Ontario Municipal Board
Commission des affaires municipales
de l'Ontario

ISSUE DATE: February 19, 2015 **CASE NO(S).:** PL131151

PROCEEDING COMMENCED UNDER subsection 34(11) of the *Planning Act*, R.S.O. 1990, c. P.13, as amended

Applicant and Appellant:	Raffi Konialian
Subject:	Application to amend Zoning By-law No 0225-2007 Neglect by the City of Mississauga
Existing Zoning:	"R1-7" (Detached dwellings – Typical Lots)
Proposed Zoning:	"R16 Exception-(Detached dwellings on a CEC – Private Road) and "G1" (Greenbelt – Natural Hazard)
Purpose:	To permit eight detached dwellings on a common element condominium private road
Property Address/Description:	2167 Gordon Drive
Municipality:	City of Mississauga
Municipal File No.:	OZ 12/002 W7
OMB Case No.:	PL131151
OMB File No.:	PL131151

PROCEEDING COMMENCED UNDER subsection 45(12) of the *Planning Act*, R.S.O. 1990, c. P.13, as amended

Applicant and Appellant:	Raffi Konialian
Subject:	Minor Variance
Variance from By-law No.:	0225-2007
Property Address/Description:	2167 Gordon Drive
Municipality:	City of Mississauga
Municipal File No.:	A 358/13
OMB Case No.:	PL131151
OMB File No.:	PL131230

PROCEEDING COMMENCED UNDER subsection 53(19) of the *Planning Act,* R.S.O. 1990, c. P.13, as amended

Applicant and Appellant:	Raffi Konialian
Subject:	Consent
Property Address/Description:	2167 Gordon Drive
Municipality:	City of Mississauga
Municipal File No.:	B-059/13
OMB Case No.:	PL131151
OMB File No.:	PL131229

Heard: January 26 to 28, 2015 in Mississauga, Ontario

APPEARANCES:

Parties	**Counsel**
Raffi Konialian	Mary Flynn-Guglietti and various Students-at-Law
City of Mississauga	Marcia Taggart
Gordon Woods Homeowners' Association	Eileen Costello

DECISION DELIVERED BY R. ROSSI AND ORDER OF THE BOARD

INTRODUCTION

[1] Raffi Konialian, the Applicant/Appellant ("Appellant") has appealed to the Ontario Municipal Board ("Board") his application for development of the lands at 2167 Gordon Drive, which was refused by the Committee of Adjustment ("Committee") of the City of Mississauga ("City").

[2] The nature of the three private appeals are as follows: first, rezoning of the site to permit the construction of seven detached dwellings on a Common Element Condominium ("CEC") private road that would change the zoning from R1-7 (Detached Dwellings – Typical Lots) to R16 Exception (Detached Dwellings on a CEC Private Road) for the western portion of the lands and G1 (Greenbelt – Natural Hazard) for the eastern portion of the lands (PL131151); second, to sever a parcel of land having a frontage of approximately 30.7 metres ('m") and an area of approximately 1,150 square metres ("sq m"), whose effect is to create a new lot for residential purposes (PL131229); and third, to permit a retained lot having a frontage of 20.8 m whereas Zoning By-law No. 225-2007, as amended, requires a minimum lot frontage of 30.0 m (PL131230).

Two Official Plans are at play at this hearing: Mississauga Plan 2003, which was the in-force Official Plan for the rezoning application and Mississauga Official Plan 2011, which is the applicable Official Plan ("OP") for the consent application and minor variance application.

[3] Adrian Savin did not appear at the hearing and the Board determined he was no longer a party to these appeals. On the Board's file is an e-mail message from Counsel for Mr. Savin at the two prehearing conferences and he advised the Board by e-mail that he would not be attending the hearing.

[4] At the commencement of the hearing, Counsel for the Appellant, Mary Flynn-Guglietti advised the Board that her client had reached a settlement with the City. Counsel for the City, Marcia Taggart presented to the Board a copy of the signed and executed Minutes of Settlement dated January 22, 2015 (Exhibit 1 and Attachment 1 to this Order). A short meeting with the counsels for the three parties was held to discuss the hearing process. However, the Gordon Woods Homeowners' Association ("GWHA") represented by Counsel Eileen Costello, opposed the settlement reached between the Appellant and the City. Given that mediation was not an option at this juncture the Board proceeded with the scheduled ten-day hearing. At this stage, the City's Counsel withdrew from the hearing but she advised the Board that the City would be available to assist the Board should it be necessary.

The Proceedings and the Case for Active Adjudication

[5] Presented with a settlement between the City and the Appellant, the Board determined that this case was a suitable candidate for active adjudication. After a short meeting with the counsels for the parties, the Member recessed the proceedings on the first day of the hearing to review the totality of the planning evidence and planning witness statements presented on behalf of the Appellant and GWHA. On the second day (the first day of substantive evidence), the Member pared down GWHA's issues list in the presence of the parties – a list that had been left untouched during a previous

prehearing conference. With the concurrence of the two parties, the Member focused only on those planning issues that were initially deemed to be relevant to the adjudication of these matters.

[6] The Member next advised the parties that he had read the entirety of the planning witnesses' statements and that he considered the contents of the experts' witness statements as if given orally at the hearing, rendering moot the need for the Member to "re-hear" the planning evidence. However, the Member identified issues for which he requested additional *viva voce* planning evidence and opinions from the witnesses and he granted both counsels the opportunity to address other items of relevance to them.

[7] At the end of the first day of evidence, the member confirmed with the parties' counsels the list of witness statements and evidence he would review overnight related to the environmental and arborists' data as well as the matter of tree removal and conveyance of the eastern portion of the property from private ownership to public ownership in perpetuity.

[8] On the second day of evidence, in order to complete the planning evidence, the Member called the City's planner, Michael Hynes as an expert witness to answer questions related to what he as the assigned municipal planner had considered in supporting the City's settlement with the Appellant. Counsels were free to ask questions of this witness. The Member also advised the Appellant's counsel Ms. Flynn-Guglietti that he would not need to hear from the Appellant's proposed urban design witness, Dennis Small, as no site plan application was before the Board and urban design matters were of lesser importance than the more salient issues (detailed later in these reasons) to adjudicate. It was agreed at the hearing and uncontested by GWHA's counsel Ms. Costello that the urban design expert Mr. Small was a recognized expert in his field; that he had won an award for his designs in the City and that he possessed experience in this area.

[9] Next, the Member followed the same process as the day before, advising the parties that he had read the entirety of the arborist and ecologist witnesses' statements as well as the scientific reports and data exhibits and that he considered the contents of the experts' witness statements as if given orally at the hearing, rendering moot the need for the Member to "re-hear" the arborists' and ecology evidence. Again, the Member identified issues for which he requested additional *viva voce* planning evidence and opinions from the witnesses and he granted both counsels the opportunity to address other items of relevance to them.

[10] At the end of the day, the two counsels provided their oral submissions and the Member reserved his decision and adjourned the hearing so that he might consider the totality of the evidence and decide which issue or issues might figure prominently in the Board's adjudication of these appeals. Having applied the Active Adjudication process in other Board hearings, the Member was confident that this approach could result in a more efficiently-run hearing by focusing on the most important evidence and issues. In this case, the ten-day process involving six witnesses was reduced to a two-day hearing through the Member's active case adjudication. Nevertheless, the Board emphasizes the fact that not all cases lend themselves to this intensive approach and all are dependent upon the individual circumstances of each appeal.

[11] The Board considered the evidence of six witnesses – three for the Appellant: Planner Jim Levac, Arborist Alistair Johnston and Ecologist Kenneth Ursic; two for GWHA: Planner Carol-Anne Munroe and Arborist/Ecologist Sal Spitale; and City Planner Michael Hynes, whom the Board called on its own initiative. All of these witnesses were qualified to furnish the Board with their evidence and respective opinions.

The Settlement

[12] The Minutes of Settlement (Attachment 1 to this Order) reference the reduction in detached dwellings along the CEC private road from eight to seven with a freehold

house being located on the severed lot. The implementing Zoning By-law now before the Board (Exhibit 4, Tab 51) details the City-approved R16 zoning provisions for the development. Map Number 15 of Schedule “B” to Zoning By-law No. 0225-2007 would be amended by changing the zoning for the subject lands from “R1-7” to “R16-XX” and “G1” (as per Schedule “A” to this exhibit).

The Proposal

[13] The subject lands at 2167 Gordon Drive are 1.784 hectares (“ha”) (approximately 4.4 acres) and have a frontage of 55.5 m along the east side of this street. This would be severed without the need for variances in order to create a lot with 34.67 m of frontage along Gordon Drive – in excess of the base R1-7 zoning standard of 30 m for this area. A separate freehold residence would be built on this site, which is located at this northwest corner of the subject lands abutting Gordon Drive. The remaining lot would be situated immediately south of the newly-created lot. While smaller at 20.85 m and requiring a minor variance for reduced lot frontage, this smaller lot would serve as the Gordon Drive entrance of the CEC private road to access the seven large condominium residences.

[14] This is a large site with a depth of 216.58 m and a net developable area of 1.0 ha – that is, the western portion of the lands from Gordon Drive approximately extending halfway into this property is proposed for development. This large portion of the subject lands would be rezoned R16 to permit the aforementioned seven new dwellings. The latter east half of the site marked from the line on the Coloured Landscape Plan and identified as “Limit of the Greenbelt” line – 44% of the entire site – would be conveyed to the City in perpetuity and would be rezoned G1 to reflect the Greenbelt Area. This latter portion of the site is a heavily treed area that extends from the top of bank and downward to the lands leading to Mary Fix Creek and extends to the “Greenbelt Overlay” depicted on Map 15 of Schedule “B” to Zoning By-law No. 0225-2007. A chain link fence would surround the entire property, which would be served by an on-site storm sewer system. Of the 464 inventoried trees on site, approximately 35 of these

are proposed to be removed from the developable land only. No tree removal from the G1 lands is contemplated. There is on file a comprehensive and highly detailed Restoration Plan for tree replacement and replanting, landscaping and improvement of the table lands as well as for the G1 area through additional non-invasive local species plantings and the conveyance of the G1 lands to City ownership in perpetuity.

The Subject Lands and Context

[15] The subject lands were previously severed in 2003 to create the existing severed lot at 2185 Gordon Drive (the property northwest of the subject lands) with a minimum frontage of 30.5 m and lot area of 1,200 sq m. The Appellant purchased the subject lands from Ann-Marie Janoscik in May 2011. Ms. Janoscik had filed with the City in 2008 a previous rezoning application and draft plan of subdivision application on these lands to permit five detached dwellings on a CEC private road. That application ended with the sale of the property to the Appellant and the Board is now evaluating the Appellant's revised application and appeals.

[16] Today, the subject lands are heavily treed with an existing house and long driveway on site and the Board acknowledges that tree clearing has occurred on this site in recent years. In the planning context, the subject lands are located within the interior of the Gordon Woods neighbourhood, part of the City's Cooksville (Planning) District. The site is situated just west of the City's designated Urban Growth Centre, which includes lands along the west side of Hurontario Street. The site is also situated west of Hurontario Street and south of Queensway West. Trillium Hospital is located at the southwest corner of the Queensway West and Hurontario Street intersection and it abuts the site to the east across Mary Fix Creek. North of the subject lands are detached residential dwellings at 2185 Gordon Drive, along Breezy Pines Drive and south along Autumn Breeze North.

[17] The subject lands enjoy a variety of designations in the Official Plans. Mississauga Plan 2003 designates Cooksville as a Character Area, which enjoys its

own District Policies while the Cooksville District Land Use Map designates the subject lands Residential Low Density 1 – Special Site 11, which permits detached dwellings to a maximum density of ten units per net residential ha in accordance with the Site 11 policies for this neighbourhood. This earlier Official Plan's Site 11 policies apply to the rezoning application at hand and these provide direction for development that will preserve and enhance the character of Residential Low Density areas.

[18] The newer Mississauga Official Plan designates the site as part of a Neighbourhood Character Area (Exhibit 4, Tab 47, Schedule 9). It is part of the Urban System and is designated Green System (Schedules 1 and 1a). While not a designated Intensification Area in this Official Plan, development on the subject lands is nevertheless contemplated and all parties agreed that the subject lands are an underdeveloped site that is worthy of some form of residential intensification.

[19] The site is also part of the City's Residential Woodlands area and is so designated on the Official Plan's Natural Area System map (Schedule 3). Residential Woodlands is an important natural designation given that the City has implemented specific Residential Woodlands policies in its Official Plan that seek to maintain, preserve and enhance what little remains of these important lands. Reviewing the Natural Areas System map (Exhibit 17, page 6), Residential Woodlands area comprises a mere 0.8% (232 hectares) of the total land area covered by the City's Natural Areas System. Ms. Munroe explained that the Gordon Woods neighbourhood comprises only those lands that are subject to all of the Residential Woodlands and Site 11 Policies of Mississauga Plan 2003 and form part of the City's Natural Areas System. These lands are what contribute to the special character of the Gordon Woods neighbourhood and through its previous decisions as evidenced at this hearing the Board has sought to protect the neighbourhood from insensitive development that could destabilize the estate character of this area.

[20] Ms. Munroe's evidence on the boundaries of the Gordon Woods neighbourhood was helpful to the Board. The area is bounded generally by Mary Fix Creek to the east,

Harborn Road to the south, Lynchmere Avenue to the west and the Queensway West to the north. The neighbourhood is a stable and mature characterized by detached dwellings on large lots. There is abundant mature vegetation including many tall trees throughout the area and on the subject lands. As Ms. Munroe's evidence on the subject of neighbourhood character noted, the absence of curbs and sidewalks in most of the neighbourhood reinforces its unique, rural estate character. Ms. Munroe explained that while experiencing infill pressures, reinvestment in the Gordon Woods neighbourhood over the past few decades has consisted largely of the construction of replacement houses and additions, the approval of seven lots along Parker Drive that are compliant with the R1-7 Zone standards and the creation of two R1-7 zoned lots requiring lot frontage relief at 2255 and 2265 Gordon Drive near Queensway West. Previous Board decisions on file have supported the preservation of these large lots and the estate-like character of the Gordon Woods neighbourhood and turned down development determined to be unsuitable for severance.

[21] The City's comprehensive Zoning By-law No. 0225-2007 ensures ongoing application of the base "R1" Zoning requirements for the Gordon Woods neighbourhood together with a minimum lot frontage requirement of 30 m in both the R1-6 and R1-7 Zones. R1-7 zoning requires a minimum lot area of 1,140 sq m and R1-6 zoning requires a minimum lot area of 3,500 sq m.

[22] The Board examined the lots in the immediate and broader areas. The subject lands and the lands abutting it on the north and south are zoned R1-7. Properties to the immediate west across Gordon Drive are zoned R1-6 while lands north, west and south of this central core R1-6 zone carry the R1-7 zoning. Abutting lots at 2145 and 2185 Gordon Drive each has a frontage of 30.4 m, which exceeds the 30-m zoning standard as cited. The lots at 2119, 2123, 2125 and 2135 Gordon Drive have frontages ranging from 24.4 m to 28.6 m. The frontage of all 13 lots along Breezy Pines Drive exceed the 30-m standard. The 14 lots along Autumn Breeze Drive North have frontages ranging from 22.3 m to 26.2 m.

[23] The Board also examined the lots along the immediate west side of Gordon Drive, which is zoned R1-6. Five lots on this side of Gordon Drive between Breezy Pines Drive and Autumn Breeze Drive North have frontages ranging from 35.7 m to 53.28 m. The average lot frontage and area of residential lots on both sides of Gordon Drive and located within 120 m of the subject property is 35.08 m and 3,949.1 sq m respectively. These lots on the west side of Gordon Drive are heavily treed and enjoy ample space with long residential driveways leading to houses set back on the properties. These lands have been the subject of previous Board decisions that have rejected severance of these large estate lots. At these hearings, the City and GWHA have worked together to oppose successfully destabilizing development.

[24] Residential intensification projects have also occurred outside the immediate neighbourhood on properties adjacent to Queensway West and Hurontario Street and outside of the Residential Woodlands area and the City's Natural Areas Survey (NAS). In the case of condominium development being proposed along a CEC private road such as this case proposes, the City requires the use of R16 Zone performance standards. Mr. Levac told the Board that the Appellant's initial application sought an R1 Exception Zone for the subject lands but when City planning staff advised the Appellant that the R16 Zone was required for such development, the Appellant re-applied with a development scheme that ultimately reflected the R16 Zone's provisions. That is, the City applied its base R16 zoning standard to the proposed "R1-Exception" Standard on the basis of eight detached dwellings. Revisions (including the reduction in dwellings from eight to seven) subsequently enabled the Appellant to meet most of the R16 zoning standards. Mr. Levac's overall opinion that the severed area accommodates the lot and the retained lot accommodates the condo development was persuasive to the Board.

[25] Mr. Levac's materials include reference to nine other condominium projects in the City that have been zoned R16 yet none of these sites is located in the Residential Woodlands. For example, he referenced the 2004 Regency Rowe condominium project near the corner of Gordon Drive and Queensway West and adjacent to a hydro corridor

– a residential development that is only 240 m northwest of the subject lands but not located in the Residential Woodlands area. This factor that caused Ms. Munroe to exclude it from her lot analysis assessment and overall characterization of the Gordon Woods neighbourhood as reflective of the rural, estate-like character that GWHA does not want changed through the subject proposal. Ms. Costello challenged Mr. Levac that Regency Rowe, with its lots (similarly sized to what is in fact proposed at this hearing) has “a very different land use context and Official Plan context”.

[26] However, the Official Plan does not preclude development from occurring on Residential Woodlands. In this case, this development enjoys the same R16 zoning that the City requires of condominium projects built around a CEC private road and it is appropriate to consider it in the context of Gordon Drive just as the Board considered other smaller lots nearby that were created prior to the current zoning regime in place. And, like the subject lands, Regency Rowe provides interior lot sizes that do not meet the 30-metre frontage requirement found in the base R1-7 zoning. Reference to the Regency Rowe condominium project feeds into the Board’s comments on Ms. Munroe’s evidence about tailored zoning discussed later in these reasons. For the moment, however, the Board notes that the GWHA did not allege that the Gordon Woods area has been destabilized by that development regardless of its place outside of Residential Woodlands.

[27] What is more, the Board determines that Regency Rowe’s proximity to the subject lands cannot be so easily discounted or its “context” set aside merely because it does not sit in the Residential Woodlands area or its context is “different”. It demonstrates that higher forms of intensification are permitted and do occur in the Gordon Drive area and that development such as the Appellant’s plan cannot be set aside simply because it does not employ the R1-7 base zoning as its starting point. It is not logical from a planning standpoint to then suggest that use of R16 standards – a zoning category that the City specifically directs be applied to this type of development – necessarily destabilizes the area because a different the base zoning has not been followed. In fact, no persuasive opposing evidence was furnished to the Board to

support this assertion and no evidence was given that Regency Rowe destabilizes the area Even a review of the earlier Board decisions on file necessitates the Board distinguishing between other development applications and this proposal, which is a matter of settlement with the City that is supported through the Board's analysis below.

[28] As evidenced, one of GWHA's principle criticisms of the development is that the Appellant has chosen to employ R16 zoning standards that are not "tailored" to the base R1-7 Zone provisions. Ms. Munroe repeated this "tailored" mantra throughout her evidence and the Board accepts that development in principle could easily proceed with R1-7 standards reflected in the R16 zoning, which would of course lead to fewer houses on the subject lands. But no Official Plan policy directs tailoring of the R16 zoning provisions for condominium development to reflect the base zoning provisions in a given area if the base zoning is at odds with the R16 provisions. As will be discussed later, the Board was persuaded by the evidence that the City planner had full regard to the Official Plan policies and zoning standards despite finding favour with development that generally reflects the character of the area but that does not follow explicitly the R17 Zone provisions. Without tailoring the higher zoning category to the base zoning, the proposed implementing By-law will nevertheless permit a form of development on the western table land portion of the site that does not meet most of the prevailing minimum provisions of the R1-7 Zone, but which will meet virtually all of the provisions of the R16 Zone (except for the minimum front yard and front garage standards). The following chart, created by the Board from the Zoning Standards Comparison chart (Exhibit 15) bears inclusion in these reasons to show the various standards at play:

Zoning Provisions	Base R1-7	Base R16	R16 proposed
Min. Lot Area	1,140 sq m	550 sq m	826 sq m
Min. Lot Frontage	30 m	15.0 m	18.0 m
Min. Lot Coverage	25%	35%	35%
Min. Front Yard	9.0 m	7.5 m	6.5 m
Min. Front Garage	9.0 m	7.5 m	6.0 m

Min. Interior Side Yd	1.8 m on 1 side and 4.2 m on other side	1.5 m	3.0 m
Min. Rear Yard	7.5 m	7.5 m	7.5 m
Max. Height	9.5 m	10.7 m	10.7 m
Garage Type	Attached	Attached	Attached
Parking	2.0 spaces/unit	2.0 spaces/unit and 0.25 visitor spaces per unit	2.0 spaces/unit and 0 visitor spaces (City requested)

[29] This chart reveals that the Appellant has proposed lots that are smaller than the prevailing character of R1-7 zoned, larger lots in the Gordon Woods neighbourhood. The Appellant's lots have smaller frontages and greater lot coverage, lesser-sized front, side and rear yards and houses that will be taller than what is permitted in that zone. Notwithstanding this fact and as stated, the Board reviewed the planning documents carefully and nowhere in the Official Plan or the comprehensive Zoning By-law did the Board read that the application of an R16 Zone for development on a CEC private road is legally required to "tailor" the zoning to reflect the base zoning. Even if the Board had read such a statement, and even if this requirement is buried deep in some obscure section of the Official Plan, the Board is persuaded that the City has given full consideration to what is and is not acceptable to it for development to proceed on the subject lands – and to settle on a form of development that does not destabilize the Gordon Woods neighbourhood. Ms. Munroe held the view that "tailored" zoning is the best way to insert condominium development into the Gordon Woods neighbourhood to avoid destabilizing impacts on the character of the area. The Board was not persuaded by this evidence, however, and finds the resulting seven lots to be generously-sized in the context of the site and relative to other development occurring north and south of it. Given the verdant nature of the area and the mature trees that will be preserved along the frontage of Gordon Drive, the Board finds that there is no visibly destabilizing effect of creating seven lots on this large site.

[30] The Board was mindful that no party to these proceedings objected to

intensification of the site. All agreed that the presence of one house on the subject lands today is an underutilization of the site and that the site is ripe for some form of development (the degree of development being the wedge issue). GWHA's witnesses were not able to state unequivocally, however, the minimum or maximum level of development they would consider appropriate for the subject lands and nor were they required to do so. The Board heard Ms. Munroe concede in cross examination that if built, more than two houses would trigger the need for a private road and thus trigger the R16 zoning provisions but she said such development should reflect the R1-7 Zone provisions and in particular, lots of 30 metres frontage and minimum coverage of 1,140 square metres. This evidence simply illustrated for the Board that the parties are prepared to support some form of intensification of the site although the Appellant and GWHA differed on the level of intensification that would work well.

The Scientific Evidence

[31] Along with the planning issues, GWHA was concerned with the proposed removal of trees from the site, which is located within a Residential Woodlands area. This necessitated a high degree of analysis by the Board of the scientific evidence and findings on this element of the development scheme that was supplied by the Appellant's Arborist Mr. Johnston and Ecologist Mr. Ursic and to a lesser degree the opposing evidence of Arborist/Ecologist Mr. Spitale. Of note are the following documents: Mr. Ursic's Witness Statement and Environmental Impact Study of February 2012 (Exhibit 6); his Reply Witness Statement and December 2014 Updated Environmental Impact Study (Exhibit 6A); Mr. Johnston's Witness Statement and Arborist Report updated July and November 2014 (Exhibit 7) and his Reply Witness Statement and updated December 2014 Arborists Report (Exhibit 7A); and Mr. Spitale's Witness Statement and "Assessment of Removal of Trees for Proposed Condominium Single Family Development of 2167 Gordon Drive, Mississauga" (Exhibit 12); his Reply Witness Statement (Exhibit 12A); the Streamridge Tree Inventory Report of 2010 (Exhibit 26); and the Scoped Environmental Impact Study of November 2010 (Exhibit 27). Within Exhibit 3, the Board read the following environmental-related

documents: the 2009 Mississauga natural Areas Survey: Cooksville and the Residential Woodland & 2013 Natural Areas Survey CV2 and the City of Mississauga Private Tree Protection By-law No. 254-12.

[32] The amount of net developable area of 4,310 sq m was uncontested. Some 1,283 sq m of canopy exists on both the table land and the land to be conveyed. Tree removal will only occur on the net developable portion of the table lands to facilitate development. Overall, the 1,283 sq m figure increases to 1,335 sq m of canopy that will be provided over the entire site, which the Board considers to be a satisfactory improvement to the existing tree and vegetative condition. The Board accepts that total canopy loss on the subject lands is 29.7% but no loss will be experienced on the Greenbelt lands (those lands conveyed in perpetuity to the City) and in fact this area will be improved through re-planting. Despite the immediate loss, the Appellant has devised highly-detailed and comprehensive Restoration and Landscape Plans that will, over time, restore and enhance the subject lands' tree canopy. Proceeding from the restorative measures that are settled matters with the City, the Board finds that the proposed intensification and infill development is proposed to occur on this site in a way that is respectful and that recognizes the Natural Areas designation, the Residential Woodland policies that apply and respect and enhance the tree canopy.

[33] The Board determined that the total number of trees on the condominium site to be removed ranged downward as the application was revised. At the hearing, the number of trees reduced from 39 trees to 35 trees to evidence that provided a figure of 30 trees. Mr. Johnston and Mr. Spitale agreed, for example, that the seven-lot plan would require removal of 35 of the 464 trees on the subject lands. Some 24 of these trees will be removed in order to construct the internal CEC private road with the rest removed for excavation, grading, gas, servicing, sewer and related requirements. Some 11 of the 24 trees are located near the front of the site. The existing driveway is found within the drip line of several trees so this driveway must be removed and entails work that requires significant excavation that did not make sense to attempt to protect those remaining trees.

[34] However one counts the total number of trees to be removed – 30 or 35 out of a total of 464 inventoried trees across the entire site, not only on the table lands – this small number of trees to be removed in the context of this entire site (as it should be considered) is not unacceptable to the Board and does not diminish the Residential Woodlands when the entire Restoration Plan and conveyance of lands into public ownership is considered. The Board also heard that 92 trees will be planted in the front and rear yards of the new lots and of this number some 64 native species of trees of the total number will be planted in the Greenbelt as well as in and around the proposed outfall area, which is very large. The Board heard evidence that the City and the Credit Valley Conservation Authority ("CVC") as a specialized commenting agency had direct input in determining the appropriate number of trees to be planted. The Board also noted that no trees will be removed from the Greenbelt zone and as for the new G1 canopy area, no cumulative loss of that Zone's tree canopy will occur. In fact, the resulting restoration and enhancement process will be visited upon the Greenbelt Area with native species trees as well as with other appropriate re-plantings in open areas to fill in gaps in the crown as well as in and around the outfall area.

[35] The Board wishes to say more about Mr. Ursic's "Table 6. Impact Assessment Matrix" from his Restoration Plan and Updated Environmental Impact Study. The Board finds this extract from his environmental work on file to be one of the most comprehensive documents this Member has ever evaluated when assessing impacts and making recommendations for the ecology of a development site. The Table spans the categories of physical resources identified on site; examines the potential impact of development impact(s) on these resources; delineates the mitigation opportunities for these potentially impacts resources; and sets out where appropriate the predicted net effects and recommendations as to how to proceed. The Restoration Plan is equally thorough in explaining both the tree preservation and restoration plan implementation. The "Proposed Conceptual Restoration Plan" on page 35 of his report provides helpful visual representation of the Native Vegetation Salvage and Transplant Zones. Lastly, the "Conclusions" on pages 36-38 of his report are well laid out and borne out by the

scientific data and empirical evidence provided. Both the City and the CVC were persuaded by the environmental firm's final conclusion: "…the proposed storm sewer and related residential development activities will not adversely impact on the natural features and ecological functions of the Greenbelt designated area. It is also our opinion that the current proposal is consistent with the City of Mississauga's environmental policies."

[36] The Report and its author had regard for the subject land's location in the Residential Woodlands and the site's capacity to provide opportunities for integration of existing trees on new lots to maintain the wooded character of the Residential Woodlands. The Report is equally up front regarding the potential loss of some native vegetative species diversity but this loss of diversity can be partially mitigated by transplanting native plants and soil seed bank to the valleyland buffer and storm sewer construction access area (see complete details in the Impact Assessment Matrix as referenced above). Mr. Ursic's work in this regard was the most persuasive scientific evidence presented to the Board at this information and was part of the information considered by the City and the CVC in arriving at the settlement presented to the Board at this hearing. This evidence was, in the Board's view, entirely uncontradicted and a significant factor in the capacity of the Appellant's development scheme to work on a site located in the Residential Woodlands area.

[37] The Appellant's Arborist Mr. Johnston also identified opportunities to improve the G1 area's canopy through new plantings of good nursery stock and additional native species, which GWHA's opposing witness Mr. Spitale challenged as unnecessary given his examination of existing understory growth in this area. The Board will comment further on the weight it attributed to Mr. Spitale's evidence below. Suffice to say that GWHA offered no persuasive evidence through its witness to undermine the effectiveness of a proposal the City and the CVC considered such that a settlement was concluded.

[38] The Board finds that the methodological evidence and findings of the Appellant's

Arborist and Ecologist were unshaken in cross examination, and certainly not disparaged in any meaningful way by the opposing witness or through cross examination so as to diminish the correctness of their data. Thus, Ms. Costello's criticism of Mr. Johnston's decision not to include a list of trees that could be potentially injured did not undermine the methodology behind Mr. Johnston's tree risk assessment exercise. His explanation for why he regularly chooses to retain a list of trees that might be liable for injury in his field notes rather than to include it in his data was acceptable to the Board given its limited knowledge of tree risk assessment. Judged in the totality of the evidence and the settlement agreement, the Board accepted the appropriateness of this approach and what is more, this aspect of Mr. Johnston's work was unassailable by either GWHA's counsel or its expert witness.

[39] While both Mr. Spitale and Ms. Costello also criticized Mr. Johnston's Tree Protection Zone (TPZ) methodology and analysis, the Board's finding is consistent on the appropriateness of the methodology. It was in fact Mr. Johnston's evidence that his TPZ is based on other municipalities' TPZ's By-laws (regardless of Ms. Costello having pointed to different approaches in other municipalities). The Board noted Mr. Johnston's oral evidence that the City's current By-law in respect of assessing tree injury is not as detailed as in other municipalities (it provides a preservation key but not a table to identify what constitutes injury in the City), requiring him to consult the by-laws of those other municipalities.

[40] Mr. Ursic advised the Board that there would be a 26% increase in the size of the Greenbelt Area through the conveyance of the G1 lands. He explained that the CVC had worked with the Appellant's experts to establish the new limit of the Greenbelt area, the Hazard Lands have been more clearly defined and a Meander Belt Assessment was completed to inform the position of the future storm sewer outfall, which the CVC did not want sited near the Mary Fix Creek. The outfall siting was completed by an engineer and the CVC – this agency having chosen a new configuration and outfall location on the flood plain outside of the Meander Belt.

[41] In his concept design, the City asked the Appellant to factor in rear yard decks and plunge pools in order to plan for an appropriate tree protection zone around the perimeter of the subject area. It became clear to the Board, however, that the rear yard of Lot 5 will be tight and it will border the sensitive G1 lands. The Board understands that not all rear yards of the seven condominium lots will have plunge pools and rear decks but the board desires certainty in respect of Lot 5. The Board is of the view that restrictions must be placed on usage of the rear yard of Lot 5 in order to minimize impacts on the abutting Greenbelt land. Accordingly, and with the expressed willingness of the Appellant at the hearing, the Board will assign a condition to its approval of the rezoning application that no plunge pool, rear deck or accessory structure shall be permitted in Lot 5's rear yard in order to ensure no impacts are created on the G1 lands to be conveyed into public ownership. This must be expressly reflected in the revised documents that the City and the Appellant will furnish to the Board before its final Order is issued.

[42] All parties recognized that some trees must be removed from the table lands in order to facilitate development. This proposal to remove such a small number of trees for development of the tablelands, considered alongside the provision of well-laid out plans for restoration and expansion of the Greenbelt Area with conveyance of 44% of the lands into public ownership in perpetuity are not only entirely reasonable and desirable in the Board's view but are entirely supportable given Mr. Ursic's expertise in such matters. His evidence, provided through his witness statement and reply and through his environmental reports, was unshaken in the Board's view. Further, Mr. Johnston's evidence in response to Ms. Costello's question why he looked at the total canopy as opposed to that on the developable table land alone was helpful to the Board. He responded that the total is important because the entire site is under single ownership; it is important to ensure that an accurate representation of the site is portrayed; and it is necessary, therefore, to look at the site "inclusively" as one site. Mr. Ursic echoed these statements and no opposing evidence detracted from this approach.

[43] Whatever development occurs on the subject lands will require the removal of

trees. Does development of a lesser intensity result in less trees being removed? Not necessarily as the Board heard in persuasive and uncontradicted evidence from Mr. Johnston, who criticized a previous suggestion form the opposing side that the earlier five-lot proposal for this property (from the period in time before the Appellant owned the property) would have required some 16 trees to be removed. In fact, Mr. Johnston clarified that the earlier report for that earlier five-lot proposal was deficient and that the number of trees was underestimated. He noted that the earlier report had excluded many trees on site that were not part of the original topographic survey. He had called many of them “hazard trees” and he disagreed with this characterization (which then exempted them from removal). Based on the five-lot plan in Exhibit 25, Mr. Johnston estimated that there would be 44 trees requiring removal due to the lotting configuration; that is, 34 By-law trees and 10 non-By-law trees. When he added in the 13 trees to be removed through lot severance and seven more for servicing, the five-lot proposal would have resulted in the removal of 64 trees.

[44] What this important evidence revealed to the Board is that development requires a certain amount of tree removal regardless of the configuration; all parties agreed that development necessitates the removal of some trees; but most importantly, an acceptable, higher form of intensification is possible on the subject lands that results in less trees being removed than a less-intense form of development. When combined with the particulars of this development scheme – a Restoration Plan that the City and the CVC find acceptable and the deeding of lands into public ownership - the development scheme as borne out by careful methodological and scientific approach of the Appellant’s scientific witnesses and resulting Minutes of Settlement are acceptable to the Board.

[45] Simply put, the Board finds entirely acceptable the modest number of trees to be removed in the context of the remaining several hundreds of trees and the Restoration Plan to be sufficient and comprehensive in a way that restores and enhances the canopy in keeping with the Official Plan. All of these improvements to the table lands and valleylands for future generations, together with putting into public ownership an

entire area of natural vegetation, strengthens, in the Board's view, the long-term viability of the Greenbelt System and is entirely within the public interest to support.

[46] Despite Mr. Spitale's methodological criticisms of some of Mr. Johnston's and Mr. Ursic's work and data, the Board assigned little weight to Mr. Spitale's critical observations for a number of reasons. While no single expert witness is infallible and mistakes can and do occur, the Board always weighs the overall merit of their evidence and considers it in the context of the planning application. In this case, the evidence of the Appellant's scientific experts was unshaken. Mr. Spitale's evidence was earnest though of little value to the Board when compared with that of Messrs. Johnston and Ursic. GWHA's witness admitted that his list of 42 trees was very different from the Appellants' experts' list as he had erroneously included trees that should not have been included. He confirmed for Ms. Flynn-Guglietti that his table was wrong whereas Mr. Johnston's information was correct. To avoid soil erosion, he recommended moving the outfall but his recommendation would have place the outfall in the Meander Belt, which Mr. Ursic opined made no sense from an ecology point of view and which should be avoided lest negative impacts be created on Mary Fix Creek. Mr. Spitale also opined that the G1 area has a relatively closed canopy, yet he based his identification of gaps in the valleyland canopy on his sole site visit in early December the day after a snowstorm. This is, in the Board's view, hardly representative of what might be experienced at the approach of winter when many trees have shed their foliage. Mr. Spitale used a different TPZ for his single-trip observations on the subject lands than did Mr. Johnston, but it was evident that the City and the CVC commenting agency considered as acceptable and appropriate Mr. Johnston's TPZ methodology for the purposes of settling the appeals.

[47] The Board finds that while a recognized expert whom the Board listened to carefully and intently, a comprehensive comparative analysis of the scientific evidence demonstrated that Mr. Spitale lacks the significantly broader City experience of Messrs. Johnston and Ursic, having only completed two applications in this City. The Board could assign only limited weight to Mr. Spitale's evidence regarding his on-site

observations given that these had taken place only once and that was the day following a snowstorm when he explained the snow was knee-high, making on-site movement and observations challenging at best. The Board also accepts that the Appellant's scientific witnesses have enjoyed vastly greater exposure to the subject site than Mr. Spitale through numerous on-site visits and considerable firsthand observations made in all of the seasons. The Board finds their evidence to be far more persuasive when compared to Mr. Spitale's work on this file.

[48] Mr. Spitale's suggestion that the Appellant cannot compensate for a 30% loss of canopy in the Greenbelt is assigned no significant weight given that the City and the CVC commenting agency found merit in the Appellant's scientific evidence, all of which was placed before the City and the CVC as they evaluated the development proposal to the extent that, with revisions, the development was deemed by them to be supportable and to the extent that the City was able to reach a settlement with the Appellant. As Mr. Ursic noted, the ecology and function of the site will be improved. There is, in the Board's view, a public interest and benefit to be derived in the immediate and long term through enhancing and preserving Greenbelt lands in public ownership as this proposal contemplates. In this context, GWHA could not reasonably expect the Board to prefer Mr. Spitale's evidence or critical comments about the Appellant's corresponding experts or to assign any measurable weight to them as reasoned above.

Section 2.1 of the *Planning Act*

[49] The central issue for the Board in this case flows directly from the first issue on the parties' Issues List: "Does the application have regard for Section 2 of the *Planning Act*, R.S.O. 1990, c. P. 13, as amended?" Read as a whole, s. 2 comprises two directive components – regard for matters of provincial interest (not all of which apply in the circumstances of this case) and s. 2.1 – regard for the decision of municipal council as it relates to the same planning matter. Of these, the Board finds s. 2.1 to be the most important issue in this case. The particular passage is instructive:

> 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;…

[50] The Board is mindful of its responsibilities under this section of the *Act* and the necessity of turning its mind to what Council considered in deciding to settle with the Appellant and the information it considered in reaching that decision. In this case, the Board assigns great weight to the fact that the City and the Appellant have presented Minutes of Settlement so that development, at least from the City's perspective, can proceed in the manner prescribed in that document, in the implementing Zoning By-law Amendment, through the identified Conditions of Approval and based on the extensive planning and scientific evidence presented in this case.

[51] Initially, the Board was reluctant to set aside the Minutes of Settlement and engage the GWHA by opening up the hearing *de novo* to a lengthy recitation of their evidence based on an issues list of their making (necessitating the Board's paring down of that list at the hearing as stated) in light of a settlement between the City and the Appellant supported by highly persuasive evidence. Nevertheless, it opened the hearing process to afford the GWHA an opportunity to present its case – a case that was centred on two opposing experts who levied their criticisms of the planning and scientific methodologies of the Appellant's witnesses and their argument that permitting this settlement to proceed with development that employed R16 zoning standards would result in a destabilizing effect on the neighbourhood. Ultimately, the Board determines that substantively speaking, their criticisms did not undermine the planning, public interest and ecological merits of the proposed development for reasons as presented below.

[52] The Board made two reasonable presumptions based on the evidence before it. In presenting Issue 1 to the Board for adjudication, the Appellant and GWHA had two

expectations: first, the Appellant expected the Board to have regard for the decision of the City and the planning information it had before it to support the revised application and to settle its issues with the development scheme, and that the Appellant's applications represented good planning; and second, GWHA had the same expectation of the Board in respect of the City's decision but prior to the City and the Appellant negotiating their settlement and signing the executed Minutes of Settlement in January 2015. Thereafter, the Board only had the scant two pieces of evidence from Ms. Munroe on s. 2 (paragraphs 5.1.5 and 5.1.6 of her witness statement) and no evidence from her on s. 2.1, while GWHA's Counsel Ms. Costello made only one submission on this matter referring direction to s. 2.1 as follows: "You don't need to have high regard for council's previous decision". The Board expected the GWHA witness to speak to this important section of the *Act* yet her submissions were silent on the s. 2 matters of provincial interest and on the matter of having regard for the decision of Council.

[53] Reviewing the witness statements of Mr. Levac and Ms. Munroe in the context of s. 2.1, the Board notes the great difference in the two planners' treatment of Issue #1. As evidenced, Ms. Munroe provided her planning opinion in two short paragraphs: summed up, approval of the consent application is premature and not in the public interest since the settlement for the retained lot does not conform to Mississauga Official Plan and is not good planning, and the minor variance application should not be approved until "an appropriate development scheme" has been advanced and approved. This in fact was the totality of her evidence on the associated consent and minor variance applications. The bulk of her evidence dealt with the other issues on the list in the context of the rezoning application.

[54] In contrast, Mr. Levac issued a far more comprehensive response to Issue 1 and he was the only planner to offer an opinion on the 18 listed matters of "provincial interest" in s. 2 (Exhibit 5, Section 2.5 "Issues to be Addressed"). Those 18 elements do not require recitation in these reasons but Mr. Levac addressed all of them and most notable of these are regard for "the protection of ecological systems, including natural areas, features and functions"; "the orderly development of safe and healthy

communities"; "the adequate provision of a full range of housing…"; and "the appropriate location of growth and development". It is the Board's finding that these matters have been diligently planned for based on the submission of Minutes of Settlement on the planned development scheme and the breadth of documentary evidence in support of both the proposed built form development, lot sizing and quite significantly the ecological preservation of the G1 area through conveyance of the lands to the City in perpetuity. Neither Ms. Munroe nor GWHA's Arborist/Ecologist Mr. Spitale provided evidence that called into question for the Board the viability of the Appellant's plans for replanting of the table lands and the valleylands or the presentation of nearly half of the verdant subject lands to the City for ownership in perpetuity.

[55] As evidenced, only Mr. Levac raised the critical element in s. 2 – s. 2.1- and its requirement that the Board have regard to the decision of the municipal authority. As he wrote: "The Council of the City of Mississauga has voted to support the amended rezoning application as presented and, as such, the OMB shall have regard to that decision." Ms. Munroe's witness statement was silent on this important component of s. 2. Moreover, only Mr. Levac offered extensive planning analysis and opinion to the Board that the consent application for the new lot – which is permitted as of right, triggers no variances and meets the R1-7 zoning provision for 30-m lot frontages and lot area of 1,140 sq m or greater – meets the relevant criteria of s. 51(24) of the *Act*. His equally-comprehensive evidence and opinion was that the minor variance application to create a lot of less than 30 m on Gordon Drive to serve as the entry point from Gordon Drive to the CEC private road meets all the tests for a minor variance as set out in s. 45(1) of the *Act*. His witness statement details this with reference to each of the tests. In contrast, Ms Munroe's opinion on these two points was silent on the planning tests and was confined to her opinion that the applications were premature until a more "appropriate" development scheme for the rezoning application could be considered. This was insufficient evidence in the Board's view and it preferred Mr. Levac's planning evidence in this regard (Exhibit 5). The Board had no hesitation in finding planning merit in the consent and minor variance applications and clearly, based on the

presentation of Minutes of Settlement, the City and its planning staff were eventually able to support the Appellant's proposal as justified in the planning context.

[56] As the Board has centred its analysis on s. 2.1 as an important issue (s. 2.1(a) as excerpted), it is appropriate to consider what information the City relied on to support the proposed development as per s. 2.1(b) (also excerpted earlier). The first and easiest indicator of this information is of course the totality of the Appellant's planning and environmental evidence as entered and exhibited in this hearing. The Board also determined that it should hear from Mr. Hynes, the City planner assigned to the rezoning application to understand what went into his and planning staff's thinking in arriving at a recommendation to Council that a settlement could be supported.

[57] Thus, the Board determined that if it was to have full regard to s. 2.1 of the *Act*, and given the importance the Board has placed on this issue for its successful adjudication of the appeals, the Board would have to examine what information the City considered in arriving at its decision to settle with the Appellant along with acknowledgement of the direction of Council in this regard. To this end, the Board initiated its own call for the City planner to appear at the hearing. Mr. Hynes advised the Board that he initially recommended to Council that the proposed rezoning for eight detached dwellings did not represent good planning and should not be approved (March 4, 2014 report, Exhibit 4, Tab 42, page 574) but that the Commissioner of Planning would report back to Council should a settlement be reached (page 575). The "Report Highlights" on the same page noted that the proposed rezoning was unacceptable regarding the protection of the Residential Woodlands, tree preservation and compatibility with the existing character of the area with respect to zoning standards. The report recommended reduction of a minimum of two units to "better retain and enhance the existing tree canopy, address compatibility with abutting and existing zoning regulations and be more in keeping with the character of the area." Later in the report, Mr. Hynes noted that the proposed scale of development was not in keeping with the neighbourhood character; the zoning provisions for the area did not respect and relate to the adjacent lots in the surrounding area; the tree canopy will be impacted; and

some technical details still had to be addressed.

[58] Mr. Hynes stated that in reviewing the development scheme, he had regard to the relevant policies of the Official Plan as well as the Residential Woodlands policy, which is intended to protect, enhance, restore and expand the existing ecosystem, and his report discussed s. 6.3.1.4 of this Official Plan regarding the importance and function of Residential Woodlands. He then suggested to Council that the Appellant should adjust his concept plan to reduce the number of units and building footprints of the dwellings and to increase the front, rear, interior and exterior side yards "to be more consistent with the existing established character of the area and allow for more tree preservation opportunities." The Board was persuaded generally that there is a higher threshold when assessing development on Residential Woodlands as Mr. Hynes acknowledged when questioned by Ms. Costello. Yet, every indication from the evidence demonstrates that Mr. Hynes undertook that higher threshold evaluation by referencing the Residential Woodlands policies. Further, he recommended additional revisions and additional work from the Appellant with respect to tree canopy preservation, for example. The Board is satisfied that the City planner had consulted the relevant policies of the OP to evaluate a revised proposal that he subsequently recommended as worthy of settlement by Council.

[59] The Board learned other important facts from Mr. Hynes' report. The CVC, which is the ultimate specialized agency mandated to ensure Ontario's water, land and natural habitats are conserved, restored and responsibly managed through watershed-based programs, indicated in the documentary evidence on file its satisfaction with the environmental delineation of the hazards and buffers in line with the Long Term Stable Top of Bank plus 5.0 m as well as the resulting limits of the Appellant's proposed development and the lands to be dedicated to the City and to be zoned Greenbelt as part of the application. The CVC suggested the provision of a satisfactory Tree Preservation Plan, Restoration Landscape Plan and Functional Servicing Report and additional details on the proposed storm water outfall design, including satisfactory sediment and erosion control measures and landscape plans to be provided through the

Servicing Agreement and prior to the CVC's issuance of a permit. All of this the Appellant undertook to do; the CVC supported the responsiveness and substantive details provided by the Appellant through the revised design; all of which contributed to the Council's decision to enter into Minutes of Settlement with the Appellant.

[60] The Board also learned from Mr. Hynes (and Mr. Levac's witness statement) that the Functional Servicing report and Phase 1 Environmental Evaluation were satisfactory but required CVC approval regarding the outlet works to Mary Fix Creek. The requirement as stated in the Minutes of Settlement for a "Development and Servicing Agreement" in a form and on terms satisfactory to the City was also referenced by Mr. Hynes. Further, the Appellant's scientific data as contained in the environmental reports and subsequent December 2014 updates on file reflect the seriousness with which the Appellant took the City's recommendations and the Appellant complied by providing some of the most rigorous and comprehensive scientific and environmental evidence this Member has seen for a private application such as this. The Appellant agreed to the requirement for a Development and Servicing Agreement.

[61] City Community Services Department – Parks and Forestry Division/Park Planning Section staff also reviewed the application and advised that its approval would be possible if the lands below the established Top of Bank and any buffer lands would be zoned Greenbelt and dedicated "gratuitously" to the City for long-term conservation and natural hazard management. The Appellant complied with this recommendation.

[62] The Board is satisfied that the appropriate commenting agencies had regard for the specific aspects of the proposal that were relevant to their consideration of the proposal and their recommendations have been demonstrated through the evidence to have been achieved by the Appellant. Equally, the Board also finds that as the assigned planner, Mr. Hynes and his staff had access to and considered all of the necessary evidence including the context of the Gordon Drive area to opine that the resulting revised scheme, with lots based on R16 provisions that achieved new wider side yard separation distances and a reduction in the number of dwellings, represented

good planning worthy of support. Ms. Munroe's characterization of his analysis as "deficient" is assigned no weight by the Board and is not borne out by his *viva voce* evidence at this hearing. The Board heard no persuasive evidence from her or Mr. Spitale and no persuasive submission from GWHA's counsel that somehow the newly-created lots of the subject lands fronting onto Gordon Drive (or the new interior lots for that matter) must reflect the R1-6 character of the heavily-treed big lots across the street as GWHA desired (let alone the R1-7 base zoning); or that Mr. Hynes was obligated to use these as the basis for assessing the Appellant's development scheme. When queried, Mr. Hynes was in fact clear and unwavering in his reference to the smaller lots located in close proximity to the subject lands – those found along Autumn Breeze Drive North with frontages of less than 30 m and 1,140 sq m – are appropriate context for this development scheme regardless of the planning regime in effect at the time of their creation. Their presence must be considered and where an appropriate rationale was given for their consideration, the Board does not hesitate in finding persuasive Mr. Hynes' preference for the southern lot context rather than across the street where the R1-6 zoning category exists.

[63] The Board was satisfied that Mr. Hynes assessed the development against the context of R1-7 zoning in the area and not against the R1-6 zoning, particularly where the lot frontage standard reflects a level of existing lot development throughout the area both north and south that does not meet the frontage and lot coverage standards. With no legislated or municipally-mandated requirement to "tailor" the R16 Zone to meet the R1-7 Zone provisions, the Board finds that there was no obligation on the Appellant to do so or to adjust his development to accommodate a level of zoning that the City in fact directed be set aside in favor of the applicable R16 condominium-focused zoning category. The Appellant complied with what the municipal authority asked of him. Nevertheless, the City desired increased separation between the houses to reflect the more generous separation distances that are typical of the area and the Appellant complied, to the extent possible and in a manner that did not detract, in line with Mr. Hynes' planning position, from the overall merits of the proposed development as contemplated. Thus, given the improvements made in direct response to the City and

CVC comments, Mr. Hynes' review of all of those improvements as well as the planning materials and the immediate context of Gordon Drive neighbourhood itself informed his expert planning opinion which in turn served to assist Council in moving forward with a settlement agreement with the Appellant.

[64] As explained, once the Appellant had reduced his lots from eight to seven in response to the City's expressed concerns and recommendations; when he increased the number of trees to be saved from uprooting for development; and when he proposed average lot widths averaging 29.37 m of frontage and 1,067.80 sq m of coverage (given the context of the average lot width of 23.8 m and average lot area of 1,000 sq m on Autumn Breeze Drive North to the immediate south), Mr. Hynes advised the Board that the improvements were significant and he was able to "settle" the matter. For completeness, Mr. Hynes also asked the Appellant to remove the two proposed visitor parking spaces at the front of the property in order to preserve existing trees. He opined that few visitors would use them given that development was proposed to occur much farther east into the property and further, the Appellant was already providing double-car garages with parking for two more cars on the private driveways. The Appellant`s response was direct and accommodating of the City's position. In all of these changes, it is clear that the development as juxtaposed against the relevant planning context was supportable insofar as the City was concerned.

[65] As for the municipal process generally, it was unchallenged by GWHA. The procedure for preliminary and subsequent submissions for a rezoning application and subsequently for the consent and minor variance applications was followed. A statutory public meeting was held. Comments were received from all applicable authorities and agencies that fed into recommendations for moving forward resulting in a settlement that is favorable to the City and the Appellant jointly and beneficial to the public interest (discussed below). The process was fair, open and transparent.

[66] Anecdotally, the Board wishes to note that in previous Board hearings regarding the attempts to create substandard lots along Gordon Drive, the City and GWHA have

been united historically in their opposition on the basis that those proposals did not represent good planning and would destabilize the character of the area. These decisions were for the most part accorded decisive weight and resulting in protection of the area from inappropriate or impactful development. This is not the case with the proposal at hand and its particular history, topographical characteristics and individual circumstances of development distinguish it from earlier decisions, which the Board notes, require or set any precedent for development on this site as contemplated. Most telling for the Board is the City's position that, despite all of its past appearances in opposition to development in this area in partnership with GWHA, it saw fit to support this development as contemplated by the Appellant's proposal such that a settlement was possible.

[67] Lastly, there is another persuasive indicator that supports the Board's reliance on the s. 2 issue to have regard for the decision of the municipal authority. While not determinative of the case by any stretch, the Board nevertheless read with interest the comments of the local Ward 7 Councillor Nando Iannicca, whose comments in a Spring 2013 letter to his constituent residents inviting them to a public meeting on the earlier development proposal demonstrates that at least at the local councillor level, there had been a level of municipal support for the earlier proposed development scheme that represented greater intensification than what the Appellant proposes at this hearing (see Exhibit 4, Tab 30).

[68] Mr. Iannicca was notifying residents of a forthcoming informal public meeting on the earlier iteration of the Appellant's development proposal of nine units for the subject lands. He wrote: "…43% of the gross site area will be protected as natural greenbelt lands and conveyed gratuitously to the City of Mississauga" as a condition of development". He recited the smaller dimensions of the lots and added: "The models have been sized and designed to minimize impacts on the existing table land tree canopy." The Councillor's endorsement of the more intense and earlier proposal bears recitation insofar as the s. 2 issue in this case is concerned:

> I am also very pleased to note that this applicant has complied with the very strong directive from staff, the community, and I *[sic]* that the frontage of Gordon Drive should maintain the zoning and character of that entire street. Over the years various owners have tried to sever off smaller lots on this frontage and or incorporate side or rear yard conditions from within the block so as to maximize the number of buildable units. Under this development proposal only one new additional lot that appropriately fronts Gordon *[sic]* is permitted and this lot conforms to the existing zoning. Finally…a great deal of emphasis has been placed on building envelops and designs of individual single detached homes that minimize the damage to the tree canopy to the greatest possible degrees.
>
> …I would be remiss if I did not thank a long list of area residents…who over the last two decades have done a great deal to keep whittling away at some of the outlandish and excessive proposals that have come in such that whatever we end up with will be far better than what has been proposed in various applications over the last two decades.

[69] In the Board's determination, all of the necessary planning evidence was available to the City to make an informed, insightful and public interest-based decision to approve the proposed development scheme – which it did – in a manner that would not destabilize the immediate area while achieving a gratuitous benefit of new lands in public ownership for all to enjoy. The City had full regard to the requisite Official Plan policies in evaluating the rezoning application. The appropriate municipal departments as well as the CVC were consulted and all provided input to establish what comprised or did not comprise acceptable development in February and March 2014. Coupling the Ward 7 Councillor's supportive comments to his constituents in 2013 (that there was merit to this proposal albeit an earlier one at a higher level of intensification than what this Board considered) with the recent news that the City had settled on the Appellant's revised and improved development scheme, the Board finds that these considerations support the Board's decision to centre much of its analysis on the application of s. 2.1 of the *Act* and the supportive decision of the municipal authority in the manner set out in these reasons.

[70] Lastly, in keeping with the determination of public interest, the Board makes the following findings. Careful study of the all of the evidence before it establishes for the

Board that there is a compelling public interest in permitting the development to proceed as contemplated. Indeed, several of the notable planning tests at bar prescribe the determination of public interest and the resolution of conflicts between public and private interests. First, the Board accepts as persuasive that the City was the steward of the public interest in the first instance by considering the planning and ecological merits of reaching a settlement with the Appellant for a type of development and acquisition of lands that could be supported in the context of the local area as well as in its municipal planning instruments (instruments with which this Board has vast experience interpreting by virtue of its longstanding adjudicative role in resolving appeals throughout the City). Once the appeal reached the Board, the responsibility of the public interest shifted from the City to the Board and it is the Board that now determines the public interest in approving the proposed amending zoning instrument and associate applications.

[71] Second, the Board finds that a settlement of the City's issues with the Appellant is in the public interest from which derives significant benefits: completion of a north-south development strip of lots of varying sizes through a form of development that reflects the zoning standards of the requisite zoning category; sensitive development *vis-à-vis* the ecological condition of the subject lands that requires a minimal number of trees to be removed but replaced with more intensive tree planting and re-planting as well as maintaining the property's peripheral tree canopy and ground cover to the extent possible to reflect the verdant nature of the neighbourhood; and most notably, the transfer of no less than 44% of the large area of subject lands from private ownership to public ownership in perpetuity so that the Residential Woodlands designation is safeguarded through the G1 Greenbelt designation and through the planting and re-planting of non-invasive, local species on the lower valleylands as required. There is a great public interest in enabling the City to acquire roughly two acres of undisturbed forested greenbelt lands for protection and enjoyment by the public in perpetuity.

Conclusion

[72] It is also the finding of the Board that the Minutes of Settlement should receive the Board's endorsement as they serve to facilitate a form of development the Board determines to represent appropriate intensification that not only does not destabilize this neighbourhood but also advances the public interest by creating a well-executed rezoning application that includes the conveyance of lands to expand the Greenbelt Area into public ownership in perpetuity. This is development that comprises a supportable condominium plan concept that represents good infill development in compliance with the direction and objectives of the Official Plan on what Mr. Levac called "an existing disturbed and underutilized property" – along with provisional consent to create a single-family freehold residential lot as well as a somewhat smaller lot to serve as access to the CEC private road. Given the retention of mature trees around the perimeter of the site and on the properties abutting Gordon Drive, the impact of the new lots will hardly be discernible in any sense and the creation of new lots significantly farther into this deep site will create no impacts on the existing character of the Gordon Woods neighbourhood. There was simply no persuasive opposing planning or other evidence to support that notion.

[73] The Board finds that the resulting settlement on the revised development scheme is appropriate and should be accorded full weight as facilitating development that includes an important public interest component. With full regard to the details of the Minutes of Settlement as presented, the Board's withholding of its Order achieves all of the principles and policies of the Official Plan and implements full and sufficient protection of the subject lands in a manner that satisfies all of the requisite tests for a rezoning application as outlined, for provisional consent to be given as tested and for the minor variance application whose tests only the Appellant's planner reviewed. In the Board's view, these applications all represent good planning and should be approved. Having considered the evidence before it, the development should proceed in the manner set out in the implementing documents as proposed to the Board for its consideration.

ORDER

[74] The Board allows the appeals. The rezoning application and its implementing Zoning By-law Amendment as contained in Exhibit 4 are approved. Based on the planning evidence, the Board also approves the revised concept plan, which reduces the number of dwellings units proposed from eight (8) to seven (7) along the common element condominium roadway, and one single family home on a separate lot fronting onto Gordon Drive, as shown on Schedule A attached to this Order (in the Minutes, the "Revised Proposal"). Reference to Map 15 on page 908 of the Zoning By-law Amendment ("Schedule R16-XX") will be made for the approved, specific numerical figures for the lot dimensions and in particular for the larger rear yards of Lots 4 and 5. The Board directs the City and the Appellant to include wording in its final iteration of the planning documents on the prohibition of plunge pools, decks or any accessory structure in the rear yard of Lot 5 only.

[75] The Board Orders that provisional consent be given to create one new residential lot subject to the five conditions enumerated in Exhibit 4, Tab 52, page 909. The Board authorizes the variance to permit a retained lot with a lesser lot frontage than the Zoning By-law requires. The Board withholds its final Order for all of these applications until the Appellant secures Development and Servicing Agreements from the City, and that the form of Zoning By-law Amendment to be approved by this Board is agreed upon by the City and the Appellant with provision to the Board once settled for issuance of the final Order.

"R. Rossi"

R. ROSSI
MEMBER

ONTARIO MUNICIPAL BOARD

Raffi Konialian 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 2167 Gordon Drive from "R1-7" (Detached dwellings – Typical Lots) to "R16 Exception-(Detached dwellings on a CEC – Private Road) and "G1" Greenbelt – Natural Hazard) to permit eight detached dwellings on a common element condominium private road
OMB Case No.: PL131151
OMB Case No.: PL131151

IN THE MATTER OF subsection 53(19) of the *Planning Act*, R.S.O. 1990, c.P.13, as amended

Applicant and Appellant:	Raffi Konialian
Subject:	Consent
Property Address/Description:	2167 Gordon Drive
Municipality:	City of Mississauga
Municiapl File No.:	B 59/13
OMB Case No.:	PL131151
OMB File No.:	PL131229

IN THE MATTER OF subsection 45(12) of the *Planning Act*, R.S.O. 1990, c.P.13, as amended

Applicant and Appellant:	Raffi Konialian
Subject:	Minor Variance
Property Address/Description:	2167 Gordon Drive
Municipality:	City of Mississauga
Municiapl File No.:	A 358/13
OMB Case No.:	PL131151
OMB File No.:	PL131230

MINUTES OF SETTLEMENT

BETWEEN:

RAFFI KONIALIAN
(hereinafter the "Appellant")

- and –

THE CORPORATION OF THE CITY OF MISSISSAUGA
(hereinafter the "City")

WHEREAS the Appellant is the registered owner of lands known municipally as 2167 Gordon Drive, on the east side of Gordon Drive, south of Queensway West, in the City of Mississauga (the "Lands").

AND WHEREAS the Appellant proposed to construct eight (8) detached dwellings on a CEC Private Road (the "Proposal") and one single family home on a separate lot fronting onto Gordon Drive.

AND WHEREAS the Appellant submitted development applications under the *Planning Act*, R.S.O. 1998, c.P.13, as amended (the "Planning Act") to the City for a site-specific Zoning By-law Amendment, and Consent and Minor Variance to permit the Proposal (the "Applications").

AND WHEREAS the Appellant appealed the Applications to the Ontario Municipal Board ("OMB") under Subsections 34(11), 45(1), 51(24) and 53 of the Planning Act (the "Appeals").

AND WHEREAS the Planning and Building Department recommended refusal of the Applications and City Council instructed Legal Services to oppose the Applications before the OMB;

AND WHEREAS as a result of negotiations between the Appellant and the City (collectively, the "Parties"), the Parties have agreed to settle the Appeals as between them, on the terms set out herein;

NOW THEREFORE the Parties hereto agree as follows:

1. At the hearing before the OMB scheduled to commence on January 26, 2015, the Appellant will request the OMB to approve a revised concept plan which reduces the number of dwellings units proposed from eight (8) to seven (7) along the common element condominium roadway, and one single family home on a separate lot fronting onto Gordon Drive, as shown on Schedule "A" attached hereto (the "Revised Proposal");

2. The City agrees based on the Revised Proposal that it will withdraw from the hearing of the Appeals, that it will not make any submissions on the planning merits of the Applications and that it will not take any steps to prevent the Appellant from pursuing approval by the OMB of the Revised Proposal.

3. The Parties agree that at the commencement of the hearing on the Appeals they will jointly request to the OMB that should it find merit in the Revised Proposal, the Board shall withhold its final Order until a Development and Servicing Agreement are secured, and that the form of Zoning Amendment to be approved by the OMB is agreed on by Parties.

4. The Parties agree that these Minutes of Settlement shall be filed with the Board as an acknowledgment of the resolution of the matters between them.

5. The Parties agree that these Minutes of Settlement address all of the terms and conditions of their agreement and that there are no other written or oral terms which amend or modify or otherwise affect the provisions of the agreement.

6. The Parties acknowledge and agree that these Minutes of Settlement may be executed by their solicitors, respectively, in counterpart, and if so executed, these Minutes shall be of force and effect as if executed by the Parties themselves.

IN WITNESS WHEREOF the Parties have executed these minutes of settlement by their authorized signing officers.

Signed at Mississauga, this 22nd day of ~~December,~~ January 2015 HLFG

THE CORPORATION OF THE CITY OF MISSISSAUGA

Per: _____
Name: Mary Ellen Bench
Title: City Solicitor

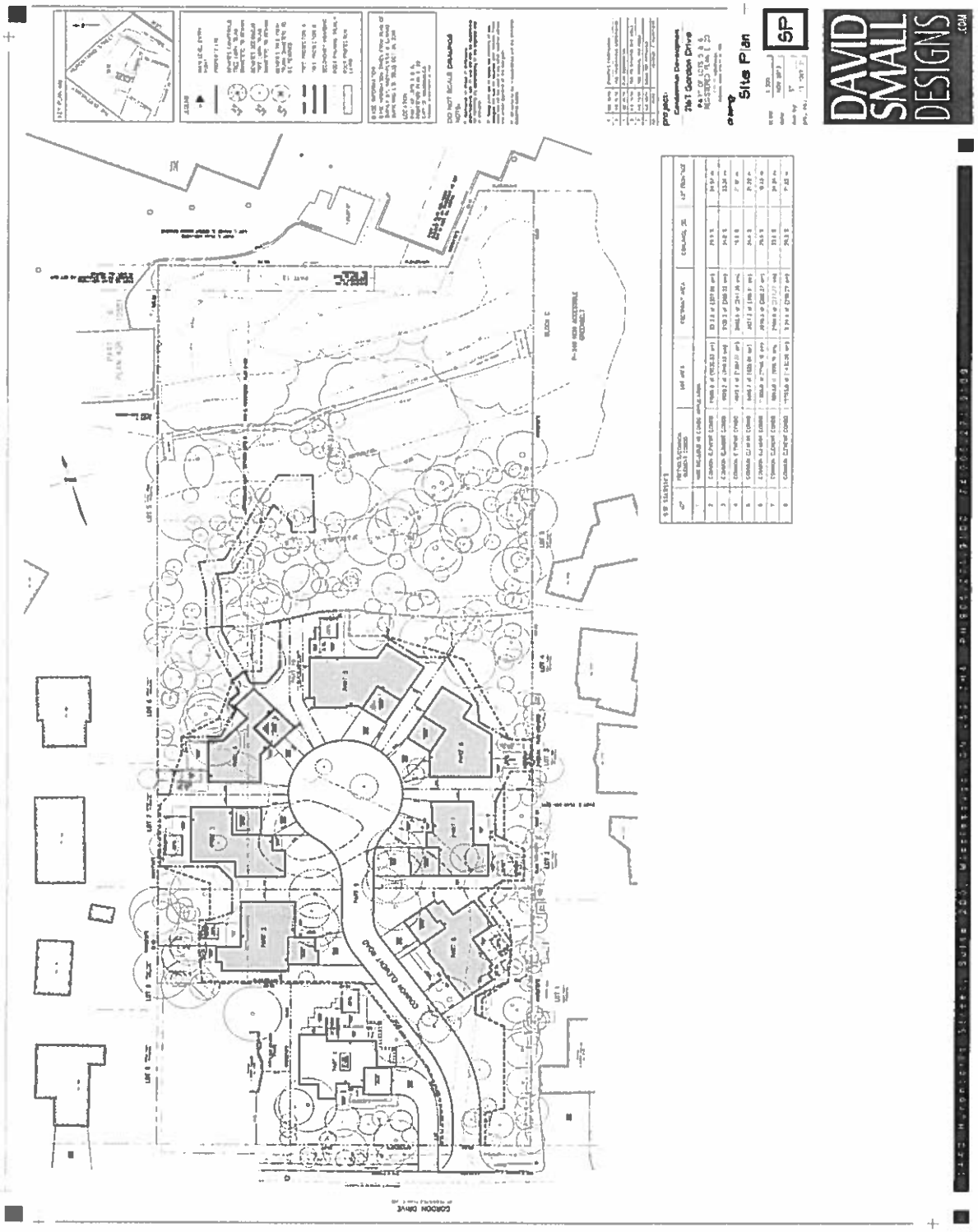
I have the authority to enter into this agreement

RAFFI KONIALIAN

Per: _____
Name:
Title: McMillan LLP

I have the authority to enter into this agreement

SCHEDULE "A"


Site Plan
SP
DAVID SMALL DESIGNS
DO NOT SCALE DRAWING
GORDON DRIVE

Paul Edward, B.Sc., O.L.S.
George T. Singh, B.Sc., P.Eng., O.L.S.
Youssef Wahba, B.Sc., O.L.S.

Ross DenBroeder, B.Sc.E., O.L.S.
Paul Madeira, C.E.T.
Chris Wahba, B.Sc., O.L.S., O.L.I.P

Rady-Pentek & Edward Surveying Ltd.
Ontario Land Surveyors

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Tel: (905) 264-0881, Fax: (905) 264-2099

FRONTAGE & AREA CERTIFICATE

Plan of Survey of
Part of Lots 5 and 6
Registered Plan E-20
City of Mississauga
Regional Municipality of Peel
Acad File No.: 11-094-R02-PLC.dwg
Our File No.: 11-094

I, C. Wahba, an Ontario Land Surveyor of the City of Vaughan, hereby certify that the frontages and areas listed below have been calculated from a Draft Reference Plan prepared for a Part–Lot Control application.

Part Number(s)	Area (Square Metres)	Frontage by Municipal Definition (Metres)	Frontage Along Street Line (Metres)
1 (Not part of condo)	1150.77	34.65	34.67
2	1030.83	24.97	25.74
3	848.13	23.26	27.69
4	1307.37	21.81	13.40
5	925.94	21.28	13.60
6	1106.10	18.23	10.76
7	826.18	24.34	26.04
8	1430.05	71.03	71.05
9	1277.10	9.23	9.20
10	99.31	N/A	N/A
11	7441.81	N/A	N/A
12	401.41	N/A	N/A

DEC. 18, 2014
Date

C. Wahba
Ontario Land Surveyor