

ISSUE DATE:

February 15, 2013



PL120307

Ontario Municipal Board
Commission des affaires municipales de l'Ontario

Daraban Holdings Limited 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 neglect to enact a proposed amendment to the Official Plan for the City of Mississauga to redesignate land at 3640-3658 and 3670 Cawthra Road from Residential Medium Density I" and "Motor Vehicle Commercial" to "Residential High Density II - Special Site" to permit a retirement home

Approval Authority File No. OZ 10/008 W4
OMB File No. PL120307

Daraban Holdings Limited 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 neglect to enact a proposed amendment to Zoning By-law 0225-2007 of the City of Mississauga to rezone lands respecting 3640-3658 and 3670 Cawthra Road from "RM4" (Townhouse Dwellings) and "C5-3" (Motor Vehicle Commercial - Exception) to "R42-Exception" (Apartment Dwellings - Exception) to permit the development of a 169 units 6 storey retirement dwelling with a 7th storey mechanical room and amenity area.

OMB File No. PL120324

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

Referred by:	Daraban Holdings Limited
Subject:	Site Plan
Property Address/Description:	3640 - 3658 and 3670 Cawthra Road
Municipality:	City of Mississauga
OMB Case No.:	PL120307
OMB File No.:	PL121292

APPEARANCES:

Parties

City of Mississauga

Daraban Holdings Limited

Regional Municipality of Peel

Counsel

M. Joblin, S. Ferri

M. Flowers, R. Kehar

R. Maciver, J. Gescher

Participants

M. Schelter

DECISION DELIVERED BY J. P. ATCHESON AND ORDER OF THE BOARD

[1] This is a hearing in the matter of appeals by Daraban Holdings Limited (“Daraban”) from the refusal or neglect of the Council for the City of Mississauga (“City”) to enact a proposed amendment to the City’s Official Plan to redesignate lands at 3640-3658 and 3670 Cawthra Road from “Residential Medium Density 1” and “Motor Vehicle Commercial” to “Residential High Density II-Special Site” to permit a 169-unit, six-storey retirement home with a seventh floor mechanical room and amenity area.

[2] Daraban has also appealed the refusal or neglect of the Council for the City of Mississauga to enact a proposed amendment to the City’s Zoning By-law 0225-2007 for the above noted property from “RM4” (Townhouse Dwellings) and “C5-3” (Motor Vehicle Commercial –Exception) to “RA2-Exception” (Apartment Dwellings-Exception) to permit the development of a 169-unit, six-storey retirement dwelling with a seventh floor mechanical room and amenity area.

[3] Daraban, through its Counsel, appealed its Official Plan Amendment (“OPA”) and Zoning By-law Amendment (“ZBA”) on March 9, 2012.

[4] Daraban appealed its revised Site Plan application to the City on November 13, 2012, being Board File PL121292.

[5] These matters were consolidated for purposes of this hearing.

BACKGROUND AND THE PROPOSAL

[6] The Daraban proposal has undergone modifications and changes from the time of its original applications to the municipality up to the final filing of its revised Site Plan on October 9, 2012, and the appeal of its OPA, ZBA and Site Plan applications to the Board.

[7] The proposal now before the Board is for a 152-unit “Retirement Dwelling” as defined by the City of Mississauga Zoning By-law 0225-2007:

Definitions Zoning Bylaw 0225-2007

Retirement Dwelling

means a building or part thereof, containing retirement dwelling units where common facilities are provided for the preparation and consumption of food and where housekeeping services and on-site

medical services are provided, as required. A retirement dwelling may contain accessory personal service establishment, retail and recreational uses for the residents. A retirement dwelling is intended to be occupied by persons who are retired from the work force, or by reason of age or infirmity require the services provided in a semi independent living environment, but who do not require the services and support provided in a long-term care dwelling.

[8] The proposal before the Board is to develop a 152-unit retirement dwelling consisting of 68 junior one-bedroom units, 65 one-bedroom units and 19 two-bedroom units together with communal facilities including a dining room, convenience commercial and a doctor's office, all within a stepped building that ranges in height from five to seven storeys with an amenity space and mechanical room structure above the seventh floor substantially in the form, as set out in a series a drawings found at Exhibit 4B and a building rendering Exhibit 4A, Tab1. The revised site statistics for the project now before the Board are set out at Exhibit 12. The stepping and height of the building now proposed is different from the Site Plan and applications originally filed and presented to City Council and results from the recommendations of Mark Sterling, an architect and urban design expert retained by Daraban. The revised Site Plan was submitted to the City on October 9, 2012, after a City Council decision dated June 20, 2012.

[9] The proposed building has a gross floor area of some 10547.1.1 square metres ("sq m") which according to Zoning By-law 0225-2007 generates a floor space index ("FSI") of 1.61.

[10] The at grade landscaped area makes up 40.18% of the lot area which includes a 4.5 metre ("m") landscaping strip along the western boundary and a 3.0 m landscape strip along the southern boundary of the property, together with other landscaping areas between the proposed building and the streets. The revised proposal includes at the south end of the building, a 251.4 sq m, at grade outdoor amenity area screened by a 2.5 m high decorative glass noise attenuation barrier. There is also a 588 sq m rooftop amenity area in the revised proposal. The City's design guidelines suggest an at grade amenity space of 304 sq m. However, the City's Zoning By-law requirement is for 55 sq m of outdoor amenity space at grade. The building also includes indoor amenities in the form of a theatre, gym, and spa areas found in the basement of the building.

[11] The revised proposal provides for 61 off-street, at grade parking spots, being a parking ratio of 0.4 spaces per unit which meets the recommendations of City staff. The

City's Zoning By-law requires a parking ratio of 0.5 spaces per unit, or 76 off-street parking spaces.

[12] Two vehicular accesses are provided, one from Burnhamthorpe Road and one from Cawthra Road, as shown on the Site Plan Exhibit 4B, Tab1. Both are right-turn-only entrances except the Cawthra Road entrance has been designed and signed to allow for a left-turn movement from Cawthra Road for emergency vehicles to meet concerns that had been raised by commenting agencies.

[13] The proposed new building height would fall within the 45 degree angular plane prescribed by the City's Zoning By-law with a proposed maximum height of 26 m.

[14] The site ("subject property") is 0.53 hectare ("ha") in size and is located at the southwest corner of Burnhamthorpe Road and Cawthra Road, in the City of Mississauga. The property is located within what is known in the City's Official Plan as the Mississauga Valleys Planning District ("MVPD") and is situated at the northeast corner of this planning district. The Rathwood District is to the north of Burnhamthorpe Road, while the Applewood District comes to the east edge of Cawthra Road.

[15] The northern portion of the subject property is currently vacant, being a former gas station site, while the southern portion is developed with 10 townhouse dwelling units that face Cawthra Road and which have a single-vehicle access located on the south side of the project to access surface parking situated in the rear yard.

[16] The area to the west of Cawthra Road and south of Burnhamthorpe Road is generally a low density residential area with reverse lots along Burnhamthorpe Road. Immediately to the west and abutting the subject property are semi-detached homes on Holden Crescent, as shown on an air photo (Exhibit 9). A double duplex dwelling abuts the subject property to the immediate south and fronts onto Cawthra Road. Further to the south along Cawthra Road is low density development with direct access to this right-of-way. Two small commercial plazas are located directly across Cawthra Road from the subject property. One plaza has access to Burnhamthorpe Road while the other has access from Cawthra Road. Both plazas have driveway interconnections, as shown on an air photograph Exhibit 4A, Tab 3.

[17] South of the plazas along the east side of Cawthra Road is a Ukrainian Catholic Church. The northeast portion of the Burnhamthorpe and Cawthra Roads intersection consists of reverse lot, low density development. The northwest corner of the Burnhamthorpe and Cawthra Road intersection was a former gas station site that is currently vacant.

[18] The land uses in the immediate area are displayed through a series of photographs found at Exhibit 4A, Tab 5.

[19] The Regional Municipality of Peel ("Region") has jurisdiction over Cawthra Road (Regional Road 17) while the City of Mississauga maintains jurisdiction over Burnhamthorpe Road. Both roads are designated as "Arterial Roads". Burnhamthorpe Road has a designated right-of-way width of 50 m, while the designated right-of-way width of Cawthra Road is 36 m.

MATTERS BEFORE THE BOARD

[20] Daraban is appealing the refusal or neglect of the City of Mississauga to make a decision on its application to amend the Official Plan and Zoning By-law of the City to permit the proposed development. City Council rejected the original 169-unit proposal and the recommendations of its planning staff for a slightly lower building on June 20, 2012. However, Council in its June 20, 2012, resolution (Exhibit 1B, Tab 5, p. 72 and p.73 supported an OPA from "Residential Medium Density 1" and "Motor Vehicle Commercial" to "Residential High Density I-Special Site" to allow the use of a retirement dwelling on the entire site, provided the proposed structure was limited to a height of no more than four storeys. The density prescribed by the "Residential High Density I" designation of the in force City Official Plan ranges from 0.9 to 1.4 FSI (Exhibit 1A, Tab12 p. 260). City Council in the same resolution also agreed to amend the Zoning By-law to permit a retirement dwelling with a maximum height of four storeys, utilizing the "RA1" zone provisions of By-law 0225-2007 which permits a density range of 0.4 to 0.9 FSI (Exhibit 1B, Tab 12, p. 230).

[21] Daraban's response to the Council resolution was to file the revised Site Plan and the revised proposal described above that is now before the Board.

[22] Daraban now seeks the following Official Plan and Zoning By-law Amendments together with approval in principal for the revised Site Plan drawings set out at Exhibit 4B and described above, subject to the finalizing of a Site Plan Agreement with the City.

Official Plan Designation Requested

[23] The current designation on the north part of the subject site is “Motor Vehicle Commercial” and on the south part is “Residential Medium Density 1”.

[24] Daraban requests that the entire site be designated “Residential High Density II-Special Site” to permit a retirement home including accessory uses, as set out in its proposed OPA (Exhibit 13).

Zoning Requested

[25] The current zoning on the north part of the subject property is “C5-3” (Motor Vehicle Commercial) and on the south part “RM-4” (Townhouses).

[26] Daraban requests that the entire subject property be rezoned to “RA-2 (exception)” which is a residential apartment zone that would allow only the retirement dwelling with its permitted accessory uses, along with a parking ratio of 0.4 spaces per dwelling unit, an FSI of 1.61, and a reduction in the required setbacks along Burnhamthorpe and Cawthra Roads to 6.0 m, as set out in the proposed draft By-law (Exhibit 14). The proposed By-law also seeks a 3.0 m landscape strip along the south limit of the property and a clause that would permit any required 0.3 m reserves to be used in the calculation of total lot area of the site, as set out in its proposed ZBA (Exhibit 14). The proposed amendment places a 26 m maximum building height, subject to the angular plane calculations set out in the Zoning By-law. No limit is placed on the maximum number of dwelling units or dwelling unit types that might be included in the proposed building by Daraban’s proposed ZBA.

Site Plan Requested

[27] Daraban request that the Board approve the Site Plan substantially in the form found at Exhibit 4B with the applicable site statistics set out at Exhibit 12 and the conditions of the Region of Peel found at Exhibit 21; except for Condition 1 which

Daraban's Counsel submits has been met. Daraban also consented to additional conditions being added to the Site Plan Agreement as follows

1. that would require any building permit plans to include recommendations for noise mitigation measures by a qualified acoustic engineer to meet applicable noise criteria for indoor space, outdoor amenity space areas and mechanical equipment.
2. that would require confirmation by a qualified acoustic engineer prior to occupancy that all recommended noise mitigation measures to meet applicable noise criteria for indoor space, outdoor amenity space areas and mechanical equipment have been appropriately implemented; and
3. that would require that any outdoor lighting or security cameras will not be directed onto any adjacent residential lands.

[28] Daraban consents as well to the Board withholding its final order pending receipt and notification from the parties that the final Site Plan and associated Site Plan Agreements have been executed with the City, and that the City is satisfied with the form of the proposed OPA and ZBA.

Statutory Context

[29] The in force Official Plan is the 2003 City of Mississauga Official Plan as amended to the time the applications were deemed complete, being August 31, 2010.

[30] Although a new Official Plan was adopted by the City of Mississauga (March 2010) and approved with modifications by the Regional Municipality of Peel (September 2011), it is under appeal as it might affect this property, and therefore, is not in effect. The Board was informed that Daraban is one of the appellants to the new Official Plan. Daraban's Counsel advised that his client has appealed the entire new Official Plan, but only as it pertains to the subject property.

[31] The Board was informed by the parties that Daraban's appeal of the new Official Plan is being held in abeyance pending a determination of the subject appeals now before this panel of the Board.

SUMMARY OF THE EVIDENCE

[32] The Board, during the course of this almost two-week hearing, heard from the following qualified witnesses.

Daraban Holdings Limited

[33] Alan Young was qualified to give opinion evidence in the matters of land use planning. He was retained by Daraban in 2009 and has been the lead planner for the project that is now before the Board

[34] Mark Sterling was qualified to give opinion evidence in the matters of architecture, land planning and urban design. He was retained by Daraban in August 2012 to provide urban design advice for its project. The modified design now before the Board results from his recommendations.

[35] Dr. A.D. Lightstone was qualified to give opinion evidence in the matters of acoustics, architectural acoustics, environmental acoustics, and noise and vibration control. His firm was retained in February 2010 by Daraban to provide technical advice with respect to noise, and the Ministry of the Environment's and City's noise guidelines. He undertook a noise study with regard to noise impact assessments and noise mitigation designs for the proposed development.

[36] Richard Pernicky was qualified to give opinion evidence in the matters of transportation engineering and transportation planning. His firm was retained by Daraban in February 2010 to undertake a traffic impact and parking study analysis for the original proposal and subsequent designs of the entrances, parking and traffic circulation systems associated with the revised 152 unit proposal.

The City of Mississauga

[37] Joseph Gulizia due to his training and experience was qualified to give opinion evidence related to the operational and functional requirements of retirement homes and long term care facilities. The Board, after considering submissions from Counsel, indicated that Mr. Gulizia's testimony would be restricted to the planning matters before the Board and that the Board would not hear testimony with respect to compliance with

the Ontario Building Code or other provincial design standards that might subsequently apply if this subject proposal was approved, but to which the Board has no jurisdiction.

[38] N. Edward Davidson was qualified to give opinion evidence in the matters of land use planning. He was retained by the City in July 2012 to review the applications and to assist the City in the matters now before the Board.

[39] Terry Montgomery was qualified to give opinion evidence in the matters of architecture and, due to his experience, matters of urban design. He was retained by the City in November 2012 to provide urban design advice for the project and to assist the City in the matters now before the Board.

The Region of Peel

[40] Brock Criger was qualified to give opinion evidence in the matters of land use planning. Mr. Criger is the Manager of Development Services-Planning for the Region.

Participant

[41] The Board also had the benefit of Murray Schelter's testimony. Mr. Schelter lives at 3617 Holden Crescent. The salient concerns he presented to the Board are as follows:

1. The proposed seven-storey retirement home is an overdevelopment of the site.
2. The seven storey height is not in keeping with the height of most buildings along Cawthra Road or within the adjacent residential neighbourhood.
3. The proposal is not in keeping with the directions of the in force City of Mississauga Official Plan section 3.2.3.2 which states in part:

High quality and innovative residential design will be promoted in a form which reinforces and **enhances** the local community **character**, respects its immediate context and creates a quality living environment. Innovative housing types and zoning standards will be encouraged. Design issues related to built form, scale, massing, orientation, parking, overshadowing, and the quantity and quality of open space will be priorities in assessing the merits of residential **development**.

4. He indicated a preference that the area be designated by extending the existing “Residential Medium Density 1” designation northward to cover the gas station site. However, he reluctantly supports the city council resolution to re-designate the entire site “Residential High Density I-Special Site” with a four storey height limitation.
5. He believes the parking standard for “Retirement Dwellings” of 0.5 spaces per unit should be maintained.
6. He believes that the official plan should be interpreted as placing the site at the centre of three neighbourhoods and not at the edge of the Mississauga Valley District Neighbourhood.

[42] The Board will give a summary of what it perceives to be the key evidentiary components provided by these key witnesses before it makes the requisite findings on the matters under appeal. This summary is undertaken by topic and does not follow the specific issues set out in the issues list filed by the parties, as in many cases these issues are reflected in the major topic areas covered by the Board.

Land Use Planning

[43] Both Mr. Young and Mr. Davidson in their testimonies provided fulsome reviews of the applicable Official Plan policies, as set out in their respective witness statements (Exhibit 7 and Exhibit 17).

[44] Mr. Young adopts the urban design evidence of Mr. Sterling as it related to the applicable urban design policies of the respective Official Plans. He testified that in his opinion the proposal now before the Board would be consistent with the Growth Plan for the Greater Golden Horseshoe Area and the applicable sections of the 2005 Provincial Policy Statement and s. 2 of the *Planning Act* (“Act”), as these documents support intensification within urban areas where full municipal services are available. He freely admits that the subject area is not within the “Urban Growth Centre”, nodes or intensification corridors, as set out in the City’s planning documents where intensification areas are identified and this form of development is promoted. He opined that the proper reading of the interim intensification policies of the in force City’s Official Plan encourages residential intensification on vacant or underutilized lands outside the “Urban Growth Centre” and along major roads. He opined that the mid-rise development as being proposed would be in conformity with the policy directions of the in force

Official Plan, noting that both Burnhamthorpe and Cawthra Roads are designated as arterial roads.

[45] Mr. Davidson's testimony is that the City through its various studies and amendments to the in force Official Plan has identified areas where intensification should occur and that the City's planning documents are consistent with the provincial policy directions. He opined that there is no policy direction in the in force Official Plan that would encourage the height and density of development being proposed at this location. He concurs with Mr. Young that the new City Official Plan carries forward the land use designation of the in force Official Plan for this site and further defined the "intensification corridors" where intensification is encouraged. He noted in his testimony that neither Burnhamthorpe nor Cawthra Roads have been designated as "Intensification Corridors" by the new Official Plan. It was his testimony that there is no policy direction in the in force Official Plan that would sanction the density and height being sought by Daraban in its revised proposal. He supports the Council resolution that the height of any development be restricted to four storeys at this location. He also supports the "Retirement Dwelling" use as an appropriate use for this site but at a lower density than is being proposed. He sees the proposed density resulting in a population density equal to the lower end of the density prescribed for the designated "Urban Growth Centre" which forms part of this planning district to the west in the area of Hurontario Street.

[46] All the planners agree that no OPA is required to the Region's Official Plan to permit this development.

[47] Mr. Young advised the Board that the in force Official Plan contains criteria to be considered for site-specific Official Plan Amendments which states:

**5.3.2 Criteria for Site Specific
Official Plan Amendments**

5.3.2.1 Council will consider applications for site specific amendments to this Plan within the context of the policies and criteria set out throughout this Plan. The proponent of an Official Plan Amendment will be required to submit satisfactory reports to demonstrate the rationale for the amendment; including, among other matters:

- a.** that the proposed redesignation would not adversely impact or destabilize the following:
- the achievement of the overall intent, goals, objectives and policies of this Plan;

- the **development** or functioning of the remaining lands which have the same designation, or neighbouring lands;
- b.** that a comprehensive review of land use designations or a five year review is not required;
- c.** that the lands are suitable for the proposed use, and a planning rationale with reference to the policies of this Plan, other applicable policies, and good planning principles is provided, setting out the merits of the proposed amendment in comparison with the existing designation;
- d.** land use compatibility with the existing and future uses of surrounding lands;
- e.** the adequacy of infrastructure and community services to support the proposed application.

[48] Mr. Young opined that the proposal before the Board would meet the criteria for an Official Plan Amendment, would not adversely impact or destabilize the surrounding neighbourhood, and was a better planning use of the vacant commercial lands at the corner. He further noted that the City staff deemed his client's application for an Official Plan Amendment to be complete. It was his opinion that this site at the intersection of two major arterial roads was an excellent location for a mid-rise development that would be compatible with, and provide, an appropriate transition to the lower density uses to the north, east, west and south. He proffered that the proposed use is to be preferred to the continuation of the motor vehicles uses currently permitted on the northern part of the site and that the height of the proposed building was in keeping with the height of the Catholic church across Cawthra Road.

[49] Mr. Davidson takes no issue with this site being used for a "Retirement Dwelling, as he sees this use being less intensive in its needs for parking. He supports in principal the City Council resolution that "Retirement Dwelling" be the permitted use for the site and that the height of any building be limited to four storeys. He opined however, that Council direction for an Official Plan Amendment was not clear noting the FSI range in the Official Plan and that the zoning designation recommended by Council provided to widen a FSI range of density. He prefers a precise Official Plan Amendment and Zoning By-law Amendment based upon an approved Site Plan for a four-storey retirement dwelling on the site. He proffered no density range for this site or any proposed Official Plan Amendment or Zoning By-law Amendment that would implement the June 20, 2012, Council resolution.

[50] Mr. Young further testified that his client's applications were supported by a functional servicing report and that no concerns were raised by either the City or the

Region regarding the provision of community services to accommodate the proposed development. This fact is not in dispute.

[51] Mr. Young opined that with respect to the Mississauga Valley District Plan (“MVDP”), the proposal would be consistent with the “Development Concept” set out at s. 4.25.2 which states

4.25.2 Development Concept

The District is a stable, established residential community with only a few sites remaining to be developed. The development in Mississauga Valleys was influenced by its proximity to the City Centre and the commercial area of Cooksville. The focus of the policies is: to preserve and enhance the character of the existing community; to facilitate infilling and redevelopment consistent with the existing character of the community, where appropriate; to improve the nature and appearance of retail commercial development along major roads; to maintain and enhance environmental features and processes; and to improve the transportation system. (MPA-40)

[52] He sees the proposal as an appropriate form of redevelopment and infilling that reflects, and would enhance, the existing character of the area by providing an alternative form of housing for the elderly. He sees the permanent removal of the service station site as a positive that will enhance the neighbourhood. He noted that the “Retirement Dwelling” use is a permitted use in the medium density portion of the site today and that in his opinion the use of the entire site for the proposed mid-rise retirement dwelling is an improvement over the existing condition that is to be preferred.

[53] Mr. Davidson takes no issue with the proposed use but opined that the height and the density being proposed would not enhance this part of the MVDP and would not provide the transition in height the Official Plan contemplates. He testified that within the MVDP, the highest density allocations are found on the west side of the planning district, as shown on the MVDP Land Use Schedule (Exhibit 1A, Tab p 268), being the city centre area. He testified that as one moves eastward from Hurontario Street, both the heights of buildings and their density transition down to the low density areas. The same low density areas are found in the Rathwood District to the north and the Applewood District to the east.

[54] It was his opinion to place a seven-storey structure at this location would not be in keeping with the heights and density currently found in the immediate area, noting that with the exception of the Ukrainian Catholic church, this is generally a low rise, two-

and-three-storey area in all of the planning districts that converge at this intersection. It was Mr. Davidson's opinion that the proposed development concept would not preserve or enhance the character of the existing community, as required by s. 4.25.2 of the MVDP.

[55] Mr. Young further opined that the in force Official Plan, in s. 3.2.2.2(c), directs that high density residential development be located "along Arterial and Major Collector Roads." He also noted that s. 3.3.3.3(a) permits housing for the elderly throughout the planning district. It was his opinion that the proposed development would meet all of the locational policies of the in force Official Plan for higher density development and should be approved.

[56] Mr. Davidson, on the other hand, opined that there was no policy basis to grant a high density status to the subject site on the basis of the interim intensification directions already in the in force Official Plan. This section of the Official Plan states:

3.2.4.3 Outside the Urban Growth Centre

- a. Applications for residential *intensification* not in compliance with Section 3.2.4.1.b and requiring amendments to Mississauga Plan will generally be considered premature. Increases in density may be considered where the proposed *development* is *compatible* in built form and scale to surrounding *development, enhances* the existing or planned community and is consistent with the intent of this Plan.
- b. Where there is no restriction on the heights of buildings in the District Policies, any consideration to heights in excess of four (4) storeys will only be considered where it can be demonstrated that an appropriate transition in heights that respects the surrounding context will be achieved.

[57] In Mr. Davidson's opinion, the proposed development will not reinforce the existing character of the MVDP as this proposal does not "reflect the historic, present and evolving policy framework established for the site and its surrounding area." He sees the proposal as a departure from the density hierarchy established by the Official Plan and that seven storeys at this location would not represent an appropriate transition in height that respects the surrounding context of the predominately one-and-two-storey buildings found in the immediate area. He does not see a seven-storey building at this location being "an appropriate transition in height that respects the surrounding context", as direct by the Official Plan. He believes the applications as revised should be considered premature under current Official Plan policy.

[58] Mr. Young freely admitted under cross-examination that a four-storey retirement dwelling on this site would meet all of the objectives of the in force Official Plan as well. He testified that at either four storeys or at seven storeys, the proposed building would fall within the 45 degree angular plane prescribed by the Zoning By-law when determining height and that when one took into consideration the shadow studies conducted by his client, it was clear that no adverse impacts would result from the proposed seven-storey building with respect to sun shadows or oversight issues and as a result, he see the proposal before the Board being compatible with the surrounding area and representing good planning for this part of the municipality.

[59] Mr. Davidson, on the other hand, opined that to allow a building with the height and density being proposed would not be in keeping with the structural hierarchy for density set out in both the in force or new Official Plans of the City and on this basis, the proposal in its current form should not be approved.

[60] Mr. Davidson proffered that the ZBA before the Board, if approved, should have both a storey and metric height limitation and should not rely solely on the angular plane limitations of the Zoning By-law. He conceded under cross-examination that the proposed By-law Amendment had a height limitation of 26 m which he feels is much too high and should be limited to four storeys. He opined that the By-law Amendment should not be generic in its form but should contain schedules for height limits, the number and type of units, and be site-specific in its construction based upon an approved Site Plan.

[61] All of the expert witnesses in their evidence took the Board to various projects throughout the City that have been approved to support their varied opinions regarding height, parking standards, amenity space areas, traffic circulation, use, and urban design concepts.

[62] Mr. Young further opined that the proposed development, while not within the specific intensification areas designated by the in force and new City Official Plans, meets the other policies that encourage redevelopment and more modest intensification on this vacant site at the intersection of two arterial roads, noting that two transit services currently exist along Burnhamthorpe Road with bus stops in close proximity to the subject site. He adopts the evidence of Mr. Pernicky that a public transit route with a

stop in front of the proposed building is being considered for Cawthra Road. This infrastructure, in his opinion, would support the proposed residential development with its reduced parking standard and would, in his opinion, be consistent with the City's redevelopment policies found in both the new and in force Official Plans.

[63] Mr. Davidson opined that there was no guarantee that the Cawthra transit services would be approved and as such, should not be relied upon.

[64] Mr. Young reviewed the proposed OPA being put forward by his client (Exhibit 13) noting that the only limitation from the provisions of the "Residential High Density II" designation was the limitation that the only permitted uses would be "a retirement home including accessory uses such as a medical office and a tuck shop."

[65] He confirmed under cross-examination and on questioning from the Board that the proposed ZBA (Exhibit 14) placed a height restriction of 26 m on the building which he opined was consistent with the angular plane requirements of the Zoning By-law. He confirmed that the proposed ZBA did not place any restriction on the maximum number, or the type of, dwelling units that might be placed in the proposed building, but instead opined that the FSI of 1.61 was all that was needed to govern the intensity of development. He proffered under cross-examination he that had no difficulty if the Board wished to impose a maximum number of 152 dwelling units in the proposed ZBA, but that he did not think it was necessary.

[66] Mr. Davidson in his testimony noted that the parking standard was based upon the number of units in the building and as such, it was important that the ZBA identified the number of, and type of, units being proposed.

[67] Both planners opined on the application of s. 37 of the Act to this project. Mr. Young in his testimony noted that the City had only used s. 37 twice, that at no time did staff or City Council ever indicate that this project should be subject to a s. 37 application. Mr. Davidson opined that s. 37 should be applied to any development in excess of four storeys.

[68] Mr. Criger, planner for the Region, testified that the Region takes no position with respect to the OPA or the ZBA before the Board and confirmed that the Region's Official Plan defers to the City with respect to these land use matters. He advised the Board

that the Region's two concerns were with the access for waste management vehicles to the site and that the width of Cawthra Road was in fact 36 m across the subject property. He confirmed that the Region had received the surveyor's letter (Exhibit 20) confirming the Cawthra Road allowance was in excess of 36 m across the Cawthra Road frontage of the property and that this confirmation would satisfy the Region's concerns with respect to the road allowance width.

[69] He also confirmed that the issues of waste management had been resolved. He took the Board to eight conditions the Region would want in the Site Plan Agreement if the Board were to decide to approve the Site Plan under appeal. The Region's conditions are set out at Exhibit 21.

[70] Mr. Criger confirmed that the Region relies on the City to include its conditions in the City Site Plan Agreement and does not impose a separate Site Plan Agreement on its own.

Urban Design

[71] Both Mr. Sterling and Mr. Montgomery in their testimonies provided fulsome reviews of the applicable Official Plan policies and applicable urban design guidelines as set out in their respective witness statements (Exhibit 7 and Exhibit 17).

[72] Mr. Sterling reviewed his recommendations for the proposed design and his opinion as to why this stepped design with heights ranging from five to seven storeys met the various urban design guidelines set out in the City Official Plan and other guidelines the City used to ensure good urban design.

[73] Mr. Sterling, to some degree, relies on the 45 degree angular plane calculations prescribed by the City's Zoning By-law and the sun shadow studies conducted by his client as a rationale that a building in the manner and of the height being proposed would result in no adverse impacts to surrounding land uses. He opined that the tests set out in s. 3.18.2.7 of the in force Official Plan for buildings higher than three storeys and s. 9.2.2.1 of the new Official Plan for buildings higher than four storeys will be met.

[74] Section 3.18.2.7 of the in force Official Plan states:

3.18.2.7 Proposals for buildings higher than three (3) storeys will be designed to minimize overlook conditions, obstructions of grade level vistas and overshadowing of any adjacent properties. In this regard, sun and shadow studies, view studies and micro-climatic studies may be required to determine the impacts of the proposal. For the purpose of this policy, the above-noted studies generally would not be required for **adjacent lands** used for industrial purposes.

[75] It was his opinion that the above-noted studies have demonstrated no adverse impacts of shadowing or oversight on the surrounding properties beyond what the Zoning By-law would permit as of right should the proposed building be approved in its current form. He opined that the location and form of the building and its relation to both Burnhamthorpe and Cawthra Roads was consistent with relevant urban design policies of the in force Official Plan found under the headings of “Urban Design”, “Context”, “Places”, “Urban Form”, “Streetscapes”, “Pedestrian Activity”, and “Spaces”.

[76] Mr. Montgomery opined that since the development did not meet the minimum standards for parking, that the proposal was an overdevelopment of this site. He opined that the proposal does not reflect the scale, character and massing of buildings in the surrounding area and as such, was not compatible with its surroundings and would not meet the urban design guidelines of the in force Official Plan, as set out at s.3.18 .2.4 which states:

3.18.2.4 Building and site design will be **compatible** with site conditions, the surrounding context, features and surrounding landscape and the intended **character** of the area.

The terms **compatible**, **character** and **enhance** in the City of Mississauga Official Plan are defined as follows:

COMPATIBLE

means **development** which may not necessarily be the same as or similar to the existing or desired **development**, but nonetheless **enhances** an established community and co-exists with existing **development** without unacceptable adverse impact on the surrounding area.

CHARACTER

means the aggregate of the features including the attributes of the physical, natural and social dimensions of a particular area or neighbourhood.

ENHANCE

means to complement and assist in furthering the aesthetic and intrinsic value of a neighbourhood, site or structure.

[77] Mr. Sterling confirmed under cross-examination and in response to questions from the Board that the west wall of the building, except for the southern and northern stepped portions, would present as a seven-storey structure for most of its length, to the properties to the immediate west along Holden Crescent (Exhibit 4B, Tab 4. Building elevations).

[78] He opined that the outdoor, at grade amenity space at the south end of the building was an appropriate design that would mitigate sound and was a feature that would enhance the streetscape in this area. He believes that the proposed building will heighten architectural interest and will provide a focal point for this very important intersection in the City, consistent with the policy directions found in the urban design sections of the Official Plan. He reviewed the location of the building on the site, the landscaping along the streetscape and the additional landscaping and setback from the property line to the west and the circulation of vehicles on the site from a urban design perspective, and opined that the project being proposed would meet the urban design objective of the City and would result in appropriate development for this part of the City.

[79] Mr. Gulizia in his testimony opined that the roof amenity space would not be used by residents as it presents too harsh an environment due to wind and sun exposure. He also opined that the at grade amenity space was not properly located with respect to the rest of the building and would not be actively used. It was his opinion that the loading space area would be a preferred area by most residents wanting to go outside.

[80] Mr. Sterling freely admitted under cross-examination that a four-storey building could achieve the same urban design policy goals. However, he believes that this site warrants a higher building in what he terms a mid-rise building and that a building such as the one being proposed would better achieve the public interest goals set out in the Official Plans, would better animate the streetscape, and would establish a built form that would act as a focal point for this very important intersection within the City.

[81] Mr. Montgomery opined that the proposed building was an overdevelopment of this site that the location of the front entrance along Cawthra Road does not enhance, or provide, a focal point for the intersection and in his opinion does not meet the urban design guidelines of the Official Plans.

[82] Mr. Sterling believes that the building as proposed will be compatible with the surrounding area as that term is defined (no unacceptable adverse impacts), is consistent with the intended "character of the area", and will "create appropriate visual and functional relationships between individual buildings found in the immediate area." While Mr. Montgomery opined that a building of this height was out of character with the height of existing surrounding residential development and did not provide the transition in the height of building required by the Official Plan policies and as such, would not enhance the existing character of the three planning districts that converge at this location.

Acoustics and Noise Attenuation

[83] The Board finds the testimony of Dr. Lightstone in the area of noise to be fulsome and complete. It is clear from his testimony that the in force City of Mississauga Official Plan and the Ministry of the Environment Guideline LU131 are similar in the outcomes in that they require for noise attenuation. Dr. Lightstone in his testimony confirmed that the original proposal and the proposal now before the Board utilizing the mitigation measure he prescribed in his report (Exhibit 2, Tab 7, p 167) would meet the noise guidelines for both the building and the amenity spaces at grade, and the roof amenity area of the proposed building. He testified, both in his direct evidence and under cross-examination, that his recommendations would normally find their way into the Site Plan Agreement with the City. He freely explained that some of the mitigation measures required, particularly for mechanical equipment, would not be known until the time of construction, that this was normal, and that municipalities normally require confirmation that the as built drawings comply with the noise attenuation guidelines prior to occupancy. He confirmed under cross-examination that the noise level guidelines could be met for either a four-storey or the current seven-story building and that in his opinion, there would be no adverse noise impacts on the surrounding residential areas to the west with respect to any noise emanating from the proposed building.

[84] Dr. Lightstone's evidence was uncontested.

Traffic, Parking and Site Circulation

[85] Mr. Pernicky reviewed his testimony with respect to traffic, access locations and design, parking requirements, and site circulation matters, as set out in his witness and reply-witness statements (Exhibit 7, Tabs 5 and 6).

[86] He reviewed the various parking standards used for retirement dwellings and lodging homes at several locations in the City, a study prepared by Cansult in December 2005 and a separate city planning study prepared on parking standards for the subject type use in 2002 (Exhibit 1B, Tab 14, p. 264). He confirmed that he originally recommended a parking ratio of 0.33 spaces per dwelling unit and testified, both in chief and under cross-examination, that he was satisfied that a parking ratio of 0.40 spaces per dwelling unit now being proposed and shown on the Site Plan (Exhibit 4A, Tab 1) would be appropriate. It was his opinion that this level of surface parking was preferred to underground parking.

[87] Mr. Gulizia in his testimony opined that underground or covered parking was to be preferred and that a parking ratio of 0.5 spaces per unit should, in his experience, be applied.

[88] Mr. Pernicky confirmed that the right turn access now being proposed was appropriate subject to some minor adjustment to the radius of the Cawthra Road entrance to accommodate fire trucks leaving the site and that this would be finalized during the final Site Plan approval process. He freely admitted that he believes that both a right-turn and left-turn-movement at the Cawthra Road entrance would be preferable but that the Region has a by-law restricting this form of movement. He noted that the Cawthra Road entrance was being modified and signed to meet the Region's requirements to allow for the left-turn movement of emergency vehicles only to the site.

[89] He confirmed that the loading space on the site was designed to accommodate an 11-metre length of truck and that he had resolved with the Region the design and location of the loading area for the pickup of waste and that this would be reflected on the final Site Plan and Site Plan Agreements.

[90] He confirmed that there was no designated drop-off area for residents but opined that the parking spaces near the rear entrance or the existing drive at this location could be used for this purpose. He confirmed his opinion that a drop-off at the front of the building along Cawthra Road frontage was not possible due to the configuration and purpose of Cawthra Road at this location.

[91] Both Mr. Gulizia and Mr. Montgomery believe the locations of the loading dock and drop-off area in close juxtaposition are not appropriate and will cause on-site traffic conflicts.

[92] Mr. Pernicky testified that two bus routes currently exist along Burnhamthorpe Road and the location of the “through intersection location bus stops” service this site. He opined that these bus stop locations were within appropriate walking distances for residents of the project. He also testified that a new bus route was being planned for Cawthra Road to connect with the new rapid transit bus station being constructed at the intersection of Cawthra Road and Highway 403 and that it was contemplated that a bus stop for this new route would be right in front of the proposed building.

[93] He testified that he had undertaken a traffic impact study in accordance with the municipal guidelines and determined that there would be no adverse traffic impact resulting from this development on the road network. His conclusions in this regard are supported by City and Region staff.

[94] He confirmed under cross-examination that his client was prepared to enter into the appropriate Site Plan Agreement with the Region to provide a 0.3 m reserve along the Cawthra Road frontage.

[95] Mr. Gulizia in his testimony opined that the loading space was not properly located and that, in his experience, trucks with a length greater than 11 m would be servicing the site and as such, would block the driveway area when using the loading bay. He noted that there was no designated drop-off area for a resident which, in his opinion, is a common feature for these types of retirement facilities.

FINDINGS AND CONCLUSIONS

[96] The Board, after carefully reviewing the evidence and submissions made by the parties and the participant, makes the following findings.

[97] The substantive matters in this appeal deals with matters of urban design, height and density. There is no compelling evidence before the Board that the use of this site for a "Retirement Dwelling" is not an appropriate use. City Council in its resolution of June 20, 2012, (Exhibit 1B, Tab 5, p 73) supports this type of use on the site, albeit at a lower height and perhaps a lower density to that sought by Daraban. Similarly, City staff in their report of June 11, 2012, (Exhibit 1B, Tab 3 p. 63) on the application did not take issue with the "Retirement Dwelling" use, but instead expressed concerns with some aspects of the design submitted and recommended a six-storey building stepping down to four storeys with an FSI of 1.4 (Exhibit 1B, Tab 4).

[98] Mr. Davidson in his testimony also supports a "Retirement Dwelling" use for this site at four storeys. He proffered no opinion on the density to be imposed preferring to review a revised Site Plan showing a four-storey building.

[99] The Board finds nothing in the new Official Plan of the City that would cause the Board to conclude that the City's new planning policies would result in a significantly new policy direction for the subject property that would give the Board direction that the proposal now before it should not be considered under the policies of the in force Official Plan. The land use designation on the subject property according to the experts has remained unchanged and the urban design directions found in both the old and new Official Plans, while worded slightly differently, convey in the Board's determination, a similar review direction.

[100] It is the Board's determination that the policy directions found in the existing in force Official Plan are the directions to be applied in determining this application.

[101] The Board is cognizant of the fact that the applications presented to it at this hearing have been varied by Daraban from what was before City Council in the original applications in an attempt to meet in a more fulsome way the urban design guidelines articulated by the in force, and to a lesser degree the policy directions of the new City Official Plan and other design guidelines of the City. The Board would note that the

revised Site Plans filed on October 9, 2012, have not been reviewed by City Council or its staff in any meaningful way.

[102] Counsel for Daraban in his submission noted that the matters before the Board resulted from a non-decision of Council within the time frame prescribed by the Act and as such, in his view, s 2.1 of the Act would not apply.

[103] Counsel for the City submits that the Board should have regard to the June 20, 2012, resolution of City Council as its direction on the matter. He submits that this Council decision resulted from the applications filed by Daraban which have been the subject of the statutory public meeting on January 9, 2012, and clearly reflect Council's views on the applications.

[104] The Bill 51 amendments to the Act direct that the Board "shall have regard to" Council's decisions before and after the appeals were received by the Board.

[105] Section 2.1 of the Act as amended by Bill 51 states:

2.1 Decisions of councils and approval authorities

When an approval authority or the Municipal Board makes a decision under this Act that relates to a planning matter, it shall have regard to,

- a) any decision that is made under this Act by a municipal council or by an approval authority and relates to the same planning matter; and
- b) any supporting information and material that the municipal council or approval authority considered in making the decision described in clause (a). 2006, c. 23, s. 4.

[106] Clearly, a fair reading of s. 2.1 must be read in the full context of the *Planning Act* amendments. In the case at point, it is the decision and resolution that Council made with respect to the OPA/ZBA appeals now before this Board that the Board is compelled to "have regard to" in arriving at its decision on the merits of the matters under appeal. The Board does not accept the proposition that by merely filing an appeal prior to Council making a determination on the matter this would sanction the Board to automatically disregard without any consideration Council's position. The Board would note that s. 2.1(a) states "any decision made under this Act". In this case, Council's resolution resulted from its deliberations on planning applications filed by Daraban and

appealed to this Board, and the Board must have regard to Council's decision and the material they had before them in arriving at its decision.

[107] The simple fact is that Council did not fail to make a formal decision on the OPA/ZBA applications of Daraban, it merely did not reach its determination in the time frame prescribed by the Act to allow an applicant to appeal. Daraban through its Counsel appealed on March 9, 2012, the OPA and ZBA applications to the Board. City Council at its meeting of June 20, 2012, passed its resolution recommending an Official Plan Amendment to "Residential High Density I-Special Site" to allow the use of a "Retirement Dwelling" on the site, provided the proposed structure was limited to a height of no more than four storeys and having a density as set out in the "Residential High Density I" designation of the in force City Official Plan. Council by the same resolution approved a Zoning By-law Amendment to implement this Official Plan Amendment utilizing the provisions of the "RA1" zone. The final Site Plans were not filed by the Appellant until October 9, 2012, well after the Council resolution and direction of June 20, 2012.

[108] The intent of much of the Bill 51 amendments was to ensure that Council had all of the information and material necessary to make a decision and the role of the Board is that of an appellant body, as opposed to a primary or alternative decision maker.

[109] The Minister responsible for Bill 51 during second reading of the Bill on April 19, 2006, stated:

I can't repeat often enough. The OMB should not be a primary decision body, but should deal strictly with appeals of matters that come before council, on which a council decision is made, and whether or not that decision is in accordance with the provincial policy statement and the municipality's own official plan.

[110] During the course of this hearing, no motions were brought by any party pursuant to s. 34(24.4) or its counterparts to refer any of the new material adduced in this hearing back to City Council on the basis that "the information and material could have materially affected the council's decision." Nor does the Board conclude that any of the new material filed during this hearing would have altered the Council decision of June 20, 2012 in that the Council resolution was clear that the height of the building should

be no higher than four storeys. The revised site plans submitted by the appellant clearly exceeded this direction of City Council.

[111] The courts in *Minto Communities Inc. v Ottawa (City)* 2009 Carswell Ont 7349, 63 O.M.B.R. 389, 66 M.P.L.R. (4th) 1, 257 O.A.C. 207, 313 D.L.R. (4th) 419 have confirmed the Board's obligation as set out in s. 2.1, as articulated by Vice Chair Stefanko in his decision *Keswick Sutherland Schools Inc. v. Halton (Municipality [2009] O.M.B.D. No. 618)* where he states in part:

that the Board had an obligation to at least scrutinize and carefully consider the Council decision as well as the information and material before Council to the extent possible" but that the Board must "for obvious reasons, retain its independent decision-making authority.

[112] The material Council had before it is contained within the exhibits filed and the Board has reviewed it together with the evidence adduced by the expert witness as to the Council's resolution meaning and how the Board should determine City Council's intent.

[113] It is the Board's obligation to consider carefully the Council's decision, the material before Council when it made its decision together with all the other facts, evidence, concerns of the residents living in the immediate area, and expert opinions proffered during this hearing, and from this, the Board must then make its own independent determination.

[114] It is unfortunate that Daraban in this case did not attempt to resolve the matter based upon the Council resolutions of June 20, 2012. It is equally unfortunate that Counsel for the City did not provide clarification of Council direction by either providing draft Official Plan and Zoning By-law Amendments or seeking more specific directions as to the Council's intention.

[115] Mr. Davidson in his testimony clearly stated that Council direction with respect to density is unclear when one reads the resolution in its entirety. Clearly, Council is prepared to support a retirement dwelling at this location in the four-storey building, but beyond that there is no certainty as to the number of units or to the built form by way of Site Plan it would support.

[116] There is no evidence that City Council ever had before it, or considered, the revised Site Plan filed on October 9, 2012, and placed before this Board in this hearing.

[117] The entire focus of this hearing revolves around the policy framework established by various Councils for the municipality over the years, as reflected in its in force Official Plan documents and properly approved studies for the orderly development of this part of the City. It is not the proposed use of a "Retirement Dwelling" that is in dispute, but instead it is the height of the building and the density being sought by Daraban and how this built form translates and implements the City's in force Official Plan policies.

[118] This is the very substance of what the Board must have regard to in deciding the matter now before it. These matters must be considered carefully in light of all of the evidence adduced at this hearing, the Council and Committee resolutions placed before the Board without deference to any particular decision of the Council. In other words, the Board is required to bring its own judgement to the matter based upon a fulsome review of the evidence.

[119] The Board was provided with a number of site-specific examples of various retirement dwellings and lodging home developments throughout the City by the various witnesses in support of their various opinions. The best the Board can take from these examples is that in Mississauga, higher density development is dealt with on a site-specific basis and development standards are developed and constructed on a site-specific basis by way of exemptions to the Zoning By-law standards to meet the unique situation of the site and development being proposed.

[120] It was Mr. Davidson's uncontradicted testimony that there were no as of right high density zones ("RA-1" or "RA-2") pre-zoned sites in place in the City and that such development proceeds by way of exemption to the By-law, be it by amendment or minor variance. The Board, as such, can place little reliance on many of the standards put forward as being applicable in this specific situation.

[121] It is clear to the Board after considering all of the testimony of the witnesses that the use of this site for a retirement dwelling with accessory uses is a preferred use to what currently exists on the site. The Board also accepts that a parking ratio of 0.4 spaces per dwelling is an appropriate parking standard for this site when one considers

the proximity of public transit, and that noise attenuation measures for such a use can be provided that meet the applicable provincial and municipal noise guidelines.

[122] The Board finds from its review of the evidence and the testimony of even the witnesses for Daraban that a four-storey building can achieve the urban design criteria of the Official Plan. Both Mr. Sterling and Mr. Young were forthright in this regard. Mr. Sterling, however, believes that the seven-storey building will provide a better focal point for this important intersection and will better animate the streetscape adjacent to the proposed building.

[123] These urban design goals must be weighed against the Official Plan policies that development will reflect the City's Official Plan urban form hierarchy for density:

2.11.1.4 Mississauga will ensure that **development** contributes to a built form, reflective of the urban form hierarchy of Centres, Nodes and Corridors, giving prominence to the City Centre. (MPA-25)

and

2.11.2.8 To ensure that buildings and structures relate to human scale and reinforce the scale of the community.

and

3.18.7.3 Building and site designs should create a sense of enclosure, pedestrian scale and identity. Enclosure means having built form along the street edge with heights appropriate to its context.

[124] It is the Board's finding that the scale of buildings in the immediate area, with the exception of the Ukrainian Catholic Church, are low rise buildings consisting of two-and-three-storey structures and that the proposed seven-storey structure stepping to five storeys at its southern and western edges does not reinforce the scale of the built form found in the existing built up community and while the building creates an enclosure by wrapping around the street corner, it does so at a height that is out of context with the majority of development found in the immediate area. This same enclosure effect could be achieved in the Board's finding with a four-storey building. The Board also prefers the evidence of Mr. Montgomery that by facing the front entrance of the building along Cawthra Road as opposed to it being located and facing the intersection, the building as a focal point is somewhat diminished.

[125] Counsel for Daraban suggests that if the Board rejects its proposal, the “Motor Vehicle Commercial” designation at the corner use will remain which by all accounts, is no longer a preferred use. This is not a reason for the Board to accept a built form on the site that does not respect the long-term planning directions of the municipality with respect to built form and scale. The ability to change the Official Plan designation on this site remains open to an applicant or the City Council.

[126] The uncontradicted evidence of all of the planning witnesses is that the City has well-established planning policies that encourage height and density in a hierarchical manner with the “City Centre Area” to the west having the highest densities and heights followed by the designated node and now-designated corridors. This is clearly set out in the interim intensification policies of the in force Official Plan.

[127] The Board finds that the in force intensification policies of the City to be clear, effective and represent good planning consistent with provincial policy directions for intensification and growth and that any applications seeking to intensify this site should be determined by the City’s planning policies and that such determinations would be consistent with provincial policy.

[128] The Board has carefully reviewed the Official Plan documents filed, the evidence and the testimony of the witnesses and the participant, and finds no reason to conclude that City Council erred in its interpretation of its planning policies when it passed its resolution of June 20, 2012, endorsing the retirement dwelling with a four-storey height limitation for this site.

[129] Counsel for the municipality encouraged the Board as an alternative to endorse the resolution of City Council and direct that an Official Plan Amendment and Zoning By-law Amendment be prepared to implement the Council’s direction. Mr. Davidson in his testimony was clear that the Council resolution was unclear with respect to density and at no time was the Board presented with any amendments that would implement Council’s direction and as such, the Board will not make any directions for such amendments as requested by Counsel for the City as an alternative.

[130] The matter of what density might be permitted in a four-storey building is an open question to be determined by a new application within the four-storey height parameter.

[131] This is a matter best left to the municipality and Daraban or a new applicant.

[132] There is an onus on an appellant when seeking a new use and a building height and density not specifically permitted by the municipal planning documents to prove the merits of its case. It is the Board's finding that Daraban has established that a "Retirement Dwelling" use is appropriate for this site, that a parking ratio of 0.4 spaces per unit is appropriate, that all acoustic guidelines for noise mitigation can be achieved, and that such a use would not negatively impact community services or traffic circulation in the immediate area.

[133] The Board is not satisfied that the building being proposed at seven storeys with a FSI of 1.61 contributes to a built form reflective of the urban form hierarchy of "Centres, Nodes and Corridors", as required by s. 2.11.1.4 of the in force Official Plan or that the current proposal "reinforces the scale of the community" as required by s. 2.11.2.8. The Board in this regard prefers the evidence and opinions of Mr. Davidson as reflecting a proper and full reading of the City's in force Official Plan policies.

[134] Nor does the Board find that the proposed development at seven storeys meets the objectives to respect the immediate context of the areas or does it, in the Board's finding, enhance local community character of low density, low rise built form, as set out in the in force City of Mississauga Official Plan s. 3.2.3.2 which states in part:

High quality and innovative residential design will be promoted in a form which reinforces and **enhances** the local community **character**, respects its immediate context ...

[135] Even the experts for Daraban conceded that a four-storey building could achieve most, if not all, of the urban design guidelines of the municipality, although in fairness to Mr. Sterling, he firmly believes a higher building at this location would provide a more dramatic focus for this intersection. The Board does not agree. A building of the height proposed would establish a new height transition parameter for this intersection not in keeping with the current built form.

[136] The Board is not convinced that a seven-storey built form in the manner proposed at this location would better enhance the character of this part of the City as those terms are defined in the City's in force Official Plan.

[137] The Board, for the reasons set out in this decision, will neither approve the revised proposal of Daraban, nor will it direct alternative amendments to the Official Plan and Zoning By-law suggested by Counsel for the municipality due to the lack of clarity in City Council's resolution regarding density.

[138] In light of the Board's decision, the question of the application of s. 37 of the Act to this application is moot and the Board will make no determination on the merits of that issue.

DISPOSITION AND ORDER OF THE BOARD

[139] The Board for the reasons set out in this decision makes the following orders:

1. The Board orders that the appeal of Daraban Holdings Limited to amend the in force Official Plan of the City of Mississauga is dismissed.
2. The Board orders that the appeal of Daraban Holdings Limited to amend Zoning By-law 0225-2007 of the City of Mississauga is dismissed.
3. The Board orders that the appeal of Daraban Holdings Limited for a determination of the matters related to a Site Plan and Site Plan Agreement for a property known municipally as 3640-3658 and 3670 Cawthra Road in the City of Mississauga is dismissed.

"J. P. Atcheson"

J. P. ATCHESON
MEMBER