

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



**ISSUE DATE:** February 18, 2016

**CASE NO(S):** PL140792

**PROCEEDING COMMENCED UNDER** subsection 22(7) of the *Planning Act*, R.S.O. 1990, c. P. 13, as amended

Applicant and Appellant: 7838794 Canada Inc.  
Subject: Request to amend the Official Plan - Failure of the City of Mississauga to adopt the requested amendment  
Purpose: To permit the redevelopment of the southwestern portion of the property  
Property Address/Description: 2700 Aquitaine Avenue  
Municipality: City of Mississauga  
Approval Authority File No.: OZ 13 /013 W19  
OMB Case No.: PL140792  
OMB File No.: PL140792  
OMB Case Name: 7838794 Canada Inc. v. Mississauga (City)

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

Applicant and Appellant: 7838794 Canada Inc.  
Subject: Application to amend Zoning By-law No.0225-2007 – Neglect of application by the City of Mississauga  
Existing Zoning: "R4A-32" (Apartment Dwellings)  
Proposed Zoning: "RA5-Exception" (Apartment Dwellings)  
Purpose: To permit the replacement of three existing 3 storey rental apartment buildings with three rental apartment buildings with heights of 19, 22 and 25 respectively  
Property Address/Description: 2700 Aquitaine Avenue  
Municipality: City of Mississauga  
Municipal File No.: OZ 13 /013 W19  
OMB Case No.: PL140792  
OMB File No.: PL140834

**Heard:** November 3-16, 2015 in Mississauga, Ontario

**APPEARANCES:**

**Parties**

**Counsel**

7838794 Canada Inc. ("Applicant") M. Flynn-Guglietti/A. Forristal

City of Mississauga ("City") M. Joblin/S. Ferri

**DECISION DELIVERED BY BLAIR S. TAYLOR AND INTERIM ORDER OF THE BOARD**

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**INTRODUCTION**

[1] In or about September 2013, the Applicant filed a development proposal for 2700 Aquitaine Avenue ("Subject Lands") seeking to amend the City's Official Plan and Zoning By-law to demolish three 3 storey rental garden apartment and townhouse buildings and enable their replacement with three rental apartment buildings with heights of 19, 22, and 25 storeys at a Floor Space Index ("FSI") of 2.49 whereas 1.0 was permitted. The application was deemed complete and circulated for internal and agency comments.

[2] In or about March 2014, a revised development proposal was filed for the Subject Lands in response to internal and agency comments. The revised proposal reduced the proposed heights of the three apartment buildings to 19, 18, and 17 storeys and the FSI to 2.16.

[3] As the City had not dealt with the development application within the statutory requirements, the Applicant appealed the proposed Official Plan Amendment ("OPA") and Zoning By-law Amendment ("ZBA") to the Board.

[4] In the lead up to the hearing, the Applicant further revised the development proposal to reduce the proposed heights of the three apartment buildings to 15, 15, and 12 storeys and the FSI to 1.91.

[5] The Board heard the matter in Mississauga for nine days.

## **DECISION**

[6] The Board has carefully considered all the evidence, the decision of City Council, the supporting information/material thereto, and the submissions of counsel. For the reasons set out below, the Board will not approve the requested development application appeals for the development proposal, and will withhold its Final Order for a period of six months from the date of issuance.

## **CONTEXT**

[7] The Subject Lands are generally located in the northwest quadrant of the City: south of Acquitaine Avenue and east of Glen Erin Drive. The Subject Lands are about 3.23 hectares (“ha”) in area with about 123 meters (“m”) of frontage onto Acquitaine Avenue. The Subject Lands are currently occupied by 335 units of rental housing which are composed of the following: a 15 storey high rise apartment building with 115 residential units; 3 storey back-to-back garden apartments that are dispersed through the Subject Lands with a total of 216 garden units; and four 3 storey townhouse units.

[8] There are a total of 522 parking spaces provided on the Subject Lands of which 370 are underground.

## **THE SURROUNDING CONTEXT (Attachment “A”)**

[9] The Subject Lands, while they have their frontage onto Acquitaine Avenue, have direct access to Lake Acquitaine, (which itself is a storm water management feature), and to the City’s trail system. As part of a comprehensive planning exercise designed in

the 1960s and 1970s and built in the early 1980s, the Subject Lands are but one development around Lake Acquitaine.

[10] On the north side of Acquitaine Avenue across from the Subject Lands is a townhouse development.

[11] To the east of the Subject Lands is part of the trail system around Lake Acquitaine and further east a townhouse development.

[12] Proceeding in a southwest fashion around the eastern extremity of Lake Acquitaine there is a large municipal park, then a 12 storey apartment building, then some single family residential development, some townhouse developments, two apartment buildings at 15 and 18 storeys and then a seven storey apartment building at the intersection of Battleford Road and Glen Erin Drive.

[13] Further west (and on the west side of Glen Erin Drive) is another 12 storey apartment building and the Meadowvale Town Centre (which generally occupies most of the entire block west of Glen Erin Drive north of Battleford Road to Acquitaine Avenue and east of Winston Churchill Boulevard).

[14] Proceeding easterly along Acquitaine Avenue from Winston Churchill Boulevard, there is a 12 storey apartment building, some townhouse development, and an 11 storey apartment building at the northwest corner of Glen Erin Drive and Acquitaine Avenue and a 13 storey apartment building at the northeast corner of Glen Erin Drive and Acquitaine Avenue. At the southeast corner of Glen Erin Drive and Acquitaine Avenue is a nine storey apartment building and further south of that is the new City Community Centre and Library, currently under construction. The Subject Lands are separated from the nine storey apartment building at the southeast corner of Acquitaine Avenue and Glen Erin Drive by the City's trail system and separated from the Community Centre by the extension of Lake Acquitaine.

[15] The Subject Lands are located about 1,000 m west of the Meadowvale GO Station and about 500 m east of the Meadowvale Town Centre, where the City's Transit provides about 15 weekday bus routes.

[16] The Subject Lands are currently designated in the City's Official Plan as Neighbourhoods with a site specific designation of *Residential High Density – Special Site 1, and currently zoned RA4-32 (Apartment Dwellings – Exception)*.

[17] The Applicant's case was put forward through the following witnesses: Jim Levac, Land Use Planning; Robert Glover, Urban Design; Jeanette Gillezeau, Demographics and Rental Housing; Rowan Faludi, Demographics and Intensification Targets; Margot Ursic, Ecologist; Jonathan Woodside, Arborist; Tim Turner, Landscape Architect.

[18] The City's case was put forward by Bojana Ivanova, Architect and Urban Designer, and Ted Davidson, Land Use Planner.

## **THE DEVELOPMENT PROPOSAL**

[19] The Development Proposal presented to the Board was based on the following:

- The retention of three northerly 3 storey buildings;
- The retention of the 15 storey existing apartment building;
- The demolition of the three southerly 3 storey buildings (-112 units);
- The construction of three high rise point towers at 15 storeys, 15 storeys and 12 storeys utilizing two 4 storey podiums;
- The provision of 404 net new rental units;
- Two and a half levels of underground parking;
- The creation of a view corridor through the centre of the Subject Lands from Acquitaine Avenue to Lake Acquitaine;

- Greater setbacks to both the (rear) property line of the Subject Lands and to the edge of Lake Acquitaine than currently exist; and
- Increased pedestrian connections to the City's trail system.

[20] The Applicant submits that the Subject Lands are immediately adjacent to the Meadowvale Community Node where all community shopping facilities and some employment opportunities are available. Moreover, the Subject Lands are physically proximate to the Meadowvale Employment Area: an employment area with approximately 76,000 jobs. Contained within the Meadowvale Employment Area is the Meadowvale GO Station which has both rail and bus connections to downtown Toronto.

[21] Mr. Glover, on behalf of the Applicant, provided the Aerial Context Map (see Attachment "A") that has what he calls the "super block" made up of the Meadowvale Community Node, (which includes the Meadowvale Town Centre and a portion of the block east of the Meadowvale Town Centre, including the City's Community Centre) and a portion of the abutting Neighbourhood (including the Subject Lands) bounded by Acquitaine Avenue, Montevideo Road, and Battleford Road.

[22] Within the Meadowvale Community Node there are three existing apartment buildings of 7, 9 and 12 storeys respectively. Outside the Meadowvale Community Node and either within the "super block" to the east or abutting the "super block" are ten other apartment buildings arranging in height from 12 storeys to 18 storeys. The Subject Lands contain one of those apartment buildings at 15 storeys.

[23] From a land use planning perspective Mr. Levac indicated that the Subject Lands are designated as *Residential High Density* which permits apartment buildings with an FSI of 1.0, and they are currently zoned *RA4-32* which is a *High Density Residential* zone category that also permits apartments and townhouses.

## OFFICIAL PLAN

[24] The City Official Plan was adopted by City Council in 2010, partially approved by the Region of Peel in 2011, and partially came into effect in November of 2012 when the Ontario Municipal Board approved the City Official Plan with some modifications and except for those areas still under appeal. As noted above, the subject application was originally filed in 2013. Thus the City Official Plan applies.

[25] The City Official Plan is a very comprehensive document with a number of themes that run through the entire plan, with a degree of repetition in the various chapters as those themes are embellished. Thus in the review of the Official Plan below the reader will note some reiteration of certain specific policy themes.

## OFFICIAL PLAN SCHEDULES

[26] Schedule 1 to the City Official Plan shows the Subject Lands as being located within the Meadowvale Neighbourhood and just outside the Meadowvale Community Node and proximate to the Meadowvale Corporate Centre to the east.

- Schedule 1C of the City Official Plan sets out the Urban System Corridors and the Subject Lands are neither on a Corridor nor on an Intensification Corridor.
- Schedule 2 identifies Intensification Areas and the Subject Lands are not found within any intensification area.
- Schedule 9 sets out the delineation of certain Character Areas and the Subject Lands are found within the Meadowvale Neighbourhood Character Area.
- Finally, the Subject Lands are shown on Schedule 10 as being designated *Residential High Density*.

## OFFICIAL PLAN POLICIES

[27] The Board notes the following policy directives:

- Growth will not be directed to areas of the City that need to be preserved and protected (e.g. stable residential areas) ... (s. 4.5)
- Most of Mississauga's future growth will be directed to intensification areas. (s. 5.14)
- Mississauga encourages compact, mixed use development that is transit supported in appropriate locations to provide a range of local live/work opportunities. (s. 5.6)
- Mississauga will protect and conserve the character of stable residential Neighbourhoods. (s. 5.17)

[28] Section 5.3 provides the City structure which contains the following elements:

- Downtown
- Major Nodes
- Community Nodes
- Corporate Centres
- Neighbourhoods
- Employment Areas
- Special Purpose Areas

And then provides these policy directives:

- The various elements of the City structure will play a unique role in accommodating development. Some will be areas where growth is focused and directed while others will accommodate some development but will not be the primary location for future growth.

and that

- Neighbourhoods and Employment Areas will accommodate the lowest densities and building heights.

At s. 5.3.5 under the title "Neighbourhoods", the Official Plan states that:

Neighbourhoods are characterized as physically stable areas with a character that is to be protected. Therefore, Mississauga's Neighbourhoods are not appropriate areas for significant intensification. This does not mean that they will remain static or that new development must imitate previous development patterns, but rather that when development does occur it should be sensitive to the Neighbourhood's existing and planned character. (Emphasis added)



This policy objective is followed by the following policies:

- Neighbourhoods will not be the focus for intensification and should be regarded as stable residential areas where the existing character is to be preserved. (s. 5.3.5.1)
- Residential intensification within Neighbourhoods will generally occur through infilling and the development of existing commercial sites as mixed use areas. (s. 5.3.5.2)
- Where higher density uses are proposed they should be located on sites identified by a local area review, along corridors, or in conjunction with existing apartment sites or commercial centres. (s. 5.3.5.3)
- Intensification within Neighbourhoods may be considered where the proposed development is compatible in built form and scaled to surrounding development, enhances the existing or planned development, and is consistent with the policies of this Plan. (s. 5.3.5.5)
- Development will be sensitive to the existing and planned context and will include appropriate transitions and use, built form, density and scale. (s.5.3.5.6)

[29] The urban design policies are found within s. 9 of the Official Plan “*Build a Desirable Urban Form*”.

[30] The introduction in s. 9.1 provides that:

Mississauga envisions that growth will be directed to intensification areas comprised of the Downtown Major Nodes, Community Nodes, Corporate Centres, Intensification Corridors, and Major Transit Station Areas. Established Residential Neighbourhoods ... will be protected and strengthened with infill and redevelopment compatible with the existing or planned character.

Further, it states that:

Appropriate infill in both Intensification Areas and Non Intensification Areas will help revitalize existing communities by replacing aged buildings, developing vacant or under-utilized lots, and by adding to the variety of building forms and tenures. It is important that infill “fits” within the existing urban context and minimizes undue impacts on adjacent properties.

[31] Similar to the policies found within the “Direct Growth” portion of the Official Plan the “Build a Desirable Urban Form” policies include:

- Mississauga will develop an urban form based on the hierarchy identified in the City structure. (s. 9.1.1)

- That infill and redevelopment within Neighbourhoods will respect the existing and planned character. (s. 9.1.3)
- That the City vision will be supported by site development that respects the urban hierarchy. (s. 9.1.10)
- Provides that a distinct character for each community will be created or enhanced through the road pattern, building massing and height, streetscape element, etc. (s. 9.11)

[32] The policy then goes on to identify “Intensification Areas” in s. 9.2.1 of the Official Plan and states that:

The Intensification Areas are the principal locations for future growth and consist of: Downtown, Major Nodes, Community Nodes, Corporate Centres, Intensification Corridors, and Major Transit Station Areas.

It then provides a series of policies with regard to the siting and design for tall buildings.

[33] This section of the Official Plan is immediately followed by s. 9.2.2: “Non-Intensification Areas” where it is stated that:

Non-Intensification Areas will experience limited growth and change; consequently intensive growth will not be directed to them and Neighbourhoods constitute one Non-Intensification Area.

[34] For the Non-Intensification Areas s. 9.2.2.1 states that:

Heights in excess of four storeys will be required to demonstrate that an appropriate transition in height and built form that respects the surrounding context will be achieved.

[35] Section 9.2.2.2 states that:

Tall buildings generally will not be permitted.

[36] Section 9.5 deals with Site Development and Buildings and s. 9.5.1 in particular deals with Context. Section 9.5.1 indicates that context addresses how developments demonstrate compatibility and integration with surrounding land uses and vegetation by

ensuring that an effective transition and built form is provided between areas of different development densities and scale and the protection of natural features.

[37] Hence, Policy 9.5.1.1 provides succinctly that:

Buildings and site design will be compatible with site conditions, the surrounding context and surrounding landscape of the existing and planned character of the area.

[38] How that is to be carried out, is set out in s. 9.5.1.2 by demonstrating regard for such items as the Natural Heritage System, Natural Hazards, Natural and Cultural Heritage Features, the size and distribution of building mass and height, the front, side and rear yards, the orientation of buildings and structures, view, sunlight and wind conditions, privacy and overlook, etc.

[39] Specifically s. 9.5.1.5 provides that developments will provide a transition in building height and form between Intensification Areas and adjacent Neighbourhoods with lower density and heights.

[40] Section 9.5.1.7 states that developments adjacent to public parkland will complement the open space and minimize negative impacts.

[41] Section 9.5.1.9 provides that development proposals will demonstrate compatibility and integration with surrounding land uses and the public realm by ensuring that adequate privacy, sunlight, sky views are maintained and that microclimatic conditions are mitigated.

[42] The next realm of policies are found under the General Land Use designations and more specifically the Residential section, the Residential High Density section, and the Residential High Density designation. Section 11.2.5.6 indicates that the only permitted use for a Residential High Density designation is an apartment building, and s. 11.2.5.12 indicates that the minimum and maximum FSI requirements are as shown on the Character Area Maps in Chapters 13, 14, 15 and 16.

[43] As noted above however, the Subject Lands fall within the Meadowvale Neighbourhood Character Area which will be dealt with below.

[44] Turning to the Neighbourhoods section of the Official Plan in Chapter 16, the policies provide in s.16.1.1.1 that:

For lands within a Neighbourhood a maximum building height of 4 storeys will apply unless Character Area policies specify alternative building height requirements or until such time as alternative building heights are determined through the review of Character Area policies.

[45] The Official Plan provides in s. 16.1.1.2 further direction with regard to proposals for heights more than 4 storeys that these will only be considered where it can be demonstrated to the City's satisfaction that:

- (a) an appropriate transition of height that respects the surrounding context can be achieved;
- (b) the development proposal enhances the existing or planned development;
- (c) the City structure or hierarchy is maintained; and
- (d) the development proposals are consistent with the policies of this Plan.

[46] The Official Plan then has Policy at s. 6.1.2.5:

Proposals for additional development on lands with existing apartment buildings will be subject to the following, in addition to other policies regarding medium and high density residential development in this Plan:

- (a) on lands designated Residential High Density, development in addition to existing buildings will be restricted to uses permitted in the Residential Medium Density designation...

[47] The Meadowvale Neighbourhood Character Area policies are found at s. 16.16, and the map there notes that the Subject Lands are to have an FSI in the range of 0.5 to 1.0 and that it is a "special site".

[48] Section 16.16.3 contains the "Special Site Policies" and the Subject Lands are designated as being a "special site" and the policy text provides in 16.16.3.1.2 that

“notwithstanding the provisions of the Residential High Density designation, townhouse dwellings will be permitted.”

[49] Finally with regard to the policy context of the Official Plan, s. 19.5 provides the criteria for site specific Official Plan amendments. The section stipulates that the City will consider site specific Official Plan amendments within the context of the policies of the Official Plan, provided that the proponent of such will submit reports that demonstrate the rationale for the proposed amendment: including inter alia that the proposed redesignation would not adversely impact or destabilize the achievement of the overall intent, goals, objectives and policies of the Plan, and the development and functioning of the remaining lands that have the same designation, or neighbouring lands, the lands are suitable for the proposed purpose, that demonstrates land use compatibility with the existing and future uses of surrounding lands, and the adequacy of services and infrastructure.

### **THE APPLICANT’S CASE**

[50] The Applicant’s case is multifaceted. Mr. Glover, on behalf of the Applicant, notes that the Subject Lands are found within the “super block” where there are 13 existing apartment buildings of which ten are outside the Meadowvale Community Node. He notes that there are a cluster of three high rise apartment buildings at Acquitaine Avenue and Glen Erin Drive, and a cluster of four at Battleford Road and Glen Erin Drive. He testified that the demolition of the three 3 storey blocks of townhouses and garden suites would result in: a view corridor extending through the Subject Lands from Acquitaine Avenue to Lake Acquitaine, (by demolishing the existing buildings that block the lake views), a development further set back from Lake Acquitaine, increased green space near Lake Acquitaine, an appropriate transition in height (through the introduction of the four storey podiums) to the surrounding areas, and an increase in opportunity for connections to the City’s trail facilities. In support of his redesign, Mr. Glover had reviewed the City’s Urban Design Terms of Reference – Standards for Shadow Studies and had prepared two shadow studies: the first for Residential Private Outdoor Amenity Spaces and the second for communal Outdoor

Amenity Areas. In both cases he submitted that the proposed development complied with the City's Design Terms of Reference.

[51] In cross-examination Mr. Glover admitted that current construction of an apartment "storey" would generally be at 3.0 m as opposed to the 1980 standard of construction at 2.7 m, and thus on a general basis each proposed storey would be about 10% higher in 2015 than in 1980.

[52] Ms. Gillizeau provided evidence from a housing and economic perspective that the provision of 404 new (net "new") market rental units at this location would optimize the use of land, infrastructure and public service facilities and provide a positive contribution to a complete community. She testified as to the importance of rental accommodation towards an appropriate range and mix of housing types and densities and that there is a shrinking supply of rental apartments in Mississauga.

[53] Mr. Faludi gave evidence as a land economist/urban planner and opined as to the central location of the Subject Lands for access to the large City park, access to the new Community Centre and Library, access to the Trail System, access to the Meadowvale Community Node for shopping and for bus transit, and access to the Meadowvale Employment Area and to the Meadowvale GO Station.

[54] He noted that the current Official Plan calls for the Community Nodes to form one level for potential intensification but the existing situation with the Meadowvale Community Node is like a doughnut where the lowest density is actually located in the Community Node/Shopping Centre and the highest densities are arranged around the Community Node at its fringes. He testified that he was not able to identify any criteria that established the Node boundary and there was no source as to how or why the Node boundary was created. He stated that the development application was not purposely to expand the Community Node boundary, but neither need one treat the Community Node boundary as being definitive, but rather to treat the area with some degree of flexibility for intensification.

[55] The housing units forecast that had been prepared by Hemson Consulting Ltd. for the City provide for the Meadowvale Community Node a forecast of 1,200 housing units in 2011 rising to 1,400 only in the year 2041. During the rest of that period of time it would be constant. With regard to the Meadowvale Neighbourhood District the Hemson forecast was for 12,600 housing units for 2011 rising to 12,800 by 2016 and remaining level at 12,800 at year 2041.

[56] Examining the intensification and density targets in Neighbourhood areas overall he testified that 24% of the household growth in the City over the 2011 to 2041 period is forecast to occur in the Neighbourhoods and since there is virtually no greenfield development remaining in the City, the vast majority of this growth would have to be through infill and intensification.

[57] Ms. Ursic, a planning ecologist, advised the Board that she had prepared a scoped environmental impact statement following the City's guidelines and that Lake Aquitaine was essentially a 40 year old storm water pond that was about 5 m deep with steep margins at the edges and that 42 trees on the Subject Lands would be lost. She indicated that the Subject Lands and the adjacent lands were quite limited ecologically, that there would be no direct impacts, there would be minimal runoff, there would only be indirect impacts and through the tree proposal to be discussed by the arborist, there would be a net gain in the trees proposed, and a net gain in the green space due to the redesign with regard to the current site plan. Off site from the Subject Lands she indicated that there was an opportunity for improved habitat for other wetland plants and a bat house all of which would cost about \$25,000 and that the Applicant was prepared to provide same through a s. 37 Agreement with the City.

[58] Mr. Woodside, an Arborist, testified with regard to the current trees that are on the site. He had done an inventory and with the redesign in the plan currently before the Board, that of the existing 195 trees, 42 would be removed in order for the construction to take place. With regard to the loss of the 42 trees the new landscape

plan proposed the replanting of 181 trees which was essentially a 4 to 1 ratio of new trees versus those that were removed for construction purposes.

[59] Mr. Turner, a Landscape Architect, gave evidence with regard to the proposed landscape plan. With the redesign of the site plan he testified that there would be more green space, there would be more tree plantings, it would improve the pedestrian experience, that there would be the north/south view corridor from Aquitaine Avenue through to Lake Aquitaine and that overall there would be increased grassy areas, increased landscape areas, and the surface parking that had formerly occupied much of the service would go underground and create additional landscaped open space at the surface.

[60] The Board heard expert land use planning evidence from Mr. Levac, who outlined the development application's progress from its original submission to the City in 2013. He advised that as a result of the internal and agency circulations, comments were provided in the Application Status Report ("ASR") and in response to that the Applicant revised the development to reduce the heights from 25, 22 and 19 storeys to 19, 18 and 17 storeys with a reduction as well to the FSI from 2.49 to 2.16.

[61] Notwithstanding the fact that the second submission had reduced the height and reduced the FSI, Mr. Levac advised that the City's comments were that the application was still too high, still too dense and did not transition well.

[62] In order to deal with these comments from the City, Mr. Levac advised that the Applicant had retained Mr. Glover to bring a "fresh pair of eyes" to the matter. Mr. Glover's evidence has been dealt with above, but suffice it to say that as a result of his involvement the draft site plan was altered, the heights were further reduced to 15, 15 and 12 storeys in height, the FSI reduced to 1.91, and the site design altered to create the view corridor through the centre of the Subject Lands.

[63] In Mr. Levac's opinion, the development application before the Board was consistent with the Provincial Policy Statement ("PPS") as it provided for efficient



development, an appropriate range in mix of housing that was in a cost effective development pattern which was a more intense development and efficient development than what was there before, all in an area where transit was available, schools, shopping and employment opportunities were readily proximate (s. 1.1.1).

[64] With regard to the *Places to Grow Act, 2005*, he advised that the definition of “intensification” was that it provide for a higher density than currently existed on the site through redevelopment, on under-utilized lands, and infill. He indicated that the *Places to Grow Act, 2005* provided for the municipality to provide a strategy and policy to advance intensification generally throughout the built up area and that there were locational attributes for the Subject Lands that included transit, community infrastructure, schools, shopping and employment that were all present at this site.

[65] Thus he was of the opinion that the subject application conformed to the growth plan.

[66] With regard to the Regional Official Plan he noted the provisions in the Regional Plan for complete communities that were compact, well designed and transit oriented and that the objectives of intensification would include the optimization of infrastructure and the opportunities to revitalize or enhance the Subject Lands. He specifically noted that in the ASR the Region had commented that purpose built rental housing creation generally in Mississauga had not kept up with the market demands in the Region.

[67] Turning to the City Official Plan, he reviewed the City structure hierarchy that had been laid out above. He noted s. 5.3.5 in the Neighbourhoods policy to protect the character of Neighbourhoods and highlighted Policy in s. 5.3.5.3 where it states that:

Where higher density uses are proposed they should be located on sites identified by a local area review, along corridors or **in conjunction with existing apartment sites** or commercial centres. (witness’s emphasis)

[68] This highlighted policy, he said, applied to the Subject Lands and the test for when higher density uses were proposed as found in s. 5.3.5.5 where it says that:

Intensification may be considered where the proposed development is “compatible in built form and scale to the surrounding development.

[69] He advised that “compatible” does not mean the same as, but being able to coexist with no unacceptable adverse impact.

[70] He opined that the current application before the Board was a compatible built form, did not replicate the 1970’s construction, was sensitive to what was there through the use of the four storey podiums, provided a view corridor to Lake Acquitaine, provided an appropriate height and density transition, and complied with the Official Plan, for in his view, it was a unique site envisaged by s. 5.3.5.3 (an existing apartment site) where “intensification was being promoted”.

[71] He then took the Board to s. 9 of the Official Plan, the Urban Form section, and noted that there would be infill in both Intensification Areas and Non Intensification Areas. This application, he said, would promote the regeneration and reinvestment of the Subject Lands.

[72] Finally, he took the Board to Chapter 16, the Neighbourhoods Policies. He acknowledged that in s. 16.1.1.1, generally a maximum building height of 4 storeys will apply unless character area policies specify alternative building height requirements. He said that was not applicable here.

[73] He testified that s. 16.1.1.2 provided the criteria for a development greater than 4 storeys where it can be demonstrated that:

- (a) there is an appropriate transition in heights;
- (b) it enhances the existing or planned development;
- (c) the City hierarchy is maintained; and
- (d) the development proposal is consistent with the policies of the Plan.

[74] He then opined on the policy direction in s. 16.1.2.5. This policy provides that proposals for additional development on lands with existing apartment buildings will be subject to the following criteria:

- (a) on lands designated Residential High Density development in addition to existing buildings will be restricted to uses permitted in the Residential Medium Density designation.

[75] He indicated in his oral evidence that this provision was a “hold over” in the Official Plan from the former City Plan and by implication this policy should be given little or no weight.

[76] He then submitted that the application conformed to s. 2 of the *Planning Act* with regard to matters of provincial interest, was consistent with the PPS, conformed to the *Places to Grow Act*, conformed to the City Official Plan in that it provided an appropriate level of intensification which would not destabilize the surrounding community but rather add value as a reinvestment in the Subject Lands, provided the appropriate transition, would provide for an increase in the availability of rental housing, and represented a compatible development and good planning.

[77] In order to resolve any concerns with regard to the possible conversion of the rental units to condominiums, he indicated that his client was willing to enter into a s. 37 Agreement with the City that would include prohibition against any possible conversion of the rental units to condominiums for a period of 10 years.

## **CITY’S CASE**

[78] The Board then heard the evidence from the City’s two witnesses, Ms. Ivanova and Mr. Davidson.

[79] Ms. Ivanova was critical of the shadow study that had been carried out by the Applicant. In particular, she was concerned with the shadows that would be created by

the proposed development of the three apartment buildings of 15, 15 and 12 storeys respectively onto the existing garden units and townhouses that would remain on the Subject Lands, and also onto the City trail system at the west side of the Subject Lands. She noted that Mr. Glover had admitted that the ceiling height used in 2015 is greater than that used in the 1980s and therefore the buildings would be at least 10% higher. Therefore, the 4 storey podium was really about 4½ storeys high and the proposed 15 storey building would, in reality be according to her measurements 48 meters high, which is 1½ to 2 storeys greater in height than the current 15 storey building on the Subject Lands. This, she indicated could have a significant impact.

[80] That impact included the existing garden apartments and townhouses on the Subject Lands and beyond.

[81] It was, in her opinion, that the private outdoor amenity spaces for the existing garden apartments and townhouses on the Subject Lands would be most impacted by the shadows from the proposed development in excess of the Mississauga Urban Design Terms of Reference Standards for Shadow Studies.

[82] Additionally, she was of the view that the Applicant should have used a 45 degree angular plane to establish setbacks from the public realm being the trail system and the Lake Aquitaine façade.

[83] In cross-examination, Ms. Ivanova was taken to Exhibit 33 which is the City's Urban Design Terms of Reference Standards for Shadow Studies. Thereafter she was taken to the following policy, s. 3.1 Residential Private Outdoor Amenity Spaces:

To maximize the use of private residential amenity spaces during Spring, Summer and Fall, shadow impacts from proposed developments should not exceed one hour in duration on areas such as private rear yards, decks, patios and pools of surrounding residential dwellings on each of the following dates: June 21 and September 21. This criterion is met if there is shadow impact for no more than two consecutive hourly test times within the space between the exterior wall of the dwelling that abuts the amenity space and the line of impact assessment (no impact zone).

Ms. Ivanova confirmed that the spaces she was referencing were not private rear yards, were not decks, were not outdoor pools, but in her mind, were patios.

[84] She was shown photographs of the Subject Lands with the townhouses having 3 storeys and the upper levels all having balconies (which are not included in the criteria) and that the lower levels have a porch.

[85] Under cross-examination Ms. Ivanova admitted that a private amenity space would appear to meet the definition of “porch” in the City’s Zoning By-law.

[86] The Board next heard from Mr. Davidson, the Land Use Planner on behalf of the City. Mr. Davidson, by air photo, tracked the development of the Meadowvale Area starting in the 1980’s. The air photo from the 1980’s showed no development on the Subject Lands with some single family development in the general Meadowvale Area. By 1985, there was extensive development in the Meadowvale Area including the Community Node, the apartment tower and the Subject Lands had been fully built.

[87] From a land use planning perspective, he noted that the development proposal was in an existing stable area that had not been designated as being within an Intensification Area and in his opinion did not appropriately consider the growth management provisions of the Official Plan.

[88] He noted that the Subject Lands were in the Neighbourhood designation, not an Intensification Area, not on an Intensification Corridor, nor even on a Corridor, but rather just part of a stable residential Neighbourhood.

[89] He testified that the development proposal was not in a form that was in conformity with the planned character or existing character of the area and that in his opinion it did not constitute good planning.

[90] Mr. Davidson described the development character of the Meadowvale Area as being the “towers in the park” type of development from its onset and that the current

Official Plan provisions were put in place to address the “towers in the park” apartments which had extensive landscaping, extensive surface parking, and no relationship with the street.

[91] He noted that the City Official Plan had a City Structure (s. 5.3) and an urban hierarchy where Neighbourhoods would accommodate the lowest densities and building heights, with the maximum building height in the Neighbourhoods being 4 storeys. While he agreed that s. 5.3.5.3 did reference higher densities in conjunction with existing apartment sites, his evidence was that that section had to be read in conjunction with the specific provisions for the Meadowvale Neighbourhood where in s. 16.1.2.5 proposals for additional development on lands with existing apartment buildings which were designated Residential High Density, that development, in addition to the existing buildings, would be restricted to uses permitted in the Residential Medium Density designation.

[92] That Residential Medium Density designation in s. 11.2.5.5 allows: “townhouse dwellings and all forms of horizontal multiple dwellings.” There is no permission for apartment dwellings.

[93] Thus Mr. Davidson disagreed with the evidence of Mr. Levac that s. 16.1.2.5 was a “hold over” from a previous Official Plan. Rather, he indicated that this section was deliberately retained by the City in the new Official Plan in order to address the “towers in the park” of which there were a number in the Meadowvale Area.

[94] With regard to s. 2 of the *Planning Act* as to the provincial interest, he specifically took the Board to subsection (p) which is: “the appropriate location of growth and development”. He indicated that the Official Plan guides that location.

[95] With regard to the PPS he first took the Board to s. 4.7 which states that: “the Official Plan is the most important vehicle for the implementation of the PPS”.

[96] While he agreed that s. 2.2.3 General Intensification s. 6(b) indicates that intensification will be generally encouraged throughout the built up area and that Mississauga is virtually an entire built up area, he pointed out that that provision comes under the overriding parameter that “all municipalities will develop and implement through their Official Plans and other supporting documents a strategy and policies to phase in and achieve intensification and the intensification target”.

[97] This, he indicated, that the City had done through its new Official Plan which was a conformity exercise with the *Places to Grow Act*.

[98] He testified that the Official Plan has a vision and that vision is found in Chapter 4. There in s. 4.5 the Official Plan provides that “Growth will not be directed to areas of the City that need to be preserved and protected (e.g. stable residential areas...”. To implement that vision, Chapter 5 deals with directing growth. The direction of most of Mississauga’s future growth will be to intensification areas (s. 5.1.4) and that Mississauga will protect and conserve the character of stable residential areas (s. 5.1.7).

[99] The Official Plan provisions on directing growth then, he said, looked to the urban hierarchy in which Neighbourhoods are considered to accommodate the lowest densities and the lowest building heights with a maximum of four storeys. This development proposal did not meet that policy direction.

[100] He was therefore of the view that the current development proposal before the Board did not conform with the policy direction of the City’s Official Plan as it was proposing three apartment buildings of 15 storeys, 15 storeys and 12 storeys in a Neighbourhood that had a clear policy directive for a 4 storey height maximum. He opined that the specific policy provision in 16.1.2.5 with regard to proposals for additional development on lands with existing apartment buildings was specifically formulated (not to encourage further apartment buildings but rather as the wording stipulates) to restrict such additional development to uses permitted in the Residential

Medium Density designation being townhouse development and all forms of horizontal multiple dwellings, with a height limit of four storeys.

[101] In summary, Mr. Davidson submitted that the City staff had ... “gotten it right” in their Staff Report to Council dated May 4, 2015, in which the staff summarized their comments:

The applications do not meet the City’s Official Plan policies for development and intensification; the height and density are excessive for a site that is outside of a node; and the buildings are not compatible with the existing character of the area.

## **COMMENTARY**

[102] In reaching its decision on this matter, the Board as required has had regard for the provincial interests set out in s. 2 of the *Planning Act*, has had regard for the decision of Council, and the information and material that it had before it. The Board has done so notwithstanding the fact that the appeal was filed before any decision by Council, on the basis of the wording of s. 2.1 of the *Planning Act*: “any decision” that is made with regard to the planning matter. The Board notes the April 14, 2015 staff report to City Council with regard to the revised development proposal at 17, 18, and 19 storeys, and the City Council resolution of June 24, 2015 directed staff to continue informal negotiations.

[103] Section 2(p) of the *Planning Act* references the provincial interest in the appropriate location of growth and development.

[104] The PPS in s. 4.7 indicates that the most important vehicle in achieving the implementation of the PPS is an Official Plan.

[105] The *Places to Grow Act* by its very title, does not just deal with the targets of intensification, but rather requires in s. 2.2.3.6 that all municipalities develop and implement through their Official Plans a strategy to phase in and achieve intensification



and the intensification target. This policy directive puts the onus on municipalities to determine the appropriate locations for growth.

[106] The City's Official Plan, done as a conformity exercise to the Growth Plan, clearly advances the policy basis for locations in which intensification will be achieved throughout the built up area of Mississauga. That policy basis includes a City Structure with an urban hierarchy; it includes Intensification Areas that will be the focus of most of the growth of Mississauga, and so called "Non-Intensification Areas" (see s. 9.2.2) where Neighbourhoods will be stable but not static, and not the appropriate location for significant intensification (s. 5.3.5). Non-Intensification Areas will have lower densities and lower building heights and heights in excess of 4 storeys will be required to demonstrate an appropriate transition in height (s. 9.2.2.1) and tall buildings will generally not be permitted (s. 9.2.2.2).

[107] With regard to the Meadowvale Neighbourhood, it is clear from the Official Plan that the City specifically considered the existing apartment buildings in Meadowvale and adopted policies to achieve its vision for the Neighbourhood. Those Official Plan policies are found in s. 16.1.1 and 16.16.

[108] Section 16.1.1.1 indicates that a maximum building height of 4 storeys will apply unless a character area policy specifies an alternative building height.

[109] Section 16.1.2.5 states that proposals for additional development on lands with existing apartment buildings will have their uses restricted to those uses in the Residential Medium Density designation.

[110] The Subject Lands are found within the Meadowvale Character Area as noted in s. 16.16 as being a "special site" with an FSI range of 0.5 to 1.0.

[111] In Section 16.16.3.1.2 there is a notwithstanding provision for the Residential High Density designation allowing the existing townhouses to be permitted (s. 16.16.3.1.2).

## FINDINGS

[112] The Issues List is attached to the Procedural Order for this hearing. The Issues list has nine issues of which the Board finds the following to be addressed: Does the development proposal maintain the intent of the Official Plan? Does the development proposal represent an appropriate level of intensification for the Subject Lands? Does the development proposal provide an appropriate transition in height and built form? Does the development proposal result in excessive shadowing? And finally does the development proposal meet the Official Plan tests for site specific amendment? As will be observed below, the Board has preferred the evidence of Mr. Davidson and to a lesser degree that of Ms. Ivanova.

[113] In terms of the Official Plan, there are policy directions that *inter alia* regard Neighbourhoods as stable, to be protected and strengthened with infill and redevelopment compatible with the existing or planned context, tall buildings would generally not be permitted, heights in excess of 4 storeys have to demonstrate an appropriate transition in height and built form, and the site specific designation of the Subject Lands would allow a development proposal to be restricted to uses in the Residential Medium Density category, and at an FSI of 0.5 to 1.0.

[114] On a *prima facie* basis the development proposal does not appear to meet any of these policy directions as it utilizes three apartment towers of 15, 15, and 12 storeys, and an FSI of 1.91.

[115] Does the development proposal represent an appropriate level of intensification of the Subject Lands? The Subject Lands are designated Neighbourhoods with a site specific designation allowing apartment buildings and townhouses. Section 5.3.5 of the Official Plan states that Neighbourhoods are not appropriate areas for “significant” intensification.

[116] Intensification is a defined term in the PPS (and the Growth Plan) meaning the development of a property, site, or area at a higher density than that which currently exists.

[117] Thus the addition of one new unit at the Subject lands would constitute intensification.

[118] With regard to the definition of “significant”, the Official Plan and the Growth Plan are silent. The PPS defines significant in terms of natural features, woodlands, mineral potential, and cultural heritage, but not in the context of urban development.

[119] Turning to a dictionary definition, the Board found the Merriam-Webster dictionary definition as being ...“large enough to be noticed or have an effect; very important.”

[120] Synonyms for significant include: noteworthy, remarkable, and important.

[121] The development proposal before the Board is to demolish the three southerly 3 storey buildings, and replace them with three apartment buildings of 15, 15, and 12 storeys, at an FSI of 1.91, and with 404 net new rental units.

[122] While the Official Plan does not have a definition for significant intensification, the Board is of the view that the Official Plan policies provide a framework with which to assess whether the development proposal constitutes significant intensification.

[123] With proposed heights of the three new apartment buildings at 15, 15, and 12 storeys, and with the increase in height per storey at 0.3 m, the actual height of the proposed two 15 storey apartment buildings would exceed the height of the existing 15 storey apartment building, and the proposed 12 storey apartment building would be quite close in height to the existing 15 storey building. This would be quite a departure from the general four storey threshold.

[124] The proposed FSI is 1.91. The Official Plan policies provide the Subject Lands with a density range of 0.5 to 1.0. The existing number of units on the Subject Lands is 335 and which is proposed to increase to 739. The proposal to increase the FSI is again a departure from the Official Plan range.

[125] The Board finds that the proposal to build three apartment towers at heights exceeding the existing apartment height on the Subject Lands would certainly be large enough to be noted, is a noteworthy departure from the approved four storeys, is a departure from the approved built form of more townhouses, and is at a density beyond the envisioned density range.

[126] Does the development proposal demonstrate an appropriate transition in height and built form? The proposed use of the 4 storey podiums is helpful at the ground level, but the Board does not agree that the construction of two new 15 storey apartment buildings that are actually higher than the existing 15 storey apartment building constitutes any form of transition. It actually introduces a new higher built form than what exists. The Board does not find there to be any transition, but rather the introduction of a new higher built form.

[127] What about the shadow effect of the three new towers? The Board is also concerned with regard to the impact that these three towers would have on the remaining townhouses and garden apartments on the Subject Lands.

[128] The Standards for Shadow Studies are guidelines prepared by the City. In the Introduction it states that: "Shadow Studies may be required in support of development applications to demonstrate that the location and height of a proposed building, if greater than 10.7 m, will not cause undue shade on the subject lands, and on the surrounding context, including facades, private and public outdoor amenity and open spaces, public parkland, sidewalks and other components of the public realm."  
(emphasis added)

[129] An examination of the study shows (Exhibit 4B) reveals that the only Residential Private Outdoor Amenity Areas (depicted in red highlighting) are those beyond the Subject Lands and there is no similar examination or depiction for the remaining garden apartments and townhouses found in Exhibit 4B for the Subject Lands. As this was not done, and based on the evidence of Ms. Ivanova, the Board remains concerned with regard to the possible impact on the remaining units.

[130] Does the development application meet the Official Plan tests for a site specific OPA? The Board is concerned that, as it has found that the development proposal does not conform to the Official Plan, that no transition in height or built form has been provided, and that an approval would constitute significant intensification, that such an approval could adversely impact or destabilize the other apartment areas within this area of Meadowvale. Thus the Board finds that the development application does not meet the test of s. 19.5 of the Official Plan.

[131] The Board finds that this development application is about “significant” intensification, whereas the City’s Official Plan does not direct this kind of growth to the Neighbourhoods at this density, and at this height. Thus the Board will not approve the revised development applications for the Subject Lands with three apartment buildings of 15, 15, and 12 storeys, and an FSI of 1.91.

[132] Notwithstanding these findings, the Board wants to be very clear that it is not saying that the Subject Lands cannot be intensified.

[133] In fact a redevelopment proposal for the Subject Lands could have a number of positive attributes including:

- The use of existing infrastructure and community services,
- Proximity to transit, jobs, and shopping,
- Proposed renewal and reinvestment in the Subject Lands,
- The provision of an increased number of market rental units,

- The creation of a view corridor to Lake Aquitaine,
- The enhanced use of underground parking,
- The creation of additional surface open space, and
- The creation of additional connections to the City's trail system.

[134] The Board is mindful of the City Council resolution to staff in advance of the hearing to continue the informal negotiations with the proponent. Clearly those discussions did not result in a settlement.

[135] However the Board notes that considerable professional time, care, and attention has been directed to the Subject Lands with regard to its potential redevelopment, and the Board wishes to encourage the parties to reconvene those discussions to see if an appropriate resolution can be achieved with regard to the redevelopment of the Subject Lands, inasmuch as the redevelopment seeks additional market rental units.

[136] Thus the Board will withhold its Final Order in this matter for a period of six months from the date of issuance to enable the parties to see if an appropriate redevelopment scenario can be agreed upon, failing which the Board will issue its Final Order to dismiss the appeals.

[137] Counsel will keep the Case Coordinator apprised of the status of this matter.

[138] I remain seized, and may be spoken to for case management purposes.

*“Blair S. Taylor”*

BLAIR S. TAYLOR  
MEMBER

If there is an attachment referred to in this document,  
please visit [www.elfto.gov.on.ca](http://www.elfto.gov.on.ca) to view the attachment in PDF format.

**Ontario Municipal Board**

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ATTACHMENT "A"