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**File: Z-8617**  
**Planner: M. Tomazincic**

<b>TO:</b>	<b>CHAIR AND MEMBERS PLANNING &amp; ENVIRONMENT COMMITTEE</b>
<b>FROM:</b>	<b>JOHN M. FLEMING MANAGING DIRECTOR, PLANNING AND CITY PLANNER</b>
<b>SUBJECT:</b>	<b>APPLICATION BY: RYGAR PROPERTIES INC. 100 FULLARTON STREET, 475-501 TALBOT STREET &amp; 93-95 DUFFERIN AVENUE MEETING ON FEBRUARY 6, 2017</b>

<b>RECOMMENDATION</b>
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That, on the recommendation of the Managing Director, Planning and City Planner, the following report on the decision by the Ontario Municipal Board, relating to an appeal by Annamaria Valastro concerning 100 Fullarton Street, 475-501 Talbot Street and 93-95 Dufferin Avenue **BE RECEIVED** for information.

<b>PREVIOUS REPORTS PERTINENT TO THIS MATTER</b>
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**September 6 2016 Report to Planning and Environment Committee – 100 Fullarton Street, 475-501 Talbot Street and 93-95 Dufferin Avenue (Z-8617)** – This report recommended that the requested amendment to the Zoning By-law, submitted by Rygar Properties Inc., intended to facilitate a specific development design which includes three new buildings ranging from nine (9) to thirty-eight (38) storeys in height, a total of approximately 703 new residential units (1,200 units per hectare), and 1,670m<sup>2</sup> of new commercial space be approved.

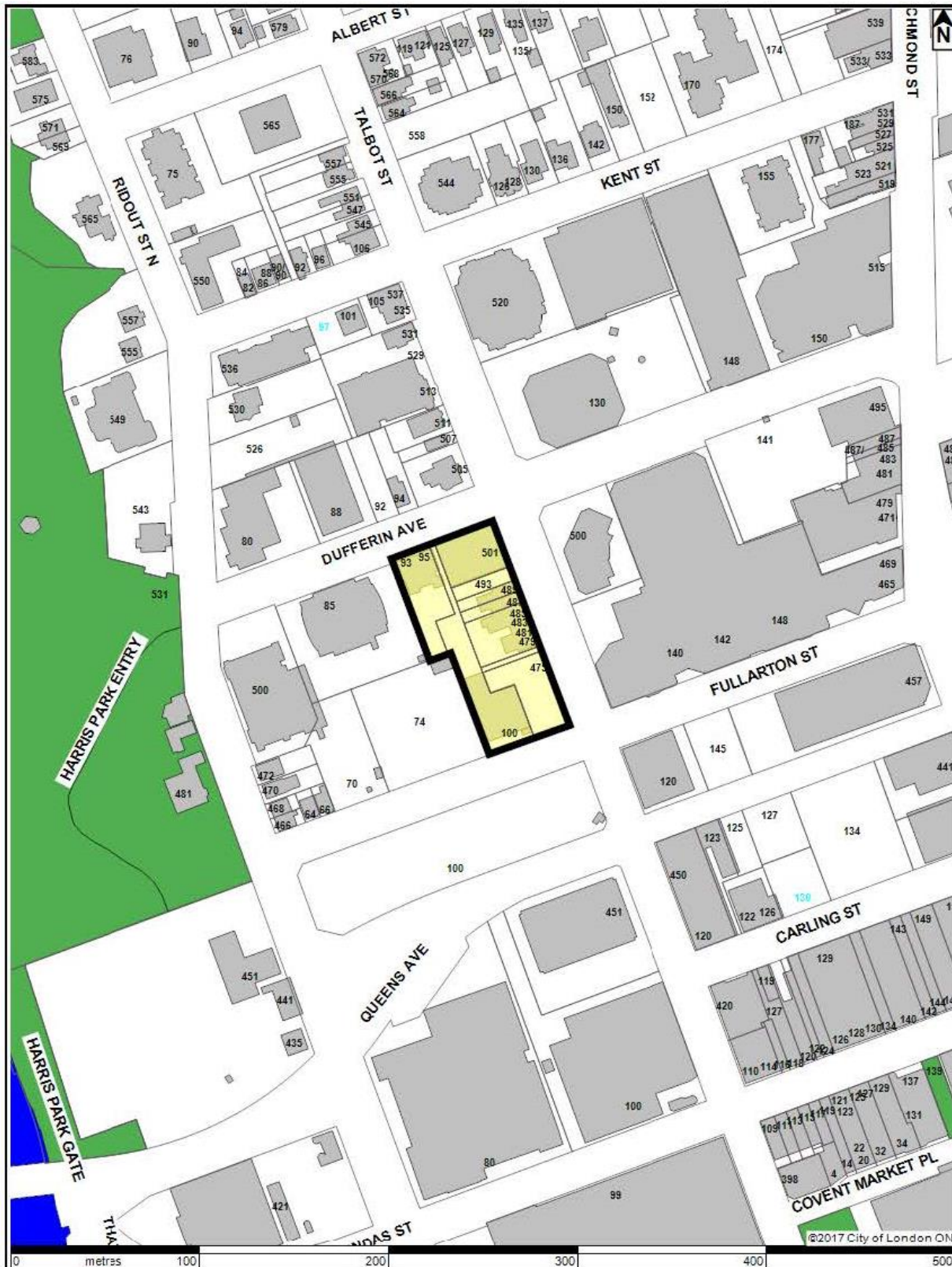
<b>BACKGROUND</b>
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In May of 2016, an application for a Zoning By-law amendment was received by the City of London for the lands at 100 Fullarton Street, 475-501 Talbot Street and 93-95 Dufferin Avenue, comprising of eight separate parcels containing a range of existing buildings and land uses. 100 Fullarton Street contains a two-storey office building, 475 Talbot Street accommodates a surface parking lot, 479-489 Talbot Street contained a row of heritage-listed street townhouses (Camden Terrace), 501 Talbot Street contains an existing one-storey commercial building and 93-95 Dufferin Avenue contains a historic semi-detached dwelling occupied by professional offices.

The intent of the application was to facilitate the removal of all the buildings on the site, with the exception of the historic semi-detached dwelling located at 93-95 Dufferin Avenue, to facilitate a comprehensive, phased, redevelopment of the subject site which includes a 9-storey building in the central portion of the site along Talbot Street comprised of approximately 607m<sup>2</sup> of commercial space on the ground floor with 92 residential units above, a 38-storey tower on the southern portion of the site with approximately 660m<sup>2</sup> of commercial space on the ground floor and 349 residential units above, and a 29-storey tower on the northern portion of the site with approximately 660m<sup>2</sup> of commercial space on the ground floor and 262 residential units above. Overall, the proposed redevelopment would provide for approximately 1,670m<sup>2</sup> of commercial space at street-level, up to 703 residential apartment units and a total of 729 parking spaces that would be provided between 4 levels of underground parking and up to three levels of above ground structured parking located at the rear of the proposed buildings.

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**LOCATION MAP**

Subject Site: 100 Fullarton St, 475-501 Talbot St, 93-95  
**Dufferin Ave**  
 Applicant: 24 12029 Ontario Inc.  
 File Number: Z-8617  
 Planner: Michael W Davis  
 Created By: Michael Tomazincic  
 Date: 2017-01-23  
 Scale: 1:2500

**LEGEND**

-  Subject Site
-  Parks
-  Assessment Parcels
-  Buildings
-  Address Numbers



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Throughout the processing of the application, there has continually been a strong desire expressed by Planning Staff, LACH and Council to fully retain the existing heritage-listed structures including both Camden Terrace and 93-95 Dufferin Avenue. Though Staff have continually sought the full retention or in-situ façade retention and incorporation, through ongoing negotiation and consultation, it has become clear that there were a number of factors which posed a distinct obstacle to full and/or partial retention, and the long-term sustainability, of Camden Terrace. These generally include:

- A June 24, 2015 Structural Capacity Report was prepared by Jablonsky, Ask and Partners Inc. The report details various structural deficiencies, some of which are so severe that immediate corrective action was deemed necessary for the safety of the general public.
- The City Building Division has confirmed the conclusions of the structural study and, on July 8th, 2016, issued a make safe order for portions of the building.
- A Phase II Environmental Site Assessment prepared by EXP Services Inc. identifies soil contamination issues on various portions of the site, including those beneath Camden Terrace. The report recommends complete excavation and removal of soils underneath Camden Terrace, to be deposited at an appropriate sanitary landfill prior to a change in land use.
- The Developer has expressed concern regarding the economic viability of retaining the buildings given the extent of upgrades required to bring them up to modern building code, balanced with their limited operating income potential in comparison to the value of the downtown land they occupy.
- The proponent's project objectives relating to the creation of a highly visible interior lobby and a pedestrian-oriented active street environment along Talbot Street, the primary entrance point to the entire development, are challenged by the nature of the Camden Terrace façade due to small openings and large proportions of solid materials.

Based on the above, on September 12, 2016, Municipal Council approved Zoning By-law amendment (Z.-1-162518) recommended by Staff and in October 2016, a demolition application for the buildings located at 479-489 Talbot Street, known as Camden Terrace, was approved.

On October 7, 2016, a letter of appeal to the Ontario Municipal Board was submitted by Annamaria Valastro in opposition to Zoning By-law Z.-1-162518. The reasons for the appeal of Council's decision to amend the Zoning By-law, are summarized as follows:

- 1) The application is challenging the 'validity of the decision' by council to combine a zoning amendment with a review of heritage designation.
- 2) The proposed development will intrude on the aquifer. As aquifers are fluid and the sediment is sand, there is concern that continued intrusion into the aquifer may have a negative unintended consequence on heritage foundations [of residential homes in the vicinity].

On December 12, 2016, the OMB heard a Motion to Dismiss the appeal of the appellant brought by the applicant alleging that the reasons set out in the Notice of Appeal did not disclose any apparent land use planning ground upon which the Board could allow the appeal, and that the appeal was not made in good faith and was frivolous and vexatious.

During the hearing, five new grounds for appeal were alleged for which the City and appellant took the position that no apparent land use planning grounds were disclosed and all five grounds were addressed in the Staff report to Council

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In its decision dated December 23, 2016, the OMB accepted the submission of the City and the applicant that the grounds alleged by the Appellant were addressed in a clear and satisfactory manner in the City's Planning report to Council, in which the Director of Planning recommended approval of the ZBA and the bonusing. The only additional ground alleged by the Appellant not addressed in the City's Planning report related to the lack of an Environmental Impact Statement, but as the Subject Lands are located in the Downtown Area, and there are no abutting or adjacent natural heritage features, there is no requirement for such a study.

<b>CONCLUSIONS</b>
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Having reviewed all of the evidence at the hearing, the OMB found that in the circumstances of this matter, the presentation of a series of uncorroborated concerns and questions did not constitute genuine, legitimate and authentic planning issues which are worthy of the adjudicative process and, as a result, the OMB allowed the Motion to Dismiss, and dismissed the appeal by the appellant against City of London By-law No. Z.-1-162518. A copy of the OMB decision dated May 15, 2013 is attached to this report as Appendix "1".

<b>PREPARED AND SUBMITTED BY:</b>
<b>MICHAEL TOMAZINCIC, MCIP, RPP MANAGER, CURRENT PLANNING</b>
<b>RECOMMENDED BY:</b>
<b>JOHN M. FLEMING, MCIP, RPP MANAGING DIRECTOR, PLANNING AND CITY PLANNER</b>

January 20, 2017  
Michael Tomazincic  
Y:\Shared\implemen\DEVELOPMENT APPS\2016 Applications 8573 to\8617Z - 100 Fullarton St, 475-501 Talbot St, 93-95 Dufferin Ave (MD)\OMB Folder\8617Z - OMB Decision Report

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



**ISSUE DATE:** December 23, 2016

**CASE NO(S):** PL 161032

**PROCEEDING COMMENCED UNDER** subsection 34(19) of the *Planning Act*, R.S.O. 1990, c. P.13, as amended

Appellant:	Anna Marie Valastro
Subject:	By-law No. Z-1-162518
Municipality:	City of London
OMB Case No.:	PL161032
OMB File No.:	PL161032
OMB Case Name:	Valastro v. London (City)

**PROCEEDING COMMENCED UNDER** subsection 34(25) of the *Planning Act*, R.S.O. 1990, c. P.13, as amended

Motion By:	Rygar Properties Limited
Purpose of Motion:	Request for an Order Dismissing the Appeal
Appellant:	Anna Marie Valastro
Subject:	By-law No. Z.-1-162518
Municipality:	City of London
OMB Case No.:	PL161032
OMB File No.:	PL161032

**Board Rule 107 states:**

**107. Effective Date of Board Decision** A Board decision is effective on the date that the decision or order is issued in hard copy, unless it states otherwise.

Pursuant to Board Rule 107, this decision takes effect on the date that it is e-mailed by Board administrative staff to the clerk of the municipality where the property is located.

**Heard:** December 12, 2016 in London, Ontario

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**APPEARANCES:**

<u>Parties</u>	<u>Counsel</u>
Rygar Properties Inc. ("Rygar")	B. Card
City of London ("City")	N. Hall
Annamaria Valastro ("Appellant")	Self-represented

**MEMORANDUM OF ORAL DECISION DELIVERED BY BLAIR S. TAYLOR  
DECEMBER 12, 2016 AND ORDER OF THE BOARD**

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**INTRODUCTION**

[1] Rygar brought a Motion to Dismiss the appeal of the Appellant with regard to the development approvals by the City concerning the lands known municipally as 100 Fullarton Street, 475 - 501 Talbot Street, and 93 - 95 Dufferin Avenue ("Subject Lands"), pursuant to s. 34(25) of the *Planning Act*, alleging that the reasons set out in the Notice of Appeal did not disclose any apparent land use planning ground upon which the Board could allow the appeal, and that the appeal was not made in good faith and was frivolous and vexatious.

[2] The Notice of Motion to Dismiss contains the affidavit of Melissa Campbell, a land use planner who had carriage of the Rygar development application. Her affidavit reviews the grounds of appeal and opines that it does not disclose any *bona fide* land use planning ground upon which the Board could allow the appeal, and that the appeal was not made in good faith as it was for a collateral purpose (i.e. to prevent demolition of 479 - 489 Talbot Street ("Camden Terrace")).

[3] The City supports the Rygar Motion.

**BACKGROUND AND CONTEXT**

[4] The Subject Lands contain about one third of a city block in the downtown area.

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[5] The Subject Lands are generally rectangular with 28 metres (“m”) of frontage onto Fullarton Street and 115 m of frontage on Talbot Street, and with a site area of 0.6 hectares (“ha”).

[6] The uses of the Subject Lands at the time of application were as follows: 100 Fullarton Street had an existing two-storey office building; 475 Talbot Street had a surface parking lot; 479 - 489 Talbot Street had a series of row houses which were listed on the City’s Inventory of Heritage Resources (not designated); 501 Talbot Street had an existing one-storey commercial building; and 93 - 95 Dufferin Avenue was a semi-detached dwelling used for office purposes and also listed on the City’s Inventory of Heritage Resources.

[7] The development proposal sought to amend the City’s Zoning By-law for a revised Downtown Area By-law that would permit an increased height up to 129 m, and an increased density of up to 1,200 units per ha.

[8] Such an approval would entail the demolition of the row houses at Camden Terrace.

[9] The City’s Planning report dated September 6, 2016 recommended approval.

[10] At p. 3 of the City’s Planning report, the following is noted:

Council should be aware that an application for the demolition of Camden Terrace has been submitted, and due to the Municipality’s requirement to consult with LACH, will be presented at a future meeting in September. For the sake of transparency, staff wish to clearly acknowledge that a decision on this Zoning By-law amendment will provide direction for how Council wishes to deal with designation or non-designation...

**NOTICE OF APPEAL**

[11] The Appellant’s Notice of Appeal dated October 7, 2016, is found at Exhibit 2 Tab 2B, and it sets out two reasons for the appeal. The first reason is to challenge the

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“validity of the decision by City Council to combine a zoning by-law amendment with a review of heritage designation.” The second reason is that the City sits on a highly vulnerable aquifer and the cumulative development in the City will push back the aquifer, and this may accelerate erosion of brick foundations.

[12] The relief sought is twofold: firstly that the Board either order an independent review of the properties at 479 - 489 Talbot Street and 93 - 95 Dufferin Avenue as to whether they meet the criteria for Heritage Conservation or adopt the recommendations set forth by the City’s Heritage Committee, and secondly that the Board order a study to review how the aquifer is being impacted by continual intrusion with a focus on impact to neighbouring heritage homes.

[13] The Appellant Form (A1) in part 8 notes that the Appellant intends to call no expert witnesses or other witnesses.

**NOTICE OF RESPONSE TO MOTION: APPELLANT**

[14] The Appellant’s Notice of Response to the Motion to Dismiss is found at Exhibit 3 and it contains her affidavit in which the following is noted. At paragraph 20 with regard to calling an expert witness it states: “Tentative—David Winninger Family Law Attorney and Former City Councillor, Not yet retained—Planner”.

[15] Paragraphs 21 to 28 deal with the Appellant’s Motion in Superior Court to stop the demolition. Paragraph 26 notes that the Superior Court file is returnable on January 6, 2017, but demolition has already occurred.

[16] Paragraphs 30 to 34 contend that the merits of the appeal (to the Ontario Municipal Board) stand, as:

- a) The loss of heritage is likely responsible for the increase of density beyond what is permissible without a zoning by-law;
- b) The bonus zones did not have internal staff or advisory committee support;



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- c) Deficiencies in municipal services were not addressed prior to approval;
- d) There was no assessment on impacts to the local neighbourhood;
- e) There was no environmental impact statement.

**RYGAR’S RESPONSE**

[17] Exhibit 5 is the Supplementary Motion Record of Rygar. It contains a further affidavit by Ms. Campbell replying to the Appellant’s Notice of Response.

[18] Briefly, Ms. Campbell swears that:

- a) The Subject Lands are designated “Downtown” in the City’s Official Plan;
- b) The Official Plan policies that place limitations on scale will be less restrictive in the Downtown, and that the greatest height and density shall be in the Downtown;
- c) The Official Plan policies provide that concerning preservation and restoration of buildings, the policies on preservation are to be balanced against policies which promote growth and development in the Downtown;
- d) That with regard to groundwater conditions, the development project is subject to site plan approval, and if required by the City, an assessment of the groundwater by a qualified geotechnical engineer will be provided; and
- e) That City Council consented to the request to demolish the properties at 479-489 Talbot Street, and they have in fact been demolished.

**NOTICE OF RESPONSE TO MOTION: CITY**

[19] The City’s Notice of Response contains three affidavits by staff members of the City with regard to the Motion by the Appellant in the Superior Court.

[20] The first affidavit is from the Manager of Urban Regeneration, who is a Registered Professional Planner, was formerly the Manager of Community Planning and Design at the City, and with experience in the application of the *Ontario Heritage*

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*Act.*

[21] The second affidavit is from the Chief Building Official for the City and also the Managing Director of Development and Compliance Services. He is a professional engineer with 14 years of experience as a Chief Building Official.

[22] The third affidavit is from the Deputy Chief Building Official for the City. He is a professional engineer with 10 years of experience as a Deputy Chief Building Official.

[23] The affidavits track the development proposal for the Subject Lands, the appeal by the Appellant, the request for demolition by Rygar, the staff recommendation to demolish, and the resolution by City Council consenting to the demolition.

#### **APPELLANT'S FACTUM**

[24] The Appellant's Factum (Exhibit 8) provides *inter alia* that the Appellant lives four blocks away from the Subject Lands; that the Planning Staff at the City had received during the circulation process significant concerns regarding municipal services, that City Council had actually issued a Notice of Intent to Designate (certain heritage properties on the Subject Lands) on September 30, 2015, (Exhibit 8, Tab 11, para. 24) and raises these questions in paragraph 26:

- a) Did Council fail in their responsibility to preserve, conserve and protect Ontario's shared Heritage?
- b) Did Council act in bad faith when they failed to consider designation despite having issued a Notice of Intent to Designate?

#### **PLANNING ACT**

[25] Section 34(25) of the *Planning Act* states the following:

*Despite the Statutory Powers Procedure Act and subsections (11.0.2)*

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and (24), the Municipal Board may dismiss all or part of an appeal without holding a hearing, on its own initiative or on the motion of any party, if,

- a) It is of the opinion that,
  - (i) the reasons set out in the notice of appeal do not disclose any apparent land use planning ground upon which the Board could allow all or part of the appeal;
  - (ii) the appeal is not made in good faith or is frivolous or vexatious;
  - (iii) the appeal is made only for the purpose of delay; or
  - (iv) the appellant has persistently and without reasonable grounds commenced before the Board proceedings that constitute an abuse of process.

#### **CASE LAW**

[26] The Board, in *East Beach Community Assn. v. Toronto (City)* [1996] O.M.B.D. No. 1890 considered the test for the exercise of the Board's discretion to dismiss an appeal without a full hearing and stated:

The Board is entitled to examine the reasons stated to see whether they constitute genuine, legitimate and authentic planning reasons. That is not to say that the Board should take away rights of appeal whimsically, readily, and without serious consideration of the circumstances of each case. This does not allow the Board to make a hasty conclusion as to the merit of an issue. Nor does it mean that every appellant should draft the appeal with punctilious care and arm itself with iron-clad reason for fear of being struck down. What these provision allow the Board to do is seek out whether there is authenticity in the reasons stated, whether there are issues that should affect a decision in a hearing and whether the issues are worthy of the adjudicative process.

[27] The Board, on consideration of the documentary evidence filed with the Board, and the submissions of the parties, and having regard to the matters of provincial interest expressed in s. 2 of the *Planning Act*, and having regard to the decision of municipal council and the information and materials that were before City Council, and having considered the Provincial Policy Statement, gave an oral decision allowing the Motion to Dismiss, for the reasons set out below.

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**DECISION**

[28] The Board has been requested by counsel for Rygar and the City to give an oral decision on the Motion to Dismiss the appeal by the Appellant due to an imminent court date.

[29] The Board will do so.

**CONTEXT**

[30] City Council approved a development application for the Subject Lands, which are located in the City's Downtown Area. The development approval came in the form of a Zoning By-law Amendment (“ZBA”), which would involve the utilization of bonusing provisions to increase the height to 129 m and increase the proposed density up to 1,200 units per ha, in return for certain facilities, services, and matters that are described in the ZBA, including heritage conservation for 93 - 95 Dufferin Avenue and commemoration of Camden Terrace.

[31] The Appellant appealed City Council's approval of the ZBA and her Notice of Appeal has been summarized above.

[32] The Notice of Appeal does not reference or provide any independent land use planning evidence, heritage evidence or hydrogeological evidence; it only provides the Appellant's opinions on the process and result.

[33] Counsel for Rygar and the City argue that *prima facie* the Notice of Appeal should fail as the reasons in the Notice of Appeal do not disclose any apparent land use planning ground upon which the Board could allow all or part of the appeal.

[34] Additionally, they submit that the Appellant's Notice of Response (Exhibit 3), which alleges five new grounds for the appeal, still does not disclose any apparent land use planning ground as all of the five grounds are dealt with in the City staff report to

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Council, and there is no contrary independent evidence that has been produced by the Appellant.

[35] Additional ground No. 1 alleges that the loss of heritage is likely responsible for the increase in density, whereas the City staff report to Council states that: “...The Subject site falls within the City’s Downtown Area. Section 4.1.7 of the City’s Official Plan relating to scale of development in the downtown, intends that the “Downtown will accommodate the greatest height and density of retail, service, office and residential development permitted in the City of London.” Additionally it is noted that: “...Increases in density may be permitted without amendment to this Plan provided the proposal satisfies density bonusing provisions of s. 3.4.3 iv and 19.4.4 of the Plan, conforms to the Site Plan Control By-law and addresses standards in the Downtown Design Guidelines”.

[36] Additional ground No. 2 alleges that the bonus zones did not have internal staff or advisory committee support. First it is clear that the City’s Planning report that went to City Council recommended approval of the ZBA. However, in the processing of the development application, there were dissenting reports from a heritage planner, the Urban Design Review panel, and comments from Transportation Planning and Design on deficiencies with the Traffic Impact Statement, as well as comments from Wastewater and Drainage Engineering on significant wet weather flows in the sanitary sewer system. As with any development application, part of the role of the Planning Department is to collect and collate the circulation comments from individual departments, agencies, boards etc., and synthesize those replies into a recommendation to City Council. The Summary section of the report addresses that role:

In summary Staff have spent significant time considering input from stakeholders and working with Rygar to develop a plan that recognizes the complexities and various competing interests involved with the comprehensive redevelopment of the site. The recommendation recognizes the practicalities and limitations associated with the required brownfield cleanup, the poor building condition, excavation and the proponent’s project objectives.

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[37] The Board would note that at page 29 of the City’s Planning report, there is a summary of the factors that lead staff to its recommended position:

Though Staff have continually advocated for full retention or in-situ façade retention and incorporation, through ongoing negotiation and consultation, it has become clear that there are a number of factors which pose a distinct obstacle to full and/or partial retention, and the long term sustainability of Camden Terrace.

[38] The factors then listed by staff include a 2015 Structural Capacity Report on structural deficiencies, that the City issued a “make safe” order for portions of the building, that the Phase II Environmental Site Assessment identified soil contamination on various portions of the Subject Lands including Camden Terrace and the report recommended removal of the soils underneath Camden Terrace.

[39] Additional ground No. 3 alleges that deficiencies in municipal services were not addressed prior to approval. The City’s Planning report addresses this under the heading Servicing/Infrastructure Issues where the following is noted:

An important consideration in determining the appropriateness of a given site to accommodate the requested level of intensity is the availability of municipal services. In this regard, existing hard services, (sanitary sewers, water mains, storm sewers, road connections, etc.) are all available to the site from Talbot Street. Through the site plan approval process, detailed engineering studies will be completed to determine the extent of improvements or upgrades necessary to the local systems to adequately service the proposed development. Necessary local improvements would be completed at the expense of the future developer.

[40] Among the noted infrastructure reports are a traffic report, a sanitary servicing report, and a storm water management report.

[41] Additional ground No. 4 alleges there was no assessment on impacts to the local neighbourhood. The City’s Planning report has a section entitled Neighbourhood Context. It notes that the Subject Lands are directly south of vacant parcel that is zoned for a wide range of uses with a maximum height of 90 m. East of the Subject Lands is a high rise office building and a 15-storey apartment building. North of the Subject Lands a new 30-storey apartment building is under construction. West of the Subject Lands is

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a vacant site with a surface parking lot beyond which is another high rise apartment tower.

[42] The City's Planning report states that the proposed heights of 9 storeys to 38 storeys are comparable and compatible with other buildings in the immediate vicinity and buildings seen across the Downtown. The 38-storey tower has been located in the southern part of the site to provide for a logical step down as the site transitions from the Downtown towards the North Talbot neighbourhood.

[43] Additional ground No. 5 alleges there was no environmental impact statement. Counsel for the City submits that the reason is that there are no natural features in the downtown area that would require an environmental impact statement. Moreover, the City staff report notes that the Subject Lands are a brownfield site and that two Phase II ESA reports have been received by the City for 479 - 489 Talbot Street and 93 - 95 Dufferin Avenue.

[44] At the commencement of the hearing, the Appellant provided her Factum (Exhibit 8) which outlines her submissions with regard to her appeal. The “Overview” in that document raises two additional questions:

1. Were bonus zones for properties 100 Fullarton Street, 479 - 489 Talbot Street and 501 Talbot Street warranted pursuant to Chapter 19.4.4 of the Official Plan?
2. Did Council uphold their responsibility under the *Ontario Heritage Act* to conserve, preserve and protect Ontario's shared heritage?

[45] For both questions, the uncontroverted expert evidence supports the position taken by Rygar and the City.

[46] Turning now to the Motion to Dismiss, it is important to understand the jurisdiction of the Board on a Zoning By-law appeal pursuant to s. 34(26) of the

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*Planning Act:*

The Municipal Board may:

- a. dismiss the appeal; or
- b. allow the appeal in whole or in part and repeal the by-law in whole or in part or amend the by-law in such manner as the Board may determine or direct the council of the municipality to repeal the by-law in whole or in part or to amend the by-law in accordance with the Board's order.

[47] With regard to the relief requested by the Appellant in the Notice of Appeal, the Board has no jurisdiction on a Zoning By-law appeal to order an independent heritage review, or to order a study on the City's aquifer. The role of the Board is to adjudicate land use planning matters based on sworn evidence given and tested before the Board.

[48] Moreover, with regard to the heritage issue, it appears to the Board that there is a fundamental factual dispute between the Appellant and Rygar and the City relating to the resolution of City Council on September 30, 2015: (Exhibit 8, Tab 11). The Appellant clearly is of the view that City Council in that Council resolution directed staff to publish Notices of Intent to Designate the Talbot Street properties and the Dufferin Avenue properties.

[49] Counsel for Rygar and the City submit that the said Council resolution does not do so, but rather referred the matter back to staff to consider in conjunction with the evaluation of future planning applications for the Subject Lands.

[50] The Board having reviewed the said resolution concurs with the submissions of the City and Rygar: there is no resolution directing staff to give Notice of Intent to Designate. The wording of the resolution is clear on its face: it is simply a referral back to staff.

[51] Turning to the additional grounds alleged by the Appellant, the Board accepts the submissions of Rygar and the City that each of those additional grounds were



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addressed in a clear and satisfactory manner in the City's Planning report to Council, in which the Director of Planning recommended approval of the ZBA and the bonusing.

[52] The only additional ground not addressed in the City's Planning report related to an alleged lack of an Environmental Impact Statement, but as the Subject Lands are located in the Downtown Area, and there are no abutting or adjacent natural heritage features, there is no requirement for such a study.

[53] The test for the Board on a Motion to Dismiss is to determine if there are genuine, legitimate, and authentic planning issues to be adjudicated: *East Beach Community Assn. v. Toronto (City)*.

[54] In reviewing the evidence, the Board has taken into consideration the Appellant's Notice of Appeal, her Notice of Response and her Factum.

[55] The Board has juxtaposed those documents against the expert land use planning affidavits of Ms. Campbell, and the three affidavits of City staff members. In particular, the Board notes the affidavit evidence of James Allen Yanchula who states in Exhibit 4, Tab 1, paragraph 19, that in his professional experience: "...the consideration of zoning amendments and the designation of heritage properties simultaneously is an accepted practice and is considered to be good planning practice".

[56] In contrast to these expert affidavits, the Board finds no expert evidence of any kind from the Appellant. Rather the Appellant has set out a series of concerns and questions.

[57] The Appellant submits in her Factum that the standard of review to dismiss an appeal without a hearing is high as it impacts on the rights of individuals to appeal and cites *Oak Orchard Resort Inc. v Howard Cadsby* (PL050130) as an authority for that position. The Board has reviewed that case. There the appellant had retained a land use planning consultant who prepared a report which the Board found raised triable issues with respect to servicing, scale and form of development. No such evidence has

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been brought by the Appellant in this matter.

[58] Moreover in the authorities cited by counsel for Rygar, the Board notes *Mason v. Grandview Estates Inc.* (1999) 38 O.M.B.D. 443. There, the Board had the uncontroverted expert land use planning evidence of two experts and made the following finding: “Speculation is not sufficient for the purpose of disposing of the obligation of an appellant at a hearing.”

[59] The Board finds that in the circumstances of this matter, the presentation of a series of uncorroborated concerns and questions does not constitute genuine, legitimate and authentic planning issues which are worthy of the adjudicative process.

[60] In light of this finding, it is not necessary to consider the second thrust of the Motion to Dismiss.

**ORDER**

[61] Thus, the Board will allow the Motion to Dismiss, and dismisses the appeal by the Appellant.

*“Blair S. Taylor”*

BLAIR S. TAYLOR  
MEMBER

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