

ISSUE DATE:

**April 15, 2010**



PL080144

Ontario Municipal Board  
Commission des affaires municipales de l'Ontario

Royalcliff Developments Inc. & Lake Path Holdings Inc. have appealed to the Ontario Municipal Board under subsection 22(7) of the *Planning Act*, R.S.O. 1990, c. P.1G, as amended, from Council's refusal or neglect to enact a proposed amendment to the Official Plan for the City of Brampton to redesignate land at the Southwest Corner of Sandalwood Parkway East and Conestoga Drive from "Town Centre Designation" to permit "Medium Density Residential" Approval Authority File No. C01E14.024  
OMB File No. PL080144

Royalcliff Developments Inc. & Lake Path Holdings Inc. have 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 270-2004 of the City of Brampton to rezone lands at the Southwest Corner of Sandalwood Parkway East and Conestoga Drive from "Residential Apartment B – Section 216 (R4B – Section 216)" and "Commercial Three-Section 577 (C3 – Section 577)" to residential Apartment B – Section 216 (R4B – Section (216))" to permit the development for 1,443 residential units  
OMB File No. PL080145

IN THE MATTER OF subsection 69(3) of the *Planning Act*, R.S.O. 1990, c. P. 13, as amended

Appellant: Royalcliff Developments Inc. &  
Lake Path Holdings Inc.  
Subject: Protest the levying of fees in relation to an  
application for Official Plan Amendment and  
Zoning By-law Amendment  
Property Location/Description: Southwest Corner of Sandalwood Parkway  
East and Conestoga Drive, Part of Blocks B, C,  
and G, Registered Plan M-100  
Municipality: Brampton  
OMB Case No.: PL070175  
OMB File No.: M070015

**APPEARANCES:**

**Parties**

Royalcliff Developments Inc. & Lake Path  
Holdings Inc.

City of Brampton

Regional Municipality of Peel

**Counsel**

Scott Snider

Barnet Kussner & Matthew Rea

John Gescher

**DECISION OF THE BOARD DELIVERED BY J. de P. SEABORN**

**A. Introduction**

The matters before the Board consist of appeals launched by Lakepath Holdings Inc. and Royalcliff Developments Inc. (collectively referred to as Royalcliff) from a refusal by Council for the City of Brampton (City) to enact a proposed Official Plan Amendment (OPA) and Zoning By-law Amendment (By-law) in connection with a development in the Heart Lake area. The City and the Regional Municipality of Peel (Region) oppose the planning instruments under appeal on the basis that they will facilitate a project that represents over development for the site. Designated and zoned for high density residential and commercial development since the 1970's, the parcel remains vacant. The issue for determination is what represents appropriate intensification for the Royalcliff site.

In support of the proposed OPA and By-law Royalcliff called a number of witnesses qualified to give expert opinion evidence, as follows: Mr. Gagnon (land use planning); Mr. Cherepacha (traffic and transportation); Mr. Feldgaier (housing market analysis); Mr. Turner (architect); and Mr. Barron (landscape architect). In opposition to the application the City, called the following witnesses to give expert opinion evidence: Ms Iannuzziolo (traffic, transit and transportation); Ms Given (land use planning); Mr. Mathew (housing market analysis, forecasting and land use planning); Mr. Gabor (urban design); Mr. Smith and Mr. Cheatley (land use planning); Mr. Spencer (land use planning, including parks and open space planning); Ms Pritchard (municipal property valuation). Mr. Bailey and Mr. Jaros (both land use planners), were called as expert witnesses representing the Region.

The Citizens for Managed Development at Loafers Lake, a local residents association, was a participant and represented by Mr. Bokor, who gave evidence 9 including a written submission, Exhibit 78) during the evening session which was organized to allow members of the public who could not attend during the regular hearing day an opportunity to provide evidence. Several members of the public testified in opposition to the proposal to develop the site with high density residential housing, taking the position that such development represents an over intensification of the site and the Heart Lake area.

## **B. Site Location and the Application**

The Royalcliff site is 9.9 acres of vacant land situated at the corner of Conestoga Drive (Conestoga) and Sandalwood Parkway (Sandalwood) in the Heart Lake area, which is at the north end of the City. The site is surrounded by institutional and commercial uses and open space, including Loafers Lake and its associated Community Centre and Park, Sandalwood Park, Cyril Clark Library, a police station, church and commercial plaza to the east. The Heart Lake Transit Terminal is part of the commercial plaza and the site is within one kilometre of the proposed Hurontario Bus Rapid Transit (BTR) route. There are no residential uses abutting the site and while vacant, it is fully serviced.

The original application contemplated a development with six apartment towers at heights of 18, 25 and 32 storeys, six blocks of three storey townhouses and a 17,200 square foot amenity facility. A total of 1,443 residential units were originally proposed (gross residential density of 145 units per acre (upa)). City Staff were not supportive of that application.

In an attempt to respond to the concerns expressed by City Staff in its August 22, 2008 Report (Staff Report), (and after a Board sponsored mediation that was not successful) Royalcliff amended its application in 2009 and the proposal before me represents a reduction in both height and density and changes, in certain respects, to the form of development and residential housing type.

The revised application proposes a combination of apartment and commercial buildings at heights ranging from 3 to 20 storeys, with the exception of one higher tower at 26 storeys. The overall gross residential density has been reduced to 80 upa (approximately 99 upa net density) and the total number of proposed residential units is 834, which includes 42 live-work units. Set out in Attachment "1" is Development Concept Alternative #3 (Royalcliff's preferred plan, found in Exhibit 32), which depicts the project, including access points, interior roads, walkways, parking and the area of open space and flood line (subject to the exact limits of development being established following more precise mapping). While the concept plan is not before me for approval *per se*, it represents Royalcliff's preferred alternative, to be implemented through the

planning instruments under appeal, including specific requirements in respect of phasing the development.

**C. Current Permissions and Agreed Statement of Facts**

Pursuant to the provisions of the 1993 City of Brampton Official Plan (1993 Plan) the Royalcliff site is designated “Residential” and in accordance with the “City Concept”, located in a residential district. A full range of dwelling types, from detached homes to high rise apartments is permitted, subject to the policies of the applicable secondary plan. Designated “Town Centre” in the Heart Lake West Secondary Plan (Secondary Plan), the majority of the site is zoned “Residential” which permits two eighteen (18) storey apartment buildings, at a density of 419 units. The northwest portion of the site is zoned “Commercial”, allowing for a maximum gross floor area of 30,000 sq. ft. and a maximum height of 3 storeys. Therefore, amendments to the City’s Official Plan (proposed by Royalcliff in the form of an amendment to the Secondary Plan) and By-law are required to accommodate the proposal. Current permissions, which have been in place for approximately 30 (thirty) years, allow for high density residential uses as well as the proposed office and commercial uses proposed for the site. In consideration of the existing permissions for the site, and as part of the agreed statement of facts (Exhibit 25) filed in advance of the hearing, the planners concurred:

- That high density development in an apartment form compatible with the host community is acceptable for this site;
- That office development compatible with the host community is acceptable on this site;
- That live work units are acceptable from a land use perspective on this site; however, there is no agreement on how these units should be calculated with respect to density; and
- That two (2) 18 storey buildings and commercial lands uses are currently permitted on the site in the existing zoning by-law.

Similarly, the expert witnesses who testified in the area of urban design agreed (Exhibit 39), among other matters, that:

- The linear distance/spatial separation between the point towers, as shown on the proposed plan meets minimum acceptable standards from an urban design perspective;
- The subject site is part of the Heart Lake Town Centre and as such higher/high density forms of development as well as a variety of uses as envisaged by the Secondary Plan that are compatible with the surrounding context is permitted; and
- “Towers in the parking lot” typology which is permitted as-of-right is not desirable.

The site can be developed for high density residential and commercial purposes under exiting permissions and the issues between the parties were narrowed as a result of the agreements of the experts, as outlined above. The major difference between the parties relates to the opposition by the City and the Region to the increase in density and height that Royalcliff seeks beyond what is currently allowed.

#### **D. Issues and Findings**

##### **1. Policy Framework and Growth Plan Conformity**

Given the Royalcliff site is designated and zoned for high density residential development the first and primary issue for determination is whether intensification beyond what is allowed under the as of right permissions is appropriate. In this regard the evidence was clear that the site is unlikely to be developed in accordance with the as of right permissions, which have been in place for over thirty years. The planners agreed that the concept plan implementing the as of right zoning amounts to a “towers in the park” scheme, a plan that cannot be supported today as appropriate planning or urban design. Accordingly, the thrust of the evidence centered on whether an increase in density beyond the permitted 419 units (depicted as two 18 story apartment towers) constitutes good planning. In this regard I note that while opposed to the project, local residents and Mr. Bokor were realistic in their testimony insofar as they acknowledged

that current permissions do allow the property to be developed with high rise apartment style dwellings. Their issues concentrated on the number of apartment buildings and respective heights associated with the buildings as proposed. While the application also includes an increase beyond what is permitted as of right for the commercial development, that element of the proposal was of less concern to the local residents, the City and Region.

Considerable evidence was provided with respect to the planning history of the site. What is however of particular relevance is that the site was always intended to form part of the Heart Lake Town Centre and identified as such in the applicable Secondary Plan. Nevertheless, the City (and the Region) took the position that the proposal fails to conform to the *Growth Plan for the Greater Golden Horseshoe, 2006* (Growth Plan), the Provincial Policy Statement (PPS), and particular policies contained in both the Region and City's Official Plans (1993 and emerging policy in the 2006 Plan).

#### **a) Growth Plan**

Pursuant to subsection 3(5)(b) of the *Planning Act*, a decision of the Board must conform with "provincial plans that are in effect" or "not conflict with them, as the case may be". The City and the Region argued that the Growth Plan provides no direction for additional intensification at the Royalcliff site beyond the as of right permissions (two 18 storey apartments, 419 units, plus commercial space). The suggestion from the City and the Region was that Royalcliff cannot rely on the Growth Plan to support the increase in density it seeks. Intensification should be directed to key focus areas, as defined in the Growth Plan. While the Royalcliff site is listed as a site for intensification under the Growth Plan conformity exercise, the City argued that it cannot be concluded that the site can in fact be intensified beyond current permissions. It is just one of many sites within the built boundary that could be developed to meet provincial targets.

In evaluating the extensive evidence presented on this matter, I find, for several reasons, that the Royalcliff project does not conflict with and in fact conforms with the Growth Plan. The site is within the built boundary, is identified by the City as an opportunity for intensification and the as of right permissions allow for that intensification. Approving additional density for a site situated in the built-up area and

already designated for high density development conforms with the Growth Plan. To suggest otherwise ignores the overall intent of the Growth Plan which is to encourage intensification throughout the built up area of any municipality. The City and the Region argued that because the site is not within a key focus area (delineated as urban growth centres, intensification corridors and major transit station areas), the Growth Plan does not provide support for the scale and density Royalcliff is seeking beyond the as of right permissions. The difficulty with this submission is that the Growth Plan is simply a framework to assist municipalities in managing growth. As described at the outset, the Growth Plan is intended to “guide decisions on a wide range of issues—transportation, infrastructure planning, land-use planning, urban form, housing, natural heritage and resource protection—in the interest of promoting economic prosperity” (1.1 Context, Growth Plan, Exhibit 23). The test that Royalcliff has to meet is whether intensification of the site conforms with the policy direction of the Growth Plan and that test is met. Whether the proposal constitutes good planning, taking into account applicable official plan policies and potential impacts is another matter and a different set of considerations become relevant, which have no bearing on the issue of Growth Plan conformity.

Lastly, the City’s Growth Plan conformity exercise is not complete and the planners agreed that the additional 415 units sought by Royalcliff beyond what is permitted as of right will neither change nor impact the City’s intensification strategy. The inventory prepared by Hemson Consultants (Hemson) identifies opportunities for intensification outside of key focus areas and outside intensification areas. Clearly, the City’s Growth Plan conformity exercise does not restrict potential sites for intensification to key focus areas. The inventory identifies sites such as Royalcliff where as of right permissions are in place; however, it also identifies sites where there is merely an opportunity for intensification but there are no existing permissions and no application has been made for an increase in density. One example provided was the commercial plaza adjacent to the Royalcliff site. Hemson indicates it could be redeveloped with up to 1000 residential units, yet the site is neither designated nor zoned for residential development. The Royalcliff site is an intensification opportunity given the current permissions. That opportunity is not diminished because additional density is sought. In fact, the City has adopted official plan and zoning by-law amendments necessary to facilitate developments outside of intensification areas and key focus areas. In short,

the evidence does not support a conclusion that in order to achieve conformity, intensification should be restricted to key focus areas.

**b) Provincial Policy Statement (PPS)**

Board decisions are required under subsection 3(5)(a) of the *Planning Act* to be consistent with any policy statements issued by the Minister on matters relating to municipal planning that are of provincial interest. The 2005 PPS is a policy statement relevant to this application. On this matter, I find that approval of the planning instruments under appeal is a decision consistent with the policies of the PPS. First, the City was fair in acknowledging that the PPS recognizes that development under the current as of right permissions would constitute intensification consistent with those policies. Second, I accept the opinions of both Mr. Feldgaier and Mr. Gagnon that additional intensification is consistent with the PPS. In particular the PPS encourages optimization of the use of land and infrastructure as well as efficient development patterns. The Royalcliff site is already slated for high density residential development and in the absence of adverse impact, approval of additional density is entirely consistent with the PPS and the policies therein actively support the scale of development, as proposed. Pursuant to section 2 of the *Planning Act*, the project has regard to matters of provincial interest and the evidence did not suggest otherwise.

**c) Regional Plan**

There is no amendment proposed to the Region's Official Plan (Region Plan), nevertheless conformity of the proposed planning instruments with the Region's Plan was raised as an issue. Mr. Jaros and Mr. Bailey, planners with the Region, were fair in their testimony in agreeing that: first, when the application was initially reviewed Regional Staff did not raise official plan conformity as an issue; and second, one of the roles of the Region in participating in the hearing process was to support the City.

First, the Region argued that the applications do not conform to its policies on the basis that the development is not located within Brampton's Central Area, which is a defined Regional Urban Node. While Mr. Bailey testified that a project of this scale, magnitude and density would be more appropriately suited to the Regional Urban Node, I cannot conclude from this opinion that the project is not equally well suited for a site that has been identified for over thirty (30) years as appropriate for high density

residential development. Simply put, the Region's Official Plan does not set out any density directions or targets for the Region of Peel.

Second, it is significant to note that when the Region analysed the original application (which proposed approximately 1,400 residential units as opposed to the 834 units proposed before me) Staff concluded that, subject to specific technical requirements, they had "no objection to the proposed amendment to the Official Plan and Zoning By-law provided that the above noted requirements are satisfied prior to site plan approval" (Letter dated October 15, 2007, Exhibit 130). Given the application as revised represents a significant reduction in the number of residential units and accepting that Royalcliff has satisfied (or will be in a position to satisfy) Regional technical issues, there is no basis to conclude that Regional Official Plan conformity is not achieved. It is clear from the record that the Region raised its concerns about the magnitude and scale of the development following rejection of the application by the City. While it is open to the Region to raise concerns and support the City in its opposition, based on the evidence provided the planning instruments do in fact promote official plan policies. For example, Regional policies urge that development: be directed to transit supportive locations; promote pedestrian friendly environments; achieve intensified and compact forms of development and a mix of land uses; and promote efficient growth while providing for well served communities. These policies are satisfied by the project. For all of these reasons, I find that Regional Official Plan conformity is achieved by the Royalcliff proposal.

## **2. Official Plan Policies and Density, Height and Urban Design**

The City opposes the Royalcliff application on the basis that it fails to conform to the Brampton Official Plan (both 1993 and emerging policies in the 1996 Plan) and the Secondary Plan, and that the massing, density and scale of the project at this location is not supported by the applicable policy structure. In addition, the City takes the position that Royalcliff has failed to demonstrate that the municipal policy framework actively supports and encourages development at the scale and location proposed by Royalcliff. In contrast, Royalcliff views its revised application as a compromise which has reduced the density originally proposed resulting in a development that is entirely appropriate for the site itself and area generally.

The applicable Official Plan (1993) designates the Royalcliff site as Residential, which includes a full range of housing types. The density range in the Official Plan (Old Housing and Density Categories chart in Policy 4.1.1.2) permits 31-80 units per net acre (upa) for high density residential. Despite the existing designation and the range of densities set out in the Official Plan, there was a suggestion that an amendment to the Part 1 Official Plan is required. In my view, this is a matter that is addressed by Royalcliff's approach in applying for an amendment to the Secondary Plan. I accept the proposition that the City's Secondary Plans are incorporated into its Official Plan. As submitted by Mr. Snider (and supported by the opinion evidence of the planners), Policy 4.1.1.2 simply states that the housing mix and density policies in the Secondary Plans shall reference the categories set out in the tables. Given the City's various Secondary Plans are incorporated into the Official Plan under Policy 1.2, "a site specific or notwithstanding clause in the Secondary Plan would be every bit as effective to address any concerns about the density categories as a site specific exemption in the Part 1 portion of the Plan" (Submissions of Royalcliff, December 15, 2009, p. 48). Moreover, the City has not typically required a Part 1 Official Plan amendment where the density is exceeded. Instead, as is the case here, the proposed OPA is attached to the Secondary Plan.

The more significant issue is not the form of the amendment, but whether the Royalcliff proposal, with the increase in density, conforms to the entire Official Plan. I find that it does, and in this regard it is not necessary to provide an extensive analysis of the detailed evidence provided on this point. Suffice to say that the starting point in considering the policies of the Official Plan is a recognition that the site is already designated and zoned for high density residential development. No change in use is requested through the planning instruments under appeal. The current zoning, permitting two 18 storey apartments, as a matter of law, conforms to the Official Plan. In this regard, the planners were consistent in their opinions that the existing designation and zoning constitutes good planning and achieves conformity with the Official Plan, including the Secondary Plan. There is conformity with the policies (4.1.1.6 and 4.1.1.7) that describe the characteristics associated with high density residential development. While the City's position that the most intensive form and scale of development should be reserved for the Central Area or Urban Growth Centre is reasonable, in this instance the land use designation has been long established. There is no question that if a

change in use and change in designation were proposed, the policy considerations would be different. For reasons elaborated upon below, I find that the additional density sought does not result in non-conformity with City policies. It may be correct that the development will be one of the largest projects in the City. However, that fact has to be balanced against the reality that the planning permissions have been in place for decades, the existing permissions and associated zoning represents an out of date proposal, and the thrust of provincial policy is toward intensification of existing opportunities. More significantly, accepting that two apartment towers (and commercial) may be constructed without resort to any further planning approvals, there is no evidence of impact attributable to adding 415 units at the site that cannot be mitigated.

The Land Use Concept of the Secondary Plan, in particular Secondary Plan Area 3, describes the major elements recognized for the planning area, including: the Etobicoke Creek Valley as a significant open space system; the new Heart Lake Community with a full range of facilities; and the Heart Lake Town Centre, which includes the Royalcliff site. The Heart Lake Area policies stipulate that the Town Centre (about 37 acres) include retail and commercial facilities, offices, hotel facilities, social and cultural facilities, high density residential development, and transportation and automotive service facilities. It also recommends that the westerly portion of the Town Centre, which includes the Royalcliffe site, be related to a proposed lake creating a pedestrian precinct. The Secondary Plan provides for a Town Centre Study (which was undertaken in 1979), the purpose of which was to set out the appropriate organization of land uses and densities. The Town Centre Study was implemented “through approval of a zoning by-law and the execution of a development agreement. The amended zoning by-law allowed for a maximum of two apartment buildings at a maximum height of 18 storeys and a maximum number of total units of 419. The by-law also allowed retail, office and restaurant uses within the northwest corner of the site closer to the Lake” (City Staff Report, August 22, 2008, Exhibit 40). Recognizing that the existing zoning standards and the location and form of the apartment buildings and commercial space may be “out of date”; City Staff concluded that “with whatever amount of development is supportable from a traffic and servicing capacity perspective, and with respect to the City’s broader planning policies, the spirit of the original plan should not be lost” (City Staff Report, August 22, 2008, Exhibit 40).

What clearly emerged from the evidence was a real concern that the number of point towers and their associated heights would be inappropriate intensification, resulting in adverse impact. In this regard, the City suggested that a new concept plan for the site could be created that reflects an up to date approach of distributing the as of right density across the site with the result that the towers in the park concept, which the planners agree is not appropriate, would not be adopted. Attachment "1" (the preferred development concept) is instructive as it shows the proposed location of the buildings, their respective heights, and site function. Alternatively, the City recommended in final argument that a reduction in the overall density and scale of development, including reduced building heights along Conestoga and Sandalwood, reduction in the number of towers, including elimination of one of the apartment point towers proposed at twenty (20) storeys (Building 1B).

Mr. Smith, Director of Planning with the City, was fair in his assessment of the project, as was Mr. Bokor on behalf of the local residents. In his witness statement, Mr. Smith stated that "it is my opinion that high density permitted in conformity with the Official Plan could represent an appropriate development of the subject site provided complete and satisfactory planning justification was provided. Planning justification would have to address urban structure, traffic impact, physical impacts on adjacent properties including privacy, and the ability of the development to physically integrate with the host neighbourhood in an acceptable manner including density, design, functional and other physical considerations" (Exhibit 109, paragraph 8). Mr. Smith also indicated that it had not been demonstrated that a development at a density permitted by the Part 1 Plan (80 upa) could be accommodated, suggesting that the actual impact of the development has to be tested. On this issue, I find that the potential impact of the project has been properly assessed by Royalcliff. Other than traffic, discussed below, there were no discernable impacts identified in the evidence. The planners agreed that the apartment towers are properly spaced. Two sides of the development front onto major roads (Conestoga and Sandalwood) with additional frontage on the west side of Loafers Lake Lane. The site is otherwise surrounded by institutional uses, including the Loafers Lake recreation centre, the Cyril Clark Library, and the Etobicoke Creek Valley. Only a small portion of a residential subdivision is within 120 metres of the site. There were quite simply no impacts identified in the evidence in respect of privacy, shadow,

noise or dust, or environmental impacts (subject to final determination of the limits of development).

As Mr. Kussner fairly indicated, “putting its case at its highest, it is undisputed Royalcliff has demonstrated that the proposed development will not have certain unacceptable adverse impacts for the community of which the site forms part” (City’s Argument, paragraph 4). Notwithstanding this submission, the City also suggested that Royalcliff has failed to demonstrate how the policy framework actively supports the project. Given the existing designation and zoning and the fact that Royalcliff is adding just over 400 units to a 9.9 acre site and for the reasons set out above with respect to the applicable policy regime, I find that the development can be integrated into the community and impacts, if any, mitigated. While the urban design is compact it is also sensitive to the surrounding land uses and in fact integrates the site, where appropriate, with these uses. The site is well supported by transit, linked to the Etobicoke Valley system and numerous parks and within the site itself, designed to be pedestrian friendly.

In their testimony, Mr. Smith and Mr. Bokor were both candid that first, the as of right permissions with two apartment towers is not appropriate development; and second, the density *per se* is not the primary concern. The real issue is height (and to a lesser extent re-distribution of the density across the site). Apartment towers at 18 to 20 storeys are not unreasonable; however, a 26 story tower, even tucked into the middle of the site, is simply too tall. On this matter, I find that the concept plan should be revised to reflect a maximum height of 20 storeys, consistent with the other apartment towers. The original permissions were for 18 storeys. The evidence of Mr. Smith and Mr. Bokor was that 20 storeys would not be of concern given the high density designation; however, a taller tower (even with the design that has the upper floors stepped back) would represent too much height for the site itself and surrounding area. On this point, I accept the opinion of Mr. Smith and the concern expressed by Mr. Boker..

Based on all of the evidence, provided both by planners and experts in urban design, and taking into account the agreements reached between these experts, the preferred development concept (at the density proposed) is reasonable, without adverse impact, and is not out of character for the area, subject to the one exception discussed above: the proposed height of Building 3A at 26 storeys. On this matter I find that no

apartment tower shall exceed 20 storeys. This finding is consistent with the report commenting on the original proposal (six apartment towers at proposed heights of 18, 25 and 32 storeys) where Staff noted that apartment buildings “in the realm of 20 storeys could establish a suitable landmark for this high-rise site” (Exhibit 40, Tab 83, p. 4550).

Given the agreement between the urban design experts that the spatial distance separation between point towers meets minimum acceptable standards from an urban design perspective, the number of towers proposed is acceptable. Similarly, the urban design experts were in agreement that “locating and orienting buildings along street frontages is generally appropriate and the use/provision of a three story building podium/component around the edge of the site is generally a good idea” (Agreed Statement of Facts, Exhibit 39). The urban design experts also agreed that active and pedestrian friendly streetscapes are beneficial and further, that the provision of live/work units promotes flexibility, albeit supporting elements such as parking are significant components. I adopt and rely upon the agreements reached between the experts in the area of urban design, and subject to my finding above in respect of height find that the concept plan (Attachment 1) sets out a configuration of buildings that is compatible for the site, compatible with the surrounding commercial, institutional and residential areas and represents appropriate urban design, consistent with official plan policies.

### **3. Traffic**

The City took the position that the traffic evidence raises serious concerns about whether the existing and contemplated road network can accommodate the development. The traffic experts were able to agree that with existing volumes, existing road configuration and existing signal timing in use by the City, the intersection at Sandalwood and Conestoga is operating at satisfactory levels of service. There was also agreement that the widening of Sandalwood as a proposed improvement is planned to be in place within a five-year period (2015). Nonetheless, the length of queue for the left-turn at Sandalwood and Conestoga was identified as a concern. Ms Iannuzziello, on behalf of the City, testified that the impacts to levels of service cannot be adequately mitigated whereas Mr. Cherepacha, acknowledging that mitigation is required, testified that acceptable levels of service can be achieved once the improved infrastructure is in place. The City also suggested that a holding by-law regime should

be put in place to ensure that the required traffic infrastructure is in place prior to development of the final phase of development. Lastly, there was a disagreement amongst the experts on a technical issue relating to the applicable land use category from the ITE Trip Generation Manual to be relied upon for the purpose of estimating the traffic to be generated by high rise condominium units.

Dealing with the trip generation issue first, suffice to say that I accept Mr. Cherepacha's choice of land use category as appropriate. It is clear from the evidence that first, the category selected by Mr. Cherepacha (combination of categories 231 and 232 versus category 230 selected by Ms Iannuzzeillo, which generates more trips) is reasonable as it accurately reflects the proposed configuration of residential units proposed by Royalcliff. Second, the category selected by Mr. Cherepacha was not challenged by City Staff in their initial review. Ms Iannuzziello's Peer Review noted the use of ITE Code 232, but is not critical of its use. Accordingly in preparing his evidence and taking into account in any event the overall reduction in residential units as compared to the original submission, Mr. Cherepacha's selection of land use categories is appropriate.

In considering the potential impacts associated with increased traffic, Mr. Cherepacha was clear in his evidence that the road network is capable of modification to accommodate additional trips from the proposed development. Based on the evidence presented this is a conclusion that I accept. First, the concern in respect of level of service is limited to the intersection of Sandalwood and Conestoga and in particular, the potential that southbound queues on Conestoga waiting to turn left may block the entrance to the shopping plaza. Mr. Cherepacha demonstrated in his testimony that the impact can be mitigated if a right hand turn lane is added on Conestoga resulting in a re-configuration of the intersection with two left turn lanes on Conestoga, one through lane, and the new right hand turn lane. The infrastructure upgrade would mean that the plaza entrance would not be blocked and the intersection would operate at an acceptable level of service even when the site is fully developed. Second, these improvements will be made at the expense of Royalcliff and a condition in this regard is appropriate. Royalcliff has agreed that holding provisions that reflect the development phasing requirements identified by Mr. Cherepacha are acceptable subject to the proviso that such requirements are tied to the posting of necessary letters of credit. I adopt this approach as a reasonable way to ensure protection for both Royalcliff

and the City that the improvements will be made, as recommended by Mr. Cherepacha. Royalcliff has been clear that the new right turn lane and re-configuration of the intersection with a double left-turn will be constructed at no public cost.

Third, the evidence indicated that while they are not widely used, double left turn lanes are in use on collector roads within the City. In fact, double left turn lanes were proposed for the area when the Town Centre Study was conducted in the 1970's. Fourth, the concern raised that through traffic travelling south on Conestoga will be restricted to one lane south of Sandalwood is not an adverse impact attributable to the development proposal. This is the status quo and the traffic impact analysis indicated that southbound traffic on Conestoga will largely turn right or left onto Sandalwood. In this regard, Ms Iannuzziello's analysis of the double left turn configuration assumed one through lane and the evidence supports a finding that the intersection operates more than adequately with a single southbound lane. Lastly, both experts agreed that Sandalwood is slated for widening within five years. While the original date was 2013, even with a delay to 2015, there is no evidence to support a finding that the City will not proceed to widen Sandalwood. It is designated as a Primary Transit Corridor in the City's Transportation and Transit Master Plan and has been upgraded to a major arterial road in the 2006 Official Plan. The evidence was clear that with the planned widening and taking into account the addition of the Royalcliff, all intersections will operate at an adequate level of service, with the only issue as described above, relating to the length of the left turn queue. Capacity is not accordingly an issue.

Based on all of the evidence provided, potential traffic impacts have been adequately addressed by Royalcliff.

#### **4. Parkland Dedication**

There was a difference between the parties with respect to the City's parkland dedication requirements which it seeks to enforce pursuant to section 42 of the *Planning Act* and Section 4 of By-law 41-2000. Based on 1ha/300 dwelling unit factor (provided for in the City's 1993 and 2006 Official Plans), the City argued that Royalcliff's application generates a parkland dedication requirement of more than 7 acres. The proposal from the City was that approximately 3 acres be dedicated for public recreational purposes (subject to some adjustment with respect to the limits of

development, explained below) associated largely in the form of parking for the Loafers Lake recreation complex, with the balance paid by Royalcliff as cash-in-lieu. The precise cash-in-lieu figures for parkland dedication were provided by Ms Pritchard in her testimony. While Mr. Gagnon took a somewhat different approach, Royalcliff indicated it was prepared to accept the methodology described by Ms Pritchard as the appropriate way to calculate parkland/cash-in-lieu requirements, should any contribution be required or volunteered.

The real difference between the parties is whether, in light of the history of the development of the Villages of Heart Lake, the City is entitled to any parkland dedication. The Heart Lake West community was planned and subdivided in the 1970s's. With respect to these lands, a 1973 subdivision agreement was entered into and amended in 1980 when the zoning for the Royalcliff site was finalized with the as of right permissions (two apartments and commercial space). Royalcliff's position was simply that the Villages of Heart Lake Plan of subdivision was over dedicated by about 45.5 acres and once the 7 acres the City now seeks is off-set, there remains an over-dedication. Mr. Snider submitted that even "this is a conservative calculation since the total parkland requirement should be based only on the additional density proposed through the Royalcliff application since it is clear from the history and various subdivision agreements that the as of right permissions were already accommodated by the dedications made through the subdivision approval process." (Royalcliff Submissions, p. 86). In this regard, Mr. Snider proposes that my order be withheld to allow Royalcliff to enter into an agreement with the City to dedicate, in conjunction with the final approval of the Official Plan, zoning by-law amendment and site plan a dedication of approximately 1.3 acres of parkland (Area of Open Space "A" of 0.82 acres and Area of Open Space "B" of 0.47 acres) as depicted an Attachment "1" plus a cash payment of \$1,093,397.02.

As indicated at the outset, the City is seeking 3 acres of the site for a parking lot to improve existing facilities at Loafers Lake Community Centre and plus a cash contribution to represent the balance of the dedication it seeks. I find that the City's position in this regard is not tenable.

First, pursuant to Section 42(7) of the *Planning Act* and consistent with the provisions of By-law 41-2000, if there has been a prior conveyance of land or cash-in-

lieu of parkland, a municipality is restricted from seeking an additional conveyance, unless there has been a change in the development that increases the density or where there is a change in land use. The City initially argued that this exception did not apply on the basis that it had no evidence to suggest that the lands subject to the Royalcliff application had ever contributed parkland dedication requirements. Yet in the course of the hearing it became clear, after extensive evidence and the production of certain documents, that the lands were in fact subject to a prior subdivision agreement and through that process parkland was conveyed to the municipality. As a result, Mr. Spencer on behalf of the City acknowledged that it was reasonable for Royalcliff to take the position this prior conveyance satisfies parkland dedication requirements. Second, as submitted by Mr. Snider, the restrictions in "Section 4 of By-law 41-2000 would prevent the City from requesting an additional conveyance merely because the development of the land was delayed. The development of the Royalcliff site has, indeed, been delayed but that delay cannot be used to require the dedication of more parkland when there was a large over dedication of parkland through the subdivision process" (Royalcliff Submissions, p. 91). Third, Mr. Kussner argued that changes in the legislation suggest that the right under Section 42(7) of the *Planning Act* to a credit in respect of dedications does not apply if that dedication was imposed under a pre-1994 subdivision agreement or other pre-1994 agreement. I do not accept this interpretation as it is contrary to what Mr. Spencer, the City witness on this matter, originally stated in his witness statements. Mr. Spencer was clear the real concern was a lack of evidence proving past conveyances. If conveyances made before 1994 cannot be used as a credit, then whether a conveyance had been made in connection with the original subdivision agreement would not have been relevant to the City. Its position would have been articulated much more simply, and it would not have been necessary for Royalcliff to undertake the extensive land registry searches to convince the City that prior conveyances had in fact been made.

Last, even if the City were entitled to a dedication, paving over 3 acres of a 10 acre site to provide for extensive parking is not an efficient use of vacant land where the existing permissions allow for high density development. Royalcliff's proposal as set out in its preferred concept plan has the potential to generate some additional parking for the recreationi centre. That, coupled with its offer of cash-in-lieu, represents an appropriate contribution to assist in solving the City's parking concerns for the existing

community centre. I find therefore that the dedication/a cash-in-lieu payment proposed by Royalcliff is appropriate and my order is withheld pending an offer to this effect (Royalcliff submissions paragraphs 194 and 195).

#### **5. Limits of Development**

The other significant matter between the parties was in respect of the limits of development, which cannot be finally determined until the location of the flood line is resolved and mapped. In accordance with a joint submission dated December 3, 2009 Royalcliff, the City and the Region arrived at an agreement with respect to how this matter can best be handled. In essence, Counsel agreed that my decision in respect of the other issues and evidence should be “strictly without prejudice to the positions of the parties respecting the ultimate resolution of the limits of development issue and the final determination of the developable area and resulting yield on that basis”. I accept this submission and find that my decision is subject to the agreement reached between the parties in this regard.

#### **E. Fees Appeal**

Royalcliff protested the levying of fees in relation to its application for official plan and zoning by-law amendments, and that matter was before me. However, Counsel advised prior to the conclusion of the hearing that this matter is resolved and the appeal was withdrawn.

#### **F. Decision and Order**

In arriving at my decision, I note that the entire development is subject to site plan control. Accordingly, additional holding provisions (with the exception of Royalcliff's submission as it relates to road improvements, referred to above) as suggested by the City and supported by the Region, are unnecessary. The project will be phased in any event, and detailed design, including landscaping for example will be addressed through the site plan process. I have also had regard to section 2.1 of the *Planning Act* and the decision of Council. The City chose to designate and zone the site for high-density development over thirty years ago. The increase in density proposed by Royalcliff is entirely consistent with provincial objectives to make the best use of existing sites, in the absence of impact. The project, taken as a whole, constitutes good planning.

The appeals are allowed and the parties are directed to prepare an Official Plan Amendment to the Heart Lake West Secondary Plan and a Zoning By-law Amendment in accordance with Alternative #3 (Exhibit 32 and Attachment "1"), subject to the direction that Building 3A shall not exceed 20 storeys and the increase in density beyond the as of right permissions may not exceed what is proposed by Royalcliff.

The Board's Order is withheld in light of the outstanding matter in respect of the limits of development and finalization of the wording of the Official Plan Amendment and Zoning By-law Amendment required to implement this decision. If the parties cannot agree on the wording of these instruments, I may be spoken to.

"J. de P. Seaborn"

J. de P. SEABORN  
VICE CHAIR

ATTACHMENT "1"



STATISTICS

PART	DESCRIPTION	ACRES	M <sup>2</sup>
A	OPEN SPACE	0.82	3328
B	FLOOD PLAIN	0.47	1903
C	NET SITE	8.51	34809
TOTAL		9.90	40047

**PRELIMINARY**

REVISED AND PROPOSED LAYOUT OF DEVELOPMENT INFORMATION RECEIVED OCTOBER 18, 2009

TURNER FLEISCHER ARCHITECTS INC.  
 1777 Sandalwood Drive, Unit 278  
 Toronto, Ontario M3J 2T8  
 Tel: 416-452-2222  
 Fax: 416-452-2177

Request Development of THE RESERVE OF HEADQUARTERS CENTRE  
 Submission to the City of Mississauga  
 DEVELOPMENT CONCEPT ALTERNATIVES

**#3**