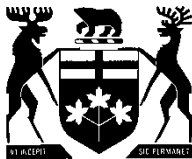


ISSUE DATE:

**January 17, 2014**



Ontario

Ontario Municipal Board

Commission des affaires municipales de l'Ontario

PL130153

F. S. 6810 Limited Partnership 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 6, 8 and 10 Ann Street from Mainstreet Commercial to residential High Density 1 and to add a special site policy to permit the proposed height, density and mixed use to permit a 140-unit, 22-storey condominium apartment building with commercial uses at street level and surface parking to serve the abutting funeral home to the south

Approval Authority File No. OZ/OPA 11 14

OMB File No.: PL130153

F. S. 6810 Limited Partnership 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 6, 8 and 10 Ann Street from Mainstreet Commercial (C4) to Residential (Apartment Dwellings) RA5 Exception Zone to permit the development of a condominium apartment building with commercial uses at street level and surface parking to serve the abutting funeral home to the south

OMB File No.: PL130154

## **APPEARANCES:**

### **Parties**

### **Counsel**

F. S. 6810 Limited Partnership

J. Alati

City of Mississauga

B. Ketcheson

## **DECISION DELIVERED BY R. ROSSI AND ORDER OF THE BOARD**

[1] F. S. 6810 Limited Partnership ("Applicant") has appealed to the Ontario Municipal Board ("Board") the failure or neglect of the City of Mississauga ("City") to make a decision on the Applicant's proposed Official Plan Amendment ("OPA") and Zoning By-law Amendment ("ZBA") applications to permit a 140-unit, 22-storey condominium apartment building with commercial uses at street level and surface parking to serve the abutting funeral home to the south. The OPA would redesignate 6,

8 and 10 Ann Street (the “subject property”) from Mainstreet Commercial to Residential High Density I and add a special site policy to permit the proposed height, density and mixed uses.

[2] Planner Lindsay Dale-Harris, Urban Design Planner Robert Glover and Architect Ralph Giannone (who designed the building) spoke in support of the application. City Development Planner Ben Phillips and City Urban Design Planner Sharon Mittmann spoke in opposition to the application. All witnesses were qualified to provide their evidence.

[3] The parties listed a series of issues to be adjudicated. The evidence presented led the Board to narrow down this hearing to the issue of balance and how the proposed development as supported by the proposed Official Plan and Zoning By-law Amendments could be accommodated in light of existing municipal planning policies and the City’s goal of preservation of the Port Credit Village character. In adjudicating this matter, which was determined by the Board the central issue in this hearing, the Board specifically assessed the development in the context of the municipal planning policies before it, which were given prominence and assigned substantive weight. Having considered all of the evidence in this context, the Board finds that the proposal as contemplated does not conform to current planning policies and does not achieve the above-stated goal in respect of the area’s character.

## **THE PROPOSAL**

[4] The Applicant proposes to build a 22-storey condominium apartment building on the subject property with commercial uses at street level. Underground parking for residents as well as 17 at-grade parking spaces will be provided on site. The building will sit atop a two-storey podium.

[5] The subject property comprises three parcels and is situated on the west side of Ann Street at the corner of High Street East and north of Lakeshore Road East. The southerly lot known as 6 Ann Street contains a one-storey dwelling. The middle lot at 8 Ann Street is being used for surface parking. The northerly lot at 10 Ann Street contains a one-storey dwelling. The subject property is located in the Port Credit Village of the City of Mississauga in an established neighbourhood comprised of a mix of residential, retail and office uses and it sits north of the funeral home that fronts onto

Lakeshore Road East. There is a mix of old mid-rise and high-rise apartment buildings as well as low-rise buildings and detached dwellings.

[6] The proposed Official Plan Amendment would change the land use designation from “Mainstreet Retail Commercial” from the 2003 Mississauga Plan (now “Mixed Use” under the City’s new Official Plan (Mississauga Official Plan (2011)) to “Residential-High Density I-Special Site” (now “Residential-High Density-Special Site” under Mississauga Official Plan). If approved, the Special Site provisions would create a building with a maximum floor space index (“FSI”) of approximately 7.4 times, a maximum height of 22 storeys, ground floor commercial uses to a maximum gross floor area (“GFA”) of 185 square metres and 17 at-grade parking spaces for the south-abutting funeral home. The Applicant also proposes to change the zoning from “C4” (Mainstreet Commercial) to “RA5-Exception” (Apartment Dwellings) by means on a Zoning By-law Amendment.

[7] The Applicant’s land use planner, Mrs. Dale-Harris, opined during her presentation that the proposed Official Plan Amendment and Zoning By-law Amendments are appropriate ways to facilitate development of an underutilized site in close proximity to the GO Transit Station and the Mobility Hub and represent good planning. A great deal of this planner’s evidence relied on the appropriateness of the proposed development in relation to the transit-supportive policy direction of the planning instruments. This evidence was generally uncontested, but the matter of transit-supportive development was but one component of the broader planning policy framework for Port Credit and transit was not a determinative issue. And, despite the transit responsive nature of placing high-rise development proximate to a Mobility Hub and south of the Port Credit GO Transit Station, the Board determines that the issues of preservation of the village character and non-conformity with other salient municipal planning policies were not sufficiently addressed by this planner when compared to the land use planning evidence of City planner Mr. Phillips for reasons discussed below. As such, the development in the form that the Applicant envisions cannot be considered to be an appropriate use of the subject property.

[8] The fact that the Applicant’s urban design planner, Mr. Glover and Mrs. Dale-Harris frequently referenced nearby high-rise buildings during their presentations as at least partially justifiable for development in the manner proposed was largely irrelevant to the matters at hand insofar as the City’s plans to control future development that preserves the Port Credit character are concerned. Exhibit 6, Tab 1 provides an aerial view of the Port Credit Node and identifies the subject site. This exhibit confirms the

statement of Mrs. Dale-Harris that there is no consistency in the height of buildings. The Port Credit Node is an eclectic mix of low and high-rise buildings. This aerial view shows the development of low-rise buildings (with several mid-rise examples) south of Lakeshore Road East. It also shows the existing and decades-older high-rise buildings, which start along High Street East and reach similar and greater tall heights as one moves north to Park Street East and farther north to the Port Credit GO Transit Station. At the southeast corner of Ann Street and Lakeshore Road East is an existing tall building of older vintage. Farther east is the Northshore Condominium Residences (“Northshore”) development at the gateway location of Lakeshore Road East and Hurontario Street.

[9] This aerial view exhibit can be interpreted in two ways. In its most facile interpretation, bereft of planning considerations, the existence of so many tall buildings (one located southeast of the subject property and others located north and west of the subject property) justifies the addition of yet another tall building. After all, with so many existing apartment buildings, what is the difference if another tall building is added to the mix of heights? In a more earnest interpretation, one informed by Mississauga’s planning regime, the addition of another residential tower cannot be supported where the City has set in place policies that support its strategic plan to protect and preserve the village character in Port Credit for the future.

[10] The Board sees no satisfactory justification on any planning grounds (discussed below with reference to the planning instruments) to permit development at this height and level of intensification or to approve planning permissions in the form of amendments such as those before the Board in this case whose effect is to impact adversely and undermine the City’s long-term vision for preservation of this area’s village character. Were the Board to approve this high-rise building, it would likely serve as the catalyst for future development applications seeking similar permissions along Lakeshore Road East and the Mainstreet Commercial-designated lands. No one can argue that high-rise buildings do not exist, but the City has taken policy steps to ensure that subsequent development does not replicate these older built forms. All recognize that the area was developed with these taller buildings at a time when no consistent planning framework existed. The City has demonstrated its intention and efforts to bring order to future development and growth of the Port Credit Village and such intensification must respect and contribute to the neighbourhood character; specifically, in a form of development that is lower in height than that sought by the Applicant and

that transitions appropriately to Lakeshore Road East and the immediate interior neighbourhood.

Mississauga Official Plan (2011)

[11] The witnesses provided various planning opinions with diverse interpretations of the broad policies of Mississauga Official Plan. It is reasonable and expected that divergent expert opinions might be provided in respect of broad policy goals such sections as “Guiding Principles”, building “Complete Communities” and contributing to broad transit goals. On this broader level, indeed a case can be made for more intense development such as that proposed by this Applicant. However, the Board’s thorough reading of the directly applicable policies, which provide direction on how development shall proceed on sites such as these and in respect of the preservation and protection of nodal character, indicated to the panel that this particular development and its facilitating instruments do not conform to Mississauga Official Plan.

[12] Specifically, although the subject lands are located within a Community Node and Major Transit Station Area and are in proximity to a Mobility Hub and in an area where intensification is to be directed primarily, the greatest intensification is to occur in the Downtown Core. The Port Credit Community Node “will provide for a similar mix of uses as in Major Nodes, but with lower densities and heights.” The Applicant proposes to development the site with proposed FSI of 7.4 times and unit density that far exceeds what currently exists in this Node. As City Planner, Mr. Phillips pointed out; this development reflects densities found more commonly in the Downtown Core. The most intensive development in this Community Node has been the Northshore Condominium Residences (“Northshore”) but even that tall development, which sits at the gateway corner of Hurontario Street and Lakeshore Road East, has combined density of 4.7 FSI and far lesser unit density than the subject proposal. Yet, the City witnesses presented no persuasive evidence – planning, policy or otherwise – to establish satisfactorily why a site within the Port Credit Community Node and governed by the Port Credit Local Area Plan (“Area Plan”) should be permitted to develop at a higher level than the Northshore (gateway) development; at a level consistent with Downtown Core high-rise development; and at density levels beyond anything currently existing in the broad area.

[13] Next, the Board reviewed the urban design policies of Mississauga Official Plan and finds persuasive the presentation of the City’s Urban Design witness, Mrs. Mittmann. This section of Mississauga Official Plan directs that “it is important that infill

“fits” within the existing urban context and minimizes undue impacts on adjacent properties.” Most importantly, “Redevelopment must also be sensitive to the existing urban context and minimize undue impacts on adjacent properties.” These broad goals are not achieved in light of Area Plan policies as referenced later in this decision. In the Board’s view, the proposed development at this level of height, massing and density, does not “respect the experience, identity and character of the surrounding context”, which is the Port Credit Village. Most plainly, the proposal does not achieve this policy document’s requirement that properties are “to develop in a manner that contributes to the overall vision for the city.” This proposal seeks a level of intensification more appropriately (and as required) to the Downtown Core – not in Port Credit Village whose nodal character was carried over into Mississauga Official Plan and for which very clear policies for development and the City’s vision have been established. This proposal fails to respect these elements of the urban design direction of Mississauga Official Plan.

[14] Policy 9.1.3 states that “infill and redevelopment within *Neighbourhoods* will respect the existing and planned character.” The Applicant’s design, while attractive and thoughtful, has missed the mark in terms of Port Credit Village’s character in the following way. It was the evidence (in various words) of all three of the Applicant’s witnesses that the building’s design was created to reflect the undulating wave movements of Lake Ontario and the site’s waterfront proximity. This has been executed primarily through the residential floors and most notably by means of creative employment of undulating balcony design. However, this comes at the price of the design’s failure to connect with the more proximate, established low-rise, Mainstreet commercial character of the very neighbourhood in which the building is proposed to be built.

[15] Policy 9.2.1.11 is relevant for the Board’s consideration of the building’s failure to transition appropriate to its surroundings: “Appropriate height and built form transitions are required between sites and their surrounding areas.” Yet, the proposed development is physically too large and bulky if placed on the three lots as assembled. It is, in the vernacular, simply too much building on too small a parcel and it towers over everything around it. By extension, existing high-rise residential buildings of a much earlier vintage enjoy generous landscaped grounds all around. This building offers minimal setbacks such that the Board deemed the renderings to cause a jarring effect

when viewed in the context of the adjacent properties and especially in the context of the village character of Port Credit.

[16] The proposed development fails to achieve Mississauga Official Plan's objectives for the context of development. Policy 9.5.1.2 directs: "Developments should be compatible and provide appropriate transition to existing and planned development by having regard for", among other things, "the size and configuration of properties along a street, including lot frontages and areas; front, side and rear yards; and the local...character". This proposal shows far greater regard for the development of the subject property through a very high level of maximization of development potential through height, massing and density increases in a manner that utterly fails to account for its immediate surroundings. Indeed, it appears to treat its surroundings as an afterthought.

[17] In this regard, Mr. Phillips has made a highly persuasive point: this local neighbourhood of Port Credit is characterized by a mix of building heights and massing, but there is proportionality in the interface relationship. Heights such as those proposed by the Applicant cannot, in the Board's determination, be permitted in stark proximity to the local character, which the City seeks to protect. Spatial distances are miniscule between the subject property and neighbouring development such that proportional transition is not achievable and thus the policy regime is compromised through this proposal. As presented, this development would create an abrupt change in height, scale and massing that offends the existing context.

[18] The City has been clear in its policy context as to the type of building relationship it seeks for future development in Port Credit. The Applicant disregards these important aspects of transition in the Board's view, such that the subject property is not an appropriate place for a development of such magnitude in the Board's view. It is entirely opposite to the growth direction that the City has established for Port Credit; it runs counter to the specific provisions one finds in the Area Plan (below); and as the City witnesses opined persuasively, such development is better directed either to the lands abutting the GO Transit Station and, at this density level, even better directed to the Downtown. The Board cannot approve such intense development in flagrant disregard for the Municipality's very clear, strategic and purposeful policies for future growth while protecting the Port Credit Village character.

[19] Similarly, in the context of the general Community Node policies of Mississauga Official Plan, the proposed development also fails to achieve several important components of these policies. The Applicant has failed to provide appropriate transition in heights that respects the surrounding context (Policy 14.1.1.3a) for the reasons stated; the development proposal does not enhance the existing or planned development (Policy 14.1.1.3b) when considered in the context of the aforementioned policies and the Area Plan; and primarily where this proposal is not consistent with the policies of Mississauga Official Plan (Policy 14.1.1.3d) as evidenced herein.

[20] Broadly speaking, in terms of the Implementation Section of Mississauga Official Plan, the proposed development fails to address “the compatibility of the proposed development to existing or planned land uses and forms (well established through the City’s policy regime and specifically through the Area Plan’s vision (below), including the transition in height, density and built form”. Accordingly, the proposed development fails to conform to the policies of Mississauga Official Plan (Policy 19.4.3b) as well as Policy 19.4.3h: “the suitability of the site in terms of size and shape, to accommodate the necessary on site functions, parking, landscaping and on site amenities.” On this latter point, the Board was not impressed with the vehicular ingress/egress elements that require separation of parking functions by virtue of the site’s compact and limited size. The Board was less concerned with the lack of landscaping offered, however. What remained outstanding and problematic for the reasons stated was the bulky nature of the building, its overwhelmingly large massing in the immediate neighbourhood context and its sheer height as it towers over the Mainstreet commercial development along Lakeshore Road East. Consequently, this policy too is not achieved through the proposed development.

[21] By extension and in its iteration as presented, the proposed development cannot possibly achieve Mississauga Official Plan’s “Criteria for Site Specific Official Plan Amendments” – Section 19.5. In the Board’s determination, the proposed redesignation would adversely impact and destabilize “the achievement of the overall intent, goals, objectives and policies of this Plan” as outlined.

[22] In the urban design context then, the proposal fails to conform with Policy 2.1.1 “Community Identity and Focus” as new developments should maintain and enhance the identity of Port Credit as a diverse established community by integrating with the surrounding area and avoiding the establishment of enclaves (Policy 2.1.1a).



[23] The Central Residential policies (Policy 2.1.2.4) will be discussed in the context of the Area Plan but at this juncture, it is necessary to outline the City's plans for Port Credit for new development: "...development proposals must avoid adverse impacts on the surrounding areas" and "the existing character of the area should be maintained." Most notably is Policy 2.1.2.4a, which directs that building heights should not exceed 14 storeys and should decrease toward the east, west and north boundaries of this area, with which the proposed development does not conform. A comprehensive reading of the contemporary Plan's policies indicate to the Board that the maximum height appropriate for these lands is 15 storeys and perhaps less, given their proximity to the Mainstreet component of Port Credit Village. In the Board's determination of the Mississauga Official Plan's policies as identified, approval of a 22-storey building on the subject lands would not only impact negatively the City's vision for development of this unique and special area of the City but unnecessarily undue a great deal of comprehensive and well-executed planning work in respect of directing future growth in Port Credit.

### **MISSISSAUGA PLAN (2003)**

[24] Regrettably, the corresponding policies of the earlier Mississauga Plan under which the application was filed, are also not achieved through this proposal. With the same reasons enunciated for the more contemporary Mississauga Official Plan, the Board finds that the earlier Plan's policies are offended by this development. Of note is Policy 2.4.2.4, which encourages "compatible residential intensification." While offering a building of attractive and appealing design such as this, it is entirely incompatible with not only the existing built form character of Port Credit Village in this local neighbourhood and with City plans for the future development of this area, it is better suited to areas of higher development intensification like the lands around the Port Credit GO Transit Station and the Downtown. In terms of the earlier Plan's urban design goals, Policy 2.11.2.1 is offended for the same reasons as the newer Plan is similarly offended by not respecting "the existing built context, community vernacular and streetscape in the design, placement and scale of development." The Board is particularly concerned that Policy 2.11.2.8 has been offended whereby new development should "ensure that buildings and structures relate to human scale and reinforce the scale of the community." The proposed tower is similar in size and scale to the existing high-rise building to the southeast and to the Northshore development and to the high-rise building to the north and west, but the site's proximity to the

Mainstreet commercial feature and its adverse impact on the overall character, coupled with clear direction from the City on the course and type of future development, make its realization at this location inappropriate.

[25] Similarly, Policy 3.2.3.1 is offended by this proposal. While the Board accepts that the proposal is innovative in its design, something called for in this policy, its form does nothing to reinforce or enhance the local community character; nor does it respect its context, which is the Port Credit Village. Following along this theme of incompatibility of design with the area character, the intensification policies are similarly not achieved: for example, Policy 3.13.6.16 “Development should be compatible with the scale and character of a planned area” and Policy 3.13.6.17, which directs that “Development proposals will demonstrate compatibility and integration with surrounding land uses by ensuring that an effective transition in built form is provided between areas of different development densities and scale.” As outlined previously and further in these reasons, such transition cannot be achieved through this proposal.

[26] Lastly, in respect of Mississauga Plan, Urban Design Policy 4.27.3.1.1a, which directs that “New development should maintain and enhance the identity of Port Credit...” is not achieved through this proposal for the reasons provided throughout this decision. Specifically, the proposed development represents a significant and irreversible departure from the planning context that the City has established for Port Credit. The development as envisioned is entirely inappropriate for Port Credit. It does not respect the surrounding context or enhance the existing and planned area development. In this context, the Board is unwilling and unable to approve amendments to the planning designations for the totality of this proposal’s inability to conform to the Mississauga Plan’s and most importantly to the Mississauga Official Plan’s policies as identified.

## **PORT CREDIT LOCAL AREA PLAN**

[27] The area was developed at a time when no consistent planning framework existed. That being said, the City has endeavoured to bring order to future development and growth of the Port Credit Community Node. This work finds expression in the Port Credit Local Area Plan (“Area Plan”).

[28] The subject lands are subject to the policies of the Port Credit Local Area Plan (“Area Plan”) (Exhibit 1, Tab 14). Central to the Board’s determination of this case is

how well the proposed development and the implementing amendments achieve the various policies of the Area Plan, which the planning witnesses referenced to varying degrees. The Area Plan's vision is for, among other things, an urban waterfront village with a mixture of land uses, a variety of densities, transit supportive urban forms and development that incorporates high quality built form. The Board determines that the proposal achieves these components of the Area Plan's vision. The main street village character along Lakeshore Road East and with its various neighbourhood components is to be preserved and enhanced, which this proposal does not achieve. The vision is intended to manage change to ensure "an appropriate balance is maintained between growth and preservation" that is supportive of Port Credit's Village feel.

[29] The Applicant's witnesses opined that the proposed building achieves the objectives of providing transit-supportive development, offer a range of housing options, encourages employment uses and enhances its surroundings. While this might be true, it is the development's failure to meet several of the Guiding Principles of the Area Plan that make it inappropriate for the subject property. The proposal fails to protect and enhance the urban village character (Policy 5.1.1) by siting a very tall building that is not compatible in scale with the surrounding low-rise commercial and residential buildings abutting and adjacent to it. As presented, the built form is required to squeeze itself onto a relatively small site that compromises traditional ingress/egress and which, as the City witnesses pointed out, overwhelms the area with its size, massing and density.

[30] As the draft Built Form Guide identifies High Street East and Ann Street at this location as residential in character, setbacks of 4.5 metres to 7.0 metres is required. The Applicant proposes commercial uses at grade although the permitted as-of-right amount is not, as planning staff contend, a rationale for moving the building very close to the street. The proposed 1.2 metre setback to Ann Street is insufficient and will not provide adequate room for landscaping that is consistent with the existing character of the residential community (Exhibit 3, Tab 43, p. 1294).

[31] The development and its level of intensification fail to respect the experience, identity and character of the surrounding context and vision (Policy 5.1.5) that the City is trying to preserve through this and other planning instruments. As the Port Credit Node, it is intended to offer lower heights and densities than those of a Major Node and lower than what the Applicant proposes to build. As the City planning staff have written, this Area Plan respects the planned function and position within the City's hierarchy while also reflecting the existing and planned character of Port Credit. This is why the City

has established a 15-storey height limit for new development, which the City has determined is necessary to support the vision as an urban waterfront village and that respects the existing character. New development such as this is not supportive of the waterfront village character by virtue of its height, massing, density and proximity to the “main street”.

[32] By extension, the Community Node includes the GO Transit Station farther north as a Major Transit Station Area and a Gateway Mobility Hub. While the proposed development is transit supportive and walkable to the GO Transit Station (some 120 metres north), its height is not reflective of the village character that the City is attempting to preserve and more reflective of the type of tall built forms that are sited in the Major Transit Station Area and Gateway Mobility Hub. In fact, the City recommends that densities up to 4.0 times FSI (the proposal is above 7 times) and heights up to 25 storeys are appropriate for this location; an area the Board determines more appropriate for the building as designed.

[33] This approach also finds expression in the Port Credit Mobility Hub Master Plan Study (Exhibit 2, Tab 15). Where this document states that opportunities exist “to accommodate additional height potentially up to 22 storeys at 4.0 times FSI”, these opportunities are located in the vicinity of the GO Transit Station and even then these are to be considered only through the submission of a development application that would provide for a detailed evaluation on a site-by-site basis.

[34] While the City expects some change for the Community Node and the Port Credit Neighbourhood, new development “will respect the character of the area” and the Area Plan, together with the Port Credit Built Form Guide (Exhibit 1, Tab 14) (“Built Form Guide”) provide clear direction for appropriate transitions in built form and scale of buildings. Moreover, the City has established that the subject area offer limited potential for infill development. It has also set “existing maximum building heights” for the lands north of Lakeshore Road East, which includes a maximum height of 15 storeys for the subject lands. Yet, the Applicant has proposed to develop its site with a level of development that is, according to the City’s expert witnesses, too tall for the neighbourhood and too small a lot size to accommodate something of this mass, height and density.

[35] Much was made by the Applicant’s counsel of how little or none of the existing buildings achieve the Built Form Guide’s guidelines (such as proposed building

transitions from the interior neighbourhoods to Lakeshore Road [Mr. Alati roundly criticized these guidelines by arguing that there is no transition or stepping pattern for the existing older high-rise buildings], tower separation distances and building setbacks for example), thereby criticizing the City for setting goals that existing built form development did not currently meet. The Board was unconcerned about how existing development in the Port Credit Village local neighbourhoods does or does not achieve the policy direction the City has set out, however. This is because the policy regime already recognizes what exists and it has set out very clear policies, benchmarks and standards that will guide future development that require respect for and preservation of the existing neighbourhood village feel of Port Credit. Contrary to the Applicant's case, the Built Form Guide (and by extension the Area Plan) are not tools to assess how well existing buildings achieve the Area Plan's vision. Rather, it is how well future development – and specifically that proposed by the Applicant – will preserve and will enhance the Mainstreet village character. Even flexibly so, the Area Plan's vision statement also reinforces the importance of retaining and “enhancing” the built elements that provide residents with a sense of local community and social activity. In this latter context, even existing development can be retained and enhanced to contribute over the long term to a stable and unique Port Credit Village character. The subject application departs from the Built Form Guide's approach as well as from the Area Plan by not conforming to its policies, however, as it proposes a form of new development that the Board determines to deviate radically from the type of future development contemplated for Port Credit.

[36] In essence, the Port Credit Village is comprised of neighbourhoods that are intended to recognize areas that are physically stable “with a character to be protected” (Policy 5.2.3). As this policy recognizes, some level of change in these stable neighbourhoods is anticipated and new development does not have to mirror existing development types and densities so long as the neighbourhood character is respected. As stated, the Area Plan and the Built Form Guide provide direction for appropriate transitions in built form and scale of buildings. This is one reason why the City has determined that the greatest height and density for Port Credit will be in close proximity to the GO Transit Station and future Light Rail Transit (LRT) stop at Hurontario and Park Street – locations farther north and northeast of the subject lands. The Built Form Guide echoes this approach. Section 2.2, Planned Building Heights, states that the greatest heights in the Node are generally located in the Central Residential Precinct closest to the GO Transit Station and buildings should generally slope down from the

railway tracks to the north to Lakeshore Road East farther south. With specificity, the Built Form Guide for the Port Credit Community Node states that the highest buildings should be in the vicinity of the GO Transit Station and future LRT Station (as stated above) and then transition downward to Lakeshore Road East and to Lake Ontario and the Credit River. This proposal fails to achieve these guidelines, which were written to give effect and guidance to future development in the subject area.

[37] Building heights receive further instructive guidance and approval of 22 storeys is justified. As we have seen above, the City has determined the appropriate locations for new buildings that propose such heights. The maximum height in this Node “shall be 22 storeys”, which reflects existing building heights and recognizes that development in this Community Node should not be as high as development in a Major Node. The Built Form Guide distinguishes older tall building development from current tall building development and notes the approval of the Applicant’s earlier successful development (Northshore) at the corner of Lakeshore Road East and Hurontario Street. As evidenced at the hearing and in the documents, a 22-storey height was approved for the Applicant as this height was determined to be appropriate given the site’s location at an important gateway into Port Credit that creates a visual landmark. This development was deemed to balance well with the massing of the older 20-storey building just west of Hurontario Street.

[38] In the Board’s view, the same cannot be said for the subject property, which is part of the Mainstreet Commercial Precinct. This Precinct includes part of the traditional Mainstreet component of Port Credit and low rise buildings are the norm. The juxtaposition of this site to Lakeshore Road East once fully developed as planned, and physically separated by a funeral home only, would tower over the main street and overwhelm the visual experience in the Board’s view. There was no persuasive planning evidence presented to justify the placement of a tower of this size so close to Lakeshore Road East and particularly where the Area Plan and its guidelines expressly discourage such development.

[39] The guidelines also direct that buildings over six storeys should be designed so that they are as square as possible to ensure minimal shadow impact and to ensure they do not create the visual impact of a larger bulky floor plate. By extension, the maximum length of any building over six storeys should be 35 metres for buildings under 15 storeys and 30 metres for buildings over 16 storeys. The proposed building offers what the Board determines to be a bulky floor plate some two storeys tall that

does nothing to contribute to the character of the area and is 39.2 metres in length, which is greater than what the guidelines recommend for the area. Given the constraints of the site, the Applicant has sought to maximize the development potential of the site to the detriment of the neighbourhood character that the City is seeking to protect and preserve through the Area Plan.

[40] This is an appropriate place to address the issue of whether the proposed design represents a point tower or a slab building. The parties' witnesses debated this point through their respective presentations. The proponents and the architect called the building a point tower; the City's witnesses called it a slab tower. Various rationales were provided to support the two positions. While the Board recognizes that the building's architect is well-placed and perhaps best-placed to characterize his design as a point tower, certain evidence as presented signals otherwise. Mr. Glover said that slab buildings have a blocky character. The Board finds this building to present the character of a slab building when viewed from the west and east perspectives and as depicted in the computer-generated renderings. The building presents as a point tower from the north and south views. However, the west and east views, confirmed visually and schematically rendered in a number of exhibits, depict a building that is longer than a point tower at the proposed height (e.g. Exhibit 3, Tab 39, p. 1249, 1250 and 1254); that is, more like a slab building. City planning staff opined in their 2013 report that the proposed height and floor plate design generates unacceptable sky view and massing impacts along the important Lakeshore view corridor when the east and west views of the tower will be seen.

[41] The Board accepts as persuasive Mr. Glover's suggestion that the placement of corridors around a central bank of elevators is an indication of a point tower, but there is no specific design rule that says the placement of elevators automatically identifies a building as a point tower. The real feel of a building's size and shape in relation to its neighbouring context is experienced externally; its internal configuration, such as the location of a bank of elevators, cannot necessarily define the structure as a point tower. Typologically, whether slender or stout, the floor plates of point tend to be slender. Mr. Glover opined that this building has a relatively slender floor plate based on its GFA so it is a point tower. He compared the proposed floor plate, size, shape and configuration to a range of other towers in Toronto and to one example (the Marilyn Towers) in Mississauga. The Board was not persuaded by his statement, however, that the proposal as designed is what the City has called for in its Built Form Guide for Port

Credit or that a building of this shape, form and height is appropriate at this location. In cross examination, Mr. Glover also acknowledged that the proposed building is within the range of dimensions of a slab-type building, using the terminology “small slab tower”. In this case, the Board finds sufficient evidence to show that the building offers elements of both slab and point towers. The Board cannot determine resolutely whether the proposed building will be a point tower or a slab tower. In fact, a combination of traits for both built forms has been presented in the Board’s view. Were the building to achieve the planning policies in this case, a specific building type might be established and/or its form might be an acceptable one but in the end and as all witnesses agreed, the issue is first how one perceives the massing and its overall visual appearance and next how this impacts the character of the area.

[42] To be clear, in the context of shadow impacts, the Board heard from both parties that shadowing is not an issue for this hearing by virtue of the lack of impacts this design creates on adjacent building forms. So whether the tower is a slab building or a point tower is a moot point in this context. However, for its relationship to the Mainstreet character, the Board finds as stated that the proposed design appears to offer elements of both tall built forms.

[43] Pointedly, the proposed height in its current guise, whether slab form or point tower, would nevertheless establish an undesirable precedent for other developers seeking to pursue similar heights along this section of Lakeshore Road East. The June 2013 report to the Planning and Development Committee notes that approval of this intensity of development on these lands in Port Credit Village could be seen as planning support for other building proposals of similar heights on sites that do not enjoy the landmark attributes of sites such as the Northshore development farther east. The Board is persuaded by this statement and the precedential value of approval of a development plan such as this. Moreover, such approval could cause a destabilizing impact on carefully planned and intended development heights and densities – all made with a view to controlling the form of future development in a manner that respects and even protects the character of the Port Credit Village. The report also makes note of the undisputed fact that the adjacent stretch of Lakeshore Road East from Stavebank Road over to Hurontario Street represents the core of Port Credit’s traditional commercial main street. This section of Lakeshore Road East is the location of much of Port Credit’s village character and sense of place. The Area Plan sets out the City’s plans for height limit maximums to protect the existing height regime found close to the



main street and to prevent future tall buildings from becoming visually intrusive and dominating of the pedestrian experience. This building, if approved, would cause such impacts in the Board's view. As the report stated, generous sky views and a sense of openness would be eroded if the City were to permit buildings above 15 storeys adjacent to the main street. As Mr. Phillips opined most persuasively, this is not consistent with Mississauga Official Plan policies, including those that require tall buildings to have appropriate height and built form transitions to surrounding areas, siting and design to enhance an area's skyline (not to intrude into it along the main street in this case) and to create appropriate visual and functional relationships between individual buildings and groups of buildings. This proposed building cannot achieve these policy directions as currently configured at this size, massing, density and height. As the staff report also indicated, the site's location does not warrant a landmark building of this type that would equal the height of the Applicant's other 22-storey condominium building (Northshore), currently the tallest building in Port Credit. The report present no less than five comprehensive reasons why the City was able to approve that development (Exhibit 3, Tab 43, p. 1292) and it distinguished the subject site from that prominent built form that does not impact the Port Credit Village.

[44] Mr. Phillips referenced Policy 10.2.2.2 of the Area Plan, which directs that building heights on lots adjacent to the Mainstreet Precinct will demonstrate an appropriate transition. The proposed building fails completely to provide either gradual or acceptable transition from Lakeshore Road East to the interior neighbourhood and in the Board's view, its size, height and massing serve to create a jarring visual experience that does not contribute to the village character the City wishes to preserve.

[45] Further, the lack of suitable transition of built form (a large two-storey podium to a two-storey triplex) is all the more palpable given the existing location and the plan to construct a 22-storey, 77-metre tall building on a site that would be the smallest for an apartment building site in Port Credit and as Mr. Phillips pointed out, in the City's Downtown Area as well. It was Mr. Phillips's evidence, presented through the June 2013 report to the City's Planning and Development Committee that a larger site size would allow for a satisfactory site design, including sufficient common amenity and landscape areas and among other things, appropriate residential setbacks for residential use and increased room to provide transition and buffering to adjacent lower density buildings.

[46] Given was the Applicant proposes to construct, the Board finds persuasive the City's position that this is not a suitable site for this level of development and will negatively impact the village character of Port Credit. Appropriately, the City is concerned that the scale of development and the level of intensification for Port Credit will be compatible with and will preserve the village character of this special and unique area of the City. The Board finds that development in the manner the Applicant proposes would represent Downtown densities in a community node, something not contemplated in the current planning regime but as well, this approach is inconsistent with the City's established urban hierarchy which finds written expression in Mississauga Official Plan and the Area Plan. Density as proposed would be approximately 86% higher in terms of FSI than any other density in the Central Residential Precinct and 46% higher than any other density in the Port Credit Community Node. This condition is reflective not only of the subject property's small size but also of the proposed height. The Applicant and its witnesses have failed to make a persuasive case for disrupting the established urban hierarchy and causing a significant and permanent departure from the City's planned vision for Port Credit.

[47] Given the planning evidence as analyzed, the Board was ultimately persuaded by the words of both Mr. Phillips and Mrs. Mittmann, which cautioned that approval of this application would irrevocably change the character and the sense of place that define Port Credit. The notion of balance that the Board adjudicated in this case was the Applicant's proposed development of its site with the intensification objectives of the City and its desire to preserve character within the existing Port Credit Village. In this regard, the scale and form of the development as contemplated would create imbalance of the City's planned context and the character of this area. In fact, the Board determines that the development as envisioned would undermine and destabilize the character and the City's planning direction. And specifically, the Applicant's proposal fails to match the intent of, and fails to conform to the City's policies that seek to strike a balance between intensification and the local village character of Port Credit.

[48] It is appropriate for the City, in its strategy for intensification, to seek to balance intensification goals with other goals such as maintaining an existing community character like that so well established in Port Credit. This balance of protection of character with intensification has been in place since at least 2003 and has been carried forward to incorporate intensification policies into the 2011 Mississauga Official Plan. This concept of balance was also carried forward in part by the City's identification

through its local area and district plans and the subject Area Plan, which requires us to balance intensification with the preservation of character.

[49] The Port Credit area context is worthy of preservation in its current form (with forms of intensification far more moderate than that which the Applicant proposes) and through the maintenance of existing height regimes in this area. None of that has changed. The City has established other areas for the types of higher heights and densities that the Applicant seeks, such as, for example, the area adjacent to the GO Transit Station. Moreover, the Applicant has attained success through development of the Northshore condominium residences at the Hurontario Street and Lakeshore Road East gateway location. A sophisticated developer in the City, the Applicant will have to pursue development of this size and intensity at locations the City deems appropriate for such proposals, such as in the Port Credit GO Transit Station area or in the Downtown. Alternatively, the Applicant might wish to explore a level of design that responds favorably to the City's planned context and direction for Port Credit. This proposal as proffered to the Board cannot be supported in its current form, however.

[50] While the Applicant's counsel argued that there is no policy basis for FSI, and the City does not use density control on a policy basis, density is a valid planning consideration and is nevertheless a helpful indication of the size of development in relation to the size of this site. It is clear that in terms of size and its proposed scale, this site would see the most aggressive form of development to date relating to the amount of building mass and its small footprint. In the Board's view, the Applicant has shown how a tall building can be sited on a small site and made to function. However, that function has come at the expense of Port Credit's established character, at the cost of adverse impacts on its character through lack of compatibility and transitional design and in contradiction to the planned policy direction and context that the City has established.

[51] The Board was also presented with the comments of the Mississauga Urban Design Panel (Exhibit 2, Tab 21), which noted that the building architecture was well executed, it will provide "a good example for the area" and the site is "ideally located given the proximity to the GO Transit Station" and in particular the panel's comment that the proposal can "contribute to Port Credit Village." The panel found favor with the proposal and the proposed height, even suggesting that the proposal's "contemporary style would serve as an appropriate expression and would show a maturity that Port Credit is ready for." The Board considered the panel's comments in the context of the

existing planning regime, the City's planned direction for Port Credit Village and the totality of the expert City witnesses' evidence at this hearing. In this context, the Board cannot assign weight to these findings of the panel, which fail to respect the especially well thought out and articulated direction for development in this area. The only elements of their comments that were persuasive to the Board were those that spoke to the favorable design elements of the building and its sculptural quality. Regrettably, even these design components are unsuccessful in addressing both the City's policy direction and they fail to respond to the village character that the City seeks to protect. As Mr. Ketcheson said so persuasively, this is a well-designed building that is wrong for the subject property. The Board has shown precisely through the evidence above how the proposal fails the key objectives that the City has set out for future development in Port Credit.

[52] The Applicant has proposed that a Residential – High Density I designation would be more appropriate for this site than the current Mainstreet Retail Commercial designation (see Exhibit 2, Tab 25, p. 943). Mr. Glover said that the area's skyline has a distinct nodal character of an apartment neighbourhood so the proposed building would not be out of place. The Board determines that this extension of the apartment character further north and west is not an appropriate one as discussed earlier and one that the City's witnesses could not support. The change in designation, purportedly to bring the site more into line with the Central Residential character of the neighbourhood farther west and north, would instead result in an adverse impact on the character of Lakeshore Road East by placing new development much closer to Lakeshore Road East than other older examples farther north and west and of a type and size that offends the direction of planning for Port Credit Village. It would not maintain the character the City so ardently seeks to preserve through its Area Plan; and in fact would set an opposite course for future development in Port Credit notwithstanding the proximity of a much-older 20-storey building or the newer gateway development (Northshore) farther east. The Board cannot support such a disparate approach to land redesignation and built form development from that planning regime which the City has so carefully developed to guide future development and preservation of Port Credit.

[53] The Board determines that the City planners undertook the most thorough examination of the character of the area and their evidence is preferred all respects to the evidence of the Applicants' witnesses. Both City planners have more direct experience with development in the subject area than do the Applicant's planning

witnesses. Mr. Glover, although a highly respected planning witness, possesses no prior planning work experience in Port Credit and this was his first project here. The vision and experiences that he brought to the hearing were more informed by his downtown Toronto experiences and these did not enable the Board to find the proposed development to be suitable or appropriate for Port Credit. His examples offered little on the larger character of the neighbourhood or how this proposal would inform the Area Plan policies. Further, while the Board appreciated Mr. Giannone's skilful design of a contemporary residential building, the architect admitted under cross-examination that he had not looked at any other properties in the area and instead had focused on his client's site alone. His design is eminently more suited to other areas of the City as cited in these reasons that can more appropriately absorb the height and level of intensification without undermining planned context and neighbourhood character.

[54] The Board determines that the City's witnesses – and in particular Mr. Phillips – imparted far more comprehensive understanding of the planning regime and more persuasively applied the relevant planning policies to these lands and this neighbourhood in opining that the proposed development is not appropriate for the subject property. Their planning opinions were assigned more weight in this context and were helpful to the Board in assessing the evidence and adjudicating this case.

[55] Approval of the requested amendments would invariably set a dangerous precedent for increased heights in Port Credit – something that entirely undermines the direction that the City has carefully planned for this unique and special neighbourhood.

[56] The building represents excessive density and is inconsistent with the City's Official Plan policies. At 22 storeys, the building is too tall for this location; offers inadequate built form transition; and lacks conformity with the aforementioned policies. Moreover, it is not up to the City to show how the proposed amendments do not work; rather, the onus is on the Applicant to demonstrate through the planning instruments how the proposed amendments maintain the character and planning direction established in and for this area of the City. The Applicant and its witnesses have not achieved that standard.

[57] The Board finds that the proposal does not achieve the overall intent, goals, objectives and specific policies of Mississauga Official Plan or policies of either Mississauga Plan or of the Area Plan. The proposal is of a height, scale, massing and density that is excessive for the site and does not provide an adequate height transition

to adjacent low-rise buildings. The proposed development does not represent good land use planning and is not in the public interest. If approved, it would serve to erode the Port Credit Village character by undermining the policy direction that the City has set for this unique neighbourhood and set a disruptive precedent for similar development proposals.

**ORDER**

[58] The appeals are dismissed.

“R. Rossi”

R. ROSSI  
MEMBER