

ISSUE DATE:

**FEB. 14, 2011**



PL100084

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

First Capital (Chartwell) Corporation & First Capital (175 Commander) Corporation 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 remove land respecting 175 Commander Boulevard zoned Industrial (M) Zone under the Employment Districts Zoning By-law No. 24982, as amended, of the former City of Scarborough, and add to lands respecting 2301, 2329-2361 Brimley Road zoned Neighbourhood Commercial (NC) under the Agincourt North Zoning By-law No. 12797, as amended, of the former City of Scarborough and rezone all respective lands to establish site specific performance standards to permit retail and other commercial uses, a drive-through facility for the redevelopment of an existing neighbourhood shopping centre  
O.M.B. File No. PL100084

IN THE MATTER OF subsection 41(12) of the *Planning Act*, R.S.O. 1990, c. P. 13, as amended

Subject:	Site Plan
Referred by:	First Capital (Chartwell) Corporation & First Capital (175 Commander) Corporation
Property Address/Description:	2301, 2329-2361 Brimley Road and 175 Commander Boulevard
Municipality:	City of Toronto
OMB Case No.:	PL100084
OMB File No.:	PL100216

**APPEARANCES:**

**Parties**

First Capital (Chartwell) Corporation; First Capital (175 Commander) Corporation

City of Toronto

**Counsel**

S. Zakem and P. Harrington

A. Biggart and R. Balfour

**DECISION DELIVERED BY S. J. SUTHERLAND AND ORDER OF THE BOARD**

On May 12, 2009, an application for zoning by-law amendment was filed for the purpose and effect of allowing the redevelopment of an existing neighbourhood shopping centre, Chartwell Plaza Shopping Centre located at 2301 Brimley Road and 2329-2361 Brimley Road and its proposed expansion onto lands located to the south at

175 Commander Boulevard (Subject Site) by way of a conversion of an existing industrial building to a large scale, stand-alone use in the form of a supermarket along with retail, service commercial and office uses.

Generally, the application by Chartwell seeks to extend the current Neighbourhood Commercial (NC) Zone under the Agincourt North Community Zoning By-law No. 12797, as amended, on the existing shopping centre lands to the lands located at 175 Commander Boulevard, which are currently zoned Industrial (M) under the Employment Districts Zoning By-law No. 24982, as amended, (of the Former City of Scarborough, Marshalling Employment District) to permit retail and other commercial uses on the entire site, and to permit a drive-through facility, and to establish specific performance standards.

The proposed development site is approximately 5.86 hectares (14.5 acres) in an area located on the south-east corner of Brimley Road and Huntingwood Drive. It is composed of two distinct parts:

1. the northern portion, housing the existing Chartwell Shopping Centre, which is 4.29 hectares (10.6 acres) in area, and consists of two buildings, a strip plaza constructed in the 1970s and an enclosed mall constructed in the 1980s;
2. the southern portion, a 1.56 hectare (3.85 acre site) having frontage only on Commander Boulevard, which has been used historically for industrial related purposes, and is currently occupied by an industrial building leased as a storage facility.

The proposal involves revitalization and expansion of the existing shopping centre through the demolition of most of the 1970s portion of the shopping centre, the renovation of the southerly industrial building at 175 Commander Boulevard, and the construction of two new commercial buildings along the Brimley Road and Huntingwood Drive frontages.

The City refused the Application to amend the Zoning By-law (ZBL) at its meeting on November 30, December 1, 2, 4 and 7, 2009, on the basis that the application does not conform to the Official Plan (OP), and conflicts and does not conform with the Growth Plan for the Greater Golden Horseshoe (GP). While generally encouraging and supporting efforts to rejuvenate the existing shopping centre, the City did not support

the expansion of the shopping centre into the Employment Area designated lands at 175 Commander Boulevard. City Staff recommended refusal of the application in its current form.

Chartwell has appealed that decision to the Board pursuant to subsection 34(11) of the *Planning Act*, disagreeing with Staff's position that the application does not conform to and conflicts with the GP, and that the proposed use on 175 Commander Boulevard, is a conversion of an employment area to non-employment uses. Chartwell's position is that the application is consistent with the Provincial Policy Statement (PPS) and conforms to the GP. More specifically, Chartwell maintains that GP Policy 2.2.6.5, which sets out requirements for the conversion of employment area to permit non-employment uses, is not applicable because the application does not represent a conversion, and that the proposed expansion of the shopping centre to include the 175 Commander Boulevard parcel does not constitute a "major retail" use within the meaning and intent of the GP. Chartwell also maintains that the proposed development is permitted by the applicable policies of the OP with respect to small-scale and large-scale retail in Employment areas and that, in particular, the impact considerations outlined in Policy 4.6(3) have been satisfactorily addressed.

At the outset, the Board determined, at the request of the City, that the new Comprehensive Zoning By-law was not before the Board, and that the Board would not deal with any issues related to that By-law.

There were several other issues before the Board, but these are the two upon which the hearing essentially hung:

1. Does the proposed large scale retail development on the 175 Commander Boulevard lands constitute a conversion under the *Growth Plan for the Greater Golden Horseshoe* of lands within an employment area to a non-employment use as contemplated by Policy 2.2.6.5 of the Growth Plan?
2. Does the proposed large scale retail development at 175 Commander Boulevard lands, upon lands designated as Employment Areas within an Employment District, conform with the policies of the Toronto Official Plan, and in particular, policies contained in Policies 2.2.4 and 4.6.3.

Peter F. Smith, a planner with more than 30 years experience, including those for a large number of redevelopment projects throughout the Greater Toronto Area, gave expert land use opinion and evidence on behalf of Chartwell. It was his opinion that the proposed development on the 175 Commander Boulevard lands does not constitute a conversion under the *Growth Plan* (GP). He maintained that the 440-350 jobs generated by the proposed development will assist in meeting the employment forecasts specified for the City of Toronto (City) in Schedule 3 of the GP. He said it was important to note that the employment targets in the GP do not differentiate between commercial, industrial and institutional employment. The resulting employment density on the site will be 75-94 jobs per hectare, in excess of both the Growth Plan target of 50 residents and jobs per hectare for greenfield development and typical employment densities found in Employment Districts throughout the city.

As related to the *Provincial Policy Statement* (PPS), Mr. Smith said the proposed redevelopment and expansion of the Chartwell Shopping Centre is consistent with that document, just as it conforms to the GP. He said it is consistent with the policy promoting efficient land use and development patterns and would result in the redevelopment and intensification of a parcel within the build-up area, consistent with Policy 1.1.3.2, and would result in an appropriate interface between sensitive residential uses to the north and industrial employment to the south and east, making it consistent with Policy 1.7.1.

He told the Board that both Policy 1.1.1(b) and Policy 1.3.1 make it clear that the proposed retail and service commercial uses are employment uses. By his calculation, the expanded shopping centre would generate approximately 440-550 office and retail jobs. Based on this, the proposed development is consistent with Policies 1.3.1(a) and (b), which seek to promote economic development and competitiveness by providing for an appropriate mix and range of employment uses and by providing opportunities for a diversified economic base, including a wide range of economic activities and ancillary uses. He said a “comprehensive review” is not required pursuant to Policy 1.3.2 in order to permit approval of the rezoning application because the proposed uses are employment uses and no conversion is being proposed.

Mr. Smith stated that an Ontario Growth Secretariat background paper, “Planning for Employment in the Greater Golden Horseshoe”, dated May 2008, states that “retail

trade is a fundamental economic activity”. With respect to large scale retail uses, the paper states that Official Plans should ensure that “appropriate areas are identified for retail uses” in order to avoid fragmentation of important employment lands. In this regard, the City’s OP provides locational restrictions on large scale retail uses through Policy 4.6.3, which has been determined to conform to the GP.

In Mr. Smith’s opinion, OP Policy 2.2.6.5, which sets out requirements for the “conversion” of employment area to non-employment uses, is not applicable because the proposed development does not represent a “conversion” and is not a “major retail” use.

He said that three key questions must be answered within the context of 2.2.6.5 to determine if the requirement for undertaking a municipal comprehensive review is applicable:

1. Is the site within an employment area?
2. Is the proposed development a “conversion”?
3. Does the proposed development constitute “major retail”?

Mr. Smith said that Employment Areas are defined by the PPS and the GP as “clusters of economic activities including, but not limited to, manufacturing, warehouse, offices and associated retail and ancillary facilities”. He said the reference in the definition of Employment Areas to “clusters” reflects the fact that the policies are concerned, not with each and every individual parcel of land that may be designated for employment purposes, but rather with strategic employment areas, typically large employment districts which are characterized by purely employment oriented uses.

In this instance, the site is located at the interface of the Tapscott/Marshalling Yard Employment District and the Agincourt and Agincourt North residential communities. Mr. Smith said the large Employment District to the south and east has been identified by the City as an employment area of strategic economic importance over the long term.

He told the Board the site is located on the edge of the Employment District and only the southern portion of the site appears to be shown as part of the Employment

District on Map 2 of the OP. The southerly lot, with the unique address of 0 Commander Road, is currently zoned for parking in association with the existing shopping centre and has been used for that purpose for a number of years. It was Mr. Smith's opinion that, given the OP designation, zoning and physical context, the southerly portion of the subject site, including, at a minimum, the parcel at 175 Commander Boulevard is within an area that meets the PPS and GP definition of an "employment area".

It was Mr. Smith's opinion that the proposed development cannot reasonably be considered a major retail use, and the rezoning to permit commercial uses on the expansion parcel at 175 Commander Boulevard does not represent a "conversion" given existing retail permission in Policies 4.6.1 and 4.6.3.

There is no definition of "major retail" in the GP, and, as a result, Mr. Smith said the term must be interpreted "on the basis of a plain reading" of the words within the context of each particular proposal. It is clear, Mr. Smith said, that not all retail developments are intended to be subject to a municipal comprehensive review, only those considered "major". He said, "it can be reasonably interpreted that the policy concern that gave rise to the insertion of the 'major retail' language of Policy 2.2.6.5 related to large retail 'power centre' proposals that had the potential to use up large expanses of strategic employment lands such as highway interchanges that might otherwise be developed for offices and prestige industrial uses."

He pointed out that, in the case of 1780 Markham Road, the Board determined that a 3,660 square metre commercial development on a 1.42 hectare site, anchored by a 1,590 square metre drug store, did not constitute "major retail" in that context. The decision stated that "major retail" was intended to relate to "big boxes" of approximately 11,615 square metres (126,000 square feet).

Given this, it was his opinion that Chartwell's proposed expansion to include the 1.56 hectare parcel at 175 Commander Boulevard, with up to 6,847 square metres of retail and service commercial uses within a renovated building, including supermarket, does not constitute a "major retail" use within the intent of the GP. He noted that no rezoning is required to allow either the redevelopment of the existing shopping centre buildings or the expansion of the existing southern parking lot.

It was Mr. Smith's opinion that the proposed development is not a "conversion". The existing shopping centre is permitted as-of-right by the existing NC zoning. Therefore, the redevelopment of the 1970s portion of the existing centre for commercial uses cannot reasonably be considered a "conversion".

Mr. Smith said that, so far as the southerly portion of the site is concerned, the proposed rezoning to permit commercial uses cannot reasonably be considered a "conversion" given that the proposed uses are permitted on the site by the policies of the "Employment Areas" designation, subject to a rezoning.

Douglas Muirhead, Senior Planner in the City's Planning Division, in his expert opinion and evidence, maintained that the terms "major retail uses", as appears in the Growth Plan, and "large-scale, stand alone retail uses, as appears in the OP, are interchangeable. To support this, he introduced a July, 2008 letter from Ron Glenn (a planner previously employed by the Province), concerning the City's Growth Plan conformity exercise. In the letter (Exhibit 2, Vol. 3, Tab 59), Mr. Glenn appears to use the terms "major retail" and "large scale stand-alone retail" interchangeably, but there was no confirmation from Mr. Glenn, or the Province, that this is what Mr. Glenn indeed meant. No evidence was presented to the Board that the Province has ever taken the position that "large scale stand-alone retail" and "major retail" are the same thing. The terms remain undefined in the Growth Plan, as they do in the City's OP.

Mr. Smith disagreed with Mr. Muirhead's position on the interchangeability of the terms, and directed the Board to Member Jackson's decision on 1780 Markham Road (2008 O.M.B.D. No. 21), which determined that a 3,600 square metre commercial development on a 1.42 ha site, anchored by a 1,590 square metre drug store, did not constitute "major retail uses" as referenced in the Growth Plan, but did constitute "large-scale, stand-alone retail stores", as referenced in the City's OP. Member Jackson went on to hold that "Major Retail" is intended to relate to "big box" type stores and "power centres" with sizes of approximately 125,000 square feet. Mr. Smith supported Member Jackson's order of magnitude in this regard.

The Board likewise supports Member Jackson's differentiation between the terms. It would have been helpful had Mr. Muirhead contacted Mr. Glenn in an attempt to confirm, or not, his interpretation of what Mr. Glenn meant in this regard. The Board

holds that the two words are meant to mean two different things, and that Member Jackson's description of what constitutes "major retail" is a reasonable one.

Mr. Smith was clear that the applications do not propose major retail on "employment area" lands for the following reasons:

1. Only the 0 and 175 Commander Boulevard portion of the site is considered to be within an "employment area" as defined by the Growth Plan. There is no prohibition on "major retail" development on lands that are not within an "employment area", which constitute the balance of the site.
2. 0 Commander Boulevard is already zoned and functions as a commercial site.
3. The size of the parcel at 175 Commander Boulevard (3.85 acres) is similar to the parcel at issue at 175 Markham Road (3.5 acres).
4. While the GFA of the expansion onto 175 Commander Boulevard (73,700 square feet) is larger than the GFA onto 1780 Markham Road (39,400 square feet), both are well below the 125,000 contemplated by Member Jackson.

The Board agrees that the portion of the First Capital proposal that will be developed on "employment lands" does not constitute "major retail",

It was Mr. Smith's opinion that the proposed development at 175 Commander Boulevard conforms to OP policies, notably Policy 2.2.4 and 4.6.3. In particular, it was his opinion that the proposed development, which contains a mix of small-scale and large-scale retail uses, is permitted on the subject site by Policy 4.6.3. He maintained the site fronts on two major streets (Brimley Road and Huntingwood Drive) at the periphery of an Employment Area and satisfactorily addresses certain criteria related to potential transportation and economic impacts. Mr. Smith was careful to point out that the policy does not limit the permission for large scale retailing to a certain depth extending back from major streets, nor does it limit it to existing "lots" fronting onto the major street. In his opinion, this policy approach is appropriate given that it allows the retail permission to be applied flexibly, having regard to all relevant planning considerations.



Mr. Smith said the proposed development conforms with Policy 2.2.4.1, which specified that Employment Districts will be protected and promoted exclusively for economic activity, and Policy 2.2.4.2(a), which states Employment Districts will be enhanced to ensure they are attractive and function well by, among other measures, permitting a broad array of economic activity. In this regard, the proposed retail and service commercial uses are employment uses which constitute economic activity.

The Board accepts First Capital's position that the intent and purpose of the OP is to protect lands within Employment Districts from the encroachment of "non-economic" functions, such as conversions to residential uses, and Mr. Muirhead concurred, under cross-examination, that retail uses are an "economic function" as contemplated by the Employment District commentaries in the OP. If they are developed in accordance with the relevant Employment Area policies, they are "employment" uses within Employment Districts, and various studies have contemplated the inclusion of retail uses within employment areas (Exhibits 27, 28 and 45). Some passages from the studies have been placed verbatim into the OP's commentaries. The Board is satisfied that retail development, including large scale stand-alone stores, is a recognized economic activity generating employment, and is in conformity with the OP's Employment District Policies, and can strengthen an existing employment/economic cluster, as was noted by staff in relation to the Woodbine Live application.

The Board agrees with First Capital's assertion that the expansion and redevelopment of the Chartwell Shopping Centre will strengthen the Employment District's attractiveness by the revitalization of an existing economic and employment generator, thereby meeting the intent of OP Policies 2.2.4.1 and 2.2.4.2.

In his vigorous cross-examination, Counsel for the City suggested to Mr. Smith that the proposed development reaches into the "heart" of the Employment Area, which would not be in concurrence with Policy 4.6.3. Mr. Smith did not agree.

The principles laid down in *Bele Himmell Investments v. City of Mississauga* and the commentaries to Employment Area policies in the OP call for a broad liberal interpretation of the OP in order that its policy objectives might be furthered. Large scale, stand-alone retail uses are not prohibited within Employment areas, but must

meet special locational limitations. They are not to be located in “the heart of Employment Areas” because they can adversely affect, or be affected by, businesses there.

Policy 4.6.3 of the City’s OP reads:

Large scale, stand-alone retail stores and “power centres” are not permitted in Employment Areas in the Central Waterfront and are only permitted in other Employment Areas fronting only major streets as shown on Map 3 that also form the boundary of the Employment Areas through the enactment of a zoning by-law. Where permitted, new large scale stand-alone retail stores and “power centres” will ensure that:

- a) sufficient transportation capacity is available to accommodate the extra traffic generated by the development, resulting in an acceptable level of traffic on adjacent and nearby streets; and
- b) the functioning of other economic activities within the Employment Areas and the economic health of nearby shopping districts are not adversely affected. (Exhibit 2, Vol. 1, Tab 5)

In this, the City acknowledges that Policy 4.6.3 authorizes the development of large scale stand-alone retail uses through the approval of a zoning by-law, and further acknowledges that this authorization constitutes sufficient “permission” to render a “conversion” pursuant to the Growth Plan unnecessary. Does this permission then apply to the expansion lands of 0 and 175 Commander Boulevard for the purposes of this application?

The City maintained, through its planners, that Policy 4.6.3 provides permission only on “lots” or “parcels” that have actual frontage onto a major street. But, the policy does not state that. It is not explicit in that regard, and any proposed policy amendments to make it so, have not been the subject of a statutory public meeting and have not been endorsed by Council. The Board cannot read Policy 4.6.3 as if such amendments actually exist; nor do such explicit policies speak to the “flexibility” and “adaptation” called for in the OP commentaries.

Mr. Smith pointed out that the language does not limit “permission” for large scale, stand-alone retail stores to a specific depth extending back from major streets, nor is the ability to rezone limited exclusively to existing “lots” with direct frontage onto a

major street. It was his opinion that what is implied in Policy 3.5.3 of the OP is “access”, meaning that the proposed development must be accessible to and from a major street within an Employment Area. He pointed to the City’s support of the Lowes application at 50 Resources Road, a site that does not front onto a major street being physically separated from Islington Avenue. In this instance, Mr. Smith said, the City determined that the *proposal* effectively fronted onto a major street via the interchange between Resources Road and Islington Avenue/Highway 401. Deeming the “proposal” to have frontage allowed the application to be approved pursuant to Policy 4.6.3 of the OP.

175 Commander Boulevard has flankage along Brimley Road, which is a major street. This flankage is interrupted by an environmental protection area maintained by the TRCA. As part of the First Capital proposal, 175 Commander Boulevard will gain access through the existing commercial centre not only to Brimley Road, but also Huntingwood Drive, affording 175 Commander Boulevard, as part of an overall development *proposal*, access to two major streets, which, in Mr. Smith’s opinion, satisfies the intent of the OP. The Board agrees with this assessment of the intent and purpose of the OP.

Mr. Smith looked at the prevailing lot fabric in the area and drew the line at the point where the presence of large scale, stand-alone retail uses would “adversely affect” businesses within the “heart” of the Employment Area in terms of traffic impacts, land use incompatibilities and disruptions to the planned function of the Employment Area. This constituted an analytical not a mapping exercise. Based on his comparative analysis, which he presented to the Board, Mr. Smith concluded that the proposed expansion onto 175 Commander Boulevard would not result in a lot size and depth that was out of keeping with other approvals by the City pursuant to Policy 4.6.3. Examining the lot fabric of Huntingwood Drive, Mr. Smith concluded that, if the southern edge of the Chartwell site were expanded to include 175 Commander Boulevard, the resultant “lot” would line up with the southerly boundaries of other lots along Huntingwood Drive, creating a defined “depth line” for proposals “fronting” onto Huntingwood Drive. If approved, the Chartwell site would constitute only 2.3% of the Commander Employment area, and 0.2% of the overall Tapscott/Marshalling Yard Employment District. As Mr. Smith pointed out, lot boundaries are not apparent to the general public, and whether a development is built upon a single large lot or on a series of small lots brought together through assembly, is of no impact or concern to the public. The Board was given a letter

(Exhibit 13) from First Capital's solicitors to the City offering to resolve the "separate lots" issue by combining the parcels at law, and offering a one-foot reserve along the southerly boundary of the expanded site, to ensure that there could be no additional lands added to the shopping centre absent municipal approval. The City did not accept either proposal.

In addition to Mr. Smith's opinion, the expert opinions of First Capital's traffic, (David Argue), market (Mimi Ward) and urban design (Russell Fleisher and Matt Bernstein) experts are that the application is supportable and consistent with the City's policies, not only generally, but specifically for the Subject Property.

In the opinion of James Helik, senior planner, Policy and Research, for the City's Planning Division, there would be a negative impact by including the "next" interior lot (750 Commander Boulevard) in a land parcel subject to Policy 4.4.3, but Mr. Smith argues that the mathematical exercise of calculating the size of the "next" interior lot fundamentally misunderstands the planning rationale for the proposed rezoning which is to permit the expansion of the Chartwell Shopping Centre in order to rejuvenate the existing shopping centre within the Employment Area by allowing for larger, updated anchor stores in a circumstance where the depth and boundaries do not penetrate into the "heart" of the employment area. Mr. Smith maintained that Mr. Helick's analysis took no account of the site-specific circumstances of the application.

Mr. Smith also pointed out that the existing building at 175 Commander Blvd. will not be removed, but will house a different employment use, one that will provide considerably more employment than the most recent use as a warehouse. The land will remain within the Employment Area designation and will be used for a range of uses permitted by Policies 4.6.1 and 4.6.3.

Based on the reality that the proposal has access onto two major streets, as well as on his analysis of the lotting pattern and lotting fabric of the area, and of how much of the overall Employment Area is to be used for the proposed development, Mr. Smith concluded that locational requirements of Policy 4.6.3 of the OP have been met. The Board agrees with his analysis and his conclusion. The Board cannot accept Mr. Muirhead's position that Policy 4.6.3 is not adaptive to site-specific circumstances, and that it refers only to lots on major streets. That is not what OP Policy 4.6.3 states, nor,

in the Board's conclusion, what it means. To read into the policy what Mr. Muirhead has read into it reflects a narrow interpretation of the OP suggesting an inflexibility that is not there and should not be there if the policy objectives of the document are to be met.

OP Policy 4.6.3(a) also requires that "sufficient transportation capacity is available to accommodate the extra traffic generated by the development, resulting in an acceptable level of traffic on adjacent and nearby streets." Mr. Argue prepared a "Traffic Expansion Study" which analyzed the impact of the expanded shopping centre on existing road infrastructure. Ex.1, Tab 1B). His conclusion was that, with the improvements being proposed, sufficient capacity does exist, and Policy 4.6.3(a) of the OP has been appropriately addressed. Following review by the City's transportation staff, an Agreed Statement of Fact was arrived at (Exhibit 9), recording agreement that, subject to First Capital implementing a list of traffic improvements, there will be sufficient transportation capacity to accommodate the increased traffic generated by the proposal.

OP Policy 4.6.3(b) prescribes additional impact criteria:

1. the functioning of other economic activities within the Employment Area is not adversely affected; and
2. the economic health of nearby shopping districts is not adversely affected.

There was no disagreement between the Parties that approval of the application would have any adverse impact on nearby shopping districts.

With respect to the first criteria, Ms Ward, in a report titled "Employment Area Impact Assessment, Chartwell Shopping Centre Redevelopment, Brimley Road and Huntingwood Drive, Toronto, Ontario" (Exhibit 1, Tab 7B), concluded that "the Chartwell expansion would not adversely affect the functioning of economic activities within Commander Boulevard area or the Tapscott Employment Area as a whole." The report states, "The Chartwell Shopping Centre redevelopment and expansion will add to the employment supply in the Tapscott Employment District. The addition of service based jobs reflects market trends to service oriented jobs and helps to offset declines in the manufacturing sector employment. The employment area impact assessment illustrates that the proposal can easily be integrated into the area and will not detract from the function of economic activities within existing businesses adjacent to the shopping

centre and elsewhere in the Commander Boulevard area of Tapscott Employment District.”

The report concluded that the application, which represents an expansion of an existing land use, would not cause speculative retail development on adjacent lands, and would not adversely affect the functioning of other economic activities within the Employment Area.

Rebecca Condon, an economic development officer with the City, disagreed. She said the City is working to attract and retain qualifying businesses, which do not include retail businesses, with Development Charge credits and with the Imagination, Manufacturing, Innovation and Technology Program (IMIT) (Exhibit 7, Tab 5). Retail, she stated, “looks after itself.”

Mr. Helik presented evidence that the City and Tapscott have performed well though the most recent economic downturn. With this, the witnesses for First Capital agreed. It is significant, the Board believes, that the City’s witnesses did not identify any current economic activity within the Employment Area that would be jeopardized if the application was approved. It is also significant that no owner or tenant within the Employment Area objected to the application.

We cannot accurately predict the future, as the City asked the Board to do in relation to Ms Ward’s testimony, saying that she did not project the economic impact of the application into the future. There is a saying that, if you lined up all the economists in the world end-to-end, they would all point in a different direction. In the Board’s view, Ms Ward went as far as it was reasonable in her assessment of the impact, or lack thereof, of the proposed Chartwell expansion on other economic activities in the Employment Area.

Conversely, the health of the Chartwell Shopping Centre, may well help draw potential employers to the area and retain existing ones, as Counsel for Chartwell argued.

The Board cannot base a decision on the basis of speculation or apprehension, but must do so on the basis of solid planning evidence and fact. In this respect, and for

the reasons outlined thus far in this decision, the Board finds that Chartwell's position is supportable, on the two key planning issues and finds that:

1. the proposed large scale retail development on the 175 Commander Boulevard land does **not** constitute a conversion under the Growth Plan for the Greater Golden Horseshoe of lands within an employment area to a non-employment use as contemplated by Policy 2.2.6.5 of the Growth Plan; and
2. the large scale retail development on the 175 Commander Boulevard lands which are designated as Employment Area within an Employment District **conforms** to the policies of the Toronto Official Plan, in particular policies contained in Sections 2.2.4 and 4.6.3.

The proposal also conforms to the *Economic Health, Built Environment and Future Retailing* sections of the City's OP.

Xue Pie, an urban designer with the City of Toronto, presented two renderings (Exhibit 7, Tab 6) in which she attempted to illustrate how the proposed intensity of the development, including the proposed supermarket use, could reasonably be accommodated on the existing commercial site(s) without the need to expand onto 175 Commander Boulevard. The Board found neither of the proposals convincing, notwithstanding that the Board's role is to assess the proposal before it, not all possible proposals, and that this does not constitute a "test": under either the Province's or the City's land use planning policies. It was raised, however, as Issue 3 before the Board.

There was agreement that the Applicant's submitted Expansion Traffic Study demonstrated there is sufficient transportation capacity to accommodate the expanded Chartwell Shopping Centre, which was Issue 4.

Issue 5 has already been dealt with in this decision with the Board's determination that the Applicants submitted *Employment Area Impact Assessment* demonstrates that the functioning of other economic activities within the Employment Area will not be adversely affected by the proposed expansion of the existing Chartwell Shopping Centre onto 0 and 175 Commander Boulevard.

Issue 6 asks whether the lands at 175 Commander Boulevard are suitable for non-retail employment uses and non-retail employment intensification. The Board finds

that the answer is yes. The application provides the opportunity to redevelop a property that has operated as a manufacturing business and, more recently, a warehouse, for a higher density employment use in conjunction with the revitalization of the existing shopping centre. This accords with various policy direction in the PPS, the GP and the OP, and is by far preferable to leaving the existing shopping centre to languish in an effort to protect 175 Commander Boulevard for some lower density employment use.

Issue 7 is related, asking whether the lands at 175 Commander Boulevard are suitable for retail employment uses and retail employment intensification. For the reasons given above, the Board finds that they are, noting that the expanded site will have access to two major streets on the westerly tip of the Tapscott Employment District.

Issue 8 deals with the contribution of the proposed development at 175 Commander Boulevard to the preservation of employment land and the advancement of the City's goals for long term economic growth as outlined in Policies 2.2.4, 3.5.3 and 4.6 of the OP. For the reasons given in the determination of the two key planning issues at this hearing (Issues 1 and 2), the Board finds that the proposed development does contribute to this preservation and advancement. With the rezoning, the entire site will remain designated Employment Area and 0 and 175 Commander Boulevard will also remain within the Employment District. The rejuvenated shopping centre will contribute positively to the existing economic cluster within the area.

Issue 9, regarding the appropriate form for the draft zoning by-law amendment will be dealt with in the Board's Order.

The Site Plan was also before the Board. The development falls under OP Policy 3.1.2 – Built Form (Exhibit 1, Tab 5). The City asked that an addition be added to Building A, the current Shopper's Drug Mart, thereby moving it to the street, or that it be demolished. Either approach, the City maintained, would result in an improved development that meets urban design policy objectives. Counsel for Chartwell argued that Building A is not proposed to be moved, and whether its current location is "appropriate" is accordingly not a proper issue before the Board.

If this were a greenfield site and an entirely new development, then it would be good urban design, and in accordance with the City's urban design principles, to place



Building A adjacent to the street, but Building A is where it is, and it is not proposed by the Appellants that it be demolished. The Board cannot order it demolished, nor can it order it to be added to.

The City argued that the existing berms should be cut into in order to provide direct access to the public sidewalk. Russell Fleischer, the Applicant's architect, argued that this would create issues of concern regarding safety. The Board finds, with Mr. Fleischer, that the main entrances of Building B, C and D are appropriately located and accessible for a continuous on-site walkway connecting directly to the public sidewalks that surround the site, and that there is no need to cut into the berms. Were this a brand new development on this site, it may well be argued that the berms should not be there, but this is not the situation with which we are dealing. The Board finds the open space "piazza" a desirable feature and one that has been appropriately designed.

The Board also determined that pedestrian walkways into and through the site to be situated where they are feasible, and to be appropriate and to meet the intent of the City's policies.

The Board also accepts the opinion of Matt Bernstein, who gave expert evidence as a landscape architect on behalf of the Applicants, that the proposed street tree planting is both adequate and appropriate and that First Capital has taken steps to "adequately address" the recommendation of the Draft Parking Lot Guideline and the Draft Drive-Through Guidelines. The Board also notes that these are Draft Guidelines, having no status.

Finally, among the unresolved issues is the amount of surface parking that should be provided. The Site Plan presented to the Board for approval contains a parking space ratio of 4.5 spaces per 100 square metres of gross floor area. David Argue, who gave traffic and parking space opinion on behalf of the Applicants, proposed this ratio, with either a minimum of 5.0 or a reasonable cap on restaurant space. Andrew Au, Assistant Planner in the City's Transportation Planning Section, proposed a minimum, a maximum and a restaurant cap at rates that, in Mr. Argue's opinion, are likely going to lead to the site being under serviced for parking. Mr. Au argued that "we do not plan for Christmas" and that the City is attempting to see that a "sea of parking" is not created.

A “sea of parking” is certainly not advisable, but neither, in the Board’s view, is a site that does not provide adequate parking. Such a situation could have a negative impact on the success of the development and the economic health of the area. The site’s current zoning does not impose a “maximum” on parking supply and Mr. Smith told the Board that imposing a maximum parking supply on a suburban shopping centre is an unusual requirement. Based on the expert evidence presented by both Parties at the hearing, the Board finds that a minimum ratio of 4.5 and a cap on restaurant space, which is a high generator of parking demand, at 3,360 square metres, or 19% of GFA, as outlined in Exhibit 48, would address the needs of the development as well as the City’s objective of not having an oversupply of parking available.

After a careful review and consideration of the evidence, and for the reasons outlined in this decision, the Board Orders that the appeal is allowed and the municipality is directed to amend By-laws 12797 and 24982 of the former City of Scarborough as set out in Attachment “1” to this Order subject to a technical review by City staff within 60 days of the issuance of this decision;

The Board Orders that the site plan prepared by Bousfields Inc. dated October 19, 2010 is approved subject to the conditions set out in Attachment “2” to this Order.

The Board Orders First Capital (Chartwell) Corporation and First Capital (175 Commander) Corporation enter into a site plan agreement with the City of Toronto similar in principle to that set out in Attachment “3” to this Order subject to further discussions between the parties.

The Board’s final Order with respect to the Zoning By-law Amendment, site plan, site plan conditions and site plan agreement will be withheld until the Board is advised of the following:

1. that the parties have agreed to the final form of the Zoning By-law Amendment;
2. that the parties have agreed to the final form of the site plan;
3. that the parties have agreed to the final form of the conditions of site plan approval; and

4. that the parties have executed a site plan agreement.

This Member remains seized and may be spoken to if any difficulties arise.

“S. J. Sutherland”

S. J. SUTHERLAND  
MEMBER