

**Ontario Land Tribunal**  
Tribunal ontarien de l'aménagement  
du territoire



**ISSUE DATE:** April 10, 2024

**CASE NO(S):** OLT-22-003989

**PROCEEDING COMMENCED UNDER** subsection 22(7) of the *Planning Act*, R.S.O. 1990, c. P. 13, as amended

Applicant and Appellant: Fengate Liuna Gardens Holdings LP  
Subject: Request to amend the Official Plan - Failure of the City of Hamilton to adopt the requested amendment  
Existing Designation: Local Commercial  
Proposed Designation: Medium Density 3, Low Density Residential and General Open Space  
Purpose: To permit two 24-storey buildings, two 15-storey buildings, two 4-storey stacked townhouse blocks, and five 2-storey townhouse blocks  
Property Address/Description: 526 Winona Road  
Municipality: City of Hamilton  
Reference No.: UHOPA-22-007  
OLT Case No.: OLT-22-003989  
OLT Lead Case No.: OLT-22-003989  
OLT Case Name: Fengate Liuna Gardens Holdings LP v. Hamilton (City)

**PROCEEDING COMMENCED UNDER** subsection 34(11) of the *Planning Act*, R.S.O. 1990, c. P. 13, as amended

Applicant and Appellant: Fengate Liuna Gardens Holdings LP  
Subject: Application to amend Zoning By-law No. 05-200 – Neglect or Refusal of application by City of Hamilton  
Existing Zoning: Community Commercial (C3, 579) Zone  
Proposed Zoning: To be determined  
Purpose: To permit two 24-storey buildings, two 15-storey buildings, two -storey stacked townhouses blocks, and five 2-storey townhouse blocks  
Property Address/Description: 526 Winona Road  
Municipality: City of Hamilton

Reference No.: ZAC-22-015  
 OLT Case No.: OLT-22-003990  
 OLT Lead Case No.: OLT-22-003989

**PROCEEDING COMMENCED UNDER** subsection 41(12) of the *Planning Act*, R.S.O. 1990, c. P.13, as amended

Appellant: Fengate Liuna Gardens Holdings LP  
 Subject: Site Plan  
 Description: To permit two 24-storey buildings, two 15-storey buildings, two 4-storey stacked townhouse blocks, and five 2-storey townhouse blocks

Reference Number: UHOPA-22-007  
 Property Address: 526 Winona Road  
 Municipality/UT: City of Hamilton  
 OLT Case No.: OLT-22-004751  
 OLT Lead Case No.: OLT-22-003989

**Heard:** November 29 to December 1, 2023 and December 11, 12, 14, and 15, 2023 by video hearing

**APPEARANCES:**

**Parties**

**Counsel/Representative\***

Fengate LiUNA Gardens Holdings LP

D. Bronskill

City of Hamilton

B. Duxbury  
R. McVean

Robert Morash

J. De Marinis  
N. Smith (*in absentia*)

Charles Puma  
Dawn Simpson

Self-represented\*  
Self-represented\*

**DECISION DELIVERED BY S. BRAUN AND ORDER OF THE TRIBUNAL**

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[Link to the Order](#)

## INTRODUCTION

[1] Along the shore of Lake Ontario, in the City of Hamilton (“City”) north of the Queen Elizabeth Way (“QEW”) between Winona Road and East Street, sits a vacant 3.4 hectare property at 526 Winona Road (“Subject Property”/“site”). The Subject Property is bound by the lake to the north and is otherwise surrounded by a predominantly low-rise residential neighbourhood, known as Winona North. Formerly on the site were private banquet and skilled trades training facilities as well as a large, private outdoor garden space. The banquet facility and garden were regularly used for celebrations and ceremonies such as weddings, graduations, etc. The training facility, which included a large outdoor space used for instruction on the operation of construction machinery, was used to host such training activities and other meetings.

[2] Fengate LiUNA Gardens Holdings LP (“Appellant”/“Applicant”) wishes to redevelop this underutilized site, which currently serves no planned function. The proposal contemplates residential intensification within low-, mid- and high-rise built forms. To that end, applications were made for an Official Plan Amendment (“OPA”), Zoning By-law Amendment (“ZBA”) and Site Plan Approval, (collectively, “the Applications”). The City failed to make decisions on the Applications and, under ss. 22(7), 34(11) and 41(12) of the *Planning Act* (“Act”), the Applicant appealed to this Tribunal.

[3] The following are the Tribunal’s reasons for dismissing the appeals.

## PROCEDURAL HISTORY

[4] Initially, the proposal was for 1,212 residential units contained within: two four-storey stacked townhouse blocks and five two-storey townhouse blocks located on the northern and southern portions of the site, as well as two 24-storey buildings situated on the interior of the site, flanked by two 15-storey buildings, along the easterly and westerly edges of the site. It included a new 30-metre (“m”) wide public open space

along the waterfront, as well as underground parking for 1,067 automobiles and 727 bicycles.

[5] At previous Case Management Conferences, Party status was granted to the Lakewood Beach Community Council (who later withdrew from the proceedings altogether), as well as neighbourhood residents Robert Morash, Dawn Simpson and Charles Puma. Participant status was also granted to a number of others who reside in the neighbourhood, all of whom raised concerns with potential impacts of the proposed development, which were echoed at the hearing in the cases presented by the City and the added Parties.

[6] Prior to the hearing, in response to comments from the City and concerns raised by neighbourhood residents, several revisions were made to the proposal including, but not limited to:

- reductions in the height of the two peripheral buildings from 15 to 12 storeys;
- a reduction in the height of the easterly interior building from 24 to 22 storeys;
- an increase in the height of the westerly interior building from 24 to 26 storeys;
- a reduction in the number of residential units from 1,212 to 1,060;
- a reduction in the number of townhouse blocks from five to four, with an increase in the height of those blocks from two to three storeys; and,

- an increase in the total number of parking spaces for automobiles to 1,420, resulting in an increase in the parking ratio from 0.88 to 1.2 spaces per unit.

## **SITE CONTEXT, REQUESTED RELIEF AND KEY ISSUES**

[7] The site is currently designated *Neighbourhoods* on Schedules E (Urban Structure) and E1 (Urban Land Use Designations), in the Urban Hamilton Official Plan (“UHOP”). It is located within the Winona North neighbourhood and is subject to the Urban Lakeshore Secondary Plan (“Secondary Plan”), which designates the site as Local Commercial, reflective of its former use.

[8] The proposal contemplates building heights of 12-, 22- and 26-storeys, and a density of approximately 430 units per hectare. The highest residential designation within the Secondary Plan is Medium Density Residential 3 (there is no high density designation available). Medium Density Residential 3 permits a maximum height of nine-storeys and a density of 50-99 units per net residential hectare. As such, in order to permit the proposed development including the proposed public waterfront promenade, the Applicant seeks redesignation of a portion of the Subject Property from Local Commercial to a site-specific Medium Density Residential 3 and to redesignation of the northern portion of the site to General Open Space.

[9] A ZBA is required to change the zoning from Community Commercial in the City Zoning By-law (“City ZBL”) No. 05-200 and Single Residential 2 in the Stoney Creek ZBL to a site specific Multiple Residential Five Zone and a site specific Single Residential One Zone in the Stoney Creek ZBL and Open Space in the City ZBL. The draft ZBA also includes provisions for reductions in yard setbacks, landscaped open space, separation distances between dwellings, and parking ratio requirements as well as increases in lot coverage and residential density.

[10] The Applicant requested the Tribunal issue an Interim Order allowing the appeals, in part, approving the proposed development in accordance with plans

prepared by Graziani & Corazza Architects Inc. and withholding a Final Order until versions of the proposed draft instruments (including conditions of site plan approval and Holding provision language) satisfactory to the City and the Applicant, are submitted for approval in final form. The City and the added Parties were aligned in opposition to the proposed development, each requesting an Order of the Tribunal dismissing the appeals in their entirety.

[11] The submissions and evidence presented focused largely upon the following key issues:

Whether the development, as proposed:

- a) represents an appropriate level of intensification within this particular neighbourhood;
- b) is compatible with the existing low-rise residential neighbourhood of Winona North;
- c) would result in undue adverse impacts from a traffic/transportation and safety perspective; and,
- d) includes a sufficient amount of on-site parking, including parking for visitors.

## **LEGISLATIVE FRAMEWORK**

[12] The proposed planning instruments, and the development they would ultimately permit, must be representative of good planning; have regard for matters of provincial interest in s. 2 of the Act; be consistent with the Provincial Policy Statement, 2020 (“PPS”); and conform/not conflict with A Place to Grow: Growth Plan for the Greater Golden Horseshoe (“GP”).

[13] The proposed ZBA must conform with the UHOP, including the proposed OPA, if approved. The OPA, which seeks to make changes to the UHOP, need not strictly conform thereto but rather, must be found to implement or align with the vision thereof. The proposed site plan must be compliant with applicable by-laws and any conditions proposed must be reasonable and necessary, having regard to the nature of the development.

[14] The Tribunal must also have regard for the decision of the municipal council and the information considered by it. Although these appeals relate to a non-decision, it is noted that City Council is not supportive of the proposal and instructed counsel to appear at the hearing to oppose the development.

***The Official Plan Adjustment Act, 2023***

[15] During this hearing, Bill 150 (*Planning Statute Law Amendment Act, 2023*) received Royal Assent and came into effect on December 6, 2023. Bill 150 enacted the *Official Plan Adjustment Act, 2023* (“OPAA”), which reversed certain modifications previously made by the Province to various official plans and official plan amendments, including those made to Official Plan Amendment No. 167 (“OPA 167”) of the UHOP on November 4, 2022.

[16] During closing submissions, counsel were invited to make oral submissions as to the impacts of the OPAA, if any, upon the evidence presented to the Tribunal in the context of this appeal. Counsel noted that they had not yet had an opportunity to review the OPAA and were not aware of any specific policies which might be affected but generally agreed that, in all likelihood, absent specific transitory provisions, the policy framework in place at the time of the applications would prevail and therefore, the OPAA would not have any impact. Counsel for the City noted that, should relevant policies be “undone”, there might be a need to revisit the testimony of some of the witnesses with respect to those specific policies.

[17] Under the OPAA, the Ministerially-approved version of OPA 167 was rescinded and the version originally endorsed by the City was retroactively approved as of November 4, 2022. Only three Ministerial modifications to OPA 167 were retained under the OPAA, namely numbers 18, 26 and 36. All other modifications to OPA 167 were deemed never to have been made. Two of the now-rescinded modifications were:

- modification 12 - UHOP B.2.4.1.3 – which breaks down the residential intensification target, allocating 30% to the Downtown Urban Growth Centre, 40% to Urban Nodes and Corridors, and 30% to Neighbourhoods; and,
- modification 27 – UHOP C.4.2.11 – which states that corridors along the entire BLAST network shall be supported by transit-oriented communities and the City shall encourage higher density development on all frequent transit corridors.

[18] Modification 12, which featured prominently in the arguments and evidence presented by the Applicant, was rescinded by the OPAA. As such, out of an abundance of caution given the caveat of the City's counsel during his oral submissions, the Parties were given a further opportunity to provide input and/or revisit evidence on the impacts, if any, of the OPAA following the close of the hearing. The Parties maintained the position that the OPAA did not have any bearing on the issues to be decided by the Tribunal and elected not to provide anything further.

### **THE NEIGHBOURHOOD, AS DESCRIBED BY THE RESIDENTS**

[19] The Tribunal heard testimony from the following lay witnesses, all of whom reside in Winona North: Robert Morash, Dawn Simpson, Charles Puma and Dr. Joseph Kozak. They collectively described their neighbourhood as a quiet, idyllic waterfront community with a cottage-like atmosphere. Homes in Winona North are predominantly one to two-storey, single family dwellings, some of which are 100-year-old cottages that have been



renovated over the years. There are also some relatively recently built three to four-storey townhouse units located at the south end of the neighbourhood on Baseline Road, just north of the QEW.

[20] Winona North was described as low profile and low density, with mature trees, generous front and backyards with pools, gardens and other outdoor features. One such outdoor feature, repeatedly referenced throughout the hearing, is a tire swing in the front yard of Ms. Simpson's home, located on Winona Road directly across the street from one of the proposed 12-storey buildings. The swing was held out as a symbol of the existing character and function of Winona North - a typical suburb removed from the bustle of busier urban centres, and a close-knit community where residents take pride in their individual properties but also in the neighbourhood, regularly performing maintenance tasks (cutting grass and picking up garbage) on public property, such as the accesses/foot paths to the lake located at the ends of Winona Road and East Street.

[21] Ms. Simpson considers the proposed development too dense and the height and massing of the buildings too large to be compatible with Winona North. Imagining the 12-storey building proposed immediately across the street from her home, she testified that it would be "massive, looming, intrusive". In her view, the many units proposed to directly overlook her property from this building would result in unacceptable interference with her family's privacy and their ability to use, enjoy and feel at ease in and around their home - especially outside in the yard.

[22] The nearest transit stop, shops, restaurants and other businesses, including Costco, LCBO and a Metro grocery store, can be accessed at Winona Crossing, which is located south of the QEW, approximately 1.2-1.5 kilometres ("km") away. All schools are located 2 or more km away, with the closest community centre and ice rinks being 4-6 km and medical services (hospital and walk-in medical clinic) roughly 12 km away.

[23] The Subject Property can be accessed from either Winona Road or East Street. East Street is a two-lane local road and Winona Road is two-lane local road north of Baseline Road, continuing south of that point as a collector road. With reference to photographic evidence, the residents emphasized that there are no sidewalks along East Street and, on Winona Road, there is a sidewalk on one side of the road, which extends only as far south as Lido Drive. Beyond that point to/from Winona Crossing, but for a small stretch of sidewalk atop the QEW overpass (also referred to throughout the hearing as Winona Bridge), there is only a gravel shoulder.

[24] Although there are painted bicycles on the road leading up to the overpass denoting a cycling route, there is no dedicated lane/path, and cyclists must share the road with vehicular traffic. It was also noted that the overpass and immediate area lack streetlights, making it difficult for motorists to see pedestrians and cyclists along this stretch of road at night. The Tribunal heard that, during the winter, snow cleared from the street piles up on the gravel shoulder and on the stretch of sidewalk atop the overpass, resulting in pedestrians frequently having no choice but to walk within the roadway.

[25] Given the distance to community facilities and services, schools and local commercial uses, the majority of neighbourhood residents currently rely upon automobiles to meet their daily needs. Extensive testimony was given with regard to how busy the traffic gets once one ventures outside of this neighbourhood – particularly, at the intersection of the North Service Road and Fifty Road, as well as on the eastbound and westbound QEW interchanges. Notwithstanding the foregoing, the Tribunal heard from the residents that roads within Winona North are not presently busy with traffic and, for the most part, residents feel at ease walking and cycling around their neighbourhood. Ms. Simpson testified that her teenage children frequent Winona Crossing on foot to attend part time jobs and patronize restaurants, and while she feels that the existing route to Winona Crossing is not ideal from a safety perspective given the lack of sidewalks, bicycle lanes and streetlights, she expressed grave concerns that

the traffic generated from over 1,000 new residential units would increase the potential for conflicts between vehicles and pedestrians and/or cyclists.

[26] While these witnesses all acknowledged extensive revisions were made to the original proposal, they remained staunchly opposed to the development. From their perspective, when taken as a whole, the heights, massing and density proposed would visually overwhelm and abruptly transform the character of this quiet suburban neighbourhood into a busy urban environment, interfering not only with the use and enjoyment of individual properties, but the way in which residents currently access and move throughout the neighbourhood with a feeling of relative safety.

[27] Ultimately, each communicated support for redevelopment and some level of intensification of the site in built forms other than single family dwellings. However, they all emphasized that whatever is built must fit into the neighbourhood and not result in undue adverse impacts, including risks to public health and safety. They urged the Tribunal to accept that what “makes sense”, when one takes into account the location, context, character and limitations of *this* particular neighbourhood, is a development of lesser density, within lower rise built forms.

## **TRANSPORTATION, LAND USE PLANNING AND URBAN DESIGN EVIDENCE**

[28] The following individuals were qualified without objection to provide opinion evidence to the Tribunal in their respective fields of expertise, as noted below:

- For the Applicant – Matt Johnston, Land Use Planning; Tom Kasprzak, Urban Design; and Richard Pernicky, Transportation;
- For the City - James Van Rooi, Land Use Planning; Edward Winter, Urban Design; and Steve Molloy, Transportation
- For Robert Morash – Jonathan Law, Transportation.

[29] Mr. Puma also called the following individuals, who appeared to testify under summons:

- Paul Nunes - Senior Project Manager, Highway Corridor Management Section, Ministry of Transportation (“MTO”), who provided factual evidence only; and,
- Mike Stone – Manager, Watershed Planning, Stewardship and Ecological Services, Hamilton Conservation Authority, a Registered Professional Planner and a Member of the Canadian Institute of Planners, qualified without objection to provide opinion evidence on matters of planning in relation to the proposed development’s impacts upon the environment.

[30] Although the Tribunal appreciated the testimony of Messrs. Nunes and Stone, which did provide some additional context, nothing turned on their evidence. As such, the balance of this section of the decision focuses upon the evidence of the witnesses called by the Applicant, the City and Mr. Morash.

### Transportation

[31] With regard to issues of traffic and transportation, the majority of the argument and evidence focused on:

1. whether the number of parking spaces proposed would be adequate or result in negative impacts such as “spillover” parking on surrounding neighbourhood streets;

2. whether additional traffic generated from the proposed development would result in unacceptable adverse impacts to the surrounding transportation network; and,
3. the adequacy of existing and planned transit, and whether the level of density proposed would support a future extension of transit to this neighbourhood.

*Parking and a revised draft Zoning By-law Amendment (“ZBA”)*

[32] Leading up to the hearing, Mr. Pernicky built upon a 2021 Transportation Impact Study (“TIS”) with additional technical analyses and letters directly responding to questions/comments in the various written statements of Messrs. Molloy, Law and the lay witnesses. That iterative process continued during the hearing and, on the second last day, following evidence and recommendations provided during the testimony of the other transportation witnesses in relation to parking rates and impacts upon the surrounding transportation network, the Applicant submitted a revised draft of the ZBA.

[33] Among other things, the revised draft ZBA increases the proposed 1.2 parking spaces per unit to a minimum required parking ratio of 1.0 spaces per unit plus 0.25 spaces per unit to be reserved for visitor parking. It also includes a Holding provision addressing improvements to the North Service Road/Fifty Road intersection beyond signalization and the implementation of traffic calming measures.

[34] The acceptance of a total rate of 1.25 spaces per unit with 0.25 thereof, specifically reserved for visitors, directly addressed the concerns of Messrs. Molloy and Law in relation to the adequacy of the proposed parking and therefore, resolved this issue from the standpoints of the City and Mr. Morash. As such, it is unnecessary to review the initial disagreement with respect to the proposed parking rate and the evidence heard in that regard. It is noted that, despite the revised draft ZBA, Mr. Puma maintained his position that the parking proposed would be inadequate. However,

based upon the transportation witnesses being *ad idem* on this issue and testimony heard in relation to existing City-wide by-laws and enforcement mechanisms to address parking on neighbourhood streets, the Tribunal is satisfied that the parking rates proposed in the revised ZBA are adequate.

[35] Notwithstanding those changes, from the perspective of the City and the added Parties, the revised draft ZBA went only so far in addressing the totality of their concerns and, as such, they continued to oppose the development, in part, on the basis of unresolved traffic and transportation issues discussed below. The City did indicate though, that should the Tribunal see fit to allow the appeals, it would work together with the Applicant to craft mutually agreeable language in relation to the Holding provision proposed.

#### *Impacts to the Transportation Network*

[36] A great deal of the evidence heard in relation to impacts on the transportation network focused upon the intersection at North Service Road and Fifty Road, which is currently a stop-sign controlled intersection with one lane in each direction. The Tribunal heard uncontested evidence that, with or without the proposed development, this intersection is presently “failing” and requires improvements to accommodate future background traffic and that the City has planned, and set aside funding for such improvements, including conversion to a signalized intersection.

[37] Mr. Pernicky analyzed the impact of the traffic anticipated to be generated from the proposed development and recommended further intersection improvements, including dedicated turning lanes with specific storage and taper lengths. Those additional improvements (the functional details of which he opined could be addressed at subsequent stages of the development process) combined with planned signalization, would allow the intersection to accommodate the traffic generated by the proposed development and operate at an acceptable level of service.

[38] Additionally, Mr. Pernicky's analyses concluded that other intersections studied (Winona Road/Baseline Road; Baseline Road/East Street, Baseline Road/North Service Road and Winona Road/Vince Mazza Way) would be capable of handling the additional traffic generated by the development, functioning at acceptable levels of service with existing lane configurations and traffic controls. On cross-examination, he acknowledged that he did not study the intersection of Winona Road and Lido Drive, which is the first controlled intersection vehicles will encounter after leaving the site via the Winona Road access. He explained that this intersection was not included in the comments received and did not arise at the expert meetings held in advance of the hearing. However, he opined that further study would not be required because he did not consider this intersection to be significant and, based upon the results of the other intersections studied, he expressed the view that it would also operate at acceptable levels with traffic from the development layered on.

[39] The Tribunal also heard a great deal about transportation impacts in terms of increased traffic creating potential conflicts between vehicles, pedestrians and cyclists. Presently, the neighbourhood does not meet UHOP C.4.5.2 v), which states that on local roads, sidewalks should be provided on both sides of the street. Mr. Pernicky suggested that concerns in this regard ought to be raised with the City, noting the Applicant is only required to provide sidewalks along the frontage of the site, beyond which, it is the City's responsibility to ensure adequate networks to address pedestrian and cycling safety.

[40] Ultimately, in Mr. Pernicky's opinion, the proposed development would not only result in a minimal impact upon the existing transportation network in the area but, through various means, including Development Charges ("DCs") and taxes generated from future residents, would make a positive contribution to North Service Road/Fifty Road improvements and any future enhancements the City might make to pedestrian and active transportation networks in the neighbourhood.

[41] Following Mr. Pernicky's various letters and his testimony at the hearing, neither Mr. Law nor Mr. Molloy recommended an outright refusal of the development. However, both maintained the view that all transportation impacts from the proposed development had not been properly evaluated and that additional traffic generated from the development could adversely impact pedestrian and cyclist safety along East Street and Winona Road and, in particular, in the area of the Winona Road Bridge/QEW overpass. Mr. Law recommended further study be conducted to assess the adequacy of the existing sidewalk facilities and the necessity for improved pedestrian facilities to handle impacts of increased traffic volume within the neighbourhood.

[42] Mr. Molloy acknowledged that the responsibility to provide sidewalks beyond the site does rest with the City, but noted that this could not be done simply or quickly. He explained, with particular reference to the areas of the QEW overpasses, that the installation of sidewalks would be both challenging and costly, requiring a great deal of study and long-term planning. He recommended further study in the form of a holistic TIS, not just in relation to traffic impacts and the necessity for pedestrian network improvements but also, further study in relation to the proposed development's share of impacts to the already busy QEW interchanges, noting that while the ramp exiting the Niagara Region was "sort of" studied, the same could not be said of the opposite direction from Toronto.

#### *Existing/Planned Transit*

[43] All of the witnesses agreed that the site is not located within an Urban Node or Corridor, nor is it located within a Major Transit Station Area and the nearest transit stop, located at Winona Crossing, south of the QEW, is approximately 1.2-1.5 km away. It was further agreed that the site is not within walking distance of transit as, in general, the accepted walkable distance to transit is 300-400 metres ("m").

[44] When assessing traffic impacts from a proposed development, the number of vehicle trips anticipated to be generated can be reduced if there are available



alternatives to single-occupancy vehicle travel (such as transit and active transportation), which are well supported by existing/planned infrastructure and services. In this instance, Mr. Pernicky testified that, “because the site does not benefit from a robust active transportation, pedestrian or transit network”, his analysis of traffic impacts was conservative and did not include any such reduction.

[45] The Tribunal was presented with a copy of the City’s approved Ten-Year (2015 to 2024) Local Transit Strategy, which includes the future extension of the B-line (bus) to Fifty Road. Although approved, this strategy is not enshrined within the UHOP or in a Transportation Master Plan (“TMP”), is currently under review and the extension to Fifty Road has not been funded. Mr. Johnston drew attention to UHOP C.4.2.11, which speaks to supporting corridors along the transit network with transit-oriented communities and the encouragement of higher density development on all frequent transit corridors.

[46] Messrs. Pernicky and Johnston explained the concept of “induced demand”, and expressed the view that the future of transit in this area is dependent upon the generation of need. Mr. Pernicky added that need is driven by density and partly aided by low parking ratios, which encourage residents to seek out alternative modes of transportation. He was steadfast in his opinion that the appropriate amount of need cannot be generated by building single family dwellings on this site and, as such, this development *must* be approved and built to support transit extension. He suggested that residents could use alternative services, such as car sharing, while waiting for transit improvements to come to the area. Although he acknowledged such services do not currently exist in this area, he testified they could be considered as part of a package of Transportation Demand Management measures and secured through future conditions of site plan approval.

[47] Mr. Molloy agreed that, in theory, density can support transit through induced demand. However, he opined that to be successful in so doing, the right amount of density must be placed at the right location. He explained that the “build it and they will

come” approach works when density is placed along Nodes and Corridors, where there has been a coordinated approach to land use and transportation planning to ensure necessary investments in services and infrastructure are/will be made to support density/demand. In his view, this particular site, which is “lacking in pedestrian connections” and “not close to a collector road to help support the idea of walking a couple of hundred metres to access transit”, is inappropriately located for the density proposed to make transit extension a reality.

[48] In furtherance of this opinion, he explained that the existing transit stop at Winona Crossing only takes a rider as far as the Eastgate Terminal beyond which, riders must transfer to another bus to get anywhere else in the City, including downtown. He testified that, in order to entice people to choose transit, it must be convenient, easily accessible, reliable and well-connected. He opined that stops located beyond a walkable 300-400 m distance and having to transfer to connecting transportation to get to one’s destination decrease the viability of transit as an option, serving to perpetuate automobile dependency.

[49] Given the lack of transit, active and other alternative transportation options in the neighbourhood at present, he opined that future residents of the development would, for the most part, rely upon their automobiles to get to and from work, school, shopping and other daily needs, similar to current residents. He predicted that this behaviour would be well-entrenched when and if any extension of transit to this area were realized, ultimately decreasing the likelihood of a shift away from single occupancy vehicles.

#### Land Use Planning and Urban Design

[50] Mr. Johnston explained that both the Secondary Plan and the parent ZBL predate the PPS and GP, and do not readily facilitate current Provincial objectives. He further explained that the Applicant’s use of OP and ZBA processes available in the Act helps to implement updated policy direction and address the current housing crisis.

[51] He provided a detailed review of matters of provincial interest, as well as applicable PPS, GP and UHOP policies, and opined that the proposal aligns with the foregoing. In his view, the development represents good planning in the public interest, making efficient use of an underutilized site, creating necessary demand to attract transit to the area and increasing housing affordability by offering options that do not exist in this neighbourhood. He testified that necessary shoreline protection work had already been done, leaving no outstanding environmental or public health and safety concerns and, with respect to ensuring the availability of necessary infrastructure and public service facilities, the development will result in three important enhancements:

- upgrades to a currently over capacity sanitary sewer station;
- the provision of a new public walkway along the waterfront; and,
- required transportation improvements to the currently overburdened intersection at North Service Road and Fifty Road.

Over and above the foregoing, he noted that the development would result in opportunities to cost share in future improvements for the neighbourhood.

[52] The majority of the planning and urban design evidence in relation to local policies focused on whether the proposed development is compatible with, and appropriately placed in, the neighbourhood of Winona North. In this regard, Messrs. Johnston and Kasprzak characterized both suburban Hamilton and Winona North as being in transition, moving toward more dense and urban forms of development. They opined that the proposal seeks to redevelop an underutilized site and introduce higher density to an evolving neighbourhood in the form of low, medium and high-rise built forms, and directly aligns with UHOP E.2.7:

Neighbourhoods are where the majority of Hamiltonians live, learn, shop, socialize and play. A key component of Hamilton's urban structure, the Neighbourhoods element is an all encompassing element representing the concept of a *complete community* at the structural level. Neighbourhoods

occupy the greatest proportion of the City, containing a mix of low, medium, and high rise residential areas...

...Hamilton's neighbourhoods are, by and large, regarded as stable. However that does not mean these areas are static. These neighbourhoods will see some physical change over time. Neighbourhoods will evolve as older residents move out, younger residents and families move in, homes are renovated or rebuilt, infill development occurs, commercial areas are invigorate, or underutilized commercial areas are redeveloped. *Residential intensification* within Neighbourhoods is part of the evolution of a neighbourhood and can happen at a range of scales and densities provided the *intensification* is compatible with and respects the built form and character of the surrounding neighbourhood.

[53] The Tribunal also heard that OPA 167 had the effect of removing density limits on a site specific basis for lands within Neighbourhoods and although general density limits in the Secondary Plan remain, Mr. Johnston again pointed out the dated nature of the Secondary Plan. He also referenced an uncontrolled survey on intensification and urban boundary expansion, noting that of 230,000 households surveyed, 18,000 responses were received - 90% of which favoured freezing the urban boundary. He also drew attention to UHOP B.2.4.1.3 and highlighted subparagraph c), noting that a significant amount of intensification is anticipated within Neighbourhoods:

The residential intensification target shall be established through a future Amendment to this Plan as part of this municipal comprehensive review. The housing units specified in Policy A.2.3.2 shall generally be distributed through the built up area as follows:

- a) The Downtown Urban Growth Centre shall be planned to accommodate approximately 30% of the intensification target.
- b) The Urban Nodes and Urban Corridors identified in Section E.2.0 – Urban Structure, excluding the Downtown Urban Growth Centre, shall be planned to accommodate approximately 40% of the residential intensification target.
- c) 30% of the residential intensification target is anticipated to occur within the Neighbourhoods as illustrated on Schedule E – Urban Structure. The City will review and update its Zoning By-law to facilitate the planned housing units to be developed within the Neighbourhoods through intensification.

In light of the foregoing, Mr. Johnston opined that the proposal avoids uneconomical and unwanted expansion of the urban boundary.

[54] Mr. Johnston sensitively addressed the concerns of the added Parties and the Participants, pointing out that UHOP policies do not require new development to have *no* impacts but require, instead, that impacts be mitigated (for example, ensuring appropriate transitions in scale, adequate privacy, and minimization of shadows and wind). Relying upon the evidence of Messrs. Pernicky and Kasprzak, he testified that the development will not result in any adverse impacts. He expressed the view that the only “impact” to the neighbourhood would be change and although he acknowledged that change is often difficult to accept, he opined that change does not equate to adverse impact.

[55] Mr. Kasprzak also acknowledged that the proposal represents a departure from the built form that currently exists, but expressed the view that it is compatible with the existing and planned context of Winona North, taking the Tribunal to the UHOP definition of compatibility, which:

...means land uses and building forms that are mutually tolerant and capable of existing together and in harmony within an area. Compatibility or compatible should not be narrowly interpreted to mean “the same as” or even as “being similar to”.

[56] He also drew attention to UHOP B.2.4.2.2, which discusses the matters to be evaluated when considering residential intensification within Neighbourhoods, including but not limited to: compatibility with adjacent land uses in terms of shadowing, overlook, noise, lighting, traffic and other nuisance effects, as well as transitions in height and density to adjacent residential buildings.

[57] Mr. Kasprzak reviewed particular elements of the proposal’s design which, in his view, adequately mitigate impacts and achieve compatibility. These include: placing the tallest buildings on the interior of the site and mid-rise 12 storey elements along the periphery of the site, to act as an intervening land use between the taller buildings and the existing low-rise residences on Winona Road and East Street. He opined that various setbacks, significant stepping, a three-storey street wall podium and the use of materials and glazing to mirror what exists in the area serve to further achieve transition

to, and compatibility with, the surrounding low-rise residential neighbourhood. He noted the absence of privacy/overlook and shadow impacts, explaining that people in taller buildings tend to cast their gaze outward toward the horizon rather than down, and that the north-south orientation of the development adequately limits shadows on surrounding properties.

[58] With respect to the placement of high density residential development in Winona North, Mr. Kasprzak explained that the proposal aligns with UHOP E.3.6.1, which states, “high density residential areas are characterized by multiple dwelling forms on the periphery of neighbourhoods in proximity to major or minor arterial roads”. He drew attention to UHOP E.3.6.7, which sets out a number of criteria upon which to evaluate high density residential development, including that such development:

- a) ...should have direct access to a collector or major or minor arterial road. If direct access to such a road is not possible, the development may be permitted indirect access to a collector or major or minor arterial roads from a local road upon which only a small number of low density residential dwellings are fronting on the local road.
- b) Multiple dwellings greater than 12 storeys shall not generally be permitted immediately adjacent to low density residential uses. A separation distance shall generally be required and may be in the form of a suitable intervening land use, such as a medium density residential use. Where such separations cannot be achieved, transitional features such as effective screening, progressive building step backs, and/or other design features shall be incorporated into the design of the high density development to mitigate adverse impact on adjacent low profile residential uses.

[59] He expressed the view that the proposed development would be appropriately located because it is on the periphery or edge of the neighbourhood and not immediately adjacent to, but across the street from, the low-rise dwellings on East Street and Winona Road. He testified that Winona Road functions similarly to a collector road, with more than half of the residences not having frontage thereon and noted that the proposed buildings in excess of the permitted 12 storeys can be considered in this case as the proposal incorporates most, if not all, of the recommendations in UHOP E.3.6.7 b), including separation distances and the

intervening medium density residential use between the high rise elements of the proposal and the low rise residences across the road on Winona Road and East Street.

[60] Finally, he explained that it is common for Municipalities to situate tall buildings close to large public spaces and/or waterfront features. He referenced height maps included as part of the Applicant's visual evidence, pointing out the City has approved heights of 37 and 44 storeys near the waterfront along Shoreview Place and that there are also current applications for 12 and 16 storeys on the south side of the South Service Road, east of Winona Road and east of Fifty Road. While he admitted on cross-examination that the approvals along Shoreview Place are several km away from Winona North and that each application is evaluated in light of the unique context of its surrounding area, Mr. Kasprzak noted that, similar to the current proposal, the foregoing are all situated near the lake shore within Neighbourhoods and are adjacent to arterial roads, not on them.

[61] The planning witness for the City, Mr. Van Rooi, acknowledged that, at a macro-level, the PPS and GP direct development to settlement areas within the built-up boundary and the Subject Property satisfies those general locational characteristics. He also acknowledged that the UHOP permits high density development within the Neighbourhoods designation, and that 30% of the City's residential intensification target is anticipated to occur within Neighbourhoods. In his view, though, specific locational characteristics should be determinative of whether a development proposal is appropriately placed in any particular neighbourhood.

[62] In support of this opinion, he drew attention to s. 4.6 of the PPS, which states:

The official plan is the most important vehicle for implementation of this Provincial Policy Statement. Comprehensive, integrated and long term planning is best achieved through official plans,

as well as UHOP E.3.1.5, which promotes and supports intensification of appropriate scale and in appropriate locations throughout the neighbourhoods. He also referenced

UHOP E.2.0, which indicates that the urban structure components of the UHOP provide a policy approach to guide long range growth and development challenges as well as a basis for investments in infrastructure and community facilities.

[63] He explained that specific areas have been identified and planned for greater growth/intensification on UHOP Urban Structure Schedule E (“Schedule E”), which was recently approved in November 2022. He further explained that Schedule E represents the City’s carefully crafted long-term planning vision, in accordance with s. 1.1.3.3 of the PPS, which states:

Planning authorities shall identify appropriate locations and promote opportunities for transit-supportive development, accommodating a significant supply and range of housing options through intensification and redevelopment where this can be accommodated taking into account existing building stock or areas, including brownfield sites, and the availability of suitable existing or planned infrastructure and public service facilities required to accommodate projected needs.

[64] The Tribunal’s attention was drawn to the Nodes and Corridors depicted on Schedule E as well as UHOP E.2.1, which speaks to such areas evolving with higher residential densities to achieve their planned functions and support existing and planned transit. Mr. Van Rooi offered that if one were to transpose UHOP Schedule C (Functional Road Classification) over Schedule E, the Node and Corridor areas would be generally similar to the locations of the City’s major and minor arterial roads, explaining that these are the areas where investments in services and infrastructure already have been, or will be, made to support high density uses.

[65] He opined that the neighbourhood of Winona North is not where the City envisions the type of intensification proposed noting that regardless of the medium density designation sought the outcome of the proposal would be high density, inappropriately placed in an otherwise built-out neighbourhood, which is currently ill-equipped (and not planned) to accommodate same. Such an outcome, in his view, would not be representative of good planning in the public interest, would not demonstrate regard for and consistency with provincial interests and PPS policies that



speak to appropriately intensifying where existing/planned infrastructure and public services can accommodate projected needs. He furthered that such an outcome would not be in conformity with UHOP E.3.2.7 c) and E.3.6.4:

- E.3.2.7 The City shall require quality urban and architectural design. *Development* of lands within the Neighbourhoods designation shall be designed to be safe, efficient, pedestrian oriented, and attractive and shall comply with the following criteria...
- c. Adequate and direct pedestrian access and linkages to *community facilities/services* and local commercial uses shall be provided.
- E.3.6.4 High density residential uses shall be located within safe and convenient walking distance of existing or planned *community facilities/services*, including public transit, schools, and active or passive recreational facilities.

[66] It was uncontested that, beyond the lack of transit in the neighbourhood, there are no existing or planned schools, *community facilities/services* or local commercial uses located within walking distance, and the only opportunities for active and passive recreational opportunities would be the proposed public open space along the waterfront and an existing park along Baseline Road. Mr. Van Rooi testified that, as the City has not targeted this particular neighbourhood for significant intensification, the types of things referred to in the above policies largely do not exist and are not planned in this community. He added that while the City's transit strategy envisions a future extension to the area, this is not part of the official plan or a TMP and ultimately, that strategy may not come to fruition.

[67] The City's witnesses disagreed that Winona North is "in transition" and that the Subject Property is on the periphery of the neighbourhood. They noted that, with the exception of the townhomes along Baseline Road near the QEW, redevelopment in the neighbourhood has been in the form of renovations to individual homes. They described the site as being "in the heart of the neighbourhood", "buried within local streets" and "without convenient access to an arterial road", surrounded on three sides by nothing but low rise, single family dwellings.

[68] While it was acknowledged that part of Winona Road is a collector road and many homes do not have frontage thereon, Mr. Van Rooi opined that the policies which speak to locating higher built forms and densities on the periphery of neighbourhoods are intended to ensure a progression of land uses and densities – with low-rise, low-density on local roads, building in height and density outward toward arterial roads, which can accommodate large numbers of residents with convenient access to nearby facilities, services and commercial uses. Mr. Van Rooi noted that, despite UHOP B.2.4.1.3 c), UHOP E.2.1 speaks to Urban Nodes and Corridors being the focus of population growth and infrastructure investment and noted that UHOP B.2.4.1.3 b) anticipates such areas will accommodate approximately 40% of the residential intensification target. Consequently, he expressed the view that those are appropriate locations for the proposed development, because they do offer existing and/or planned transit, schools, *community facilities/services* and local commercial uses, allowing residents to live, work, learn, shop and meet other daily needs conveniently.

[69] Mr. Winter pointed out that one must physically go through the neighbourhood to get to and from the site to support the opinion that it is not properly characterized as being on the periphery thereof. He expressed the view that the proposal inappropriately places urban functioning built forms in the heart of a completely suburban neighbourhood noting that, when designing for mid- and high-rise buildings, there are certain expectations with respect to an urban, walkable life, supported in UHOP policies that speak to locating greater density along Nodes and Corridors and within convenient walking distance of daily needs. As such, he too, opined that Winona North is not an appropriate location for the level of intensification proposed.

[70] With respect to compatibility, the City's witnesses acknowledged that Neighbourhoods are expected to experience some change over time, and further acknowledged that compatibility is not to be narrowly interpreted to mean the same as or even similar to. Nevertheless, they opined that the proposal is incompatible with the stable, mature and built out surrounding low-rise neighbourhood. Mr. Van Rooi opined that the proposed development would significantly alter the land use pattern of this

neighbourhood, which has been planned for lower built forms and densities, pointing out that the size of the proposal far exceeds anything both within this particular neighbourhood and within several km thereof.

[71] The Tribunal heard that there are policies speaking to residential intensification in general, as well as policies specific to residential intensification within the Neighbourhoods designation, both of which prescribe evaluative criteria for such applications. Whether general or specific, concepts of compatibility and character are recurrent. UHOP B.2.4.1.4 sets out criteria for residential intensification, in general, and states:

*Residential intensification* developments within the *built-up* area shall be evaluated based on the following criteria:

- a) a balanced evaluation of the criteria in b) through l), as follows:
- b) the relationship of the proposed development to existing neighbourhood character so that it builds upon desirable established patterns and built form;
- c) the contribution of the proposed development to maintaining and achieving a range of dwelling types and tenures;
- d) the *compatible* integration of the proposed development with the surrounding area in terms of use, scale, form and character. In this regard the City encourages the use of innovative and creative urban design techniques;
- e) the contribution of the proposed development to achieving the planned urban structure as described in Section E.2.0 – Urban Structure;
- f) existing and planned water, wastewater and stormwater capacity;
- g) the incorporation and utilization of *green infrastructure* and sustainable design elements in the proposed development;
- h) the contribution of the proposed development to supporting and facilitating active transportation modes;
- i) the contribution of the development to be *transit-supportive* and supporting the use of existing and planned local and regional transit services;
- j) the availability and location of existing and proposed public community facilities/services;
- k) the ability of the development to retain and/or enhance the natural attributes of the site and surrounding community including, but not limited to native vegetation and trees; and
- l) compliance of the proposed development with all other applicable policies.

The criteria in UHOP B.2.4.2.2 address residential intensification within Neighbourhoods and include specific reference back to the criteria in B.2.4.1.2 (as set out above):

When considering an application for a residential intensification *development* within the Neighbourhoods designation, the following matters shall be evaluated:

- a) the matters listed in Policy B.2.4.1.4;
- b) compatibility with adjacent land uses including matters such as shadowing, overlook, noise, lighting, traffic, and other nuisance effects;
- c) the relationship of the proposed building(s) with the height, massing, and scale of nearby residential buildings;
- d) the consideration of transitions in height and density to adjacent residential buildings;
- e) the relationship of the proposed lot(s) with the lot pattern and configuration within the neighbourhood;
- f) the provision of amenity space and the relationship to existing patterns of private and public amenity space;
- g) the ability to respect and maintain or enhance the streetscape patterns including block lengths, setbacks and building separations;
- h) the ability to complement the existing functions of the neighbourhood;
- i) the conservation of cultural heritage resources; and,
- j) infrastructure and transportation capacity and impacts.

[72] Mr. Winter opined that the design of the development “includes individual elements which are successful to varying degrees when considered in isolation”, but nevertheless offered the opinion that, overall, the physical height of the towers are completely at odds with the surrounding low-rise neighbourhood and the combination of the 12, 22 and 26 storey buildings would overpower, rather than co-exist in harmony with, Winona North. He also pointed out, for example, that the massing and height of the 12-storey buildings create a solid and lengthy “urban city street block effect around the perimeter of the site, resulting in a lack of breathing room”, failing to achieve compatibility with, and appropriate transition to, the single family dwellings directly across the road. He noted that this city block effect would also negatively impact the quality of the streetscape and pedestrian realm. Additionally, he expressed the view that the pattern of existing development in the neighbourhood suggests a need for more generous setbacks than those proposed, which are less than those of the surrounding low-rise dwellings. Finally, he offered the general opinion that the design focuses inward, making more of an effort to incorporate generous setbacks and step backs to achieve better transitions between the differing built forms proposed for the Subject

Property itself, rather than between the proposed built forms and the existing low rise surroundings.

[73] Overall, the City's planning and urban design witnesses maintained the opinion that the current proposal is simply too high and too dense to be compatible with, and appropriately located in, Winona North. Despite admissions made to cross-examination questions based on hypothetical scenarios with no servicing/infrastructure issues and an expansion of transit to the area, Mr. Van Rooi, in the end, held to his opinion that a reduction in built form and density would achieve "intensification that works", insofar as it would, for example, still be an efficient use of land and resources, aid in the attainment of intensification targets and provide housing options, while also fitting compatibly within Winona North and aligning with UHOP Schedule E and policies that speak to intensifying where appropriate. To this end, he offered that lower mid-rise built forms and medium density might be considered.

## **ANALYSIS AND FINDINGS**

[74] Following consideration of the oral evidence, the documentary record and the submissions of counsel, the Tribunal finds the proposed development would be inappropriately placed in, and would not align with, the existing context and planned function for this particular neighbourhood, which does not benefit from robust transit, pedestrian/ active transportation networks or *community facilities/services* and local commercial uses within a convenient, walkable distance.

[75] The currently underutilized Subject Property, located in a Settlement Area within the built-up boundary, represents a unique opportunity for infill residential development. The Tribunal is cognizant of the 'omnipotent and omnipresent' nature of the documents which sit atop the planning hierarchy *Toronto (City) By-law No. 438-86, Re, 2014 CarswellOnt 8511*, issued June 19, 2014 (MM130048) and the important planning policies therein, i.e., residential intensification, compact and efficient development and the provision of a mix of housing options. There is no question the proposal aligns with

those policies, as well as a number of the evaluative criteria set out in UHOP B.2.4.1.4 and B.2.4.2.2. There is also no question that the development will result in certain enhancements to the neighbourhood in the form of new public open space along the waterfront and upgrades to the sanitary sewer system and the intersection of North Service Road/Fifty Road, both of which are currently overburdened. In addition, future improvements could be realized through cost sharing arrangements and DCs.

[76] While those higher order policy documents place great emphasis upon intensification, they also include important policies which speak to creating safe, healthy, liveable communities and which recognize that individual Municipalities are uniquely situated to implement provincially-led objectives, sensitively guiding intensification, where appropriate, through integrated and long-term planning. While the UHOP contemplates a mix of low, medium and high-rise residential areas in Neighbourhoods, it does not follow that all built forms/levels of intensification are appropriately located in all Neighbourhoods. Appropriateness does not turn solely on the size of the development site and whether it can physically accommodate the built forms proposed, but whether the development can fit compatibly into the existing neighbourhood and whether it is, or is planned to be, complemented by necessary services and infrastructure (such as transit and transportation networks) within a reasonable time horizon.

[77] It was uncontested that transit, the majority of *community facilities/services* and local commercial uses are not within convenient walking distance of the Subject Property. The transportation witnesses for the City and Mr. Morash and the planner for the City all raised concerns with respect to the inadequacy of pedestrian and active transportation networks to support the increased traffic generated by upward of 1000 new residential units and the increased potential for conflicts between vehicles, pedestrians and cyclists. Moreover, the Tribunal heard no evidence of any plans on the part of the City to improve pedestrian connectivity in and around this neighbourhood to ensure safe and convenient access to schools, *community services/facilities* and local commercial uses.

[78] It was also uncontested that, unless and until viable transportation alternatives including transit are provided within a walkable distance of the site, new residents will, for the most part, be reliant upon automobiles for work, school, accessing facilities and services and meeting their daily needs, just like the current residents of Winona North. The Tribunal was presented with compelling evidence that a convenient and walkable extension of transit to this area, even if this development and its resulting density were to be approved, is uncertain at best.

[79] The Applicant and the City were at odds with respect to the correct planning approach to be taken in this case. The Applicant submitted that transit is not a prerequisite for the approval of the development, it is the City's responsibility to provide adequate pedestrian and active transportation networks beyond the site and the level of density proposed will benefit the neighbourhood by attracting transit and other infrastructure investments to the area.

[80] Counsel for the City argued that the function of the proposed development is "highly urbanized", at odds with the current functioning of this low-rise, suburban neighbourhood, and seeks to place excessive height and density where existing and planned services/facilities are not conveniently accessible to meet the needs of upwards of 1000 new residential units. He submitted that there is strong policy direction to place intensification of the level proposed in areas where one does not require a vehicle to meet one's daily needs. He further submitted that placing the proposed level of density in an area which is known to be ill-equipped to accommodate same, in an effort to compel infrastructure investments, will result in complaint-driven and reactionary service delivery, antithetical to the modern approach of long-term coordination, planning and budgeting for growth.

[81] The Tribunal is not persuaded that intensifying to the level proposed is appropriate on this site and is not convinced that improvements to currently inadequate services and infrastructure will fall into place to meet the needs of such a high-density development. In reaching its conclusions, the Tribunal considered it significant that

UHOP Schedule E was more recently adopted by the City in November 2022, whereas the 10-year transit strategy, not enshrined in the UHOP or a TMP, was approved almost a decade ago, and is currently under review. Even if the extension of transit to this area is realized at some point in the future, the Tribunal accepts the opinion of Mr. Molloy that, by the time that occurs, vehicular dependence is likely to be well entrenched and, as Mr. Puma put it in his closing submissions, “if you build it, they may not come”.

[82] Absent conveniently located transit options, the Tribunal is of the view that walkable connections to places where residents of high-density development can meet their daily needs take on elevated importance in the orderly development of safe and healthy communities, in alignment with provincial interests and policies which speak to ensuring necessary infrastructure and services are/will be available, and avoiding land use patterns which may cause public health and safety concerns. PPS policy 1.1.3.3 requires planning authorities to identify *appropriate* (emphasis added) locations for intensification/redevelopment where it can be accommodated taking into account infrastructure and servicing needs and availability. At the local level, UHOP E.2.3.7 c) and E.3.6.4 also speak to ensuring safe and convenient pedestrian access to public transit, schools, community services and local commercial uses. The foregoing support coordination of land use and transportation planning to ensure the Municipality is intensifying in appropriate locations where services and facilities to support such density exist, or will exist within a reasonable time horizon.

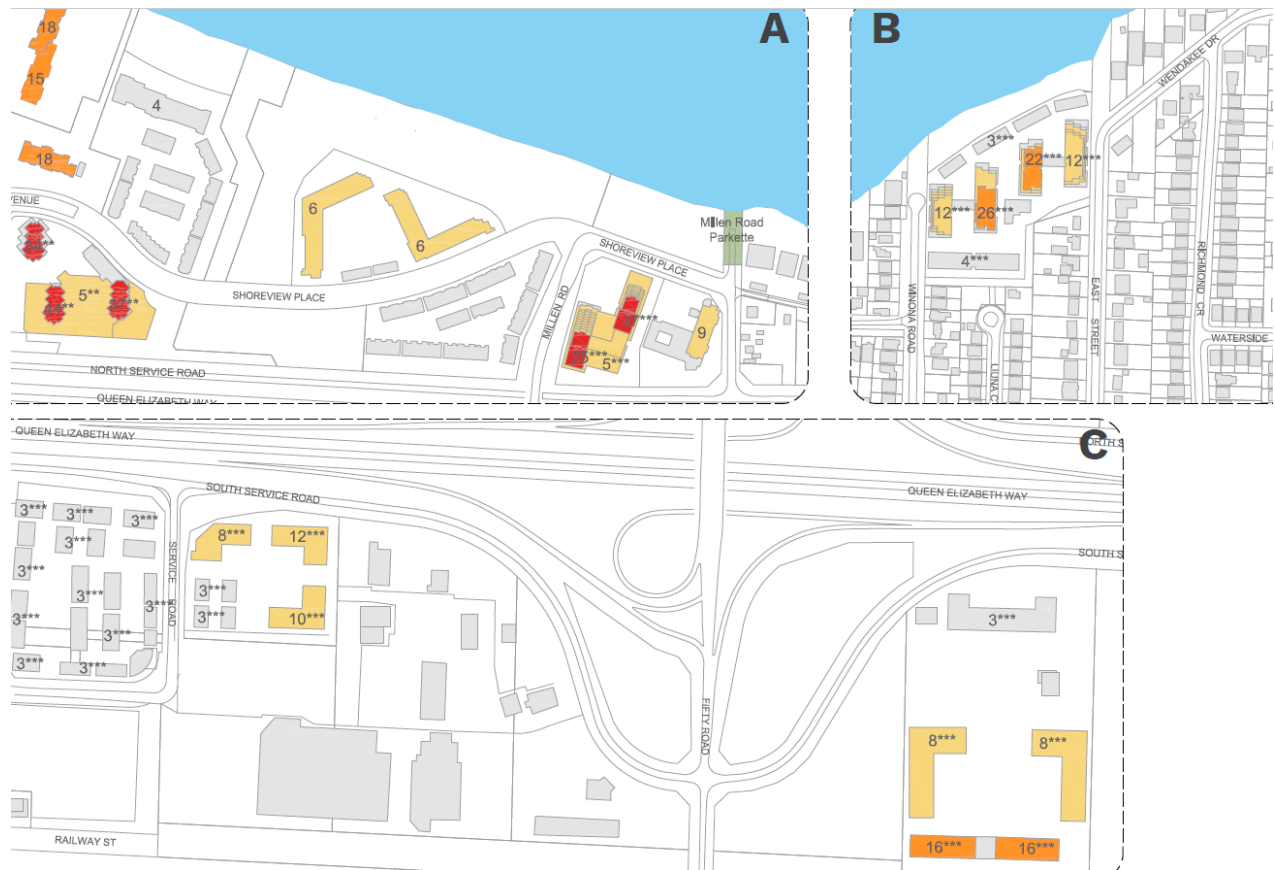
[83] Some degree of change within this neighbourhood is inevitable and expected, given provincial policies addressing growth and the need for housing of different types and tenures, as well as local direction found in UHOP intensification policies. However, common to all of the City’s residential intensification policies, including those within the Neighbourhoods designation, are references to the importance of local context/character and the requirement for residential intensification to be compatible.

[84] With respect to the local context, the Tribunal does not accept that the neighbourhood of Winona North is in transition and that the Subject Property is on the



periphery of the neighbourhood. Development/redevelopment has largely been limited to renovations and/or additions to the single detached dwellings save and except for the townhouse development near the QEW on Baseline Road and the Subject Property, which is surrounded on all three sides by low-rise development and the lake to the North is located within the heart of Winona North.

[85] Examples of other approved and proposed tall buildings within Neighbourhoods along Shoreview Place and along the South Service Road depict a much different local context. While those neighbourhoods have some surrounding lower-rise built forms, they are not dominated by single family dwellings and, in general, there appears to be greater separation distances between buildings, whereas the mid- and high-rise built forms of the current proposal appear tightly packed in with nothing other than single family dwellings surrounding all three sides of the Subject Property.



[86] With regard to compatibility, although the UHOP states that compatibility should not be narrowly interpreted to mean “the same as or even as being similar to”, counsel for the City argued that compatibility should not be interpreted so broadly as to leave it devoid of meaning. Based on the opinions of the City’s witnesses and the perspectives of the residents of Winona North, he submitted that the proposed built forms are not capable of existing in harmony, but are simply too high, too dense and ultimately, too different to be considered compatible. He further submitted that the tall, highly urbanized 22- and 26- storey towers represent too much change to respect the built form and character of this low-rise suburban neighbourhood, where the tallest built forms are the three and four-storey townhomes located on Baseline Road. Similarly, counsel for Mr. Morash submitted that the proposed built forms would physically and visually overwhelm. Referencing the opinions of the Applicant’s witnesses on this proposal’s compatibility with the neighbourhood, she submitted it would be difficult to envision any built form that could be considered *incompatible*.

[87] UHOP B.2.4 speaks to residential intensification in general and states, in part, that, while growth through residential intensification brings many benefits to communities and the City as a whole, it must be recognized that it also brings change in varying degrees across the City and in node and corridor areas targeted to receive intensification, greater changes in built form can be expected to occur. It goes on to highlight that, for intensification to make a positive contribution to the City, careful consideration must be given to design and compatibility with existing uses, neighbourhood character, and that it be representative of good planning and not cause unacceptable impacts.

[88] UHOP E.2.7 speaks to residential intensification specifically within Neighbourhoods, noting that such areas are stable but not static and will evolve over time, partially due to development (including infill development). This policy also contemplates low-, medium- and high-rise residential areas in Neighbourhoods and allows for residential intensification within Neighbourhoods to happen at a range of

scales and densities, provided that the intensification is compatible with and respects the built form and character of the surrounding neighbourhood.

[89] In this instance, the Tribunal agrees with the submissions of the City and Mr. Morash, and finds that the proposed development is not compatible with the existing neighbourhood. The Tribunal heard that mid-rise buildings range in height from 6-12 storeys. The mid-rise buildings intended to act as the suitable intervening land use between the two tall buildings on the interior of the site and the existing one- and two-storey single family dwellings directly across the road from the site are at the maximum end of the range, and while they do incorporate a three-storey podium, the Tribunal accepts the opinion of Mr. Winter that these buildings create an “urban street block effect” that does not achieve appropriate transition to, or compatibility with, the dwellings across the street, and that the design, overall, focuses inward. The proposal, as designed, takes best advantage of the amenity of the lake to the north, incorporating elements which result in a respectful relationship between the proposed built forms themselves, and does not similarly relate to the surrounding low-rise neighbourhood.

[90] The Tribunal heard evidence about the removal of density limits on a site-specific basis within Neighbourhoods and the dated nature of the Secondary Plan, which permits a density of 50-99 units per net residential hectare and a maximum height of 9 storeys. Notwithstanding that it predates the PPS and GP, the Secondary Plan is still instructive, insofar as it does not include a high density designation and evidences the vision for this community to be characterized by lower density and built forms, at odds with what the Applicant seeks to deploy on this site.

[91] Counsel for the Applicant submitted that the proposal is not an attempt to maximize development of the Subject Property, given revisions which resulted in a reduced unit count. Notwithstanding the reduced unit count, the Tribunal considers the proposal overly ambitious, attempting to maximize, rather than optimize development and introducing too great a change in built form and an inappropriate level of intensification into the heart of Winona North. The result would be an abrupt

transformation of this low-rise, low-density suburban neighbourhood into a high-density urban environment with built forms that do not exist in harmony but, rather, compete visually and functionally with the existing built form and character. For this reason, the proposal cannot be considered to be compatible with this particular neighbourhood and is better suited to Node and Corridor areas, which are contemplated to experience greater built form changes and accommodate greater densities.

[92] Based upon the foregoing, the Tribunal finds the proposed planning instruments, and the development they would ultimately permit, are not representative of good planning and do not meet the requisite legislative tests of consistency and conformity.

## **ORDER**

[93] The Tribunal orders that the appeals are dismissed.

*“S. Braun”*

S. BRAUN  
VICE-CHAIR

### **Ontario Land Tribunal**

Website: [www.olt.gov.on.ca](http://www.olt.gov.on.ca) Telephone: 416-212-6349 Toll Free: 1-866-448-2248

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