

ISSUE DATE:

**AUG. 14, 2008**



PL070655

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

PL070655

Queenscorp (Lakeshore) Inc. has appealed to the Ontario Municipal Board under subsection 34(11) of the *Planning Act*, R.S.O. 1990, c. P.13, as amended, from Council's refusal or neglect to enact a proposed amendment to Zoning By-law 5500 of the City of Mississauga to rezone lands respecting the north east corner of Lakeshore Road East and Deta Road from "R4 ( Residential Low Density I) and "AC"(Automotive Commercial) to "RM7D5" – Special Section" which would permit a 21 storey apartment building containing 235 units in addition to 10 back to back townhouse units.  
OMB File No. Z060086

Queenscorp (Lakeshore) Inc. has appealed to the Ontario Municipal Board under subsection 22(7) of the *Planning Act*, R.S.O. 1990, c. P.13, as amended, from Council's refusal or neglect to enact a proposed amendment to the Official Plan for the City of Mississauga to redesignate land at the north east corner of Lakeshore Road East and Deta Road from "Residential Low Density I" to "Residential High Density II" – Special Site" which would permit a 21 storey apartment building containing 235 units in addition to 10 back to back townhouse units  
Approval Authority File # OZ-06/003 W1  
OMB File No.: O070145

Queenscorp (Lakeshore) Inc. has appealed to the Ontario Municipal Board under subsection 34(11) of the *Planning Act*, R.S.O. 1990, c. P.13, as amended, from Council's refusal or neglect to enact a proposed amendment to Zoning By-law 0225-2007 of the City of Mississauga to rezone lands respecting the north east corner of Lakeshore Road East and Deta Road from from "R3" (Detached Dwelling - Typical Lot) and and "C5" (Motor Vehicle Commercial) to "RA5 - Exception" (Apartment Dwellings) to permit a 18 storey, 266 unit condominium apartment building and 7 row dwellings  
OMB File No.: PL080652

**APPEARANCES:**

**Parties**

Queenscorp (Lakeshore) Inc

City of Mississauga

**Counsel**

K. Kovar

M. Minkowski  
A. Wilson-Peebles

**DECISION OF THE BOARD DELIVERED BY D. R. GRANGER AND C. HEFFERON AND ORDER OF THE BOARD**

---

These are appeals by Queenscorp (Lakeshore) Inc. (Applicant) from the Council of the City of Mississauga's (City) refusal to enact proposed amendments to the City Official Plan (OP) and By-law 0225 – 2007 (By-law). The amendments would permit a 21-storey apartment building containing 235 units and 10 back-to-back townhouse units at the northeast corner of Deta Road and Lakeshore Road East identified as 1013 and 1017 Deta Road and 1439 and 1450 Lakeshore Road East (Subject Property).

The Applicant initially appealed the City's refusal to enact a proposed amendment to the former Zoning By-law 5500. The new City Zoning By-law 0225 – 2007 came into effect without appeal by the Applicant and was deemed to have come into force on the Subject Lands by Order of the Board, otherwise constituted, issued February 28, 2008. The Applicant then filed an appeal of the City's refusal to amend By-law 0225 -2007 to permit the proposed development.

Subsequent to the appeal and prior to the commencement of the hearing, the Applicant revised the applications in response to City comments. For the purposes of this hearing, the Applicant now proposes a 247-unit apartment building with a 9-storey component (six storeys with three storeys stepped back above) and a 17-storey tower component, both facing Lakeshore Road East, and a 3-unit, 3-storey townhouse block between the apartment building and the existing single-detached dwellings to the north along Deta Road for a total of 250 units and a floor space index (FSI) representing 3.9 times the area of the Subject Property (Proposal).

On behalf of the Applicant, Mr Glover was qualified to give expert land use planning and urban design evidence, and Mr Butler was qualified to give expert land use planning evidence in support of the Proposal.

On behalf of the City, Mr Hardcastle, City planner, and Mr Davidson, City planning consultant, were qualified to give expert land use planning evidence and Ms Mittman was qualified to give expert urban design evidence in opposition to the proposal.

Area residents Mr Judge, Mr Date, Mr Conroy, Mr Baker, and Ms Sertpolat presented evidence related to their concerns, including: maintaining the character of the area; maintaining separation distances; maintaining appropriate transition, views, overlook, noise levels; and preserving the natural heritage.

Mr Tovey, President of the Lakeview Ratepayers Association (Association) set out the community values as the Association sees them. These were identified as maintaining sky views, lake views, and the tree canopy. He confirmed that efforts of the City, including community meetings and visioning sessions, are ongoing related to a review of the Lakeview District planning area.

The Board has considered all of the evidence presented, and having regard for matters of Provincial interest as required by Section 2 of the *Planning Act* as well as the decision of City Council as required by Section 2.1 of the *Planning Act*. The Board finds the Proposal and resulting proposed amendments to the OP and By-law are not consistent with the Provincial Policy Statement (PPS) as required by subsection 3(5) of the *Planning Act* and do not conform to the Growth Plan for the Greater Golden Horseshoe (GP) as required by subsection 3(5) of the *Planning Act*. The Proposal does not conform to the OP, especially in addressing policy 5.3.2, which sets out the criteria to be met with respect to site specific OP amendments. The Proposal by the Applicant far exceeds the existing height and density permissions recently reviewed through the City's new OP approval and GP conformity processes as implemented through City OP Amendment No. 58. For all of these reasons, the Board finds that the Proposal does not represent good planning, and is not in the overall public interest of the community at this time.

The reasons in detail follow.

Nine issues were originally identified through a pre-hearing conference hearing conducted by the Board, otherwise constituted. At the commencement of the hearing, the Board was informed that issues 8 and 9 were generally resolved and no longer at issue for the hearing. The remaining 7 issues will now be addressed.

**Issue 1:**

Does the Proposal have full regard for the Growth Plan and does it properly conform to the intent of the Growth Plan given the context of the subject lands?

There was no dispute of the applicability of the GP. Mr Butler described it as the most current Provincial Policy “as it deserves high regard and emphasis.” The GP is intended to manage growth in the Greater Golden Horseshoe. As provided for in the *Places to Grow Act* the GP prevails where there is a conflict between it and the Provincial Policy Statement except, wherever policies related to the natural environment or human health provide more protection, they will prevail.

All municipalities will develop and implement through their official plans and other supporting documents, a strategy and policies to phase in and achieve intensification and the intensification target set out in the GP. Urban Growth Centres, Intensification Corridors and Major Transit Station Areas are to be recognized as a key focus for development to accommodate intensification.

The GP sets out policies for Urban Growth Centres in 2.2.4 and Major Transit Station Areas and Intensification Corridors in 2.2.5. Major Transit Station Areas is defined as “the area including and around any existing or planned higher order transit station ...generally defined as the area within an approximate 500-metre radius of a transit station, representing about a 10-minute walk.” Intensification corridors are defined as “intensification areas along major roads, arterials or higher order corridors that have the potential to provide a focus for higher density mixed-use development consistent with planned transit service levels.”

There was no dispute that the Subject Property is not located within the designated Urban Growth Centre for the City as established by City OP Amendment No. 58 (OPA58).

Mr Butler maintained that the Subject Property is “generally” within a Major Transit Station Area and is therefore eligible for increased residential density levels that can “support and ensure the viability of existing and planned transit service levels” as envisioned in the Growth Plan.

Mr Hardcastle testified that at a 620-metre distance, the Subject Property is well outside the 500-metre radius limit, and, by his calculation also outside the “10 minute walking distance” limit from the Long Branch GO Station as defined in the Growth Plan.

He told the Board that the Growth Plan contemplates a mix of urban services including some commercial uses, as well as some retail and/or institutional uses in the areas identified as “Major Transit Station Areas and Intensification Corridors”. The subject area, he pointed out, has none of these. The Subject Property is currently designated mostly Motor Vehicle Commercial with a small portion of Residential in the OP. The Motor Vehicle Commercial designation also exists on lands to the immediate east and west.

Mr Hardcastle confirmed that while Lakeshore Road East is an arterial road, it is not a major transit corridor nor planned to be one in the City OP. Schedule 4 of the City OP designates Hurontario Street, Dundas Street and Eglinton Avenue as the only Major Transit Corridors. Existing bus routes along Lakeshore Road East run only hourly, albeit with some increased rush hour service, and are not integrated with the Long Branch GO Station located within the City of Toronto to the east.

Mr Davidson recited a litany of reasons why the Long Branch GO Station may not even be a “Major Transit Station Area” as contemplated in the Growth Plan. These reasons include the fact that the platform is not fully accessible to persons with disabilities; save for rush hour, service is only hourly; and, he is aware of ongoing proposals to move the existing station further east to afford greater interconnection with the Toronto Transit Commission links into the City of Toronto.

It was the evidence of Mr Hardcastle that from July 2005, which is the publication date of the Growth Plan, to the date the initial applications on the Subject Property were submitted to the City, the City has undergone a successful planning exercise to bring its Official Plan into conformity with Provincial intensification targets identified in the Growth Plan. Official Plan Amendment 58 (OPA58) was the result. OPA58 represented interim residential intensification policies directing intensification to lands identified as the Urban Growth Centre while still allowing vacant, non-conforming and underutilized lands outside of the Urban Growth Area to accommodate additional residential development in accordance with the existing policies of the OP. He also told the Board that the Province is now considering substantially reducing the area of Mississauga’s Urban Growth Centre (UGC), being satisfied that the present area for the UGC may in fact exceed its GP mandated intensification target of 200 residents and jobs combined per hectare for the Mississauga City Centre.

Mr Hardcastle's conclusion is that the City is meeting its intensification target, thereby conforming to Provincial policy. The Subject Proposal, he contends, ignores the intent of the Growth Plan, which is to accommodate a significant share of population and employment growth toward the UGC.

It is the opinion of Mr Hardcastle and Mr Davidson that the Subject Property is not located in an Urban Growth Centre nor is it within a Major Transit Station Area or Intensification Corridor and therefore there is no justification for the significant increase in density and heights over what is now provided for in the recently approved and applicable City OP and amendments. They both expressed their serious concern that the Proposal would represent an undermining of the City's efforts to implement its obligations pursuant to the GP and were both unshakeable in their opinion that the proposal does not conform to the GP.

In the matter of required conformity to the GP, the Board prefers the evidence and opinion of the planners for the City

The Board finds that the City has undertaken its responsibilities to address growth through intensification in a comprehensive way with the recent approval of a new OP and intensification policies addressing conformity with the GP.

The City has clearly set out its direction for intensification, a direction endorsed by the Province and not appealed by the Applicant. While density and height caps established for high-rise development areas outside those specifically designated for intensified growth (generally 4 storey heights and maximum densities of 1.8 times the area of the lot) represent interim policies, they are clear.

In the circumstances, the Board finds that the Proposal does not conform to the GP and runs counter to existing approved City efforts to achieve its intensification objectives in conformity with the GP, new OP and OPA58. To simply allow the highest and best use to occur outside of the areas specifically targeted for intensification, namely the designated City Centre, Nodes and Corridors together with the established Urban Growth Centre, runs counter to these very current planning directions formulated by the City.

The Board takes note of the evidence related to the ongoing updating of the Lakeview District Plan with design options expected as early as the fall of 2008. This review will further refine more district-specific densities and design characteristics following from a comprehensive public planning process.

**Issue 2:**

Does the Subject Proposal have appropriate regard to matters of provincial interest set forth in section 2 of the Planning Act, and is the Subject Proposal consistent with matters of Provincial interest set forth in the Provincial Policy Statement 2005, pursuant to section 3 of the *Planning Act*?

Both Mr Glover and Mr Butler testified that the Subject Proposal complies fully with both the spirit and the letter of the applicable provisions of section 2 of the *Planning Act*; noting that the subject site is located in a fully serviced area appropriate for growth and development, and the proposal represents a sustainable form of development. Both argued that the project design ensures compatibility with both the low density housing forms to the north and the planned major regional park to the south. When it was pointed out in cross-examination that the proposed live-work units as shown in Exhibit 18 were not fully accessible as required in section 2 (h.1) of the *Planning Act*, Mr Glover argued that that had been overlooked in the concept drawings but that it was a matter easily rectified at the site plan approval stage.

Mr Glover and Mr Butler further contended that, regarding matters of Provincial interest, the proposal is consistent with the applicable provisions of the Provincial Policy Statement 2005 (PPS), particularly with respect to section 1.1, which requires managing and directing land use to achieve efficient development and land use patterns. The proposal makes optimal use of a compact, fully-serviced site with mature infrastructure on a major arterial road. The fact that the site has frequent and regular bus service and is within an easy walking distance of a major transit station (Long Branch GO) reduces its dependency on the automobile.

Mr Hardcastle and Ms Mittmann argued that because the proposed development offends key provisions of the Official Plan, it contravenes section 4.5 of the PPS, which provides that:

The official plan is the most important vehicle for implementation of the Provincial Policy Statement.

And,

Comprehensive, integrated and long term planning is best achieved through municipal official plans.

They also pointed to the following statement in Section 4.5 of the PPS:

Municipal official plans should also coordinate cross-boundary matters to complement the actions of other planning authorities and promote mutually beneficial solutions.

To demonstrate the Applicant's compliance with this provision, Mr Glover and Mr Butler took the Board to the proposed 16-storey Aquaview residential project located just off Lakeshore Boulevard West opposite the Long Branch GO Station, in the City of Toronto to demonstrate their point that Toronto had recently approved high-density residential on a property east of the subject site, east of Etobicoke Creek and east of the City boundary, and that the Proposal continues this pattern.

Disputing this, Mr Hardcastle and Ms Mittmann used photographic evidence to show that by far the most predominant form of recent residential development on Lakeshore Boulevard West in Toronto has been a low to medium rise built form comprising mostly of 4 to 6-storeys. While they indicate the Board will have to wait until the proposed new Lakeview District Plan has been approved by Council, they strongly anticipate the pattern begun on Lakeshore Boulevard West in Toronto will be continued as Lakeshore Boulevard West turns into Lakeshore Road East at the Mississauga boundary.

They maintained that the City is prepared to support a building of 4 to 6-storeys on the Subject Property, which they argue would be more consistent not only with the PPS but also with Council's direction in OPA 58.



The Board finds that the high-rise component of the Proposal is not consistent with the PPS, and Council's recently approved policy direction in the OP and OPA 58.

The Board prefers the evidence of the planners for the City that the City is properly managing growth at efficient densities in keeping with this general area both in Mississauga and the City of Toronto.

The densities and heights recently resolved by the City still represent the efficient use and optimization of infrastructure in the context of its GP obligations at this location and in the context of the existing Lakeview District in Mississauga and Lakeshore Boulevard West Avenues designation in the City of Toronto.

The Proposal represents a scale of development not anticipated for this area of the City and is outside of the areas now designated for the level of high-rise intensification proposed.

**Issue 3:**

Does the Subject Proposal comply with or maintain the intent of all the relevant and applicable policies of the Mississauga Plan and the Lakeview District Plan for the City of Mississauga, including, but not limited to, section 5.3.2 of the Mississauga Plan and the criteria to be met regarding site specific official plan amendments?

Mr Butler and Mr Hardcastle strongly disagreed on the intent of the Official Plan with respect to the requirement that new development be compatible with the existing development in the area. Mr Butler took the Board to Exhibit 19, Volume 6, Tab 8, page 79, which was submitted as representing his and Mr Glover's vision (based on his reading of sections 2.11 and 3.18 of the Mississauga Plan) for the north side of Lakeshore Road East from approximately Etobicoke Creek west to Dixie Road. Both Mr Glover and Mr Butler envisioned the predominant built form along this stretch of the north side of Lakeshore Road East as being medium to higher density. Not surprisingly, the proposed development slots easily into this vision.

Ms Mittmann and Mr Hardcastle maintain that this vision is flawed for several reasons including the fact that it does not take into account what form of development

the consultants preparing the new Lakeview District Plan might intend to recommend to Council. They also pointed out that several of the structures shown on the concept drawing as being located to the east of the Subject Property in front of the existing 3-towers-in-the-park, are actually on City-owned land, being the right-of-way for the former Toronto-Hamilton Highway.

The Board's finding on this issue hinged on the evidence presented in section 5.3.2 in the Official Plan - Criteria for Site Specific Amendments. Three subsections speak directly to Issue 3.

Subsection 5.3.2.1 (a) speaks to whether a proposed development would adversely impact the overall intent, goals and objectives of the Official Plan; and, as to whether it would adversely impact the development or function of the remaining lands, which have the same designation, or neighbouring lands.

For the City, Mr Hardcastle contended that the proposed development would undermine the City's urban "hierarchy," which is one of the cornerstone policies of the recently approved Official Plan, since it proposes to take high density development from where it is planned for – that is, the City Centre and Urban Growth Area- to where it is not. He also argued that the Proposal would render it difficult or impossible for the owner of the adjacent car wash site to develop its property to its optimum height and density.

For the Applicant, Mr Butler maintained essentially that the proposed development is consistent with the provincial policies with respect to locating higher density residential in the vicinity of "major transit stations", in this case, the Long Branch GO station; and, with the decision of the City of Toronto to permit the high density Aquaview project on a site opposite the Long Branch GO station. Mr Butler also pointed out that the Aquaview project is the second tower in the immediate vicinity of the Long Branch GO station.

Subsection 5.3.2.1 (c) speaks to the merits of a proposal.

For the City, Mr Hardcastle defined a number of reasons why the proposal is not, in his opinion, suitable for the proposed use. One reason stands out. He defined Lakeview as a community that is changing from one that has been more or less ignored

since the 1950s to one that is becoming the focus of intense community concern. The in-progress new Lakeview District Plan will be presented to Council in a matter of months, and that the principles of good planning demand that the proposal be weighed against Council's latest thinking on appropriate development for the area.

For the Applicant, Mr Butler contended that the vision Mr Glover set out for this stretch of Lakeshore Road East is the one that makes the most sense given the policy directions in the Mississauga Plan (and Provincial intensification/growth policies) and that the subject proposal is unlikely to offend the basic principles for development of the area in the new Lakeview District Plan.

Subsection 5.3.2.1 (d) speaks to a proposal's compatibility with existing development in the area.

For the City, Mr Hardcastle drew the Board's attention to the success to date of the City's hierarchy of density with all high density development to be concentrated in the City Centre. He noted the restrictions of OPA58 policy 3.2.4.3 that sets out that any increases in density may only be considered where the proposed development is compatible in built form and scale to surrounding development and enhances existing or planned community and that heights in excess of 4 storeys only being considered where it can be demonstrated that an appropriate transition in heights that respects the surrounding context will be achieved. He also took the Board to section 2.11 of the OP, in which the City's urban design policies respecting the hierarchy are enunciated. He maintained that the proposed development does not give prominence to the City Centre in regard to height and density pursuant to OP policy 2.11.1.4.

Mr Hardcastle contended that the Subject Property cannot be considered part of the existing 3-towers-in-the-park cluster to the east because the Proposal is street-related as opposed to being in a park like setting further separated from existing low density development. Because the new higher density built forms will be located in much closer proximity to low-density forms of residential, there is greater potential for conflict with inherently greater need for care to ensure compatibility, a defined term in the OP set out as meaning "not necessarily the same as...the existing development, but nonetheless enhances an established community...without unacceptable adverse impact on the surrounding area."

For the Applicant, Mr Butler and Mr Glover essentially re-iterated their client's intention to work with the City to ensure that the three 3-storey townhouse component of the Proposal, that separates the proposed 9-storey building component from the abutting existing low-density detached dwelling, constitutes an appropriate, gradual scale transition to the low-density residential to the north.

The Board notes that questions raised by the City with respect to the feasibility of the proposed townhouse block being constructed over the proposed underground parking garage access area remained unanswered by the Applicant.

After weighing all the evidence presented on behalf of both the Applicant and the City, the Board adopts and relies on the expert opinion evidence of Mr Hardcastle and Ms Mittmann regarding not only OPA 58, but also sections 2.11 and 5.3.2 of the OP.

With respect to the issue of the proposed development's actual or potential adverse impact on the overall intent, goals, objectives and policies of the (Mississauga) Plan, the Board is unable to rely on the evidence presented by the Applicant's expert witnesses. It finds that the Applicant's vision for the stretch of Lakeshore Road East cannot be relied upon because it is based on a flawed understanding of the ownership patterns in the immediate area of the Subject Property, the existing road allowance and proposed road widening along Lakeshore Road East, and the lot dimensions along the north side of Lakeshore Road East in the vicinity of the Subject Property.

**Issue 4:**

Does the Subject Proposal provide for a proper at-grade relationship to Lakeshore Road East in terms of the treatment of the public realm, built form, and land use?

Ms Mittmann, the urban design expert for the City, drew the Board's attention to a number of shortcomings in the designs presented to the Board in terms of the treatment of the public realm, the built form and the land use.

Her evidence pointed to the grade separations between the live-work units and portions of the sidewalk along Lakeshore Road East. This grade separation raised

doubts in the minds of City staff as to whether the units could reasonably support any type of commercial activity.

In response, the Appellant's planner produced photographs of Queenscorp townhouse live-work units further along Lakeshore Road East that had recently been approved by the City. From the photos, the grade separation between the front doorstep and the sidewalk appeared to necessitate several steps.

The City's witnesses also pointed out that in the designs submitted, all of the landscaping along the front of the building appears to be located on City-owned land. It was explained to the Board that the City relatively late in the process, informed the Applicant that it requires a 7.5 metre wide strip along the front of the property for the future road widening of Lakeshore Road East as set out in the OP.

Both Ms Mittmann and Mr Hardcastle questioned the absence of any indication either to how much of the live-work units would actually be dedicated to work space or what kind of work would or could be done in them.

In response, Mr Glover and Mr Butler indicated that all of the points raised by the City's experts could be more appropriately addressed at the site plan stage.

Considerable hearing time was spent examining the potential sun-shadow impact of the proposed development on the private dwellings to the north and on both the public sidewalk along Lakeshore Road East and Orchard Hill Park, which is the public park adjacent to the Subject Property. City staff prepared sun-shadow studies that clearly showed that the proposed tower in particular would leave large parts of both the private and public realms in shadow not only during the winter months, which might be expected, but also during the high summer months, which is somewhat unexpected.

The studies showed that removing the tower would mitigate much of that impact.

Ms Mittmann also pointed out that the design before the Board shows that the tower, unlike the 6 to 9-storey "base" building, does not have any of the expected features designed to mitigate downwash from wind currents such as building stepbacks, entry overhangs or suitable landscaping on lands under the control of the owner.

Other concerns raised about the proposed design included the way in which the Applicant proposed to accommodate people from the building who were waiting for a bus. The design drawings showed that the main entrance to the proposed development for both vehicles and pedestrians was located off Deta Road with a minor or secondary entrance shown on Lakeshore Road East. Moreover, this entrance would be an uncomfortably long distance, in the winter months especially, from the location of the bus stop at the corner of Deta and Lakeshore Road East.

While the site plan is not before the Board at this hearing, it nevertheless acknowledges that shortcomings exist in the concept as seen in the drawings submitted by the Applicant. While the Board agrees with the Applicant's experts that many of these details may be resolved at the site plan stage, it is not evident as to the degree of change, from the concept and by-law amendment presented, that the Proposal might suffer.

The sun-shadow studies prepared by the City staff indicate that the location of the tower at the east end of the site results in considerable adverse impact both on the private dwellings to the north and on the public realm, particularly the sidewalk along Lakeshore Road East, and parts of Orchard Hill Park. This would seem to fly in the face of the City's policy in the new Official Plan to "minimize" shadow impact.

While the Board recognizes that these and other shortcomings in the proposal could perhaps be rectified at the site plan stage, these shortcomings lead the Board to find that the plans as presented do not represent a pedestrian-friendly, transit-oriented proposal.

**Issue 5:**

Does the Subject Proposal represent good land use planning and is it in the public interest?

Mr Butler, for the Applicant, began his evidence by stating that the only issues before the Board are height and density at the location of the Subject Property. He contended that provincial policy related to intensification suggests that site density

should be maximized where appropriate. For reasons cited elsewhere in this decision, Mr Butler maintained that the Subject Property is one of those sites.

The City's expert witnesses told the Board that the City has well-established policy that encourages allotting height and density in a hierarchical manner. The City Centre has the highest densities and heights, the nodes and corridors the next highest.

This is clearly set out in the applicable policies of OP Section 3.13 and OPA58.

The Board finds that the City's intensification policies are clear, effective and represent good planning. They are current, approved by the Province and Region and were not appealed by the Applicant.

Based on these facts and preference of expert opinion, the Board finds that the Proposal is outside of the areas established for the level of intensification proposed; that the Proposal far exceeds the general level of height and density anticipated outside of those designated areas; and, the Proposal presumes to establish an appropriate area wide approach to new development along Lakeshore Road East in advance of the Lakeview District public planning process nearing completion. For these reasons, the Board finds that the Proposal does not represent good planning and is not in the overall public interest of the community.

**Issue 6:**

Does the subject proposal function appropriately and efficiently having regard to the site, access and servicing locations, the pedestrian realm, future or other proposed developments, the current and planned character of the immediate area and surrounding?

The City's experts argued vigorously that the Proposal does not function appropriately and efficiently and it would, if approved, adversely affect both the existing and the planned character of the immediate area and the surroundings.

Elsewhere in this decision, the question of accessibility is discussed. The City's experts demonstrated quite conclusively that, as designed, the live-work units along Lakeshore Road East are not adequately accessible to people with mobility problems.

Mr Davidson stated that in order for live-work (commercial) to function successfully, it was his opinion that there would have to be on-street parking in front along Lakeshore Road East. He was of the opinion that the underground parking accessed off Deta Road would not work.

To achieve separation with the single family dwelling immediately to the north and with the car wash site to the east, the Applicant proposed installing landscaping along those property lines. The City's experts pointed out that the kind of shrubbery required to provide the contemplated visual separation would require allowing a wide strip of soil several feet deep for the roots of that shrubbery. The concept drawings show the walls of the underground garage coming within a few inches of the property lines on these two sides contrary to existing By-law setback requirements.

A similar omission was noted at the north side of the rooftop-level outdoor amenity area. No room has been left to allow for the shrubbery required to achieve visual separation with the properties to the north.

Considerable discussion also ensued regarding the parking garage and the location of the three proposed townhouses directly over the garage access area, with Ms Mittmann for the City charging that this arrangement is simply not functional. Her charge was not challenged with any responding evidence.

It was, however, the consideration of the issue of the impact of the proposed development on the current and planned character of the surroundings that the expert witnesses for both parties seemed to expend the greatest part of their time.

The opinions of Mr Glover and Mr Butler in support of the proposed development appeared to be based almost exclusively on Mr Glover's vision of a line of medium rise, street-oriented residential or mixed use buildings beginning at Etobicoke Creek and continuing west beyond Dixie Road with the higher buildings being to the east. The proposed structure would, in Mr Glover's vision, represent the transition from the 20-



storey towers-in-the-park to the lower scale buildings to the west (Exhibit 19, Volume 6, Tab 8, Page 79).

In this concept, the medium rise, street-oriented buildings along Lakeshore Road East are totally separate from the bungalows and 2-storey dwellings to the north and in their opinion would have no impact whatsoever on the character of that neighbourhood.

As far as the single storey strip plazas to the west of the subject site and other automobile related uses are concerned, they are clearly not, in this scheme, destined to play a major role in the longer term future of this part of Lakeview.

Arguing against this vision, the City's witnesses contended, first of all, that Council has recently commissioned an update of the Lakeview District Plan to provide it with a vision for this part of Lakeview. As it is expected to be presented to Council before the end of the year 2008, it would seem to have been incumbent on the Applicant at least to wait until then to see what the Council decides to do with this stretch of the road.

In the second place, they argued, the recently-approved OP (Mississauga Plan) confirmed the automotive-related designations not only for a large portion of the subject site but also for the other adjacent properties along this stretch of Lakeshore Road East.

The subject proposal at 6, 9 and 17-storeys, City Staff contend, would be completely out of character not only with what currently exists on Lakeshore Road East in this area but what may be contemplated in the future.

Besides, they argued, the proximity of the tower would have an adverse impact on the future development of the car wash site immediately to the east of the subject site for residential or mixed uses.

However, as part of the City's overall intensification policy defined in part in OPA 58, the Board was told that buildings with a maximum height of 4-storeys and density of 1.8 times the area of the lot have been contemplated for some time, for this part of Lakeview along the north side of Lakeshore Road East. Mr Hardcastle confirmed that City planning staff would likely look favourably on a proposal for a development of up to 6-storeys for the subject site.

Based on the evidence presented, the Board finds that, as designed, the proposed development may not be functional particularly with respect to the location of the three townhouses over the entrance to the underground garage and with respect to the commercial operation of the live-work units in front. In addition, inadequate setbacks from the buildings and parking structures to the property lines afford little or no opportunity for required landscaping to mitigate impacts related to privacy, wind and adequate at-grade outdoor amenity space. In combination, these inadequacies represent further proof that the site, as currently laid out, is over-utilized.

The Board also finds that the proposed development with its 6, 9 and 17-storey elements is out of character, not only with existing development in the area, but also with what is being contemplated.

During the hearing, the Board heard considerable evidence that the City would like to continue the development pattern established on Lakeshore Boulevard West in Toronto along this stretch of Lakeshore Road East. The pattern in this part of Toronto is predominantly street-oriented 4-storey residential with retail on the ground level where market conditions deem it practical.

**Issue 7:**

Does the subject proposal represent appropriate urban design in addressing building setbacks, height, density, massing, bulk, scale and building location in an appropriate fashion, having regard for the site and character of the surrounding lands? Does the subject proposal provide for an appropriate transition in built form, massing and character given the context and future planning direction for the surrounding community?

The proposed setbacks from the street and from the low-density dwellings to the north were demonstrated to be inadequate. If the proposed street oriented units along Lakeshore Road East actually qualify as live-work, no setback from the sidewalk is required. However, if it is determined that these units are in reality purely residential, a 7.5-metre setback from the sidewalk will be required. This fact, along with the required

7.5 metre road allowance widening, would render the proposed massing, density and height completely impractical, if not unfeasible, on this site.

The Board also heard evidence from the City experts that the height, density, massing, scale and bulk of the proposed development are generally inappropriate given the character of the area, noting the 3-towers-in-the-park buildings to the east as an outdated anomaly. The proposed tower, on the east part of the site, is especially inappropriate on that part of the site, because it casts shadowing onto the public sidewalk, on the park and on the car wash site, whereas existing OP policy stresses *minimizing* shadow and overlook impact (section 3.18.2.7). Ms Mittmann and Mr Davidson were of the opinion that if additional height, in the form of a tower feature, was to occur, it would be more appropriate at the corner of Deta and Lakeshore Road East, where the City's sun and shadow studies show the adverse impact from shadow and overlook could be reduced.

The concept of "transition" played a major role in this hearing. The evidence presented, respecting subsection 5.3.2 (c), included considerable discussion on the way the structure would transition to the adjacent properties, particularly the single-family dwellings to the north. The Board was also taken to subsections 5.3.1.3(a), (c), (e), (g), and (h) of the OP, which speak directly to these considerations; and to section 3.18 of the OP, which sets down the City's urban design policies.

The Applicant's proposal to achieve compatibility with the character of the homes to the north seems to depend a great deal on the presence of the three 3-storey townhouses providing a transition to the rear. The transition strategy is also highly dependent on the step down from 9 to 6 storeys at the front of the building along Lakeshore Road East to provide the more human or pedestrian scale of development required (under subsections 3.18.6 and 3.18.9 of the OP) along the major arterial roads.

The Applicant also tried to show that the 17-storey tower represents a transition from the two 20-storey towers-in-the-park immediately to the east. However, there was no dispute that the proposed tower is less than 1 metre lower than the two 20-storey towers, which does not, according to Ms Mittmann, represent the kind of transition contemplated by the City nor does it seem to be reasonable in this context.

Considerable expert testimony was also given to demonstrate both, that the proposed structure does and does not satisfy the City of Mississauga's Urban Design Guidelines for High Density Apartments (Exhibit 19, Volume 2A Tab 5) and fits or does not fit within the angular plane requirements of the City of Toronto's Urban Design Guidelines (Exhibit 8).

The Board learned that one of the main reasons the Applicant chose to locate the tower portion, on the east part of the Subject Property, was because of the presence of a section of Orchard Hill Park along a portion of the interior side lot line allowing for increased height. The angular plane is allowed to exceed 45 degrees as measured from the perpendicular where there is no abutting residential lot line. The park continues for about one third of the length of the interior side lot line as measured from the east boundary of the site. This meant that the angular plane could be measured from the nearest residential lot line, which was the second dwelling north of the site. The result was that a 17-storey building could fit within the 45-degree angular plane (Exhibit 15).

The Board notes that there was no requirement that the angular plane should only be calculated to the north perpendicular to the tower, as opposed to the closest point of the tower and the closest residential lot line which would be the first dwelling to the north based on the illustrations presented. The By-law does set out that "where an interior lot line, or any portion thereof, abuts a zone permitting detached and/or semi-detached dwellings" the angular plane calculation should apply. Mr Glover acknowledged that the 45-degree angular plane did apply from open space along Lakeshore Boulevard West in the City of Toronto, a requirement acknowledged by Ms Mittman not presently required in the City By-law. Both urban designers did rely on the character resulting from the Avenues designation along Lakeshore Boulevard West in the City of Toronto as the character expected to continue to some degree along Lakeshore Road East in the City of Mississauga.

Using the 1:2 ratio provided by Alan B. Jacobs in his book Great Streets (Exhibit 19, Volume 2A, Tab 8) which was quoted by both Ms Mittmann and Mr Glover, the optimal height of any building on this section of the 35 metre wide Lakeshore Road East road allowance was calculated to be about 6 storeys. Using the 1:3 ratios, it was calculated to be from 8 to 12 storeys, with Ms Mittmann arguing the former. In cross-

examination, Ms Kovar, counsel for the Applicant, pressed Ms Mittmann towards the latter.

The Board finds that the proposed density, height, bulk and massing do not provide adequate transition to the public park to the north, to the existing car wash site to the east or to the existing automotive and general retail (strip mall) uses to the further west.

The predominance of residential use – albeit including some potential home occupation business uses – should result in a landscaped setback area between the building and Lakeshore Road East and Deta Road similar to other street-related apartment buildings located along Lakeshore Road East in the vicinity to the west.

The opinion of Mr Butler that the Subject Property should be considered for additional built form significance as an “entry point” to the City does not bear the scrutiny of the evidence showing that the Subject Property is well separated from the boundary to the City of Toronto by Etobicoke Creek and the existing towers-in-the-park development to the east. Mr Glover was forthright in his admission that the Subject Property was not a boundary site, not at a significant intersection and not a gateway site.

With respect to the City’s angular plane guideline, the Board finds that a more rational approach (and one that is more in keeping with the intent and purpose of the OP) would be to measure from the nearest residential lot line, whether or not it is directly perpendicular to the proposed building.

The Board finds that the Proposal should not be considered as a transition from the existing towers-in-the-park condominium apartment buildings to the further east as the proposed tower is not transitioning the height down by any perceptible difference.

The Board finds that the Proposal constitutes a completely different building form that is more compact and street-oriented. The context for addressing compatibility must focus on the existing low to medium-rise buildings occurring along Lakeshore Road East in the City of Mississauga as well as the existing low density detached-dwelling community and park abutting to the north. In that context, the Board finds that the proposal does not have proper regard for the character of the surrounding area.

**Conclusion**

After consideration of all of the testimony of the expert witnesses and area residents and a review of all the documents presented in evidence, the Board finds that the proposal represents an over-utilization of the Subject Property. The Proposal represents a development that is too high, too intensive, and does not provide adequate setbacks or buffers to adjacent uses. This is all in the context of relatively recent Provincial and City planning initiatives that have clearly set out the preferred locations for the level of intensification being proposed by the Applicant.

The Board therefore dismisses the appeals by Queenscorp (Lakeshore) Inc. and the requested amendment to the Mississauga Official Plan is not approved and By-law 0225 – 2007 is not amended.

So Orders the Board.

“D. R. Granger”

D. R. GRANGER  
VICE CHAIR

“C. Hefferon”

C. HEFFERON  
MEMBER