

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



**ISSUE DATE:** October 06, 2017

**CASE NO(S):** PL160045

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

**Applicant and Appellant:** 1789682 Ontario Limited  
**Subject:** Application to amend Zoning By-law No. 2010-100Z - Refusal of Application by City of Greater Sudbury  
**Existing Zoning:** "H20R1-5" Holding Low Density Residential One and "R1-5" Low Density Residential One  
**Proposed Zoning:** "R3(S) Medium Density Residential Special and "P" Park  
**Purpose:** To permit a retirement complex  
**Property Address/Description:** Moonrock Avenue, Lot 7, Concession 1  
**Municipality:** City of Greater Sudbury  
**Municipality File No.:** 751-6/13-23  
**OMB Case No.:** PL160045  
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**OMB Case Name:** 1789682 Ontario Limited v. Greater Sudbury (City)

**Heard:** January 11 to 13, 2017 in Sudbury, Ontario and January 19, 2017 by telephone conference call

**APPEARANCES:**

**Parties**

**Counsel**

City of Greater Sudbury

Stephen Watt

1789682 Ontario Limited

Denise Baker

**DECISION DELIVERED BY JUSTIN DUNCAN AND ORDER OF THE BOARD**

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## INTRODUCTION

[1] This was a hearing of an appeal filed by 1789682 Ontario Limited (“Appellant”) from the City of Greater Sudbury’s (“City”) refusal to approve applications to amend Zoning By-law No. 2010-100Z in order to permit the development of a retirement complex comprising of 108 assisted-living units and 144 independent-living units, having a maximum building height of three storeys at a site located on Moonrock Avenue, Lot 7, Concession 1 (“Site”). The Appellant proposes to develop 272 parking spaces to be associated with the retirement complex and proposes to convey 2.9 hectares (“ha”) of the Site to the City to create a park around an existing storm water management pond.

[2] The Site is more than 12 ha and is located centrally in an area that is predominately single-family detached dwellings. A draft plan of subdivision was approved in the 1990s to permit the development of 93 individual lots.

[3] The hearing was held over three days on January 11, 12 and 13, 2017 in Sudbury with the January 12, 2017 sitting extending late into the evening to afford participants an opportunity to provide presentations to the Board. Final submissions were heard by telephone conference call on January 19, 2017.

[4] The Appellant presented evidence from Planner Kris Menzies, Transportation Engineer Michael Cullip, and Architect Dennis Castellan. The Appellant also summonsed City Planner Mauro Manzon, who had reviewed the proposal for the City and had recommended approval to City Council.

[5] Prior to the hearing, the City advised that it had accepted the Appellant’s Traffic and Transportation Study and the City would not be presenting evidence from an expert traffic engineer. As a result, the City called a single witness at the hearing: Mart Kivistik. Mr. Kivistik retired from his position as Director of Development with the City’s planning department in 1999. As he had originally been granted status on the appeal as a

participant and could not meet the requirement to provide impartial expert opinion evidence, the Board had ordered that Mr. Kivistik's evidence be limited to factual evidence in an order dated January 10, 2017.

[6] The Board also heard from a total of 22 participants. The issues raised by the participants focused in large part on whether the Appellant's proposal would give rise to transportation issues and whether the complex fit into the existing residential neighbourhood that surrounds the Site.

[7] In hearing the evidence of the participants, the Board also made accommodation for the fact that a French-speaking Board member was not presiding and an interpreter was not available at the time a French-speaking participant, Réjean Grenier, sought to provide his presentation to the Board. Mr. Grenier was given an opportunity to confirm that his written statement to the Board had been accurately translated following the hearing of oral evidence. The Board received edits from Mr. Grenier on the translated document on March 17, 2017.

## **ISSUES**

[8] Generally, in an appeal relating to an application for a zoning by-law amendment in the City, an applicant must show that the proposed amendment is consistent with policies set out in the Provincial Policy Statement, 2014 ("PPS") and with the policies of the City's Official Plan ("OP"). The applicant must also show that the proposed amendment does not give rise to any issues of non-conformity with the Growth Plan for Northern Ontario ("GPNO").

[9] Based on the evidence heard and the submissions of the parties, the Board finds that the main question raised by this appeal is whether the retirement complex is consistent with OP policy requiring compatibility of the proposal with the neighbourhood in which it is to be located. The Board's inquiry into whether the retirement complex is

compatible first examines the compatibility of the complex generally and then transportation issues specifically.

## **DISCUSSION, ANALYSIS AND FINDINGS**

### **Provincial Policy**

[10] The Board received uncontested opinion evidence from Ms. Menzies that the application is consistent with the PPS and conforms to the GPNO. She opined that the proposal is consistent with the policies of the PPS. In particular, she expressed the opinion that the proposal meets policies directed at the provision of a range and mix of housing (policy 1.4.1) and housing to those with special needs (policy 1.4.3).

[11] Ms. Menzies also opined that the proposal does not conflict with and conforms to the GPNO. She opined that the proposal meets policies relating to the accommodation of the needs of seniors and optimizing the use of existing infrastructure (policy 4.2.1(b) and (c)).

[12] The Board has reviewed both provincial policy documents and finds no reason to question the evidence of Ms. Menzies. The Board finds that the application is consistent with the PPS and raises no issue of non-conformity with the GPNO.

### **City Official Plan Policy**

#### **a. General Compatibility of Retirement Complex**

##### *Evidence of the Appellant*

[13] Mr. Castellan was qualified to provide expert evidence in the field of architecture. He explained that Site is bounded on the north side by Moonrock Avenue, the east and

south by Brenda Drive and by the Hidden Ridge subdivision to the west. Mr. Castellan was retained by the Appellant to create the concept design for the retirement complex.

[14] Mr. Castellan explained that the retirement complex is proposed to be compact with a central area with radiating wings. He explained that the complex is based on a model for elderly living that incorporates independent and assisted living areas that would allow residents to remain in the residence as their needs evolve. He explained that the facility is intended to create a complete living environment that allows for seamless transition from people's homes to the residence. He explained that the central hub of the complex will contain communal space, including recreation facilities.

[15] Mr. Castellan explained that the concept plan for the complex incorporates a "no-build zone" of 30 meters ("m") around the perimeter of the Site with vegetative buffering separating the surrounding neighbourhood from the complex. This buffer is to be maintained as a naturalized vegetative buffer area. It was his opinion that this buffering would ensure there would be very little visual impact to neighbours.

[16] Mr. Castellan compared the proposal to the existing approved 93 lot draft plan of subdivision and opined that the experience of neighbouring residents in their backyards and from the street would be improved by the proposal.

[17] It was Mr. Castellan's opinion that the proposal is compatible, sensitive to the specific location and sensitive to the existing uses in the area.

[18] In cross-examination, Mr. Castellan acknowledged that the concept plan places the proposed complex at the highest point of the Site. He also acknowledged that since the complex is approximately 10,000 square meters ("m<sup>2</sup>") in floor area and the Site is over 12 ha in area that the complex is a much larger building than the residences in the area that are approximately 150 m<sup>2</sup> and the Site is much larger than the residential lots surrounding it. It was his opinion that building and lot size are not the sole measures of compatibility and that one must assess how the complex will associate with the

surrounding neighbourhood. It was his opinion that but for some site planning matters, the proposal would be compatible with the neighbourhood.

[19] Mr. Castellan acknowledged that coniferous plantings will be necessary to ensure year-round buffering is in place. Mr. Castellan was of the view that a site plan was necessary in order to ensure that vegetative buffering is put in place and maintained, building placement is finalized, dark sky lighting is adopted, and parking layout is finalized.

[20] Mr. Manzon, senior planner with the City, was qualified to provide expert planning evidence under summons. He explained that his report to Council recommended approval of the rezoning sought by the Appellant. He explained that his report to Council assessed the application against the policies of the City's OP and the PPS. It was his recommendation that a condition of approval be that a vegetative buffer of between 10 and 20 m be established. It was his opinion that what is now proposed, with 30 and 40 m buffering, is an improvement beyond what he had recommended. He explained that his main consideration was and remains as to whether the proposal is compatible with the residential neighbourhood surrounding the Site. It was his view that the proposal could be considered as a change in land use that can be achieved in a complementary manner.

[21] Ms. Menzies was also qualified to provide expert planning evidence. She explained that although the majority of properties on Moonrock Avenue and the surrounding neighbourhood are zoned R1, there are properties zoned R2, six townhouse units zoned R3 and a 14-storey apartment building zoned R4 at the corner of Moonrock Avenue and Regent Street approximately one kilometer east of the Site.

[22] Ms. Menzies explained that the Site is designated "Living Area 1" under the OP. She also explained that the Site is currently zoned Low Density Residential One (R1-5) with a site-specific holding provision applicable to the central portion of the Site. The holding provision relates to domestic water capacity (H20R1-5). Ms. Menzies explained

that it has been established that there is adequate domestic water pressure and it has been agreed between the parties that the holding provision can be lifted at this time.

[23] Ms. Menzies explained that the draft Zoning By-law Amendment (Exhibit 6) would rezone the Site to Medium Density Residential (R3). She explained that the Zoning By-law Amendment would establish a setback of 40 m at the south lot line and 30 m from the other lot lines and a 30 m vegetative buffer at the north, west and south edges of the property.

[24] Ms. Menzies examined the application for the Zoning By-law Amendment against the policies of the OP. Ms. Menzies reviewed the objectives for the Living Area designation policies of the OP.

[25] In examining policy 3.1(a) of the OP, which states that one of the policies of the Living Area policies is to “meet Greater Sudbury’s housing needs, including the special needs of the elderly...”, Ms. Menzies reviewed a population growth outlook report for the City prepared in 2013. That report indicates that there is a disproportionately large population of people between the ages of 45 and 65, that there is a steady decline in mortality rates and that the City’s population age structure will result in increased demand for medium- and higher-density housing units compared to demand in recent decades. The report found that there are signs of a shift towards demand for more row and apartment type housing amongst older residents. It was Ms. Menzies opinion that the proposal will contribute to meeting the housing needs of the City as a result.

[26] Ms. Menzies also opined that the proposal meets the remainder of Living Area objectives contained in policy 3.1 relating to encouraging the development of a mix of residential uses, ensuring that a sufficient supply of serviceable residential land is available to meet existing and future needs, ensuring that communities permit a variety of complementary and compatible land uses, focusing residential development in areas that have sufficient infrastructure capacity and promoting good community design that balances natural environment and urban development. For example, Ms. Menzies

explained that of the 12.2 ha comprising the Site, only 2.41 ha will be used for the building, access road and parking with the remainder comprising of a 2.9 ha public park dedication and 6.9 ha remaining in open space.

[27] Ms. Menzies explained that the designation contained in policy 3.2.1 – “Living Area I – Communities” is applicable to the Site. She opined that retirement homes are permitted under the designation subject to rezoning under policy 3.2.1(6) which provides that:

6. In considering application to rezone land in Living Area I, Council will ensure amongst other matters that:
  - a. the site is suitable in terms of size and shape to accommodate the proposed density and building form;
  - b. the proposed development is compatible with the surrounding neighbourhood in terms of scale, massing, height, siting, setbacks, and the location of parking and amenity areas;
  - c. adequate on-site parking, lighting, landscaping and amenity areas are provided; and,
  - d. the impact of traffic on local streets is minimal.

[28] Ms. Menzies was of the opinion that each of these policy requirements are met by the proposal. She concurred with Mr. Castellan’s description of the project and highlighted that the central building with radiating wings has the effect of minimizing the building face and massing that will be experienced by neighbours. Additionally, she opined that although the complex will be somewhat taller than single family residences in the area at 13.1 m in height with an additional 3.9 m tall sloping roof, the height is compatible by virtue of screening and setbacks. Ms. Menzies opined that the setbacks, buffering, limited view corridors into the Site, siting of the building, and built-form will ensure that the complex will fit harmoniously in the neighbourhood consistent with policy 3.2.1(6).

[29] Ms. Menzies also opined that the proposal could be viewed as a form of intensification supported by policy 3.3.1 and that the proposal has achieved a balance between addressing the concerns of the community with the need to provide opportunities for residential intensification consistent with policy 3.3.2 of the OP.



[30] In response to the evidence of Mr. Kivistik, Ms. Menzies explained that the policies of the OP relating to transit routes promotes higher density on arterial routes but the OP does not limit higher densities to arterials. Ms. Menzies explained that the OP has no locational criteria for retirement homes.

[31] Ms. Menzies explained that it is quite common to have assisted living and apartments in the same building for seniors with various needs. She explained that existing retirement homes in Sudbury have such a mix. She also explained that most retirement complexes are located on larger lots in proximity to residential areas.

[32] In cross-examination, Ms. Menzies explained that the OP contains no test for distance of retirement homes from arterial roads but she viewed the Site as being in close proximity to arterials.

[33] In conclusion, Ms. Menzies explained that she had no issue with recommending the proposal be subject to site plan control and that Schedule "K" to the Subdivision Agreement existing with the City be amended to delineate the land to be conveyed to the City to establish a public park.

#### *Evidence of the City*

[34] Mr. Kivistik explained that the major issue in this appeal was where retirement complexes ought to be located. He provided the Board with locational information about several existing retirement complexes in the City and expressed the view that the Appellant's proposal would set a negative precedent in the City.

[35] It was Mr. Kivistik's view that the history of OP policy between 1962 and the current 2006 OP reveals that there has been a consistent intent in OP policy to ensure that neighbourhood character is reinforced and respected by development proposals rather than merely ensuring compatibility. In the context of this proposal, Mr. Kivistik

expressed the view that the intent of the OP is to protect single family residential neighbourhood character.

[36] In assessing whether the complex will fit Mr. Kivistik compared the densities of the proposal against the surrounding neighbourhood. He explained that on average the Moonglo area has a density of 15 residential units per hectare. He explained that 93 homes, as currently approved, represents 9 units per ha and the proposal is for 25 units per ha. It was his view that the proposed density is out of context and would not fit in the neighbourhood.

[37] It was Mr. Kivistik's view that the City is not experiencing population growth that is driving the demand for intensification. He reviewed several recent conversions and redevelopments of existing buildings and explained that none of them are in residential neighbourhoods.

[38] It was Mr. Kivistik's view that the application for the Zoning By-law Amendment should be denied largely on the basis that it did not meet policy 3.2.1(4) of the OP which states that:

4. Medium and high density housing should be located on sites in close proximity to Arterial Roads, public transit, main employment and commercial areas, open space areas, and community/recreation services.

[39] Mr. Kivistik interpreted "in close proximity" as meaning "very close". It was his view that this policy direction, in addition to policy 11.3.2(3) that encourages higher density housing along arterial roads, are not met in by the application given the location of the Site.

[40] It was Mr. Kivistik's view that the proposal for a for-profit commercial retirement home with such mass represented a dramatic change in the neighbourhood and was not compatible as intended by the OP.

[41] In cross-examination, Mr. Kivistik expressed the view that a smaller retirement home could be compatible next door to a single family residential neighbourhood. He also acknowledged that an existing large retirement complex, Finlandia, located in the City now abuts single family residences which were constructed later. He also acknowledged that other retirement homes in the City abut low density residential neighbourhoods.

[42] Mr. Kivistik acknowledged that the policies of the OP permit retirement homes in the Livings Areas 1 designation but the question was one of compatibility. He also acknowledged that there is no specific policy language in the newest version of the OP requiring that the proposal reinforce and respect existing residential homes and that a 2013 report to Council indicated that no amendments to OP policy were necessary to protect residential neighbourhood stability.

[43] Mr. Kivistik also acknowledged in cross-examination that some medium density development exists on Moonrock Avenue already.

[44] Mr. Kivistik acknowledged in cross-examination that, to date, applications for retirement homes by City staff have not involved an examination of whether the home should be located on an arterial road under policy 3.2.1(4) of the OP, but that apartment buildings applications have routinely been subject to such an analysis by City staff.

[45] Finally, Mr. Kivistik acknowledged that he had not conducted any housing demand analysis in preparing his evidence.

#### *Evidence of the Participants*

[46] The participants, Mark Signoretti, Tanya Farkouh-Martin, Bruce Shaw, John Gallien, John Fedorowich, Ryan Bouchard, Ratvinder Grewal, Helen Strasser, Athena Christakos, Franco Signoretti, Lynn Runciman, Alyson Laking-Peters, John Vanderydt, Eugene Ben-Awuah, Robert Derrenbacker, John O'Shaughnessy, Norm Lavallee,

Colleen Riutta, Christina Wichoski, Kathy Coulson-Roos, Jim Trapasso, and Réjean Grenier are all residents of the neighbourhood around the Site. They variously raised the following overarching views regarding compatibility of the retirement complex:

- a. That the proposal should be properly characterized as an apartment building since the majority of units are apartments and since residents may not be limited to seniors;
- b. That the proposal is incompatible with the neighbourhood in terms of built form, including the size and height of the building; and
- c. That the proposal is incompatible with the neighbourhood as a result of the presence of a commercial activity, including the large parking lot.

### **Analysis and Findings of Board Relating to Compatibility**

[47] Based on the evidence heard, the Board finds that the proposal is consistent with the Living Areas objectives set out in OP policy 3.1. In particular, the Board finds that the proposed retirement complex will assist in meeting the growing need for housing for the elderly. Ms. Menzies' evidence was uncontested on this point.

[48] In considering the evidence of Mr. Manzon, Ms. Menzies and Mr. Kivistik, the Board finds that there is very little that separates them in terms of the main policy examination that the Board should undertake in this context. The Board is to consider whether the proposal for a retirement complex is compatible with the neighbourhood. Another way of asking this question is to question whether the proposal for a retirement complex respects and reinforces the existing physical character of the surrounding neighbourhood, but there is no OP language to this effect. Nothing turns on the specific semantics used to describe this assessment. Policy 3.2.1(6) of the OP sets out specific, but non-exhaustive criteria to apply in assessing for compatibility and the Board considers them.

[49] On behalf of the Appellant, Denise Baker submitted, in reliance on previous Board decisions, that compatible does not equate to the same but rather, that development can exist in harmony.

[50] In response, Stephen Watt, counsel for the City, submitted that the proposed retirement home was a good design but in a bad location incompatible with the surrounding residential community.

[51] First, the Board has considered whether the site is suitable in terms of size and shape to accommodate the proposed density and building form. There is no question that the Site is sufficient to accommodate the proposed complex. There are no constraints on the Site itself that would suggest that the Appellant is trying to fit a building and amenities on the Site that will overwhelm the Site itself. Indeed, the Site is sufficiently large that a 2.9 ha parkland dedication can be made at the east end of the Site and a remaining 6.9 ha can remain in open space which includes the 30 m vegetative buffer on the other three sides of the Site.

[52] The second consideration in policy 3.2.1(6) is whether the proposed development is compatible with the surrounding neighbourhood in terms of scale, massing, height, siting, setbacks, and the location of parking and amenity areas. To this second consideration, the Board would also add the proposed use given the evidence of the participants and Mr. Kivistik concerning the proposal with a commercial component to it.

[53] The Board recognizes that the retirement complex is taller and more massive than the residential buildings that are located in the neighbourhood around it. Additionally, the Board recognizes that the building will be located at the highest point of the land in the area and the amenity space within the building and the parking lot are unique to the neighbourhood.

[54] Balancing against those concerns is a sensitive and thoughtful building design that has a building layout with the thinnest part of the building face being closest to the property line and with the core amenity areas being located furthest from property lines. Additionally, the setbacks of 30 m or more and the 30 m of vegetative buffering will dramatically reduce any potential for visual impacts resulting from those portions of the building that are located closest to the property lines.

[55] One of the concerns raised by the participants was the potential for anyone to reside at the complex and that it may not be restricted to seniors; the potential outcome being that more traffic and activity may be associated with the complex. As recognized by counsel for the parties and some of the participants, the Board cannot “people zone” by placing age restrictions on any residents who may eventually live at the complex. The inability to “people zone” was relied upon by participant Mr. Signoretti as underlining the concern about who will live at the complex and also by Mr. Watt, in final submissions for the City, arguing that the proposal should be characterized as an apartment building.

[56] The Board finds the concern about residents to be largely unfounded. As explained by Mr. Castellan, the design of the complex is intended to be in compliance with Ontario Building Code (“OBC”) requirements applicable specifically to a retirement complex, with specific amenities geared towards seniors. The Board also notes that the draft Zoning By-law Amendment specifically limits the permitted use as follows: “the only use shall be limited to a retirement home complex”. Although this permitted use does not limit the age of residents, it will require the Appellant to construct the building in compliance with increased OBC standards for such a building. Furthermore, although it is conceivable that at some point people other than seniors may reside at the complex, no evidence was led indicating specifically how such a scenario would lead to an issue of incompatibility other than traffic concerns which are addressed in detail below.

[57] Both Mr. Kivistik and several of the participants explained that other retirement facilities in the City are located on major arterial roads and not surrounded by residential neighbourhoods. The Board has considered this evidence and makes the following observations. Many of these facilities are located adjacent to areas zoned R1 similar to the neighbourhood at issue in this appeal. There was no evidence led suggesting that these other retirement facilities have given rise to issues of incompatibility and this is despite the fact that most of these facilities do not have setbacks and buffering similar to what is proposed here. The question remains one of whether the specific proposal before the Board is compatible. It is not sufficient to simply say that this situation has not arisen previously.

[58] The third consideration under Policy 3.2.1(6) is whether adequate on-site parking, lighting, landscaping and amenity areas are provided. Based on the evidence heard, the Board is satisfied that each of these matters has either been addressed in the conceptual plan and will crystallize during site planning.

[59] The fourth and final consideration under Policy 3.2.1(6) is whether the impact of traffic on local streets is minimal. The Board considers transportation issues in the next section. By way of summary however, the Board finds that the transportation evidence shows that the proposal will have a minimal impact on traffic.

[60] As a result therefore, the Board finds that the application meets policy 3.2.1(6) of the Official Plan in terms of compatibility.

[61] There was considerable debate at the hearing about the application of policies relating to intensification in this context. The Board finds that the Appellant is not required to show that the application represents intensification under the OP in order for the Zoning By-law Amendment application to be successful. The major question here is one of compatibility, not one of proving that the proposal is intensification. Nevertheless, the Board is satisfied that the proposal could be considered a form of intensification that balances the concerns of the community against the need to provide

for residential intensification consistent with policy 3.3(2). Additionally, the Board finds that policy 3.3(3) does not require that intensification must be located on arterial roads but rather, it is encouraged to be located on arterial roads in close proximity to employment areas and public transit.

[62] Similarly, the Board has considered the evidence of Mr. Kivistik that the proposal is for a medium density development that should be located in close proximity to arterial roads and public transit consistent with policy 3.2.1(4). However, based on his own evidence, the proposal has a density of 25 units per hectare which is closer to the low density development which is capped at 36 units per hectare in the OP. Additionally, even if the proposal were characterized as medium density development given its height and design, the Board notes that policy 3.2.1(4) does not require such development be located on an arterial but merely states a preference in that regard.

[63] To conclude this section, the Board finds that but for transportation, which will be examined next, the proposed development is consistent with the policies of the OP.

**b. Transportation Matters**

[64] Although the City did not raise any transportation-related objections to the proposal, the participants dedicated a great deal of their evidence to transportation issues. For example, several participants had raised the concern that the Appellant's reports had not yet considered the full range of vehicle types associated with the complex or the curve, elevation and winter conditions on local streets in the neighbourhood. The participant's evidence can be summarized as follows on transportation-related matters:

- a. The proposal will result in an increase in larger vehicles like delivery trucks and handi-trans buses;
- b. The proposal will result in increased traffic seven days a week and result in safety and noise issues;



- c. Moonrock Avenue does not function as an arterial road;
- d. Lack of pedestrian access from the Site and lack of immediate access to transit will exacerbate traffic concerns as people will have to drive from the facility; and
- e. Winter conditions on local streets has not been considered.

[65] Mr. Cullip was qualified by the Board to provide expert evidence in his capacity as a transportation engineer. He provided evidence in relation to the capacity of the road network to accommodate additional traffic and also in relation to road safety issues. Mr. Cullip prepared a transportation impact study (“TIS”) on behalf of the Appellant dated July 23, 2015 that was updated with addenda on September 28, 2015 and October 9, 2015. Additionally, following public meeting, Mr. Cullip provided responses to public concerns. In summary, it was Mr. Cullip’s opinion that the proposed retirement complex will not have an appreciable impact on the area road network.

[66] Mr. Cullip explained that a single access point to the Site will be from Moonrock Avenue. He explained that Moonrock Avenue is considered a collector road in the City’s OP, meaning that the road is intended to funnel traffic in the neighbourhood and connect to an arterial road.

[67] In assessing the impact of the proposal on traffic, Mr. Cullip’s TIS examined its contribution to peak traffic in the morning and evening. He explained that peak traffic associated with a retirement complex would not coincide with peak hours of traffic. As a result, his TIS found that the complex would contribute 44 additional trips during the morning peak hour and 66 trips during the evening peak hour. It was his opinion that this contribution to peak hour traffic was less than what would be associated with 93 single family residences. Mr. Cullip then assessed the worst case scenario for this additional traffic at each road linkage and found that the road network could accommodate this additional traffic without issue at peak hours.

[68] Mr. Cullip also assessed the total daily traffic associated with the proposal and estimated that the complex would generate 791 total trips whereas the 93 single residences would generate 885 daily trips. It was his view that the difference between these two totals was marginal in this context.

[69] Mr. Cullip opined that no intersection improvements will be necessary as a result of the proposed development combined with other development anticipated to 2029. He had assessed that Moonrock Avenue is currently operating below 20 percent of its traffic design capacity and could accommodate traffic associated with the complex and other development.

[70] Mr. Cullip also conducted an analysis of safety issues with use of Moonrock Avenue as the access point for the complex. As Moonrock Avenue is a road with significant elevation changes, Mr. Cullip assessed minimum stopping distances against sightlines at the access point. He explained that at a design speed of 60 km/h (with a posted speed limit of 50 km/h), the minimum stopping distance is 85 m. He explained that this industry standard is conservative in that it assumes poor road traction, slow reaction time of drivers, poor pavement condition and a wet road surface. Mr. Cullip opined that as the sightline from the complex access exceeds 85 m that the proposal does not give rise to any safety concerns. He also noted that as access is close to the crest of the hill on Moonrock Avenue that the slope of the road would also add a margin of safety to drivers travelling towards the access point.

[71] In response to issues raised by participants about loss of sightlines due to the presence of snowbanks in winter, Mr. Cullip explained that roads are not designed for the presence of snowbanks and that he would expect motorists to alter their driving behaviour in response to road conditions, including the presence of ice and snow.

[72] Additionally, in response to participant concerns about the types of vehicles associated with a retirement complex, Mr. Cullip explained that his analysis considered all vehicles types and found that the complex would likely result in a slight increase in

larger vehicle traffic such as handi-trans buses, ambulances, food delivery trucks and service trucks. It was his opinion that the road network could accommodate this type of traffic without any added safety concerns.

[73] Mr. Cullip opined that a single access point for the complex was adequate for the volume of traffic anticipated. He also explained that City parking standards (1.5 parking spaces per unit) dictate that 272 parking spaces be provided. He explained that despite the provision of 272 spaces that one would not expect that 272 vehicles will ever be on site and that provision of 272 spaces is likely in excess of what is will be needed. Finally, Mr. Cullip opined that it was highly unlikely that the complex would result in any off-site parking issues.

### **Analysis and Findings of Board Relating to Transportation Matters**

[74] Upon consideration of the evidence of Mr. Cullip, the acceptance of his TIS by the City and the evidence provided by the participants, the Board finds that the proposed development will not result in any unacceptable transportation issues beyond what one would expect from the development of a 93 unit single family residential residences.

[75] Although there may be some additional truck traffic associated with the complex, based on the uncontradicted evidence of Mr. Cullip that only a slight increase in larger vehicle traffic should be expected, the Board can only conclude that such traffic will be minor in extent and will not give rise to any added safety concerns.

[76] Additionally, with regards to safety in winter conditions, the Board finds that Mr. Cullip's evidence was prepared in accordance with industry standards. The Board also finds his evidence that drivers will adjust behaviour in response to road conditions persuasive. The Board finds that whether the Site is developed with single family residences or a retirement complex does not alter the fact that snow banks will affect

driving conditions on Moonrock Avenue and that drivers will have to alter their behaviour in order to drive safely.

[77] With regards to pedestrian and public transit access, as outlined above, Ms. Menzies expressed the opinion that with the complex being approximately one kilometre from an arterial that it could be considered in close proximity consistent with OP policy.

[78] Pedestrian and transit access to the complex was raised as an issue by Mr. Kivistik and many of the participants. It was asserted that the Appellant had previously owned the subdivision to the east and should have maintained a pedestrian access path that had been used by neighbours over its lands to the commercial areas located along Regent Street and Long Lake Road. Several participants explained that it is now difficult for pedestrians to walk the length of Moonrock Avenue given its steepness and that it is unlikely that seniors would walk this route from the proposed facility. Mr. Signoretti also highlighted that most retirement facilities in the City are located on arterial roads, thereby providing easy access to bus service for elderly residents. The overall concern was that residents of the complex will either become dependent on occasional private transportation services, public handi-trans buses, or will have to drive their own vehicles.

[79] Based on the experience of the participants that Moonrock Avenue is difficult to walk, particularly for elderly people, the Board finds that residents of the retirement complex will more likely than not be almost exclusively vehicle-dependent. The Board does not expect that residents of a retirement complex will routinely walk more than a kilometre to access facilities and transit on Regent Street and then walk the steep hill to return home.

[80] In considering this lack of pedestrian access and an associated potential for an increase in traffic, the Board makes the following observations.

[81] Both the OP (policy 11.7) and the PPS (policies 1.6.7.4 and 1.8.1) promote active transportation (walking and cycling) in policy. However, given the location of the Site, whether a retirement complex or a 93 unit subdivision is developed, residents will similarly be vehicle dependent for daily routines. The competing tension in this context is that the Site is well-suited for development. It is located in an area that is fully serviced with utilities and is close to a multitude of commercial areas and community services.

[82] Additionally, the evidence of Mr. Cullip was clear that the road network can accommodate traffic associated with either the complex or the subdivision. His evidence assessed the worst case scenario and found that the road network can accommodate the traffic.

[83] Finally, one of the underlying purposes of the active transportation policies of the PPS (policy 1.5.1) and the OP (policy 11.7), in addition to the promotion of reduced vehicle use, is to encourage healthy living. The Board finds that this component of the PPS and OP policy will be met as the development contemplated in the Appellant's proposal will have walking paths and parkland immediately adjacent to the retirement complex which will be easily accessed and enjoyed by residents. Furthermore, with the parkland dedication, the park will also be accessible by neighbouring residents of the area, improving the recreational opportunities for all residents of the neighbourhood.

[84] To conclude this section, the Board is satisfied that transportation matters have been adequately considered by the application, consistent with applicable policy.

## **CONCLUSION**

[85] City Council had ratified the City's Planning Committee recommendation that the application be refused. Reasons for Council's refusal of the application were provided. The reasons, in their entirety, stated:

I believe that the Member of the Planning Committee refused this application for the following reasons:

- a. Does not conform to neighbourhood;
- b. Lack of amenities in area (i.e. public transit);
- c. Sec. 3.2.1 (does not comply) O. P.;
- d. Traffic concerns; and
- e. Lack of pedestrian access.

[86] The Board has considered this decision of Council and the municipal file provided to the Board, including the various correspondence and submissions of residents opposed to the proposal, against the evidence tendered at the hearing and finds that each of the issues identified by Council have been fully addressed on the appeal.

[87] In conclusion, the Board finds that the Zoning By-law Amendment conforms to the GPNO, that it is consistent with the policies of the PPS, and that on balance, it is consistent with the City's OP.

[88] Additionally, the Board finds that the holding provision that existed under prior zoning can be lifted and does not need to be carried forward into the Zoning By-law Amendment.

[89] As a result, the Board finds that the appeal should be allowed and the Zoning By-law Amendment approved. The language of the Zoning By-law Amendment has some minor details to be added, including a by-law number and specific zoning and paragraph numbers to be inserted. This language necessary to finalize the Amendment is administrative in nature. As a result, the Board is content that the Zoning By-law Amendment be subject to the Clerk of the City assigning the necessary numbers to the amendment in order to finalize it.

[90] The Board also finds that approval of the Zoning By-law Amendment should be subject to the Appellant making the 2.9 ha parkland dedication.

[91] Finally, the Board finds that the proposed development should be subject to site planning that implements matters discussed in evidence at the hearing. In particular, the Board finds that a site plan should include the implementation and maintenance of year-round vegetative buffering.

## **ORDER**

[92] The Board orders that the appeal is allowed and the Zoning By-law Amendment, marked as Exhibit 6 and attached to this decision, is approved subject to the City Clerk assigning the necessary administrative numbers to the Amendment.

[93] The holding provision under prior zoning for the Subject Property can be lifted and does not need to be carried forward into the Zoning By-law Amendment.

[94] Approval of the Zoning By-law Amendment is subject to the Appellant making a 2.9 ha parkland dedication to the City.

[95] The proposed development is subject to site planning, including the implementation and maintenance of year-round vegetative buffering.

*“Justin Duncan”*

JUSTIN DUNCAN  
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**

A constituent tribunal of Environment and Land Tribunals Ontario  
Website: [www.elfto.gov.on.ca](http://www.elfto.gov.on.ca) Telephone: 416-212-6349 Toll Free: 1-866-448-2248

**By-law  
2017XXXX**

**A By-law of the City of Greater Sudbury  
to Amend By-law 2010-100Z being the  
Comprehensive Zoning By-law for the City of Greater Sudbury**

**Whereas** the Council of the City of Greater Sudbury deems it desirable to amend By-law 2010-100Z being the Zoning By-law for the City of Greater Sudbury;

**Now therefore the Council of the City of Greater Sudbury hereby enacts as follows:**

**Whereas** the Ontario Municipal Board in its decision dated (insert date) in File PL160045 allowed the appeal on a decision by Council of the City of Greater Sudbury to deny an application for rezoning, and;

**Whereas** this By-law is passed to implement the order of the Ontario Municipal Board;

**Now therefore the council of the City of Greater Sudbury hereby enacts as follows:**

1.-(1) That By-law 2010-100Z being the City of Greater Sudbury Zoning By-law, Schedule "A" attached thereto, is hereby amended by changing the zoning classification of the following lands from "R1-5" Low Density Residential One, "H20R1-5" Low Density Residential One Hold to "R3(XX)" Medium Density Residential XX.

(2) Property Description: PINs 73596-0794, 73596-0892 & 73596-0931  
Part of PINs 73596-0894 & 73596-0908  
Lot 7, Concession 1  
Township of McKim, City of Greater Sudbury

2. That the following paragraph be added to Part 11, Section (1), Subsection

(10): (Paragraph letter) R3(XX) (Medium Density Residential XX)  
McKim Township Maps Lot 7, Con 1

Notwithstanding any other provision hereof to the contrary, within any area designated R3(XX) on the *Zone Maps*, all provisions of this By-law applicable to the "R3", Medium Density Residential *Zone* shall apply subject to the following modifications:

(i) The only *use* shall be limited to a *retirement home* complex comprising of the following:



- (a) A maximum of 144 *dwelling units*;
- (b) A maximum of 108 *guest rooms*; and
- (c) A *medical office* with a *maximum gross floor area* of 200 m<sup>2</sup>.

The *retirement home* complex is required to be within a single interconnected *building*;

- (ii) Related *accessory uses* and any *use* permitted in all *Zones* under Section 4.40 are permitted;
- (iii) The maximum *building height* shall be 17.0 metres and shall not exceed 3.0 *storeys*;
- (iv) The minimum *setbacks* for the *retirement home* complex shall be as follows:
  - (a) 30 metres from *interior side lot lines*; and
  - (b) 40 metres from the *rear lot line*.
- (v) A vegetative buffer shall be provided within the minimum *setbacks* as follows:
  - (a) 30 metres from the *interior side lot lines* abutting the *rear yards* of Lots 250 to 264, Plan M-998, Lots 8 to 14, Plan 53M-1195, and Lots 1 & 2, Plan 53M-1398;
  - (b) 30 metres from the *interior side lot lines* abutting the *rear yards* of Lots 1 to 16, Plan 53M-1213; and
  - (c) 30 metres from the *rear lot line*.

3. This By-law is in conformity with the City of Greater Sudbury Official Plan as amended.

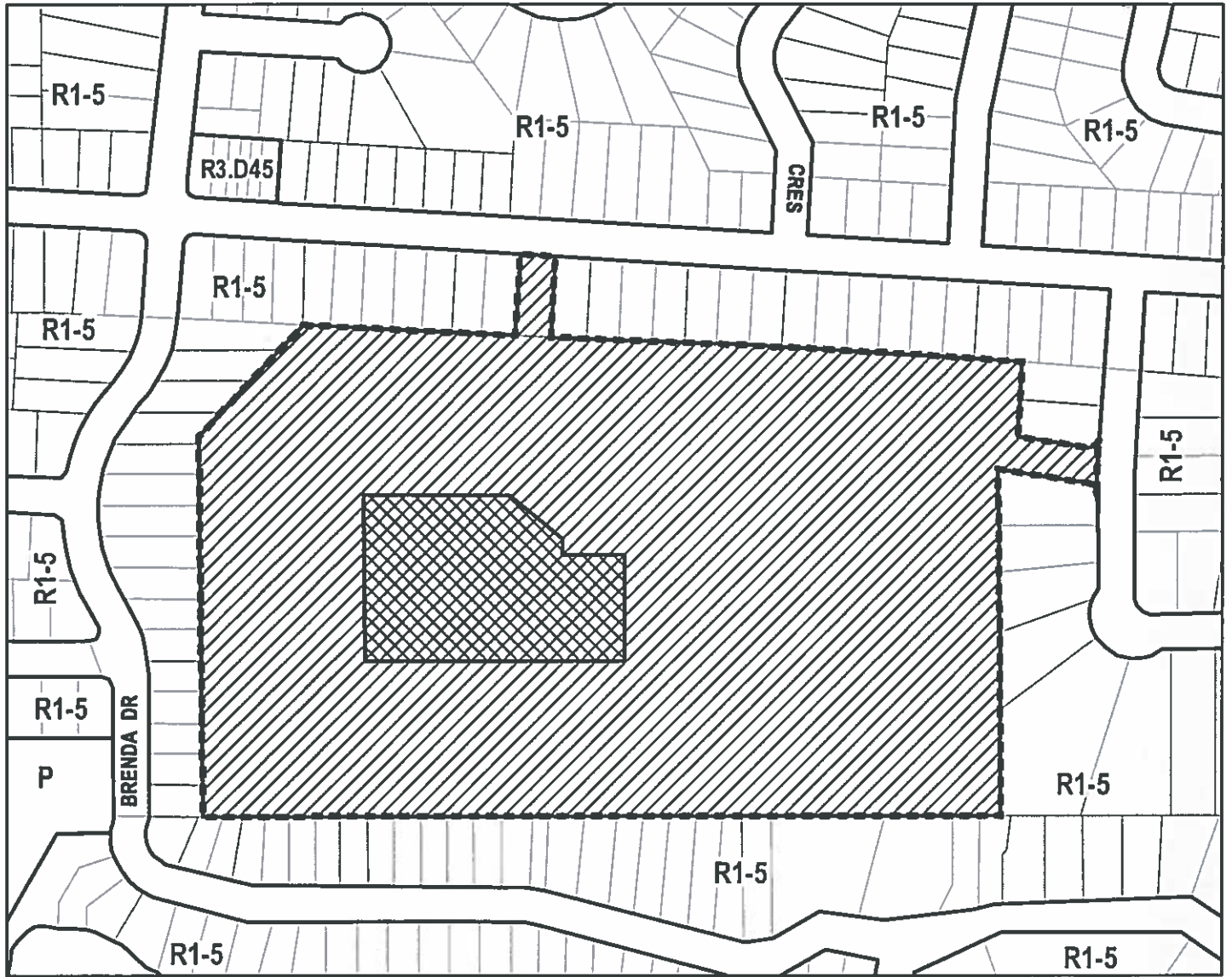
Read and Passed in Open Council this XX day of XXX, 2017

\_\_\_\_\_ Mayor

\_\_\_\_\_ Clerk

# SCHEDULE 'A1'

PIN 73596-0794, 73596-0892, 73596-0931 and Part of PINS 73596-0894 and 73596-0908,  
Lot 7, Concession 1  
Geographic Township of McKim  
City of Greater Sudbury



This is Schedule 'A1' to Zoning By-law 2010-100Z passed this \_\_\_\_ day of \_\_\_\_\_, 2017

\_\_\_\_\_  
Mayor

\_\_\_\_\_  
Clerk



Lands to be rezoned from Low Density Residential One Hold (H20R1-5) Zone to Medium Density Residential (R3(XX)) Zone



Lands to be rezoned from Low Density Residential One (R1-5) Zone to Medium Density Residential (R3(XX)) Zone

