to achieve a negotiated settlement, obviating the need for a protracted and expensive arbitration to determine the compensation payable to the owners.

The Board was asked to determine cost awards in favour of the appellants against the City. The Board will set time for a motion on costs, on request. However, the City may wish to consider this aspect in its pending negotiations with property owners in an attempt to settle the acquisitions and achieve a more timely resolution of all outstanding matters

related to this project. In this regard, the Board may be spoken to.

The Board was reminded that since its proceedings were subject to the provisions of the *Consolidated Hearings Act*, a petition to the Lieutenant Governor in Council (Cabinet) is possible. As well, the likelihood of this decision being appealed to court by some or all of the appellants was put forcefully to the Board in argument. The parties are always entitled to exercise the rights given to them by statute. The Board, however, is confident that it has carefully considered and given full and proper weight and attention to all of the evidence proffered and all arguments advanced and is confident in its findings and in its decision and report.

D.L. SANTO
VICE-CHAIR

J.R. BOXMA
MEMBER