

Local Planning Appeal Tribunal
Tribunal d'appel de l'aménagement
local



ISSUE DATE: February 22, 2019

CASE NO(S): PL161240

The Ontario Municipal Board (the “OMB”) is continued under the name Local Planning Appeal Tribunal (the “Tribunal”), and any reference to the Ontario Municipal Board or Board in any publication of the Tribunal is deemed to be a reference to the Tribunal.

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

Applicant and Appellant:	Sonoma Homes Inc.
Subject:	Request to amend the Official Plan - Failure of the City of Hamilton to adopt the requested amendment
Existing Designation:	Medium Density Residential 2C
Proposed Designated:	High Density Residential
Purpose:	To permit the proposed 12-storey residential building on lands
Property Address/Description:	1117 Garner Rd East
Municipality:	City of Hamilton
Approval Authority File No.:	UHOPA-16-010
OMB Case No.:	PL161240
OMB File No.:	PL161240
OMB Case Name:	Sonoma Homes Inc. v. Hamilton (City)

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

Applicant and Appellant:	Sonoma Homes Inc.
Subject:	Application to amend Zoning By-law No. 87-57 - Neglect of the City of Hamilton to make a decision
Existing Zoning:	H-RM6-658 Zone
Proposed Zoning:	Site specific to permit the proposed development
Purpose:	To permit the proposed 12-storey residential building on lands
Property Address/Description:	1117 Garner Rd East
Municipality:	City of Hamilton

Municipality File No.: ZAR-16-026
 OMB Case No.: PL161240
 OMB File No.: PL161241

Heard: June 18-22, 2018 in Dundas, Ontario

APPEARANCES:

Parties

Counsel

1804482 Ontario Limited
 (Sonoma Homes Inc.)

Denise Baker

City of Hamilton

Brian Duxbury

Rosehaven Homes Limited
 and Ancaster-Rose Homes
 Inc.

Russell Cheeseman

Participants

Donato Cascioli

Self-represented

Edward Hansen

Self-represented

Lazo Pejic

Self-represented

Elizabeth Morison

Self-represented

DECISION DELIVERED BY JUSTIN DUNCAN AND ORDER OF THE BOARD

BACKGROUND

[1] This decision follows from a five-day hearing of an appeal filed by 1804482 Ontario Limited (Sonoma Homes Inc.) (“Appellant”) from the failure of the City of Hamilton (“City”) to make a decision on applications for an Official Plan Amendment (“OPA”) and a Zoning By-law Amendment (“ZBA”) to permit the development of a 12-storey residential building on a property known municipally as 1117 Garner Road East (“Subject Property”).

[2] At the outset of the hearing, Rosehaven Homes Limited and Ancaster-Rose Homes Inc. ("Rosehaven"), owners of the lands to the west of the Subject Property which had been granted party status at the Pre-hearing Conference that took place on November 1, 2017, notified the Tribunal that it had reached a settlement of its issues with the Appellant. As part of the minutes of settlement between Rosehaven and the Appellant it has been agreed that the applications would be revised as follows:

- a. Reduce the height of the proposed building from 12 to 9 storeys;
- b. Eliminate all west facing balconies, with no remaining balconies to protrude beyond the exterior walls of the building;
- c. Relocate the garbage storage area from the north-west portion of the property at the back of the building to the south-east portion of the property;
- d. Redesign the building to meet a 45 degree angular plane from the west property line, which results in the addition of terracing on the west side of the building at the sixth and eighth storeys;
- e. Construction of a screening fence along the west property line; and
- f. Inclusion of a landscape buffer planting strip 3 metres ("m") wide along the west property line, to be planted with Serbian Spruce trees spaced at 3 m on centre at a minimum height of 3 m.

[3] On the basis of this settlement, Rosehaven advised that it now supports the proposed development and would not be calling any evidence at the hearing.

[4] The revised applications before the Tribunal now consist of the following:

- a. An OPA that would amend the Urban Hamilton Official Plan ("UHOP") to

redesignate the Subject Property from “Medium Density Residential 2C” to “High Density Residential” and amend the wording of Site Specific Policy - Area F to permit a nine-storey condominium apartment building with a maximum density of approximately 187 residential units per net hectare.

- b. A ZBA that would amend Zoning By-law No. 87-57 to establish site-specific zoning standards relating to maximum density, maximum building height, maximum lot coverage, minimum front, rear, east and west setbacks, minimum areas of planting strips, minimum landscaped area, and parking. The ZBA would also eliminate the requirement for a children’s outside play area and maintains holding provisions requiring the extension of suitable sanitary sewer servicing to the Subject Property.

[5] During the hearing the Tribunal heard evidence from the following witnesses on behalf of the Appellant:

- a. Glenn Wellings was qualified to provide expert planning evidence.
- b. David Premi was qualified to provide expert evidence in the field of architecture and urban design.

[6] On behalf of the City, the Tribunal heard from the following witnesses:

- a. George Zajac was qualified to provide expert planning evidence.
- b. Robert Freedman was qualified to provide expert urban design evidence.

[7] Additionally, the Tribunal heard from the following participants: Donato Cascioli, Edward Hansen and Lazo Pejic who had previously been granted status on the appeal. On consent of the parties, the Tribunal also added Elizabeth Morison as a participant to the appeal on the basis that her purchase of a property in the abutting subdivision developed by Rosehaven closed on June 3, 2018 and she only recently became aware

of the Appellant's proposal. Ms. Morison also gave a presentation to the Tribunal.

THE SUBJECT PROPERTY AND SITE CONTEXT

[8] The Subject Property is located on the north side of Garner Road East close to where Garner Road connects with Rymal Road which extends to the east. The Subject Property has approximately 83.8 m of frontage on Garner Road and a depth of approximately 61 m.

[9] The Subject Property was formerly a brownfield site, having been used as an automotive service station. It had also previously been designated Utility in the former Town of Ancaster Official Plan and zoned variously Motor Vehicle Services and Agricultural.

[10] After the property was cleaned up and a record of site condition had been obtained, approvals were granted by the City in 2014 to redesignate the Subject Property Neighbourhoods under the UHOP and Medium Density Residential 2C under the Meadowlands Neighbourhood IV Secondary Plan ("Secondary Plan") and to rezone it Residential Multiple in order to permit the development of a three-storey mixed use building.

[11] To the rear of the Subject Property is an elevated water reservoir with a new subdivision beyond consisting of single family residences. The Subject Property has a separation from this subdivision to the north of approximately 170 m. Additionally, the Appellant proposes that a two-level structured parking element at the rear of the proposed development which will set back the main building element from the rear of the Subject Property by a further 21.84 m.

[12] Directly east of the Subject Property and fronting on Garner Road is a 58 m wide, City-owned property containing a pumping station and access area associated with the reservoir. Beyond that is a property hosting a residence owned by Mr. Cascioli and further to the east is a new development consisting of three-storey townhouses.

[13] Directly to the south of the Subject Property across Garner Road, is a large playing field associated with the Hamilton District Christian School ("School Property") and older single-family residences located to the west of the School Property that are currently designated Rural. Located at the east end of the school grounds close to the intersection of Garner Road East and Glancaster Road is a public transit bus loop area ("Glancaster Loop") currently serviced by three bus routes. There are transit stops in close proximity to the Subject Property on Garner Road East. Further west and south of the older residences and the School Property are lands located close to the Hamilton International Airport ("Airport Employment Lands") which were recently redesignated Employment Areas in the UHOP. Additionally, the lands hosting the older residences are currently under consideration for redesignation by the City. At the time of hearing no decision had been made regarding the redesignation of these lands, with a decision expected as part of the next municipal comprehensive review of the UHOP.

[14] Directly to the west of the Subject Property are the Rosehaven lands on which three-storey townhouses will be built with frontage on an internal "window road" running parallel to Garner Road East. Most of the single-family detached residences behind these townhouses had already been constructed at the time of hearing. The Appellant's development proposes to incorporate a west side-yard setback of 17.59 m and step-backs at the sixth and eighth floors which will provide 26.14 m and 34.59 m setbacks respectively at those levels from the Rosehaven lands.

[15] Currently there is bus service on the Rymal Road/Garner Road corridor. An Environmental Assessment was completed in February 2014 to examine future bike lanes, sidewalks and the establishment of a rapid transit corridor. Rymal Road/Garner Road is identified on Appendix B to the UHOP as a potential rapid transit corridor terminating at a business park in Ancaster to the west of the Subject Property. A date for the development of the "S-line" rapid transit corridor on Rymal Road/Garner Road has not yet been determined but road widening is planned to be completed by 2031 and rapid transit establishment may take place within the next 20 years depending on the finalization of transit planning and the securement of funding.

ISSUES

[16] Generally, in an evaluation of applications for an official plan amendment and a zoning by-law amendment, the Tribunal is required to assess proposed planning instruments for conformity with the policies contained in the Growth Plan for the Greater Golden Horseshoe, 2017 (“Growth Plan”) as required by s. 3(5)(b) of the *Planning Act* (“Act”), consistency with the policies contained in the Provincial Policy Statement, 2014 (“PPS”) as required by s. 3(5)(a) of the Act and for consistency with applicable official plan policy, which, in this case, is contained in the UHOP and the Secondary Plan. Furthermore, in assessing the applications for planning instruments, the Tribunal is to have regard for those matters of Provincial interest set out in s. 2 of the Act and is to have regard to the decision of Council and to information and material considered by Council in making its decision as required by s. 2.1 of the Act.

[17] By way of summary, it is the Appellant’s position that the proposed development optimizes the use of existing lands and infrastructure consistent with provincial policy and is consistent with the policies of the UHOP with regards to fit within the neighbourhood and being transit-supportive. The Appellant submits that the applications simply seek relief from outdated height and density regulations contained in the Secondary Plan and in the Zoning By-law.

[18] The City acknowledges that the proposed development conforms to the Growth Plan and is consistent with the PPS. It is the City’s position that the issue for determination for the Tribunal is one of balancing intensification against fit with the neighbourhood character in accordance with the UHOP, including the Secondary Plan, and that fit should be the determinative consideration in this case. The City submits that the proposed development does not fit within the low-rise residential neighbourhood and that rapid transit planned on Garner Road East may be years away and should not dictate the development on the Subject Property at this time. The City submits that the development is not consistent with various policies contained in the UHOP requiring that the development be compatible with the character of the neighbourhood. Rezoning of

the Subject Property had been approved by City Council in 2014 to permit a three-storey mixed use building on the Subject Property and it is the City's position that this development is more appropriate for the site.

[19] The participants variously opposed and supported the application on similar bases to the submissions made by the Appellant and the City.

DISCUSSION, ANALYSIS AND FINDINGS

[20] The Tribunal considers each of the applicable tests contained in the Act set out above.

Matters of Provincial Interest: Section 2 of the Act

[21] In considering the evidence and submissions of the parties, the Tribunal finds that the following matters of provincial interest are relevant in this context:

(f) the adequate provision and efficient use of communication, transportation, sewage and water services and waste management systems;

...

(h) the orderly development of safe and healthy communities;

...

(j) the adequate provision of a full range of housing, including affordable housing;

...

(p) the appropriate location of growth and development;

(q) the promotion of development that is designed to be sustainable, to support public transit and to be oriented to pedestrians;

(r) the promotion of built form that,

(i) is well-designed,

(ii) encourages a sense of place, and

(iii) provides for public spaces that are of high quality, safe, accessible, attractive and vibrant;

(s) the mitigation of greenhouse gas emissions and adaptation to a changing climate.

[22] The Tribunal finds that the Appellant's proposal has appropriate regard to each of these matters of provincial interest. In particular, based on the evidence heard, the Tribunal finds that the proposal will make efficient use of municipal services, the planning instruments will provide for the orderly development of a healthy community, will provide a housing type that is currently lacking in the immediate area surrounding the Subject Property, and will secure intensification at an appropriate location that is transit-supportive. Finally, by locating intensification in close proximity to transit and by promoting the development of active transportation infrastructure that is planned along Garner Road, I find that the proposal provides a form of development that is necessary for achieving reductions in greenhouse gas emissions.

Regard for the Decision of Council and Materials Considered: Section 2.1 of the Act

[23] At the time of hearing, Council had not rendered a decision on the applications but had directed legal counsel to oppose the appeal. The Tribunal has had regard to the material contained in the City's file provided to the Tribunal, including available staff reports and public comments on the applications. The Tribunal notes that most of the material contained in the City's file relates to the original proposal at 12 storeys absent the revisions resulting from the settlement with Rosehaven and, as a result, has been considered and weighed against the more specific evidence led during the course of the hearing which specifically focuses on the revised applications.

Conformity with the Growth Plan: Section 3(5)(b) of the Act

[24] The current version of the Growth Plan came into effect on July 1, 2017. The changes to the Growth Plan coming into effect at that time were not inconsequential when compared to the 2006 version of the Plan. The Province's direction to municipalities and this Tribunal now stresses, with even greater force, the requirement to promote intensification that is supportive of transit and active transportation in

particular.

[25] The introductory part of the Growth Plan explains that the 2017 version of the Plan contains enhanced policy direction aimed at achieving complete communities that are compact and transit-supportive:

Since the introduction of the Growth Plan for the Greater Golden Horseshoe in 2006, the region has seen a shift to more compact development patterns, a greater variety of housing options, more mixed-use development in *urban growth centres* and other *strategic growth areas*, and greater integration of transit and land use planning.

Despite these early successes, there is still more work to do. Now is the time to build on the progress that has been made towards the achievement of *complete communities* that are compact, *transit-supportive*, and make effective use of investments in *infrastructure* and *public service facilities*. At the same time, the Growth Plan will continue to ensure protection of our agricultural and natural areas and support climate change mitigation and adaptation as Ontario moves towards the long-term goal of net-zero communities.

The Growth Plan for the Greater Golden Horseshoe, 2017 (“this Plan”), builds upon the success of the initial Growth Plan, 2006 and responds to the key challenges that the region continues to face over the coming decades with enhanced policy directions. [emphasis added]

[26] Section 1.2.1 of the Growth Plan sets out the Guiding Principles of the Plan. This section was significantly revised in 2017. It provides, in part:

The policies of this Plan regarding how land is developed, resources are managed and protected, and public dollars are invested are based on the following principles:

- Support the achievement of *complete communities* that are designed to support healthy and active living and meet people’s needs for daily living throughout an entire lifetime.
- Prioritize *intensification* and higher densities to make efficient use of land and *infrastructure* and support transit viability.

...

- Integrate climate change considerations into planning and managing growth such as planning for more resilient communities and *infrastructure* – that are adaptive to the impacts of a changing climate – and moving towards low-carbon communities, with the long-term goal of net-zero communities, by incorporating approaches to reduce greenhouse gas emissions.

[27] The Growth Plan now appears to recognize that intensification and higher densities are needed to support transit viability. In other words, that densities come first in order to support transit and not the other way around. In the Tribunal's mind, this is a logical and sound approach to land use planning and fiscal management of transit systems.

[28] Section 2.1, the Context section of Part 2, of the Growth Plan provides, in part:

Building more compact greenfield communities reduces the rate at which land is consumed. Communities need to grow at transit-supportive densities, with walkable street configurations. Compact built form and intensification efforts go together with more effective transit and active transportation networks and are fundamental to where and how we grow. They are necessary to ensure the viability of transit; connect people to homes, jobs and other aspects of daily living for people of all ages; and meet climate change mitigation and adaptation objectives. Moreover, an increased *modal share* for active transportation and transit, including convenient, *multimodal* options for intra- and inter-municipal travel, supports reduced air pollution and improved public health outcomes.
[emphasis added]

[29] The Growth Plan is stressing that communities need to develop in a form that is more dense in order to reduce the rate of land consumption and to provide for transit-supportive densities.

[30] Similar themes and direction are provided at policies 2.2.1.2 (forecasting growth), 2.2.1.3 (integrated planning by upper and single-tier municipalities), 2.2.1.4 (achieving complete communities), and 2.2.7 (development in greenfield areas).

[31] Part 3 of the Growth Plan, entitled Infrastructure to Support Growth, contains the following in s. 3.1 which provides context for the policy contained in Part 3:

It is estimated that over 30 per cent of *infrastructure* capital costs, and 15 per cent of operating costs, could be saved by moving from lower density development to a more *compact built form*.

The *transportation system* for the [Greater Golden Horseshoe] must be planned and managed for the safe and efficient movement of goods and people, and to reduce greenhouse gas emissions and other negative environmental impacts.

Transit is the first priority for transportation planning and investment. The transit network will support and facilitate improved linkages between *strategic growth*

areas and other areas planned for a mix of uses and *transit-supportive* densities. System users will benefit from improved linkages between and within municipalities as well as *transit service integration*.

[32] The policies of Part 3 provide, in part, at policy 3.2.3 that transit planning and investment is to consider, as a criteria, expanding transit to areas that have already or are planned to achieve transit-supportive densities and provide for a mix of land uses:

3.2.3 Moving People

1. Public transit will be the first priority for transportation *infrastructure* planning and major transportation investments.
2. All decisions on transit planning and investment will be made according to the following criteria:
 - a) aligning with, and supporting, the priorities identified in Schedule 5;
 - b) prioritizing areas with existing or planned higher residential or employment densities to optimize return on investment and the efficiency and viability of existing and planned transit service levels;
 - ...
 - d) expanding transit service to areas that have achieved, or will be planned to achieve, *transit-supportive* densities and provide a mix of residential, office, institutional, and commercial development, wherever possible;
 - ...
 - f) increasing the *modal share* of transit; and
 - g) contributing towards the provincial greenhouse gas emissions reduction targets. [emphasis added]

[33] In 2017 a new policy was incorporated into the Growth Plan directed at climate change specifically that provides, in part, that upper and single-tier municipalities are to develop policy in their official plans to support existing and planned transit and active transportation:

4.2.10 Climate Change

1. Upper- and single-tier municipalities will develop policies in their official plans to identify actions that will reduce greenhouse gas emissions and address climate change adaptation goals, aligned with the Ontario Climate Change Strategy, 2015 and the Climate Change Action Plan, 2016 that will include:

- a) supporting the achievement of *complete communities* as well as the minimum intensification and density targets in this Plan;
- b) reducing dependence on the automobile and supporting existing and planned transit and *active transportation*;
- c) assessing *infrastructure* risks and vulnerabilities and identifying actions and investments to address these challenges; [emphasis added]

[34] Part 5 of the Growth Plan relates to implementation. Context section 5.1 provides that previous to a municipalities updating its official plan to conform with the new Growth Plan, the policies of the Growth Plan must still be considered:

Where a municipality must decide on a planning matter before its official plan has been amended to conform with this Plan, or before other applicable planning instruments have been updated accordingly, it must still consider the impact of the decision as it relates to the policies of this Plan which require comprehensive municipal implementation.

[35] Part 7 contains the Growth Plan definitions. The following are among the relevant definitions in this context:

Compact Built Form

A land use pattern that encourages the efficient use of land, walkable neighbourhoods, mixed land uses (residential, retail, workplace, and institutional) all within one neighbourhood, proximity to transit and reduced need for *infrastructure*. *Compact built form* can include detached and semi-detached houses on small lots as well as townhouses and walk-up apartments, multi-storey commercial developments, and apartments or offices above retail. Walkable neighbourhoods can be characterized by roads laid out in a well-connected network, destinations that are easily accessible by transit and *active transportation*, sidewalks with minimal interruptions for vehicle access, and a pedestrian-friendly environment along roads to encourage *active transportation*.

Complete Communities

Places such as mixed-use neighbourhoods or other areas within cities, towns, and *settlement areas* that offer and support opportunities for people of all ages and abilities to conveniently access most of the necessities for daily living, including an appropriate mix of jobs, local stores, and services, a full range of housing, transportation options and *public service facilities*. *Complete communities* are age-friendly and may take different shapes and forms appropriate to their contexts.

Transit-supportive

Relating to development that makes transit viable and improves the quality of the experience of using transit. It often refers to compact, mixed-use development that has a high level of employment and residential densities. *Transit-supportive*

development will be consistent with Ontario's Transit Supportive Guidelines.
(Based on PPS, 2014 and modified for this Plan) [emphasis added]

[36] Although the City acknowledged that the Appellant's proposed development conforms to the policies contained in the Growth Plan, I find that the City has not fully come to grips with the policies contained in this policy document and how these policies affect the application of the policy contained in the UHOP and the Secondary Plan.

[37] It was Mr. Wellings' evidence that the applications before the Tribunal represent a better fit for the Subject Property in that they advance the key provincial policy objectives contained in the Growth Plan. Mr. Wellings explained that bus routes currently support the Subject Property and he referenced comments received from the Hamilton Street Railway ("HSR") in relation to the applications. The HSR noted that construction of higher densities helps reduce net operating costs and higher densities are needed to ensure the viability of a future rapid transit system.

[38] I find that in this context, where the Subject Property is located on a road that is currently serviced by a number of HSR bus routes and where a proposed rapid transit line being considered for implementation in the next 20 years and further, is located in close proximity to a planned employment area, that the question of intensification and transit-supportive development become paramount considerations for the purpose of conformity with the Growth Plan.

[39] In considering the evidence, I find that the Appellant's proposal conforms to the policies of the Growth Plan and will contribute towards the density needed on Garner Road to better support existing public transit and the potential rapid transit line.

Consistency with the PPS: Section 3(5)(a) of the Act

[40] For the same reasons that I have found that the Appellant's proposal conforms to the Growth Plan, I find that the proposal is consistent with the PPS. The proposal is consistent with policies in the PPS that promote development of complete communities with a variety of housing that meets the needs of people throughout their entire lives,

promoting intensification, efficient use of land and municipal infrastructure, and transit-supportive development.

[41] Similar to the Growth Plan, the housing policies contained in the PPS provide that planning authorities shall provide for an appropriate range and mix of housing types and densities and promote densities for new housing which efficiently use land, resources, infrastructure and public services, and that supports not just existing but planned active transportation and transit (policy 1.4.3(d)).

Consistency with the UHOP and Secondary Plan

a. Applicable UHOP and Secondary Plan Policy

[42] The UHOP was approved on August 16, 2013. Many policies contained in the UHOP are duplicative and overlapping. What follows is a summary of the applicable sections, policies and schedules of the UHOP and the Secondary Plan that were referenced by the parties in their evidence and submissions.

[43] Schedule C of the UHOP identifies Garner Road as a Major Arterial Road and Appendix B identifies Garner Road as the location of a potential rapid transit line. The Subject Property is currently designated Neighbourhoods on Schedule E of the UHOP. Appendix G identifies the Subject Property as being outside the City's Built Up Area and it is deemed Greenfield as a result. As explained above, the Appellant seeks to redesignate the Subject Property High Density residential in the Secondary Plan.

[44] The Parties' witnesses generally referred to the same policies of the UHOP and the Secondary Plan in their evidence, with varying interpretations of how policy ought to be applied in this context as set out below.

[45] Neighbourhood policies are contained in Chapter E, Urban Systems and Designations, of the UHOP. Sections 2 and 3 of Chapter E are relevant in this context. Section E.2.6 explains, partly, that Neighbourhoods are largely stable but not static and

that intensification is to be compatible with neighbourhood character:

Hamilton's neighbourhoods are, by and large, regarded as stable. However, that does not mean these areas are static. These neighbourhoods will see some physical change over time. Neighbourhoods will evolve as older residents move out, younger residents and families move in, homes are renovated or rebuilt, infill development occurs, commercial areas are invigorated, or underutilized commercial areas redeveloped. Residential intensification within Neighbourhoods is part of the evolution of a neighbourhood and can happen at a range of scales and densities provided the intensification is compatible with and respects the built form and character of the surrounding neighbourhood.

[46] Policy 2.6.2 provides that uses in the Neighbourhood designation are to be primarily residential with complementary uses also being permitted.

[47] Policy 2.6.7 provides that each neighbourhood has a unique scale and character and stipulates that changes compatible with the existing character shall be permitted:

Neighbourhoods shall generally be regarded as physically stable areas with each neighbourhood having a unique scale and character. Changes compatible with the existing character or function of the neighbourhood shall be permitted. Applications for development and residential intensification within Neighbourhoods shall be reviewed in consideration of the local context and shall be permitted in accordance with Sections B.2.4 – Residential Intensification, E.3.0 – Neighbourhoods Designation, E.4.0 – Commercial and Mixed Use Designations, and, E.6.0 – Institutional Designation.

[48] The UHOP defines “compatible” as follows:

Compatibility/compatible: means land uses and building forms that are mutually tolerant and capable of existing together in harmony within an area. Compatibility or compatible should not be narrowly interpreted to mean “the same as” or even as “being similar to”.

[49] Neighbourhood-specific policies are found at s. E.3.0 of the UHOP. The first goal contained in policy 3.1.1 is to develop compact, mixed use, transit-supportive, and active transportation friendly neighbourhoods. Other goals, at policy 3.1.4 and policy 3.1.5, are to promote and support design which enhances and respects the character of existing neighbourhoods while at the same time allowing their ongoing evolution and to promote and support residential intensification of appropriate scale and in appropriate locations throughout the neighbourhoods.

[50] Policy 3.2.4 relates to scale and design, stipulating that any intensification in the Neighbourhoods designation shall enhance and be compatible with the scale and character of the existing residential neighbourhood in accordance with s. B.2.4 and other policy contained in the UHOP. Policy 3.2.7 also provides that the City shall require quality urban and architectural design and establishes criteria for the consideration of development in the Neighbourhoods designation:

3.2.7 The City shall require quality urban and architectural design. *Development* of lands within the Neighbourhoods designation shall be designed to be safe, efficient, pedestrian oriented, and attractive, and shall comply with the following criteria:

- a) New *development* on large sites shall support a grid system of streets of pedestrian scale, short blocks, street oriented structures, and a safe and attractive public realm.
- b) Garages, parking areas, and driveways along the public street shall not be dominant. Surface parking between a building and a public street (excluding a public alley) shall be minimized.
- c) Adequate and direct pedestrian access and linkages to *community facilities/services* and local commercial uses shall be provided.
- d) *Development* shall improve existing landscape features and overall landscape character of the surrounding area.
- e) *Development* shall comply with Section B.3.3 – Urban Design Policies and all other applicable policies.

[51] Policies 3.3.1 and 3.3.2 set out policy relating to the location of higher density forms of residential development, namely that lower density uses be located in the neighbourhood interior while higher density uses and building forms be located close to arterial roads, and an assessment for compatibility be undertaken when new development or redevelopment is considered in proximity to existing lower density uses:

3.3.1 Lower density residential uses and building forms shall generally be located in the interiors of neighbourhood areas with higher density dwelling forms and supporting uses located on the periphery of neighbourhoods on or in close proximity to major or minor arterial roads.

3.3.2 Development or redevelopment adjacent to areas of lower density shall ensure the height, massing, and arrangement of buildings and structures are compatible with existing and future uses in the surrounding area.

[52] Section E.3.6 sets out the High Density Residential policies. Similar to policy

3.3.1, policy 3.6.1 provides that higher density residential uses are to be located at the periphery of neighbourhoods in proximity to arterial roads. Policy 3.6.4 also provides that high density residential uses shall be located within safe and convenient walking distance of existing or planned community facilities/services, including public transit, schools, and active or passive recreational facilities.

[53] Policy 3.6.6(b) sets out the scale of development acceptable in high density residential areas outside of the Central Hamilton area: 100-200 net units per hectare.

[54] Policy 3.6.7 sets out the Design Criteria for high density residential, including requirements that:

- a. development should have direct access to a collector or an arterial road;
- b. high profile multiple dwellings shall not generally be permitted immediately adjacent to low profile residential uses, that a separation distance shall generally be required and may be in the form of a suitable intervening land use, such as medium density residential;
- c. development shall provide adequate landscaping, amenity features, on-site parking, and buffering and be compatible with existing and future uses and provide adequate access to the property, designed to minimize conflicts between traffic and pedestrians both on-site and on surrounding streets; and
- d. development shall contribute to an attractive public realm by minimizing the view of surface parking areas, parking structures, utility and service structures such as garbage enclosures and expanses of blank walls from abutting public streets.

[55] Chapter B of the UHOP sets out the Communities policies. Section B.2.4 of the UHOP contains the Residential Intensification policies referenced in policies set out

above. Policy 2.4.1.4 establishes criteria for considering residential intensification:

2.4.1.4 *Residential intensification* developments shall be evaluated based on the following criteria:

- a) a balanced evaluation of the criteria in b) through g), as follows;
- b) the relationship of the proposal to existing neighbourhood character so that it maintains, and where possible, enhances and builds upon desirable established patterns and built form;
- c) the development's contribution to maintaining and achieving a range of dwelling types and tenures;
- d) the *compatible* integration of the development with the surrounding area in terms of use, scale, form and character. In this regard, the City encourages the use of innovative and creative urban design techniques;
- e) the development's contribution to achieving the planned urban structure as described in Section E.2.0 – Urban Structure;
- f) infrastructure and transportation capacity; and,
- g) the ability of the development to comply with all applicable policies.

[56] Adding to the general residential intensification criteria of policy 2.4.1.4 is policy 2.4.2.2 of the UHOP which sets out intensification criteria for residential intensification in the Neighbourhoods designation specifically:

2.4.2.2 When considering an application for a residential intensification *development* within the Neighbourhoods designation, the following matters shall be evaluated:

- a) the matters listed in Policy B.2.4.1.4;
- b) *compatibility* with adjacent land uses including matters such as shadowing, overlook, noise, lighting, traffic, and other nuisance effects;
- c) the relationship of the proposed building(s) with the height, massing, and scale of nearby residential buildings;
- d) the consideration of transitions in height and density to adjacent residential buildings;
- e) the relationship of the proposed lot(s) with the lot pattern and configuration within the neighbourhood;
- f) the provision of amenity space and the relationship to existing patterns of private and public amenity space;

- g) the ability to respect and maintain or enhance the streetscape patterns including block lengths, setbacks and building separations;
- h) the ability to complement the existing functions of the neighbourhood;
- i) the conservation of *cultural heritage resources*; and,
- j) infrastructure and transportation capacity and impacts.

[57] Section B.3.2 contains the community housing policies of the UHOP. Policy 3.2.1 sets out the goals of the UHOP in relation to housing, including to: provide for a range of housing types, forms, and densities to meet the social, health and well-being requirements of all current and future residents, provide housing within complete communities, and increase the mix and range of housing types, forms, tenures, densities, and affordability levels.

[58] Section B.3.3 contains the urban design policies of Chapter B. Policy 3.3.1.8 promotes intensification that “makes appropriate and innovative use of buildings and sites and is compatible in form and function to the character of existing communities and neighbourhoods”, while policy 3.3.2.3 establishes urban design goals which are as follows:

- 3.3.2.3 Urban design should foster a sense of community pride and identity by:
- a) respecting existing character, development patterns, built form, and landscape;
 - b) promoting quality design consistent with the locale and surrounding environment;
 - c) recognizing and protecting the cultural history of the City and its communities;
 - d) conserving and respecting the existing built heritage features of the City and its communities;
 - e) conserving, maintaining, and enhancing the natural heritage and topographic features of the City and its communities;
 - f) demonstrating sensitivity toward community identity through an understanding of the character of a place, context and setting in both the public and private realm;
 - g) contributing to the character and ambiance of the community through appropriate design of streetscapes and amenity areas;

- h) respecting prominent sites, views, and vistas in the City; and,
- i) incorporating public art installations as an integral part of urban design.

[59] Policy 3.3.2.6 provides that compatible new development and redevelopment should enhance the character of the existing environment by:

- a) complementing and animating existing surroundings through building design and placement as well as through placement of pedestrian amenities;
- b) respecting the existing cultural and natural heritage features of the existing environment by re-using, adapting, and incorporating existing characteristics;
- c) allowing built form to evolve over time through additions and alterations that are in harmony with existing architectural massing and style;
- d) complementing the existing massing patterns, rhythm, character, colour, and surrounding context; and,
- e) encouraging a harmonious and *compatible* approach to infilling by minimizing the impacts of shadowing and maximizing light to adjacent properties and the public realm.

[60] Policy 3.3.3 similarly provides, in part, that new development shall serve to maintain and support existing character, or create and promote the evolution of the character in areas where transformations are appropriate and planned, while policies 3.3.3.2 to 3.3.3.5 set out considerations to ensure that new development shall be designed to minimize impact on neighbouring buildings and public spaces, that new development shall define the street through consistent setbacks and building elevations, and that built form shall create comfortable pedestrian environments.

[61] Chapter C of the UHOP contains policy relating to City-wide systems such as transit. Policy 4.2.5 of Chapter C provides, in part, that public transit shall be an integral component of planning for new development and redevelopment of residential uses. Policy 4.4.8 requires the City to evaluate the potential to establish rapid transit on proposed corridors identified as Potential Rapid Transit Lines and policy 4.2.3.1 provides that the timing of new developments shall be coordinated with the availability of adequate, matched transportation network capacity.

[62] The Secondary Plan was approved on February 25, 2004 and predates the

UHOP, although the Secondary Plan was carried over into the UHOP when it was approved and, as a result, the Secondary Plan policies continue to apply. The Secondary Plan covers an area of approximately 204 hectares. There was no dispute that but for the Subject Property, the Secondary Plan area has been built-out through various development approvals since 2004.

[63] Chapter F contains the implementation policies of the UHOP. Policy F.1.2.2 provides that a secondary plan is to prevail in the event of discrepancy between designations and/or policy contained in the UHOP.

[64] The Secondary Plan contains policies relating to land use, the transportation network, community facilities, infrastructure requirements and development standards to guide development and redevelopment of the Secondary Plan area.

[65] Policy 2.6.1.3 of the Secondary Plan sets out the General Residential policy, including policy limiting heights to three storeys, provision of a mix and range of housing, and encouraging higher densities:

- a) Residential buildings in the Low Density Residential and Medium Density Residential designations shall have no more than three occupied storeys entirely above grade.
- b) Development within the Meadowlands Neighbourhood IV is intended to provide a mix and diversity of housing opportunities in terms of lot size, unit size, style and tenure that are suitable for different age levels, income groups, lifestyles, and household structures.
- c) To make best use of urban lands higher densities shall be encouraged throughout this neighbourhood. This density can be achieved through the provision of smaller lots in interior locations and higher density developments located at external locations within the neighbourhood.

[66] Policy 2.6.5.1 establishes additional urban design policy for the Secondary Plan area, including requirements to create pedestrian pathways to access public transit and to employ building and site design, setbacks, landscaping, screening and buffering techniques to minimise potential conflicts between new and existing uses.

b. Application of Policy in this Context

[67] There is no dispute that the density proposed by the Appellant now fits within the range contained in UHOP policy 3.6.6 for high density, that the use proposed by the Appellant is consistent with the UHOP Neighbourhood policies, that the high density use proposed is located on an arterial road in close proximity to neighbourhood facilities, including a new school located within the Rosehaven subdivision which will be safely accessible by pedestrians from the Subject Property. Furthermore, the Subject Property is located close to an area recently redesignated Employment Area.

[68] I also find that the on-site amenity areas required by the draft ZBA are adequate and that the location of the structured parking area is consistent with the Design Criteria policy of the UHOP and meets parking policy contained at policy B.3.3.10.1 of the UHOP promoting the creation of safe, attractive, pedestrian-oriented streetscapes by utilizing structured parking. The Appellant acknowledged that the location of the garbage loading area as currently proposed needs to be reworked and I am satisfied that this matter can be addressed through the site planning process.

[69] The main disagreement between the parties relates to the application of policy that requires that new development be compatible with the existing neighbourhood. The participants also raised several matters additionally addressed below.

[70] Mr. Wellings and Mr. Premi provided evidence on behalf of the Appellant. It was Mr. Wellings' opinion that the policies and definitions of the UHOP relating to compatibility require that the Tribunal consider whether the development is capable of existing in harmony with the existing neighbourhood.

[71] It was Mr. Wellings' opinion that the neighbourhood is difficult to specifically define as it is an area currently in transition given the recent changes in new and planned development and the redesignation of the employment lands to the south and west. He did acknowledge in cross-examination that the Secondary Plan area is predominated by two- and three-storey new homes which are typical for a 2004

secondary plan in the Ancaster area where automobile reliance has been the norm. He expressed the opinion that the relevant neighbourhood in this context is not simply the Secondary Plan area but that the Airport Employment lands and future rapid transit line are relevant broader considerations.

[72] Mr. Wellings opined that there is currently no policy basis in the UHOP for a transition from the proposed development to the Rural designated properties south and southeast of the Subject Property. Mr. Wellings also referenced policy 3.6 of the UHOP and opined that medium density townhouses are an appropriate transition between low and higher scale residential.

[73] Mr. Wellings explained that the City has consistently permitted lower, rather than higher, densities throughout the Secondary Plan area following the approval of the Secondary Plan in 2004. He explained that this has occurred despite the UHOP requirement that Neighbourhoods and Corridors contribute 40% each to intensification targets in the UHOP and despite provincial policy contained in the Growth Plan and the PPS promoting intensification that predated adoption of the UHOP. He explained that currently there is no high density residential lands designated in the Secondary Plan, although he acknowledged that high density designations are not required by the UHOP in every Secondary Plan area.

[74] It was Mr. Wellings' opinion that the Secondary Plan is currently outdated and that it appears to have been simply carried over into the UHOP without regard for the need to update the Secondary Plan to accord with UHOP policy. By way of example, he explained that the Secondary Plan permits three storeys above grade for the medium density designation whereas the UHOP has now been updated to permit six storeys in such a designation. He also referred to the lack of any reference in the Secondary Plan to Garner Road as a major arterial and a planned rapid transit corridor. Mr. Wellings expressed the opinion that the only reason the OPA is needed by the Appellant is as a result of the outdated policies contained in the Secondary Plan.

[75] Mr. Wellings also explained that the City's Zoning By-law has not yet been

updated to conform to the UHOP. He explained that the ZBA, as drafted, would carry forward two holding provisions from the 2014 amendments to the Zoning By-law that were approved by the City.

[76] Mr. Wellings also explained that taller forms of development have been occurring to the east of the Subject Property to date and that it is progressing west. He explained that several developments with heights and setbacks to lower scale residential uses similar to what the Appellant proposes have been approved on Rymal Road within several kilometers to the east of the Subject Property. It was Mr. Wellings' opinion that these taller buildings exist in harmony with the surrounding lower scale residential uses.

[77] Mr. Premi explained that the area east of the Subject Property is dominated by fences at the rear of properties and that the pedestrian realm has been ignored along Rymal Road to date. He opined that this is not a desirable characteristic that should be replicated along a major road. Mr. Premi explained that it is a common standard in urban design that buildings not be taller than the road allowance absent setbacks. He explained that here the building proposed is not taller than the road allowance and that step-backs are not required at the front of the building as a result. It was Mr. Premi's opinion that the proposal has a healthy relationship with the street and promotes a better pedestrian realm in accordance with applicable policy. It was his opinion that a step-back at the third storey, as suggested as necessary by the City, would erode the streetscape at this location.

[78] Mr. Premi reviewed the City's Transit Oriented Development Guidelines and opined that a certain level of density is necessary to support successful transit. It was his opinion that it is appropriate at this time to begin introducing density in this area in order to support transit goals.

[79] Mr. Premi opined that the proposed development conforms to the applicable urban design policies of the UHOP. He reviewed the proposed development against the ten design goals set out in UHOP policy 3.3.1 and various other policies, including B.2.4.1.4, B.3.3.1.8, B.3.3.2.3 to B.3.3.2.6, B.3.3.3.2 to B.3.3.3.5, E.3.2.7, and the policy

contained in the Secondary Plan. He opined that the proposal is compatible with the neighbourhood in terms of uses, form and character. He opined that the Subject Property presents a rare opportunity to introduce some density, absent adverse impacts. He opined that the separation distances to the east and north are sufficient to address any potential for impact. He explained that a 45 degree angular plane is widely used to mitigate overlook impacts, which has been met here at the western property line and with the elimination of west-facing balconies the proposal will establish a sensitive interaction with the Rosehaven subdivision.

[80] Mr. Premi also opined that but for the issue of locating the garbage loading area, the proposed development conforms to the site plan control policy contained in s. F.1.7.1 of the UHOP.

[81] Mr. Premi disagreed with the proposition in cross-examination that the proposed development will appear as an aberration and that judging the proposal based on the current area alone would be unnecessarily reactive whereas it would be preferable to be proactive in planning for the future of the area.

[82] Mr. Premi explained that the proposed building has been designed to break of the mass of the building visually.

[83] In cross-examination, Mr. Premi opined that UHOP policy B.2.4.1.4(b) requires the Appellant to address the neighbourhood character but that policy also contains the modifier "desirable". He opined that a consideration of desirable character should be conducted through a review of the UHOP policies as a whole. Mr. Premi opined that in his review of the neighbourhood around the Subject Property that he did not identify desirable patterns of development as intended by the UHOP. Mr. Premi opined that the proposal represented a desirable development that does not replicate existing character of the neighbourhood but that is compatible with the existing character of the neighbourhood.

[84] Mr. Premi expressed the opinion that if the S-line is established on Garner Road

that it is likely that a station will be located in proximity to the existing Glancaster Loop.

[85] For the City, both Mr. Zajac and Mr. Freedman expressed the opinion that the proposed development will not be compatible with the area and represents an over-intensification of the Subject Property in this context.

[86] Mr. Zajac agreed that it was appropriate to consider both the current and planned character of the neighbourhood in assessing the proposed development. Mr. Zajac characterized the neighbourhood as an area of transition between the urban and rural areas of the City and that the pattern of development for the area has already been established with two and three storey buildings which he opined is fulfilling the vision of the Secondary Plan. Mr. Zajac opined that the neighbourhood character is low-rise, semi-rural/suburban. On the basis of UHOP policy, he opined that the height and urban design of the proposal should be consistent with the character of the area. It was Mr. Zajac's opinion that the proposed development does not conform to the planning and urban design policies of the UHOP.

[87] Mr. Zajac explained that the Subject Property is on a potential rapid transit line and that the S-line is not currently planned or proposed and that the implementation is contemplated into the long-term. He explained that the City's 2015-2025 transit strategy does not indicate that funding will be allocated towards the S-line.

[88] Mr. Zajac explained that the Secondary Plan is to prevail over the UHOP policy as set out in policy F.1.2.2 of the UHOP and that policy B.2.6.1.3 of the Secondary Plan provides that there shall be no more than three occupied storeys above grade. On this basis, he opined that the 2014 approval of a three-storey mixed use building on the Subject Property meets the intent of UHOP and Secondary Plan but the new proposal does not.

[89] Further, Mr. Zajac opined that at a density of 82 units per hectare the density proposed is 12 units more than the highest density currently permitted by the Secondary Plan. He also referred to policy E.3.6.7 of the UHOP which provides that high profile

multiple dwellings shall not generally be permitted immediately adjacent to low rise development.

[90] Mr. Zajac acknowledged that the Subject Property has access to an arterial, that it is within walking distance to the Glancaster Loop and has easy access to schools and recreation fields. He did express concern about the lack of easy access to commercial locations however. Mr. Zajac also acknowledged that the raised grade of the reservoir may block views of the proposed rear parking garage but he opined that the streetscape will not be improved by the proposal. It was his overall view that the proposed development does not sufficiently mitigate its impact on the surrounding area.

[91] Regarding compatibility and intensification, Mr. Zajac opined that the policy B.2.4.1.4 requirement to maintain and, where possible, enhance the neighbourhood character is not met. He opined that UHOP policy requires consideration not just of immediately neighbouring properties but the broader relationship with the area. Mr. Zajac opined that the loss of ground-related landscaping as proposed is indicative of over-intensification.

[92] In cross-examination, Mr. Zajac acknowledged that there are no traffic or parking or servicing issues with the proposed development and that the UHOP promotes structured parking being located at the rear of properties. He explained that his main concerns relate to the height and density of the proposed development.

[93] Mr. Zajac acknowledged in cross-examination that the landscaped areas in the proposed ZBA are 42 per cent of the lot area which includes both ground-oriented and above-grade landscaped areas to be located above the structured parking.

[94] Mr. Zajac acknowledged that a 45 degree angular plane assists with transition, privacy and overlook issues and that landscaping, setbacks and step-backs can be used to mitigate impacts. He also explained that he does not generally have an issue with the front yard setback proposed but rather, with the proposed height with such a setback.

[95] Mr. Zajac acknowledged in cross-examination that the staff report to City Council for the proposal mentions the S-line in the consultation section and the fact that additional density would be beneficial and supportive of rapid transit. Mr. Zajac also acknowledged that the City has a shortfall in density in the Secondary Plan area in the range of approximately 80 per cent of the planned population for the area. Mr. Zajac opined that the proposal is not the proper manner to make up for the deficit however.

[96] Mr. Zajac acknowledged in cross-examination that the Secondary Plan allows for greater density to be established on the periphery and that intensification and high density is permitted in the Neighbourhoods designation in UHOP policy. He also acknowledged that policy E.2.6.7 of the UHOP provides that changes that can be compatible with the existing character or function shall be permitted.

[97] Mr. Freedman's opinion was that the main issue for consideration is one of balancing intensification against contextual fit/compatibility. He opined that the proposal has improperly tipped the balance towards intensification. It was his view that the proposed building would be comfortable on a commercial, mixed-use street where buildings frame the street, whereas that is not the context at this location.

[98] Mr. Freedman explained that although the UHOP permits intensification, policy also requires that character of the area be maintained and even enhanced. He opined that intensification that supports transit cannot come at any cost.

[99] Mr. Freedman opined that the neighbourhood is characterized by a mix of single-detached, semi-detached and townhouse residential. He opined that much of the development done to date in the area has been in the form of sensitive infill. Similar to Mr. Zajac, Mr. Freedman was of the opinion that the 2014 approved three-storey mixed use building on the Subject Property would fit well in the context of the neighbourhood. Overall, Mr. Freedman's opinion of the context and character of the area was as follows:

- a. The area has an edge condition with greenspace to the immediate east and rural to the south;

- b. There is an emerging character being realized as required by the Secondary Plan;
- c. The character of the area is very clear and will soon be set as approved development in the Secondary Plan area has been built-out;
- d. No major development is occurring or planned south of Garner Road; and
- e. Garner Road is currently two lanes with gravel shoulders and the area will not be an intense pedestrian environment for a long time.

[100] Mr. Freedman agreed with Mr. Premi that “compatible” is to be interpreted as capable of existing together in harmony. He explained that harmony to him means pleasing and not disjointed. It was his opinion that the proposal is jarring when viewed in context. It was his opinion that nine storeys is simply too tall for the area.

[101] Mr. Freedman explained that since the Rosehaven development will have a “window road” running parallel to Garner Road for access to the townhouses that the proposed development will have a stark juxtaposition at the streetscape level with the front setback proposed.

[102] Mr. Freedman opined that the proposed development should be quieter in the landscape and should not act as a marker building that will be visible for long stretches along Rymal Road/Garner Road.

[103] Although Mr. Freedman acknowledged that steps have been taken at the western side of the building to mitigate impact, terraces would still provide some opportunities for overlook to properties to the west.

[104] On the basis that the Secondary Plan has largely been developed out, the School Property is across the street from the Subject Property, and there is a pocket of land remaining in the Rural designation to the south, Mr. Freedman opined that Garner

Road cannot be expected to redevelop in response to or similarly to the proposal and that the proposal will not come to fit over time.

[105] Mr. Freedman also opined that even with the separation distance to the east, a nine-storey wall will appear jarring. It was his opinion that if the proposal were to be approved that the east side of the building should be sculpted to lessen the impact of the height.

[106] Mr. Freedman opined that the proposed building should be setback further from the street to provide space for permanent landscaping after the road widening strip is taken by the City, rather than simply have a temporary landscaping area. He also opined that greater setbacks at the rear and east should be provided to create opportunities for landscaping. It was his opinion that the proposal would better frame the street with greater setbacks, step-backs and landscaping.

[107] With regards to height, Mr. Freedman explained that sometimes the street right of way width can be used to assess height with 80 percent or even 100 percent of the right-of-way being used to limit height but it was his opinion that such a measurement should not be applied in this context where there is no room for other development to redefine the street edge and height character of the area.

[108] Overall, Mr. Freedman's opinion was that the visual perception of the proposed building will have a negative adverse impact in this context and there is a lack of harmony resulting from the height and massing proposed.

[109] In cross-examination, Mr. Freedman acknowledged that a building with more than three storeys could be built on the Subject Property in consideration of all relevant factors and policy but he was unprepared to provide an opinion as to what height should be permitted. He also acknowledged that the goal should be to develop in a pedestrian-friendly manner but that is not what has occurred on Garner Road to date.

[110] With regards to an angular plane, Mr. Freedman opined in cross-examination

that a shallower angle would be more appropriate given the suburban context.

[111] The participants provided the following evidence to the Tribunal regarding the proposed development.

[112] Mr. Cascioli explained that he owns two properties on Garner Road, including the closest residential property to the east of the Subject Property. It was his view that the lands around the Subject Property provide a large buffering to other properties. He explained that he intends to redevelop his properties in future with townhomes or a midrise building. He explained that Garner Road is getting busy and that residents of the area walk and bike on Garner Road regularly and that additional road infrastructure, including sidewalks, is needed in the area.

[113] Ms. Morison opposed the proposed development on the basis of her views that it was too tall and does not fit in the area. She expressed the view that nobody walks on Garner Road and that the closest grocery store is 2-3 kilometers away. It was her view that the Growth Plan does not support this type of intensification. She also expressed the view that it would not be a good idea to build below grade at this location as a result of groundwater and flood risk issues.

[114] Mr. Hansen explained that his property begins directly across the street from the western property line of the Subject Property. He explained that buses are infrequent on Garner Road and that he can walk to the closest grocery store in 25 minutes, although it is difficult to walk on Garner Road because of the lack of sidewalks. He also explained that the schools in the area are busy and that he has concerns about the Tiffany Creek wetland to the south of his property and the potential impact of all the development in the area on it.

[115] Mr. Pejic explained that he owns a property directly across the street from the Subject Property between Mr. Hansen's property and the School Property. He explained that although the area needs more apartments that this is not a proper location for development beyond the three storeys approved in 2014.

[116] On the basis of the evidence provided and an examination of the applicable UHOP and Secondary Plan policy, the Tribunal makes the following findings.

[117] With regards to compatibility with the neighbourhood, I find that the definition of compatibility and the policies contained in the UHOP does not mandate that the very same scale of development be required on the Subject Property as exists in the rest of the area. Although the Secondary Plan area currently consists of low and medium density development, the relevant question here is whether the Appellant's development can co-exist harmoniously with that other development and furthermore, whether the application serves to meet other policy objectives contained in the UHOP, including those relating to achieving intensification, transit-supportive and pedestrian-oriented development, and ensuring a range of housing types are made available.

[118] In considering the totality of the evidence, I find that the Appellant's proposal will not give rise to adverse impacts to any other properties or to the neighbourhood as a whole that are unacceptable in this context. Other than the Subject Property's proximity to the Rosehaven lands, there are very generous separation distances between the Subject Property and any other residential properties. The evidence was that the development does not give rise to any unacceptable shadow impacts. I further find that the large separation distances, in addition to the terracing and landscape buffering provided at the western property line will adequately address the potential for overlook and privacy issues on the residences closest to the Subject Property.

[119] Further, I find that by fitting within a 45 degree angular plane from the western property line and with the other mitigative measures agreed to as part of the settlement with Rosehaven, that the proposal will not give rise to unacceptable impacts to existing or future residences located on the Rosehaven lands to the west. I further find that the medium-density townhouse development on the Rosehaven lands provides for an adequate form of additional transition to the low density development in the interior of the neighbourhood consistent with the UHOP policy set out above.

[120] With regards to the existing older residences across Garner Road to the west, I

find that the proposed development will not give rise to adverse impacts. The eventual road corridor width will be greater than 36.5 m and the proposed building will have a further front yard setback of 5 m from the road corridor. Additionally, the residences are setback an additional distance from Garner Road. All of these separations combined gives rise to a significant separation between the proposed development and the older residences and is acceptable in this context.

[121] At nine storeys, I find that the proposed development will not appear jarring or out of context. Given the location of the Subject Property, being at the periphery of the Secondary Plan area and given the Subject Property's unique location, directly fronting on an arterial road while having a substantial reservoir property wrapping around it on two sides, the proposal is uniquely situated and capable of co-existing in harmony with the surrounding low and medium density development that has developed since approximately 2004 as contemplated by the UHOP and applicable Secondary Plan policy.

[122] Other than the potential for increased traffic, there is no dispute that there is adequate servicing in the area to support the proposal with holding provisions continuing to apply through the ZBA. The amount of parking proposed by the Appellant is undisputed as being adequate to service the number of residential units proposed.

[123] As for the potential for transportation impacts, the participants have complained that there is a lack of sidewalk infrastructure and traffic continues to increase on Garner Road. However, the Appellant's proposal is intended to improve sidewalk infrastructure which will eventually connect to other sidewalks as they are introduced on other properties along Garner Road. Further, the sidewalk to be introduced on the Subject Property will connect to the sidewalks that will form part of the Rosehaven development and the interior neighbourhood sidewalks that exist within the Rosehaven subdivision. Furthermore, the 8.23 m road widening dedication to the City to be provided by the Appellant will allow for future transportation infrastructure improvements along Garner Road that will address the issues identified by the participants.

[124] Although I agree with the City that there are not many commercial services within walking distance of the Subject Property and that it will take time to establish a complete community as other lands are developed south and west of the Subject Property, I find that the policy of the UHOP, including policy 3.6.4, does not require that high density residential uses must be located within a safe and convenient walking distance of commercial/shopping facilities specifically and nor does the UHOP require that any such facilities exist immediately. Although it may take some time, I accept the evidence of Mr. Wellings that as the lands redesignated Employment Areas to the south and the west of the Subject Property develop, they will most likely include commercial locations that can be utilized by employees working on those lands and also by residents living in the broader area. I also note that other than commercial/shopping facilities, there was no dispute at the hearing that other community services and amenities are located close-by.

[125] With regards to the issue raised by the participants relating to the potential for flooding and impacts on the Tiffany Creek wetland, there was no evidence led suggesting that the proposed development will have any specific impact on the wetland. As far as the Tribunal can make out, the wetland is located quite some distance from the Subject Property and Mr. Hansen's concern is that cumulative development impacts are detrimentally impacting the wetland's hydrology. Without more, the Tribunal is unable to conclude that this particular proposal will have any adverse impact on the wetland. Similarly, although Ms. Morison raised a general concern indicating that basement flooding is a potential issue in this area, I am unable to conclude, based on the evidence heard, that there is an issue relating to groundwater flow or flooding that cannot be managed and addressed.

[126] To the extent that the Secondary Plan is relevant in this context, where the Appellant is seeking an amendment to the Plan to permit a high density form of residential development, I find that the proposal is consistent with the policy contained therein. In particular, the proposed development consists of a higher density form of development to be located at an "external location" of the neighbourhood in a form that

is compatible with the lower density forms of existing development.

[127] I conclude this analysis of consistency with the UHOP and the Secondary Plan by stressing that the City has not yet assessed these documents for conformity with the 2017 Growth Plan. In applying the UHOP and Secondary Plan policies, the Tribunal is required to consider whether the policies conform to the policies contained in the 2017 Growth Plan.

[128] In considering the Growth Plan as a whole and the policies and definitions contained in the Growth Plan set out above, I find that what had occurred in the Secondary Plan Area since its adoption in 2004, with development applications subsequently being approved for lower density development, may no longer be tolerated by the policies of the 2017 version of the Growth Plan. Staff reports from previous approvals suggest that reductions in density were supported, in part, because of the three storey height limit contained in the Secondary Plan. Mr. Freedman acknowledged that development with a height greater than three storeys could be accommodated on the Subject Property specifically, while Mr. Zajac acknowledged that the population target for the Secondary Plan area will not be met by the City given the approvals granted to date.

[129] The Growth Plan mandates that municipalities achieve greater efficiencies in land use through compact built form and intensification and that greater densities of land use support existing and planned public transit. Lower density residential development in areas located in close proximity to existing and planned public transit appears to be an unacceptable juxtaposition in the current provincial policy context.

[130] To conclude this analysis, I find that the Appellant's proposed development and the planning instruments proposed by the Appellant are consistent with the UHOP, including the Secondary Plan.

Conditions of Approval

[131] The City submitted that the Tribunal's final approval of the OPA and ZBA should be withheld until a Site Plan has been approved by the City. Mr. Wellings expressed the view and the Appellant submitted that approval should not be withheld until a Site Plan is approved by the City as discussions with the City to date have not been particularly constructive.

[132] I find that it is unnecessary to withhold the Tribunal's final order approving the planning instruments until the City has approved a Site Plan. I do not view this situation as necessitating that the ZBA, or even the OBA, contents be informed through Site Planning.

[133] That said, I do find, based on the evidence heard and the applicable UHOP policy, that as a condition of approval that the Site Plan should stipulate that garbage loading be located somewhere other than the front of the building in order to minimize the potential for movement conflicts and to ensure that the garbage loading area is hidden from the street.

ORDER

[134] The Tribunal orders that the appeal is allowed in part and that:

- a. The OPA and the ZBA proposed by the Appellant and contained in Exhibit 4 are approved.
- b. The City Clerk may assign numbers to the OPA and the ZBA to accord with municipal record keeping.

- c. The Site Plan shall include provision for a garbage loading that is not located at the front of the building.

“Justin Duncan”

JUSTIN DUNCAN
MEMBER

If there is an attachment referred to in this document,
please visit www.elto.gov.on.ca to view the attachment in PDF format.

Local Planning Appeal Tribunal

A constituent tribunal of Tribunals Ontario – Environment and Land Division
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