

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



**ISSUE DATE:** September 09, 2019

**CASE NO(S):** PL170343

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 17(24) of the *Planning Act*, R.S.O. 1990, c. P.13, as amended

Appellant: 2025243 Ontario Inc., 1642989 Ontario Inc.,  
JFJ Developments Inc.  
Appellant: 2226396 Ontario Inc., 1822732 Ontario Inc,  
Grmada Holdings Inc.  
Appellant: Brian Goldfinger  
Appellant: Sheppard West Lansing Area Rate Payers  
Association and others  
Subject: Proposed Official Plan Amendment No. 367  
Municipality: City of Toronto  
OMB Case No.: PL170343  
OMB File No.: PL170343  
OMB Case Name: Goldfinger v. Toronto (City)

**Heard:** April 30 to May 29, 2019 in Toronto, Ontario

**APPEARANCES:**

**Parties**

Sheppard West Lansing Area Rate  
Payers Association ("SWLARPA"),  
2025243 Ontario Inc.,  
1642989 Ontario Inc.,  
JFJ Developments Inc.,  
2226396 Ontario Inc.,  
1822732 Ontario Inc. and  
Grmada Holdings Inc. ("Appellants")

**Counsel**

Barnett Kussner  
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Ian Flett  
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City of Toronto

Ray Kallio  
Daniel Elmadany

## **DECISION OF THE TRIBUNAL DELIVERED BY R. ROSSI**

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### **INTRODUCTION**

[1] The Appellants have appealed City of Toronto (“City”) Official Plan Amendment No. 367 (“OPA 367”) in its entirety. OPA 367 covers that stretch of Sheppard Avenue West (“SAW”) between Yonge Street and Bathurst Street.

[2] The City reached settlements with previous Parties (2250310 Ontario Inc., 1401708 Ontario Inc. and Bing Wang).

[3] Throughout May 2019, the Tribunal heard from nearly a dozen witnesses whom the Tribunal qualified to provide their respective areas of expertise and professional opinions both in support of and against OPA 367. The Tribunal also heard from Martina Zapal, an Appellant to these proceedings whom another panel approved (at a prior pre-hearing event) to give evidence related to her circulation of two petitions. Several Participants also spoke in support of and against the City’s instrument.

[4] The Tribunal was presented with more than 30 exhibits. The combined documents, witness statements and related, supporting printed evidence comprised several thousand pages of material that the Tribunal considered. Following a lengthy timeframe to permit the Parties to present their submissions, the Tribunal re-read the entire package of materials to deliberate and to ensure that a full and comprehensive review of the evidence had taken place. All of this evidence informed the Tribunal in making its determination.

## CITY'S MOTIONS

[5] The City made a series of motions throughout the hearing that required interlocutory decisions of the Tribunal in order to guide the hearing process forward. In their post-hearing submissions, the City's Co-Counsels requested that the Tribunal reference herein the motions that were adjudicated in the course of the hearing. In one City motion, the City requested the following rulings from the Tribunal:

- Strike from the issues list as detailed in Tab "N" of its motion record any issue or part of an issue relating to the Alternative Secondary Plan or Proposed Secondary Plan (Appellants call their revisions "Proposed Modifications");
- An order of the Tribunal that it does not have the jurisdiction to consider the Appellants' Alternative OPA to the City-initiated amendment pursuant to subsections 17(50) and 17(50.1) of the *Planning Act*;
- An order of the Tribunal that it does not have the jurisdiction to determine on behalf of the municipality whether parkland dedication is satisfied through a conveyance of land or payment in lieu – pursuant to S. 42 of the *Act* – where City Council has not identified it in a City-initiated OPA as adopted, and is being proposed through the Appellant's Alternative OPA; and
- An order that the Tribunal does not have the jurisdiction regarding the identification and/or delineation of a Major Transit Station Area (MTSA) within a City-initiated OPA as proposed through the Alternative OPA by an Appellant – outside of a Municipal Comprehensive Review – and as part of the order, stating that the jurisdiction to approve the identification and/or delineation of a Major Transit Station Area within a City's OP is exclusively that of the Minister of Municipal Affairs and Housing through a Municipal Comprehensive Review under S. 26 of the *Act*, conducted by the municipality.

[6] The City made additional motions as follows:

- Whether a witness statement as submitted was evidence of the Appellants' failure to comply with the Tribunal's Procedural Order;
- Whether the Alternative Secondary Plan alters the essential nature and character of OPA 367;
- A ruling on its "procedural fairness and natural justice" motion brought in relation to the Alternative Secondary Plan no 2; and
- Whether ASP 2 alters the essential nature and character of OPA 367.

[7] The Tribunal made its rulings during the hearing. It determines there is no value in repeating its interlocutory findings on these matters. The hearing was both unaltered and unaffected by the Tribunal's oral rulings in any way that might prejudice the City or the other Parties. As the Appellants' Co-Counsel, Barnett Kussner submitted in paragraph 111 of his submissions, and as echoed by various Appellants through their Counsels: "This hearing proceeded to completion without any unfairness and without any breach of natural justice." Invariably, the Tribunal moved past these in-hearing processes to complete the hearing. The focus of these reasons is the Tribunal's final determination of the evidence before it.

[8] Front and centre for the purposes of the Tribunal's adjudication of these appeals was whether OPA 367 was supportable based on the planning documents proffered at this hearing. The onus was on the Appellants to demonstrate how the City had crafted an insupportable official plan amendment for SAW; the extent of the City's obligation was to persuade the Tribunal through its evidence and witnesses that OPA 367 meets the intent and policies of all of the applicable planning instruments. The City did so with relative efficiency in the presentation of its evidence and by means of its Co-Counsels' in-chief examinations of its witnesses notwithstanding their frequent motions. In the end, a full and fair reading of the City's evidence and the Tribunal's careful analysis of the witnesses' evidence and opinions establish persuasively that OPA 367 should be approved without modifications.

## **BACKGROUND AND CONTEXT**

[9] It is relevant to the Tribunal's determination of the planning merits of OPA 367 to review the background and context of the City's processes related to the development of this instrument: that is, the consultative process and what the City's witnesses examined to inform their opinions. The Tribunal is not satisfied that the Appellants have met their onus to show that the City did not have appropriate regard for all of the relevant planning instruments, policies and guidelines to shape, inform and ultimately draft OPA 367. Scrutinized within the tests of "consistency" and conformity" to the applicable upper-tier and municipal planning instruments, the Tribunal considered the historical information leading up to OPA 367 as provided by the City. The Tribunal also

weighed the evidence and opinions of these Parties' respective witnesses to make its determination.

[10] A review of the in-force Secondary Plan covering the SAW corridor was proposed at a North York Community Council ("NYCC") meeting in June 2011. Some consultation occurred in 2012, but the exercise stalled for a number of years. Later, with several site-specific applications coming forward along SAW, such as 53-63 Sheppard Avenue West and 62-68 Bogert Avenue (PL151222, Exhibit 8, Tab 49, Page 1999); 245-249 and 253 Sheppard Avenue West and 250, 256 and 258 Bogert Avenue (PL170200, Exhibit 8, Tab 51, Page 2010), the City's review was pursued more actively in 2016. Following extensive consultation (Exhibit 13, Pages 25-27), City staff prepared its January 2017 report to NYCC related to the Sheppard Avenue Commercial Area Secondary Plan ("SACASP") and the proposed OPA. The City's Planner, Allison Meistrich, was a witness at this hearing and she has been heavily involved in the renewed efforts to develop and complete OPA 367 in its current form.

[11] Referencing the 2017 staff report herein, OPA 367 is the resulting instrument for the City's phased study of the SACASP, which examined the permitted land uses, density and development standards within the subject area (SAW). SAW constitutes the western segment of the SACASP, extending west from Beecroft Road and the North York Centre ("NYC") over to Brentwood Avenue and Easton Road to the west. City staff proposed the following updates to the SACASP:

- A mixed-use avenue;
- Appropriate density permissions;
- Appropriate built form types, setbacks, heights, massing and transitions to neighbouring properties;
- Improving the public realm of the 36-metre (m) right-of-way along SAW; and
- A new parking and transportation demand management strategy.

[12] Flowing from these updates, the report also recommended the following:

- Set out a vision and principles of development and redevelopment in the

western segment of the SACASP;

- Amend the permitted land uses to permit retail and residential uses in a townhouse or apartment building form;
- Increase the permitted density for most of the properties from 1.0 times the area of the lot (floor space index—“FSI”) to between 2.0 and 3.0 FSI;
- Increase the maximum building heights from 2 storeys (8.0 metres—“m”) to 5-6 storeys for most of the Secondary Plan area;
- Remove some site-specific exceptions that are addressed by the proposed changes;
- Provide appropriate transition to abutting residential areas through a modified 45-degree angular plane and other policies; and
- Introduce public realm policies and connections for the pedestrian and cycling network.

[13] This portion of the SAW corridor includes a mix of uses and building types. For example, there are various two- to four-storey office buildings with parking located at the rear, reflective of redevelopment under the current SACASP. Other non-residential uses along this corridor are primarily professional and medical offices, as well as a few private schools, located in re-purposed residential buildings.

[14] As referenced above, this part of the SAW corridor is planned to have a future right-of-way width of 36 m as shown on Map 3 of the City of Toronto Official Plan (“OP”). More lands will be required to be conveyed to achieve this on the south side of SAW than on the north side. Once conveyed, lot depths on the south side of SAW could be as shallow as approximately 25 m and generally 31-35 m on the north side, with a few 45-m-deep lots.

### **CONSULTATIVE APPROACH TO OPA 367**

[15] The City outlined the extensive consultative process that it followed for OPA 367 in its 2017 report as well as through the evidence of several of its witnesses. That consultation included broad outreach both within its municipal departments as well as with various external stakeholders, area landowners and other private citizens.

[16] The Tribunal had to determine whether the City's consultative approach to drafting OPA 367 with internal and external comments and input was sufficient. And, whether that approach resulted in a document that reflected all of this input while advancing the City's vision and objectives for SAW and still achieving the relevant planning intent and policies. A summary of the City's consultations and study work for SAW follow.

[17] Community comments were received at two community consultation meetings in mid-January and late-March 2012. The Tribunal heard that lot consolidation along SAW had been considered by the City at the outset of its 2011-2012 work on updates to the SACASP. In fact, the Appellants indicated to the City their preference for lot assembly permissions as early as March 2012, but the NYCC "ignored" the issue; however, both Ms. Meistrich and Urban Design Planner Michael Sakalauskas advised the Tribunal that it had been a consideration of City staff.

[18] Ms. Meistrich was involved in the Phase 1 study for SAW and she prepared the January 2016 status report that resulted from the NYCC direction to update the western segment of the in-force Secondary Plan. Ms. Meistrich's 2016 report includes an integrated vision, policies and a planning framework that sought to achieve the following: a quality, lively streetscape; an appropriate mix of uses and built form that supports the public realm on SAW; and appropriate transition to the adjacent *Neighbourhoods* lands. The development and refinement of the draft policies were based on community consultation and City policies and guidelines as stated in paragraph 22 of her witness statement.

[19] Further community consultations began again in 2016. Phase 1 meetings were held in April and September of that year. Issues were identified and comments received. These are enumerated in paragraphs 24 and 29 of Ms. Meistrich's witness statement. Other correspondence was received from the Appellants, advising among other things, that additional intensification would be appropriate for SAW beyond the proposed 5-6 storey height limit and maximum 2.0-2.5 FSI. Staff also received comments from an external planning consultant for one of the SAW landowners, noting "the challenges of redeveloping properties with the 36 m right-of-way requirement ... with parking and

loading ... and the interim public realm condition.” City Planning staff reviewed these comments and provided its clarifications and responses on Page 3 of the report to Council.

[20] Staff also received supportive correspondence for the City’s OPA 367 from area residents. The City also heard concerns that development should not proceed until issues of transit improvements and traffic congestion were addressed, and that development approvals were in place for the Sheppard Avenue extension. Notably, some residents “expressed opposition to the expansion of the planning boundary to the residential (*Neighbourhoods*) lands that parallel SAW to include properties on Bogert Avenue and Harlandale Avenue”. Comments were also received from the West Lansing Homeowners Association. Planning staff also recommended that NYCC reject two landowners’ requests to be exempted from the study area and Secondary Plan review.

[21] Staff also considered a petition that one of the Appellants devised and submitted for the November 2016 NYCC meeting. The petition comprising 404 signatures was prepared by the SWLARPA. It proposed the widening of SAW to 36 m (which OPA 367 includes), subway construction and mixed-use development between 8 and 12 storeys. Like the Tribunal’s observations express in its closer review of the petition placed in evidence at this hearing, City staff noted the issues raised and it commented that addresses on the petition were of people living outside of the circulation area.

[22] Staff also indicated that plans for future development related to the open space framework, parkland and various ravine system connections would be considered “through the Public Realm and Streetscape Plan and Urban Design Guidelines to be developed in Phase 3.”

[23] Toronto Water presented its findings and confirmed that the projected population for the corridor “confirmed that it is consistent with the 2031 projections for population and employment used for infrastructure capacity assessment for the Basement Flooding Environment Assessment (“EA”) studies. Servicing issues related to wet weather flow conditions in the area will be addressed through the “recommendations ... from the Basement Flooding EA program.”



[24] As Ms. Meistrich explained, after all of the comments were received, the City staff “modelled and tested built form and land use options; reviewed the resulting density; and tested how parking and loading could or could not be accommodated with the different scenarios.” There were also two “Planners in Public Spaces” events held in July 2016, at which members of the public had the opportunity to view displays on the study and identify priorities.

[25] All of this information and input were subsequently brought to the November 2016 NYCC meeting. Ms. Meistrich prepared the final report and attachments dated November 7, 2016 from the Director, Community Planning, North York District. This was approved on January 17, 2017.

[26] Subsequently, the NYCC directed City Planning to review a minor amendment to the angular plane for commercial properties within the area in the proposed OPA 367. Ms. Meistrich prepared a second supplementary report dated January 30, 2017 and at the end of that month, City Council adopted OPA 367 along with two amendments. City Council passed the bill that enacted OPA 367 through By-law No. 123-2017.

[27] In summary, paragraphs 28 to 38 of Ms. Meistrich’s witness statement show that the City’s consultation process for OPA 367 was extensive. The Tribunal finds it to be a comprehensive exercise and no aspects of the features and attributes of the SAW corridor were left unassessed.

[28] As noted, City staff provided responses and commentary arising from these broad consultative processes to inform the NYCC and its support for OPA 367. Accordingly, the Tribunal finds the extent of the City’s consultations to be complete and supportable as evidence that the City has considered the input of affected entities. The City has also carefully balanced those interests with its vision for the gradual and incremental growth and intensification of SAW while also protecting *Neighbourhoods* lands. Neither this approach nor the resulting OPA 367 detract from or fail to reflect the intent of the upper-tier instruments.

**OPA 367**

[29] The Tribunal examined the contents of OPA 367. The City staff report is appended with a copy of OPA 367 along with Schedule 1: “10. Sheppard Lansing Secondary Plan”. In the Vision statement, the Tribunal notes that SAW:

...connects and creates an adjacent, enhanced public realm for the *Mixed Use Areas* and the *Neighbourhoods* to the north and south of Sheppard Avenue West through improved and safer bicycle and pedestrian amenities and a greener street. Appropriate land uses and built form within the *Mixed Use Areas* will reinforce the public realm of Sheppard Avenue West and be compatible with and provide transition to the adjacent stable residential *Neighbourhoods*.

[30] In section 1.2 Principles, the following guiding principles were articulated to “permit and encourage...development and redevelopment”:

- Create a mixed use avenue;
- Frame and support Sheppard Avenue West with low- to mid-rise built form;
- Provide street enclosure with building heights that range from 3 to 6 storeys;
- Provide appropriate transition to adjacent *Neighbourhoods*;
- Animate the public realm with appropriately massed and high quality built form;
- Rebalance the right-of-way to create a complete street and the Sheppard Avenue West Promenade;
- Complete the transportation network for pedestrians and cyclists; and
- Parking and travel demand management strategies to support a mix of uses and active transportation.

[31] Four *Mixed Use Areas* (Areas ‘A’ to ‘D’) are identified along with permitted land uses therein and including low- and mid-rise residential and commercial built forms that will create a mixed-use avenue to “support the animation of the public realm and provide housing opportunities, local retail and services in walking distance of surrounding *Neighbourhoods* and Sheppard Avenue West.”

[32] Density provisions are identified and are subject to specific development criteria.

The instrument provides for consideration of additional density above 3.0 FSI and/or additional building height above six storeys within *Mixed Use Areas* 'C' subject to the following:

...all other policies of this Secondary Plan, Urban Design Guidelines, and appropriate Section 37 provisions, provided it can be demonstrated that any additional density and building height is compatible with the adjacent *Neighbourhoods* and is within the 45 degree angular plane for the Sheppard Lansing Area as illustrated in 3.6.3.

[33] Of note are the composite elements that City Planning staff considered. These included pedestrian entrances as well as front and rear yard setbacks. There is considerable detail regarding the heights to be employed in the four *Mixed Use Areas*, captured in explicit policies for minimum and maximum building heights, massing as well as transition to adjacent *Neighbourhoods* (the latter which features a modified angular plane). The policies on this latter item include Policy 3.6.4: "New development will be massed to minimize and limit impacts of overlook and ensure privacy is maintained to adjacent development."

[34] Matters related to servicing and screening as well as improvements to the public realm are outlined. The section on Mobility within the transportation considerations focuses on the City's goal of achieving "balanced mobility options and implement "Complete Streets" design elements". Notable is protection for the 36-m right-of-way. A cycling network will be improved along with providing "direct access to transit stops and stations." Parking strategies are included (section 6.4) as is a requirement for a "Transportation Demand Management Program" for all applications that seek to amend the zoning by-law.

[35] Finally, the implementation section of OPA 367 includes Urban Design Guidelines to be used "...as a tool to inform standards that will be included in implementing Zoning By-law(s)", providing for no less than six considerations that the Guidelines will address (Page 19):

- Site and building location and organization including setbacks, ground floor uses and building entrances;
- Building types;

- Access and servicing;
- Building massing, angular planes and articulation;
- Pedestrian amenity and landscape; and
- Public realm matters including pedestrian and cycling connections and boulevard improvements including tree planting, lay-by parking, sidewalks, pedestrian amenities, and street furniture.

[36] The Tribunal finds the instrument as drafted by City staff to be comparable and reflective of the language and detail found in other OPAs designed to guide growth and development within a prescribed area—details in this case that assist the City in implementing its vision for future growth and development along SAW. The Tribunal finds that OPA 367 is not deficient in the composite elements required for an OPA.

### **SUMMARY POSITION OF THE APPELLANTS**

[37] The panel analyzed each of the Appellants' propositions through a full reading of the planning and related documents; through an analysis of their witnesses' evidence; and by means of their Counsels' submissions. The Tribunal performed the same tasks in respect of the City's position, documents, witnesses and Counsels' submissions. In summary, this included a post-hearing comprehensive review of the totality of the evidence adduced during a lengthy hearing process that covered various issues as enumerated in the Procedural Order and through which the Appellants' concerns were raised and addressed.

[38] The Appellants reviewed the objectives and planned vision for OPA 367. They argued that more intense development should be permitted along SAW with the planning boundary expanded from the *Mixed Use Areas* along SAW to include the *Neighbourhoods* lands that abut from Bogert Avenue and Harlandale Avenue where appropriate opportunities for this type of assembled land development exist. The Appellants argued that higher-level development will be confined to the *Mixed Use Areas* lands, and the assembled *Neighbourhoods* lands will serve as the transition to the denser and taller built form development that could be built along SAW. They also argued that planned development along SAW must be of a more intense nature given the corridor's proximity to the Yonge-Sheppard Subway Station and the provincial

objective for higher-density permissions to be created for the increased populations and job opportunities that are proximate to such higher transit facilities. In a phrase, OPA 367 should also be more ‘transit supportive’ than it currently provides.

[39] The Appellants’ case is built upon “Proposed Modifications” (term recognized by the Tribunal in its ruling on one of the City’s motions) that are necessary to transform OPA 367 into a supportable instrument. The Appellants’ Co-Counsel, Mr. Kussner submitted that the Appellants seek to achieve four things:

1. A proper *Mixed Use Avenue*;
2. Establish and maintain an appropriate relationship and interface between the Avenue and the adjacent *Neighbourhoods*;
3. Allow for the rebalancing of Sheppard Avenue West with an enhanced public realm; and
4. Appropriately address the proximity of these lands to the Yonge-Sheppard Subway station.

[40] This list necessarily implies that these elements have not been achieved by the City through OPA 367 as currently written.

[41] To support their positions, the Appellants expended significant financial and temporal resources on a separate and distinct process from that pursued by the City in creating OPA 367. As private entities, it is an undisputed fact that the Appellants were not bound by any of the technicalities or statutory requirements associated with a municipal consultative or drafting process for an OPA instrument. Nevertheless, after extensive and costly work, the Appellants developed a comprehensive list of modifications to OPA 367 that, if adopted, would result in a higher level of intensification for SAW than that contemplated by the City in OPA 367. The Appellants held their own public consultations; they devised their own modelling and renderings; and they drew upon the services of a variety of expert witnesses to demonstrate to the Tribunal through their evidence that the City’s resulting document does not achieve the direction of the provincial planning instruments; nor does it plan properly for the future growth of SAW given its proximity to a higher-level intensified area such as the North York Centre to the east and the Yonge-Sheppard Subway Station.

[42] The Appellants' Proposed Modifications envision assembling the SAW *Mixed Use* lands with the *Neighbourhoods* lands that abut the north and south sides of the subject area; that is, the rear yards of residential lands running parallel to SAW along Bogert Avenue and Harlandale Avenue. As Ms. Zapal submitted, the Proposed Modifications would facilitate lot consolidations where feasible in order to permit "more viable, substantial and appropriate mixed-use development" with heights and densities peaking at locations closest to the Yonge-Sheppard Subway Station and transitioning downward moving west along SAW. The Appellants note that, where lot consolidation is not achievable, the maximum heights, densities and built form would remain as adopted in OPA 367.

[43] The Appellants submitted that OPA 367's reduced densities and building heights as proposed are not "feasible, sensible, realistic, practical, or in conformity with Provincial and Official Plan policy." There is a concern that SAW will "underperform" insofar as intensification objectives for this area of the City are concerned. They are concerned that the City has failed to balance the policy objectives related to intensification along the Avenue versus protection of *Neighbourhoods* for the Sheppard Lansing Secondary Plan Area.

[44] The Appellants' Co-Counsels submitted that the City's approach is not supported by the planning evidence while their modifications would instead achieve a more appropriate and higher level of development that is reflective of, and in keeping with, future anticipated growth along SAW. Specifically, the Appellants' witnesses gave evidence that OPA 367 is deficient in that the City misapplied and misread the policies of the upper-tier planning documents; it misread the future for development along this Avenue generally; and it neglected to consider various urban designations such that the form of development proposed under OPA 367 is too modest and in fact would prevent meritorious planning along the subject area. For example, the Appellants argued that Land Economist Mark Conway's evidence showed that the limited form and scale of development as planned for in OPA 367 is also not viable, particularly given the resulting site circulation limitations and angular plane constraints referenced by Architect David Moore.

[45] The Appellants had other concerns. Their Counsels submitted that the City failed to optimize and maximize growth potential through planning for higher levels of development as required under the current provincial planning and policy framework. It has failed to recognize the role of this corridor's proximity to planned and higher-order transit. The City has also failed to recognize the importance of previous site-specific appeals related to 53-63 SAW and 245-255 SAW (discussed later in these reasons). Also, given the City's determination to protect the abutting *Neighbourhoods* lands at the expense of the *Mixed Use Areas* lands, it cannot hope to protect the former since, as Co-Counsel Kussner submitted: "the resulting uncertainty and instability" would be perpetuated by this restrictive and underperforming level of proposed development along SAW.

## **PETITION**

[46] The Tribunal received a petition containing hundreds of signatures calling for a greater intensity of development. Ms. Zapal lives in the area; she rents a house that one of the other Appellants owns in the subject area. She obtained these signatures during a large canvassing effort of the area. However, this Appellant's petition also included the names and signatures of persons living in areas quite a considerable distance away from the subject area, yet those people had signed on to a petition that supports a more intense form of development for an area in which they do not live. There is nothing incorrect in having persons from other areas expressing interest in development, but the interest in intensification of SAW for persons living farther north and east of the subject area—let alone this Appellant's interest in reaching beyond the subject area—is unknown.

[47] As the tenant of a house that is owned by another Appellant, the Tribunal was unable to ascertain any demonstrable landowning or financial interest for Ms. Zapal. Other than a possible altruistic interest in planned growth along SAW, the Tribunal acknowledges the signatories to the petition and a desire for greater intensification along the corridor. Nevertheless, while indicative of community interest (and in this case, beyond the community), a petition of this nature cannot supplant the duty of the municipal government and its elected officials to plan for its City. It is amply evident that

the City's consultative process was a thorough one; an approach that ultimately contributed to the resulting vision and objectives for growth along SAW as captured in OPA 367. Thus, while acknowledging these many signatures that call for more intensive growth, the Tribunal is bound to assess the planning merits of a more gradual and more incremental approach to planning for development along SAW as contemplated through OPA 367; not to a petition for more intensive development as called for by the signatories, by the petition organizer and by the Appellants.

[48] So long as the City meets its statutory obligations and shows persuasively that OPA 367 achieves conformity with the relevant plans and consistency with the direction espoused in the Provincial Policy Statement 2014 ("PPS 2014"), the Tribunal will not interfere with that vision let alone order modifications to OPA 367—a document that satisfactorily implements an incremental form of development and growth that is supportable in the planning framework. For those reasons, the Tribunal assigns minimal weight to the petition provided by the Appellant's tenant.

### **THREE SUMMARY ISSUES FOR THE CITY**

[49] Referencing the City Co-Counsels' submissions, the City asked the Tribunal to consider, as a matter of higher order planning policy, the appropriate form and scale of intensification for a secondary plan. This is what the Tribunal has done in this case. It finds that, as long as OPA 367 has achieved the direction of the local official plan ("OP") and the upper-tier plan, and is determined to achieve the policy objectives of the in-force planning regime, the form and scale of intensification as contemplated by the municipality is supportable. There might be merit in an alternative form of development, but that cannot serve as justification to modify or supplant the direction and vision of the municipal instrument where the City has shown that it has satisfied the public interest component and proposed a form of planning that is different from that which the Appellants seek. The City has demonstrated successful achievement of the "consistency" and "conformity" tests; accordingly, the form and scale of intensification proposed herein can be supported.

[50] The City asked the Tribunal to consider whether the boundary should be



expanded to permit integrated development on comprehensive lot assemblies. Ms. Meistrich's opinions included a comprehensive and policy-reliant planning rationale for the geographic boundaries of OPA 367 as detailed in paragraphs 214-220 of her witness statement, which do not include the *Neighbourhoods* lands to the north and south of SAW. However, the Tribunal notes from the evidence that, as early as 2011-2012, the City had turned its mind to whether the instrument could expand the geographic boundaries to include the adjacent *Neighbourhoods* as part of *Mixed Use Areas* redevelopment sites. City staff considered this again following input from external stakeholders. The City has demonstrated that its approach is a correct one in the planning context, and that OPA 367 boundaries should not be expanded to permit the type of "integrated" development envisioned through the Appellants' Proposed Modifications. The Tribunal's comprehensive findings throughout these reasons support OPA 367 without modification and as crafted.

[51] In this context, Counsel for Dr. Svirsky submitted that one of the primary objections to the proposal for consolidated lots as expressed by Mr. Sakalauskas and Ms. Meistrich is that it uses the *Neighbourhoods* lands to provide the required transition. However, this Counsel added that the Proposed Modifications maintain the *Neighbourhoods* designation on the lands on the north side of Bogert Avenue and south side of Harlandale Avenue in the expanded Secondary Plan Area boundary. And, within those *Neighbourhoods* lands, the permitted built form is limited to that which is already permitted in the OP (townhouses). Further, as Urban Design Planner Anne McIlroy and Architect David Moore testified, the townhouse form on the rear of the consolidated lots will provide a better built form condition and transition for the *Neighbourhoods* from an urban design perspective than the built form condition that would result under OPA 367, which would locate servicing, loading and parking at the rear of the SAW lots directly adjacent to the existing single-family dwellings.

[52] Counsel for Dr. Svirsky also submitted that OPA 367 fails to adequately address all but the transition consideration, whereas the Proposed Modifications conform to the policies respecting intensification, efficient use of land and infrastructure and support for transit. They "properly recognize" the context of the Secondary Plan Area and its

location adjacent to the Yonge-Sheppard Subway Station and provide transition to the *Neighbourhoods* through the use of townhouse form on the rear of consolidated lots, a modified angular plane for the mid-rise buildings, and requirements for tall buildings to provide appropriate transition, which is to be further detailed through Urban Design Guidelines.

[53] As this consolidation represents a significant concern of the City, the Tribunal cannot support expansion of the subject lands for the sake of “integrating” development. The Tribunal is not bound to consider comprehensive lot assembly where that assembly requires the taking of adjacent *Neighbourhoods* lands. Not only would it have the effect of altering the fundamental character of the subject area, it would also impact these stable residential lands that surround SAW. Taking residential lands to facilitate development of, and serve as transition to taller towers and commercial buildings, does not represent good planning. In the particular circumstances of SAW, using adjacent *Neighbourhoods* lands to achieve higher forms of development on *Mixed Use Areas*-designated lands ultimately serves to prioritize development of SAW over protection of the stable residential lands along Bogert Avenue and Harlandale Avenue.

[54] The Tribunal finds that this approach runs counter to the City’s vision of providing for planned, incremental growth and intensification while protecting the abutting residential uses. Even where the Tribunal has supported their site-specific appeals (not subject to OPA 367) to build townhouses (in principle a perfectly acceptable built form) to serve as transitional components to taller residential development on at least one other site along SAW, there is no persuasive evidence before the Tribunal to show that its approval of those already-assembled sites should have broad application along all of the lands comprising SAW.

[55] As stated, the Tribunal finds that the expansion of the boundaries to permit assembled lot development would fundamentally alter the character of the area. If allowed, it is reasonable to foresee the creation of rows of townhouses lining the abutting residential lots of Bogert Avenue and Harlandale Avenue, the impact of which on the character of the abutting area has not been fully assessed in this hearing. What the Tribunal does know from the evidence is that the proposal runs counter to the vision

and objectives that the City proposes through OPA 367. As stated, the taking of residential lands to accommodate higher levels of development changes the nature of OPA 367 itself and cannot be supported. The City has demonstrated satisfactorily how development of a more gradual and incremental nature can be supported in the planning context.

[56] Additionally, the Tribunal finds that there can be no planning justification for modifying OPA 367 for the sake of maximizing the Appellants' and others' future development priorities where a perfectly supportable instrument such as OPA 367 has been crafted with the public interest in mind, notwithstanding the Appellants' objection to the more modest and incremental form of development that the City contemplates for the subject area generally. Showing the Tribunal how their development schemes can work is both irrelevant and immaterial to the adjudication of the planning merits of OPA 367; the gateway issue is whether the City's instrument is supportable in the planning context. On this threshold matter, the Appellants have failed to discharge their onus in demonstrating why OPA 367 should be modified.

[57] Finally, the City asked the Tribunal to determine whether it should in fact modify OPA 367 "to allow for the integrated OPA." The Appellants proffered the term "integrated" as a means to assemble *Neighbourhoods* lands with *Mixed Use Areas* lands, and that this is somehow more desirable as long as parks or green spaces are included, which OPA 367 does not contemplate. As City Parks Planner Vitumbiko Mhango explained at the hearing, the City has a well-developed process for consideration of parks and green spaces and where those features should occur within its system. The Tribunal is not willing to supplant the existing instrument with more parks and green spaces so long as the City has demonstrated persuasively that OPA 367 works and achieves the planning direction of the City and the province in the manner contemplated. It does this in a form that meets the City's needs; that reflects its vision for incremental change and growth along the Avenue; and that does not conflict with the direction of the upper-tier and municipal planning documents exhibited in this hearing.

[58] Further, the Tribunal is not persuaded that SAW is required to be developed at a

“highest and most intensive level for the sake of maximizing the use of the lands” as the City’s Co-Counsels submitted. Efficient uses of land are desirable and lead to supportive and sustainable growth so long as that growth does not conflict with adjacent land uses. There is no such conflict in OPA 367, yet the Appellants argue for a form of development that, if realized in an “integrated” way along the Avenue, conflict with the City’s vision and direction. The Appellants do not like the lack of integration of the adjacent land designations, but as the City’s Co-Counsels submitted persuasively, “nor have [the Appellants] made a case for such an approach”. The Tribunal prefers the City’s approach and supports the planning evidence that informs OPA 367. For the reasons stated, the Tribunal will not modify OPA 367 to permit lot assembly across designations as the Appellants have sought so as “to allow for the integrated OPA.”

### **53-63 SAW and 245-255 SAW**

[59] These two decisions were referenced at the hearing, whereby the Tribunal and its adjudicative predecessor supported development of a type contemplated by the Appellants for the SAW lands. The Appellants submitted that these decisions “recognized the need for an appropriateness of a flexible policy approach that allows comprehensive lot assemblies to achieve the relevant policy objectives, including mixed-use and transit supportive development along a major Avenue and appropriate transition with the adjacent Neighbourhood”.

[60] The Tribunal considered these cases in the context of the Tribunal’s earlier discussion of the City’s issue with the proposed matter of lot assembly across the *Mixed Use Areas* and *Neighbourhoods* designations. Counsel for the Appellant Dr. Svirksy submitted that the built form approach in the Proposed Modifications for the majority of the Secondary Plan Area is consistent with the built form already approved by the Tribunal in these two cases. In the 53-63 SAW decision, the Tribunal found that the proposed development provided appropriate and compatible transition to the adjacent *Neighbourhoods* lands. In the 245-255 SAW decision, the Tribunal accepted the evidence of Ms. McIlroy and Mr. Moore in favour of that of Mr. Sakalauskas. The Tribunal found that the proposed development conformed with the OP’s *Neighbourhoods* policies, was compatible with the existing homes, would not destabilize

the neighbourhood nor cause adverse impacts, and “may in fact alleviate potential adverse impacts that could result from development as contemplated in OPA 367.”

[61] Insofar as the jurisprudential value of these two cases is concerned, and as stated above, the Tribunal is not persuaded that the prior decisions made on site-specific applications for two properties along SAW should serve as an example to prove that these approvals are—potentially—appropriate for all properties along the entire length of SAW. It is correct that, in the case of 53-63 SAW, the decision was made that the juxtaposition of a 15-storey building along SAW transitioning downward to four-storey townhouses on the *Neighbourhoods* lands is an appropriate transition. However, the lands near the eastern edge of the SAW corridor were already assembled and a ruling was made on the appropriateness of a development scheme for a taller building abutting a residential neighbourhood on assembled lands. This demonstrates that a site-specific application was appropriate for this assembled site. It cannot be construed as *de facto* evidence that altering the boundary of the *Mixed Use Areas* lands along SAW to include and thereby alter the stable residential neighbourhood to the north and south along the entirety of the corridor represents good planning argued broadly. It is evident from the evidence that the City turned its mind to this scenario as explained to it by both Ms. Meistrich and Mr. Sakalauskas and the City determined that such an approach was unpopular and not supportive of its vision for incremental growth along SAW while protecting the *Neighbourhoods* lands.

[62] Also irrelevant to the Tribunal’s determination of the merits of OPA 367 is the Appellants’ suggestion that other developments along SAW, such as 110 SAW, which Mr. Sakalauskas referenced, would not conform with policies of OPA 367. The City is not required to craft instruments that respond to a developer’s application. Rather, the onus is on the developer to bring forward an application that should conform to the individual plan with modifications as necessary. Further, because a particular application might be unable to achieve the direction of OPA 367, this does not then make the instrument flawed. And finally, applications can be modified; making accommodations for future developments are common occurrences, worked out through dialogue between the City and those who apply for development. There is

nothing deficient about the City's direction for OPA 367, and yet it still leaves room for future development applications to come forward albeit more modest in size and massing than what the Appellants would like to see permitted through this planning instrument.

[63] These cases as referenced dealt with private landowners with assembled properties along SAW seeking development through site-specific applications. They were not subject to OPA 367. Further, the Tribunal distinguishes its consideration of those site-specific appeals within an existing, in-force planning framework and the current appeal of a new planning instrument. The Appellants submitted that the Tribunal's permissions in these decisions demonstrate that lot assembly works and taller buildings are possible and a better form of development than that for which the City has planned is possible. In the Tribunal's view, the wholesale modification of OPA 367 to permit mixed use landowners to assemble with *Neighbourhoods* lands, and *vice versa*, would alter fundamentally the City's vision for the future development of SAW. The Tribunal distinguishes those two cases from the matter at hand, and is not persuaded that two examples of assembled properties on site-specific applications should serve as justification for the entire reshaping of the abutting land uses along and adjacent to this Avenue. And finally, the Tribunal finds that to do so would alter substantively the foundation of this planning instrument, which seeks to protect abutting land uses from a more intensive form of development that the City does not wish to see occur in the subject area going forward. The Tribunal finds there is no informative or precedential value in elevating these prior decisions to guide the Tribunal's determination of the planning merits of OPA 367.

## **CITY EVIDENCE**

[64] The Tribunal examined carefully the extent of the work that was undertaken by the City's witnesses in support of OPA 367. The importance of the Tribunal's review of their evidence and opinions is to establish whether the City was properly informed by technical studies, planning policies and existing conditions to craft an instrument that proposes gradual intensification along SAW and that adheres to the intent and policies of the relevant planning instruments. The following is a comprehensive review of the

City's work and opinions in this regard.

## **SERVICING**

[65] Senior Engineer Shad Hussain undertook his work utilizing the City's Basement Flooding Protection Program ("BFPP") EA studies "for Areas 25 and 26 (sewer shed areas), as relevant" and he attached the 2016 Municipal Class EA reports (the BFPP EA Studies) prepared by Toronto Water to his witness statement as Appendix 3. Mr. Hussain opined that the population and employment densities proposed by the City in OPA 367 are consistent with the densities assumed in the BFPP EA Studies. He added that these densities can be adequately serviced following implementation of the BFPP's remediation works within the impacted sewer shed. He noted that site-specific applications in the future would need to demonstrate the adequacy of local servicing infrastructure. Mr. Hussain's opinions, buoyed by the report, were unassailed in cross-examination or by any opposing witness. The Tribunal finds Mr. Hussain's work to be comprehensive; to be focused on the documents relevant to his analysis; and based on his professional evidence and opinion, the Tribunal finds that there are no matters of servicing created through adoption of OPA 367 at the prescribed population and employment densities.

[66] The witness' response to Issue 14 was technical in nature, but easily understood in respect of his review of shortcomings in the Appellants' assumptions regarding potential future population growth. Mr. Hussain reviewed the Proposed Modifications himself and described their deficiencies in highly-technical but understandable language, noting among other things the requirement for a master servicing study (which the Appellants did not undertake) in order to "completely assess and understand capacity and impacts to overall servicing infrastructure and ongoing remediation works" (paragraph 31).

[67] The BFPP modelling as referenced also took into account the existing as well as the future conditions, noting that the 2031 population horizon was also considered. Mr. Hussain added that the models were rerun to take into account of those numbers, noting that the future conditions model was using a slightly higher number than that

contained in OPA 367. Thus, although modelled for higher density numbers (4,100 versus 3,500 in OPA 367), the modelling results remained valid. He also explained that the BFPP is a multi-year gauge for basement flooding mitigation/protection issues whereas a master servicing plan would last “at most half a year.”

[68] The Appellants suggested a higher density range in addition to the higher modelling figure. In cross examination, the Appellants’ Co-Counsel argued that whatever the figure is, the sewer pipes will have capacity to mitigate capacity and the City never tested beyond the engineering witness’ figure of 4,100. Mr. Hussain responded that if one is increasing population significantly, which the Appellants wished to do, their assumptions needed to be tested to ensure the basement flooding remediation works are still valid. The Co-Counsel delved deeper, speaking of hydraulic models that take into account sewage discharge and then asking for Mr. Hussain’s figures, a matter that the Co-Counsel later informed the Tribunal had been resolved after discussions between the Parties’ experts.

[69] Summarily, Mr. Hussain’s work had regard to the supply, efficient use and conservation of energy and water; and the adequate provision and efficient use of sewage and water services and waste management.

[70] The Tribunal is satisfied that, as approved, OPA 367 has taken into account through its Senior Engineer witness that there is sufficient capacity in the pipes for discharge from residential and commercial uses to flow out to the sanitary trunk sewer, and that these can be remediated to make that system work. The Tribunal finds Mr. Hussain’s technical evidence to be supportive of the functionality of OPA 367 insofar as servicing *vis-à-vis* the population and employment densities numbers were assessed.

## **TRANSPORTATION**

[71] Senior Transportation Planner Andrew Au utilized all of his transportation expertise at the City to opine that the vision and principles espoused in OPA 367 optimize the use of public infrastructure while comprehensively integrating transportation planning and land use planning.



[72] He shared his and his team's methodology that informed his work. For example, he reviewed the Exhibit 13 Maps for the transportation policies, noting protection of the 36-m right-of-way along SAW (2.2.3(a)) (Volume 1, Tab 4, Page 219). They reviewed OP Map 4 (Higher Order Transit Corridors) of which this stretch of Sheppard Avenue West is a Transit Corridor and Mr. Au opined that OPA 367 continues to protect for that higher order transit planning. Mr. Au referenced OP Map 5—Surface Transit Priority Network in relation to the subject area, noting that they looked at all of the maps as a comprehensive document.

[73] SAW is a major arterial road in the City's Road Classification Map. Mr. Au noted that there is currently no existing or planned bicycle infrastructure within the right-of-way of the SAW Corridor for the lands that are subject to OPA 367, and he observed that, while sidewalks are provided on both sides of SAW, they are of a substandard width. Currently, it is not a pedestrian-oriented or a pedestrian-friendly route.

[74] As for Section 6.0 Mobility in OPA 367, the City took a "multimodal" approach for pedestrian, transportation and cycling considerations with a view to supporting transit while ensuring that the public realm focuses on activating the existing capacity already there. This section speaks to achieving "balanced mobility options" so as to implement "Complete Street" design elements as identified in Section 6.1.1 with examples given in Sections 6.1.2 to 6.1.5.

[75] Section 6.4 of OPA 367 speaks to a reduction of vehicle parking through "appropriate" parking policies to support the reduction of supply on a site-specific basis, supported with "travel demand measures, public realm improvements, and other sustainable mobility options." In this context, Mr. Au opined that specific vehicular parking supply rates are not required for OPA 367 because those rates cannot take into account site-specific circumstances. This would require amendments to the plan for each application to alter or revise the prescribed rates. In this regard, Mr. Au told the Tribunal that the policies contained in OPA 367 "provide sufficient flexibility and permit each individual site-specific application to justify reduction in parking rates based on OPA 367 parking policies".

[76] Crafted in this form by City transportation staff and as supported by Mr. Au, the Tribunal finds the City's approach in OPA 367 to be based on sound planning evidence. Moreover, as the 36-m right-of-way provision for SAW (see Map 3 of the OP – Right-of-Way Widths Associated with Existing Major Streets) was not changed by Council in its adoption of OPA 367, the Tribunal is persuaded by Mr. Au's evidence, and supported by the opinion of Ms. Meistrich that the 36-m right-of-way provision is "appropriate and a requirement of the Official Plan that is in force." This is already captured and required in Map 3 and is consistent with the City's approach to similar, required right-of-way widenings between the north and south sides of SAW. Further, as the 36-m right-of-way provision did not amend Map 3, the Tribunal is persuaded that it cannot be subject to an appeal before the Tribunal.

[77] The Tribunal finds Mr. Au's review methodology to be sound and supportable in the planning context. The Tribunal will not require the addition of parking rates to OPA 367.

[78] Mr. Au opined that the City achieves the "building strong health communities" Policies 1.1.1.g and 1.1.3.2 a) 4 and 5 of the PPS 2014 by supporting these policy objectives in "building strong, healthy, livable and safe communities aligned with the available and necessary infrastructure. He opined that the policies for Transportation System are also met, referencing Policies 1.6.7.1-5, emphasizing the integration of transportation and land use considerations at all stages of the planning process. Mr. Au added that OPA 367 maintains and "significantly" improves a multimodal transportation system while making efficient use of existing and planned transportation infrastructure.

[79] Also, Policy 1.6.1 b) of the PPS 2014 states that infrastructure planning and land use planning shall be coordinated and integrated so that infrastructure is available to meet current and projected needs. Mr. Au criticized the Appellants for their attempts to coordinate land use planning with transit (not transportation) planning and to plan for growth based on "future transit infrastructure" where there is no evidence of planned, funded or even approved transit infrastructure. The Tribunal also noted that the Appellants' approach to a higher order transit system along SAW has no approved EA, and as Mr. Au explained, no financial commitment for their transit project. Insofar as the

Tribunal has interest in analyzing the merits of any of the Proposed Modifications, it determined that even a cursory analysis of a proposal to develop for higher-order transit where it is neither funded nor approved shows that the Appellants' approach serves only to elevate transit considerations along SAW to an insupportable level and one that conflicts with the City's approach. In contrast, the City demonstrated through Mr. Au's testimony that the Appellants' approach to planning on the basis of "unfunded and unapproved" transit infrastructure constitutes poor transportation planning.

[80] In terms of the Growth Plan for the Greater Golden Horseshoe, 2017 ("Growth Plan"), the Appellants also opined that transit-supportive densities are directed in the relevant planning documents presented in this hearing, whereas OPA 367 contemplates densities and heights are too low, with "no attempt at differentiating heights based on proximity to the Yonge-Sheppard Subway Station to locate greater density closer to the station as the policies direct" (Dr. Svirsky submissions, paragraph 13). Dr. Svirsky's Counsel submitted that applying a consistent density permission for sites located either 100 m or 900 m away from the Yonge-Sheppard Subway Station does not conform with the Growth Plan.

[81] Mr. Au cited Policies 2.2.4.10 and 2.2.4.11 where "lands near existing and planned frequent transit should be planned to be transit-supportive and supporting active transportation and a range of mix of uses and activities." The Tribunal preferred the evidence of Mr. Au in respect of the City's achievement of transit-supportive policies in the Mobility section of OPA 367 once considered in the context of the planning documents. Equally, the *Avenues* Policy 2.2.3 has been properly applied as referenced by him in his witness statement.

[82] The Tribunal finds OPA 367 to be consistent with these goals. The Tribunal also finds Mr. Au's evidence outline to be highly informative insofar as a reading of the applicable Growth Plan policies that informed the creation of OPA 367 is concerned (such as Policies 2.2, 2.4, 3.2 and 6 of the Growth Plan). Paragraphs 36 to 48 cover comprehensively the applicable policies that inform OPA 367.

[83] The Tribunal is not persuaded that OPA 367 somehow diminishes or fails to

acknowledge the importance of transit-supportive densities and directing growth to the Avenue. In response to the Appellants' references to the 2018 Metrolinx 2041 Regional Transportation Plan ("Metrolinx 2041 Plan"), Mr. Au noted that this is not a policy statement issued under the *Planning Act* and it is not a provincial policy document. This Plan does not require municipalities to align their municipal transportation plans with it. And to clarify, it only considers transit network opportunities; it does not consider land use policies, funding for transit projects or the status of EA studies for transit projects. With the transit network considerations that informed OPA 367, Mr. Au opined that "certain aspects" of the Metrolinx 2041 Plan are addressed through OPA 367. He also reminded the Tribunal that there are no Metrolinx GO Transit or Regional Express Rail (also known as GO Expansion—RER) stations adjacent to or near OPA 367.

[84] The Appellants submitted that the City made an "arbitrary and unsubstantiated distinction that the only relevant planned transit is funded transit" in response to Mr. Au's evidence that "Currently, funding decisions, EA, business case analysis and further planning regarding transit improvements...have not been evaluated or determined by City Council". Mr. Au wrote the following in paragraph 55 of his witness statement:

If and when a subway extension is determined to be feasible, in my opinion, the City would then appropriately plan for phasing and planning for the Sheppard Corridor based on appropriate empirical evidence regarding timing, land use and appropriate development standards to support such infrastructure, in accordance with provincial policy.

[85] However, the Tribunal was not persuaded that the City has made a distinction in relying only on plans for 'funded' transit. Mr. Au's evidence of the matters to which the City turned its attention in the context of transportation and transit belie this submission. Appropriately, the City made plain the reality of references to future transit schemes that have not yet been prioritized let alone studied fully or targeted for funding. The Tribunal noted that Map 4 identifies SAW as a Transit Corridor Expansion Element on the Higher Order Transit Network Map and as a Transit Priority Segment on the Surface Transit Priority Network (Map 5). The Tribunal is plainly aware of Section 2.2 of the OPA 367 that directs growth to, among other places, "...Avenues ... in order to ... b) concentrate jobs and people in areas well served by surface transit and rapid transit stations". Yet, the Tribunal is not persuaded that the City was required to target SAW for future higher

level transit and thereby plan for higher level development permissions along this corridor on the Appellants' reading of the documents.

[86] The Tribunal also considered Map 3 of the Metrolinx 2041 Plan, which identifies the existing and in-delivery regional rail and rapid transit projects by 2025, noting that there are currently no such projects identified in-delivery for the OPA 367 plan area. Notwithstanding its marginal applicability regarding transit planning along SAW, Mr. Au opined that the proposed policies of OPA 367 will do two things: provide an active multimodal transportation network that will provide connectivity among all modes of transportation and support existing transit investment in the area. The Tribunal was not persuaded that the City was remiss in developing the approach to transit as contemplated within OPA 367.

[87] In terms of the City's OP, Mr. Au provided an informed and detailed review of all of the relevant municipal and provincial policies in paragraphs 61 to 78 of his evidence outline. Thus, in defining the most appropriate vision and principles for OPA 367 in order to "optimize the use of public infrastructure and meet provincial policy (Issue 16)", the Tribunal considered carefully the Section 1.1 Vision and Section 1.2 Principles of the Secondary Plan that seek to optimize the use of public infrastructure along SAW. The "Complete Street" approach is an acceptable one given its objective to draw upon available transportation capacity along with existing public infrastructure. Indeed, the Growth Plan "recognizes the requirement for a complete street approach". Mr. Au opined that OPA 367 must be based upon the existing transportation along SAW as currently, "there are no planned, funded or approved transportation infrastructure improvements for this transit corridor". On this point, the Tribunal finds that the vision and principles of OPA 367 optimizes available public transit infrastructure while balancing the transportation network with the appropriate use and capacity of the available public transit infrastructure.

[88] In respect of Issue 18 and the "appropriate" transportation policies for this Secondary Plan, Ms. Meistrich reviewed these comprehensively, noting how the City has planned for the right-of-way width and provision of facilities for pedestrians, bicycles, transit and automobiles along the SAW corridor as well as signalized

intersection spacing and transportation policies that are aligned with the development of the Yonge-Sheppard Mobility Hub. Ms. Meistrich's statement references the fact that, notwithstanding the implementation of the Mobility Hub is tied to Major Transit Station Area ("MTSA") delineation as discussed in Mr. Au's evidence, that Hub is already exceeding provincial minimum targets in the Growth Plan where these areas are to be planned for 200 residents and jobs combined per hectare for those that are served by subways. Also, the Yonge-Sheppard Mobility Hub identifies an 800-metre radius from the Yonge-Sheppard Toronto Transit Commission stations, which includes a portion of the OPA 367 lands. In Ms. Meistrich's opinion, OPA 367 is already achieving the targets (in the December 2015 Metrolinx Mobility Hub Profile) of a population density of 120 people per hectare and 132.3 jobs per hectare, totalling approximately 252.3 people and jobs combined, which exceeds the target of 200 people and jobs combined per hectare in the Growth Plan. In paragraph 234 of her witness statement, Ms. Meistrich opined that these targets have been achieved, "notwithstanding that OPA 367 as adopted by Council has not yet been brought into force."

[89] Nowhere in the City's transportation evidence from Mr. Au did the Tribunal see any departure from or failure to consider the Transit Guidelines (Exhibit 6, Volume 2, Tab 17), especially where the stated goal of OPA 367's Mobility section is to achieve what these Guidelines prescribe: the need for a Complete Streets approach to the planning process and a more transit supportive environment to promote the shift in travel behavior. See for example Section 2.2.1 of these Guidelines:

The design of streets should involve a comprehensive planning process, one that identifies the needs and balances the requirements of the full range of potential users within a community including users of all ages and abilities, pedestrians, cyclists, transit vehicles and motorists.

[90] Nor could Mr. Sakalauskas support the Appellants' desire to maximize the entire corridor. He referred the Tribunal to the "Corridors" chapter on Page 1,095 of the Guidelines, wherein the Tribunal read: "Major transit routes should be planned and developed as medium and high-density *corridors*." And: "Transforming high-volume arterials into transit-supportive corridors takes time." The Tribunal can support the Mobility section of OPA 367 as the evidence shows that the instrument is grounded in policy; it achieves the direction of both the upper-tier and municipal policies as Mr. Au

detailed; and it promotes acceptable use of the available transportation infrastructure along SAW.

### **Major Transit Station Areas (MTSA)**

[91] The Appellants argued that the City has failed to plan properly along SAW because the Yonge-Sheppard Subway Station meets the definition of a MTSA. The Secondary Plan Area is designated “Avenues” and “Mixed Use Areas” and is one of the areas identified in the OP where growth and intensification is to be directed (Exhibit 5, Volume 1, Tab 4, Sections 2.2 and 2.2.2). One portion is adjacent to the Yonge-Sheppard Subway Station. The Appellants relied greatly on the location of the Yonge-Sheppard Subway Station as a potential mobility hub to justify higher densities along SAW, noting that the area around the Yonge-Sheppard Subway Station, including portions of SAW, meets the MTSA definition.

[92] Policy 2.2.4.2 of the 2019 Growth Plan directs as follows:

*For major transit station areas on priority transit corridors or subway lines, upper- and single-tier municipalities, in consultation with lower-tier municipalities, will delineate the boundaries of major transit station areas in a transit-supportive manner that maximizes the size of the area and the number of potential transit users that are within walking distance of the station.*

[93] The Growth Plan requires municipalities to delineate boundaries for MTSA's using a 500-m or a 10-minute walking radius around existing or planned higher-order transit, including all subway, GO Regional Express Rail, Light Rail Transit (“LRT”), and Bus Rapid Transit (BRT) stations. Within these areas, new density targets will apply. However, despite the identification of the Yonge-Sheppard Subway Station as an MTSA under the 2006 Growth Plan, the City has still not taken steps to implement the designation or “make any effort to update SACASP in order to bring it into conformity with those policies” (submission of Co-Counsel Kussner). He submitted in essence that the transit approach in OPA 367 simply ignores the provincial mandate for transit-supportive development and reflects instead the now-dated approach taken in the 1987 SACASP, resulting in “very little development activity in this area”.

[94] In 2019, the definition of an MTSA has been extended to include a greater radius

and there is a new requirement for municipalities to delineate MTSA's to ensure that minimum density targets are met. The Appellants also noted that MTSA's remain an important element of Strategic Growth Areas in the Growth Plan 2019.

[95] The City takes a different approach, arguing that SAW is not a Strategic Growth Area and that any maximization of the number of potential transit users within walking distance of the station is appropriately accommodated within the North York Secondary Plan—where the Yonge-Sheppard Subway Station lies. The City argued that it has not been deficient in planning for more modest growth along SAW and in proximity to the Yonge-Sheppard Subway Station because, in the particular circumstances of this case, there is room to plan at greater density within the North York Secondary Plan and SAW is impacted by stable *Neighbourhoods* lands around this stretch of SAW. Secondly, referring back to the discussion regarding subways, there is no confirmed or anticipated funding in place for textual references to subway routing along SAW at some point in the future that requires a higher level of development for SAW.

[96] These are all relevant considerations given that the Appellants opined that OPA 367 does not balance the objectives of more intensification and growth along SAW with the *Neighbourhoods* policies, attributing an inappropriately higher degree of protection to those abutting residential land uses. The Appellants argued that OPA 367 focuses too much on protecting the latter uses at the expense of achieving that intensification and growth through transit-supportive densities along SAW. Dr. Svirsky's Counsel submitted that OPA 367 does not even consider the Secondary Plan Area's location adjacent to the Yonge-Sheppard Subway Station and the resulting policies are unreflective of the need to plan for the station's proximity.

[97] The Tribunal is not persuaded by this latter argument. Mr. Au advised that justification of higher densities in this area will require "an appropriate review alongside policies within the North York Centre Secondary Plan." He noted that the Yonge-Sheppard Subway Station is located within that Secondary Plan and within the Urban Growth Centre, commenting that it is "not appropriate transportation planning to consider part planning a potential mobility hub without understanding the full planning framework for the whole surrounding area." He added that there is no provincial policy



direction to identify the Sheppard-Yonge Subway Station as a mobility hub, adding that the Metrolinx 2041 Plan defines mobility hubs as “Major Transit Station Areas”, a definition adopted from the Growth Plan.

[98] Ms. Meistrich noted that the analysis for this statement is premised on the delineation of an MTSA that does not conform to the Growth Plan (as Land Use Planner (MTSAs) Jeffrey Cantos opined during his appearance before the Tribunal). Further, Official Plan Policy 2.2.3.j identifies that the implementation of transit services in exclusive rights-of-way in the corridors as identified on Map 4 will occur as priorities are established, funding becomes available and the EA review processes are completed. She noted that there has been no planning or assessment undertaken by the City for an identified subway extension, and there are no phasing policies in the Appellants’ modifications to address these realities. She also reported that SAW is not identified as a higher order transit corridor or priority transit corridor on Schedule 5 in the Growth Plan.

[99] The Appellants submitted that, as the City must delineate its MTSA according to Policy 2.2.4.2, the MTSA for the Yonge-Sheppard Subway Station once delineated will “necessarily include some portion of the Secondary Plan Area, generally within 500 m to 800 m of the Station. Accordingly, it does not represent good planning to assume that none of the Secondary Plan Area will be included within the future MTSA, which is what the Appellants have proposed through OPA 367.” In this context, Mr. Cantos opined and agreed that good planning should still proceed in advance of the delineation of the MTSAs and that planning higher heights and densities in proximity to subway stations was appropriate, as long as one was not reliant on the MTSA delineation to do so, which is what the Appellants have asked the Tribunal to do.

[100] The Tribunal is not persuaded that the City’s approach through OPA 367 is an incorrect one. Given the City’s position that transit-supportive growth includes higher density planning within the North York Secondary Plan, where the attributes of the Yonge-Sheppard Subway Station lend themselves to future consideration as an MTSA (which in fact requires a Municipal Comprehensive Review (“MCR”) process), there is no evidence that the City was required to differentiate heights and densities along the

SAW corridor now let alone allow for higher order development in order to respond to a future and as yet undesignated MTSA. The City is not required to for more intense and taller forms of development on the sites closest to the subway so as to “maximize development” within walking distance of the subway despite the Appellants’ submissions.

[101] Dr. Svirsky’s position is that the City’s position in this hearing is not consistent with its own planning work in other areas of the City. In the Don Mills Crossing Secondary Plan OPA, which was adopted by Council on April 16, 2019 and which was not subject to an MCR, the City explicitly recognized the presence of the Crosstown LRT stations which are being constructed within that secondary plan area. In light of the MTSA policies in the Growth Plan and the direction for how they are to be delineated in Policy 2.2.4.2, planning staff delineated draft boundaries for the four major transit station areas, which they used to inform densities in the secondary plan. They consulted with the Ministry of Transportation and the boundaries were endorsed by City Council.

[102] The Tribunal is not persuaded that the City was obligated to follow this same approach with OPA 367. City witnesses explained the thought process behind OPA 367, an interest in protecting parallel residential lands, and the viability of higher-planned densities within the nearby North York Secondary Plan where, in fact, the Yonge-Sheppard Subway Station is located. Put plainly, the City is entitled to consider (as it should) the particular circumstances and context of each corridor and plan accordingly. Regardless whether the City has provided permissions for greater heights and density permissions around other higher order transit stations, the City has explained its rationale for the approach taken in the context of SAW as evidenced by the City’s transportation planner. The unique circumstances of the subject area and its proximity to North York are justifiable factors in the City’s determination where greater heights and densities are to be achieved. It is not for the Appellants to require the City to apply a broad brush for MTSA designation, thereby triggering a requirement to plan for taller buildings and greater populations densities proximate to the Yonge-Sheppard Subway Station in the lands subject to OPA 367.

[103] Mr. Cantos noted that, even without the MTSA language, it is necessary to

provide for higher heights and densities closer to the subway station, which takes place within the North York Secondary Plan. The Tribunal sees no justification for modifying OPA 367 to plan for tall buildings and higher population densities given that the City has justified its approach through sound and supportable planning evidence and expert opinions. The City is planning for growth within the parameters of the Growth Plan while recognizing the surrounding land use designations and the recognized fact that growth will not be same for every targeted or designated area. It is the City's right to determine the level of growth taking into account all factors, even where intensification through OPA 367 will take place at a level lesser than that anticipated and desired by the Appellants today. Nor is this lesser level of intensification—achieved through a balanced and gradual approach to *Mixed Use Areas* development and *Neighbourhoods* lands protection in a manner that does conform to the policies under Section 3(5) of the *Planning Act*, wherein a decision of the municipality, in summary, shall be consistent with the PPS and b) “shall conform with the provincial plans that are in effect on that date, or shall not conflict with them, as the case may be.”

[104] Lastly, Mr. Au recited nearly a dozen concerns with the Appellants' transportation analysis, advising that the imposition of Proposed Modifications on OPA 367 would “alter the scope of work for the supporting transportation review and analysis.” Finally, and perhaps most importantly, planning itself is a dynamic process. There will be plenty of time for the City to assess the viability of OPA 367 once implemented within its objective for gradual development while protecting the stable *Neighbourhoods* lands abutting SAW—and where necessary, to make revisions or amendments to respond to changing population densities and employment opportunities as growth occurs in a manner deemed appropriate by the City through OPA 367. As it stands in 2019, the City has presented evidence that it has had appropriate regard for the provincial and municipal planning processes related to the development of OPA 367 and its adherence to the consistency and conformity tests.

[105] Based on this evidence, which was unshaken during cross examination, the Tribunal finds that Mr. Au's evidence was comprehensive, focused and persuasive. OPA 367's Mobility policies represent good planning and require no modification. OPA

367's approach in respect of transportation planning is sound and supportable in the planning context. Specifically, the instrument is consistent with the PPS and it conforms to the Growth Plan and to the City's OP.

## **PARKS AND GREEN SPACE**

[106] Ms. Mhango explained how the City is able to require the conveyance of land for parkland dedication purposes through the development application process (as supported by Section 42 of the *Planning Act*). It was her opinion that no additional parkland policies are required for OPA 367, and she expressed a concern that the wording of the Proposed Modifications read as if the Appellants would tell the City how they intended to satisfy their parkland requirements. This matter was rectified through clarification of the language by the Appellants' experts.

[107] Ms. Mhango explained how parkland is to be conveyed through references to the City's policies and the various considerations that inform the process and decisions. A great deal of the witness' evidence outline provided a critical analysis of why the Appellants' approach to the provision of Parks and Green Space did not represent good planning. Most importantly, Ms. Mhango explained that the City's Parks, Forestry and Recreation Division determined that OPA 367 did not have to include any additional policies given that there is sufficient direction for the City to acquire parkland in response to opportunities as they become available. Accordingly, she framed her review in the context of the applicable OP policies.

[108] Thus, in the context of the City's instrument, and noting no additional parkland policies are required, and noting that City Council did not adopt a supplementary parkland strategy, there are no good planning grounds to alter OPA 367 to provide parkland where City staff engaged in a comprehensive analysis and review of the existing context that resulted in a supportable document. Further, the Appellants proffered no persuasive opposing evidence to suggest that parkland and green space requirements should be included so as to modify OPA 367. The Tribunal will not modify OPA 367 in this regard.

## URBAN DESIGN

[109] Mr. Sakalauskas opined that OPA 367 has been successful in implementing and planning for growth and development along SAW. The City's balance of heights will frame the street and animate it through the aforementioned Complete Streets approach by rebalancing the right-of-way while protecting for future transit improvements. OPA 367, Policy 6.1.1 speaks to this approach as well resulting in improvements to the public realm. Like Mr. Au, Mr. Sakalauskas opined that OPA 367 meets the intent of the Transit Supportive Guidelines as it rebalances the Sheppard right-of-way through this Complete Streets design. This complies with the 36-m right-of-way as contain in Map 3 as previously referenced. Mr. Sakalauskas' evidence specifically addressed the 36-m right-of-way and public realm, matters of setbacks of buildings and heights and transitions within the context of the relevant OP policies. His witness statement covers these elements in 34 to 77.

### **45-Degree Angular Plane**

[110] Mr. Sakalauskas explained that OPA 367 uses a modified angular plane (Policy 3.6.3 of OPA 367) where "no part of any building should project into a 45-degree angular plane measured from a height of 10.5 m at the minimum requires 7.5-m rear yard setback", which are taken from "Shallow Lot Performance Standard 5b" from the Mid-Rise Guidelines. These inform appropriate transition and heights towards Neighbourhoods without reconfiguring or requiring lot consolidation with those properties that are designated *Neighbourhoods*.

[111] Mr. Sakalauskas also explained that OPA 367 Policy 3.6.3 is not restrictive, noting that there might be acceptable situations where, in accordance with Policies 3.6.4 and 3.6.5, parts of a building project into the angular plane. As he wrote in paragraph 59 of his witness statement:

In my opinion, while the minimum setback and height for which the angular plane is measured at are required minimums, the language of Policy 3.6.3 states that no part of any building should project into the 45 degree angular plane. In my opinion, there may be situations where projections do not create the impacts contemplated by policies 3.6.3, 3.64 or 3.6.5, such as a mechanical penthouse, or taller commercial

floor-to-ceiling heights. OPA 367 provides flexibility in this regard.

[112] The Appellants argued that the Mid-Rise Guidelines do not contemplate nor provide guidance for transition on lots that would become shallower after the 36-m right-of-way road widening. With the shallower lots, particularly on the south side of SAW, the Tribunal received considerable evidence on the application of the 45-degree angular plan although this is not the only way to achieve transition. The use of this angular plane guides the maximum heights permitted with resulting density and built form. The Appellants were concerned that neither the provincial policy documents nor the City's OP direct that such a plane should apply to the entire Secondary Plan Area. Rather, they contend that the City has elevated the Mid-Rise Guidelines to be given the same weight as policy. This uniformity of application of a 45-degree angular plane across SAW fails to consider provincial policy for higher densities near a subway. In effect, the 45-degree angular plan drives the densities and built form, thereby resulting in an instrument that does not conform to the Growth Plan and that is inconsistent with the PPS.

[113] Mr. Sakalauskas explained that, as part of the Mid-rise Guidelines 2016, City Council approved an addendum as follows:

When a mid-rise development is proposed within a Secondary Plan Area, the policies of the Secondary Plan prevail. The Performance Standards may be applied as a useful planning tool when a Secondary Plan is under review, or where a Secondary Plan supports mid-rise development, but does not regulate built form or does not fully address aspects of mid-rise site and building design. The Performance Standards are not intended to be used to challenge Council-approved studies or Area-specific policies, by-laws or guidelines, particularly with respect to building heights and matters of transition.

[114] Further, Mr. Sakalauskas informed the Tribunal that, in adopting the 2010 Mid-rise Performance Standards, City Council removed Guideline 5b related to Enhancement Zones, which contemplate the use of a residential property to the rear of *Avenues* properties to create an alternative angular plane. He opined that not all *Avenues* will develop to the maximum standards set out in the Mid-rise Guidelines. The Performance Standards also speak to this:

Not all sites on the Avenues will be able to achieve the maximum height.  
The dimensions of the development lot – particularly lot depth – impact

the ability of a given site to be built to its maximum height. Achieving the maximum building heights will be dictated by the required angular planes set out in subsequent Performance Standards.

[115] The Tribunal is persuaded that the City's application of the angular plane calculation as explained, and the application of the Mid-Rise Guidelines, are appropriate tools that informed the crafting of OPA 367. These do not conflict with orderly development principles espoused in the planning instruments before the Tribunal.

[116] Mr. Sakalauskas then identified proposed building heights within the various *Mixed Use Areas* B and C for six storeys, compared to *Mixed Use Areas* A where only five storeys is permitted. Referencing the fact that the lot depths on the south side of SAW are shallower than the lots on the north side of the street, *Mixed Use Areas* C contemplates additional height beyond six storeys provided that they built forms meet the other policies of OPA 367 and are within the 45-degree angular plane.

[117] Mr. Sakalauskas emphasized that Section 4.5 *Mixed Use Areas* of the OP states that not all *Mixed Use Areas* will experience the same scale or intensity of development, and OPA 367 recognizes its relation to the NYC in taking on the highest scale of development. Most relevant to the Tribunal's determination is the fact that, as it relates to OP Policy 4.5.2, OPA 367 provides a form and intensity of development that meets the needs of the local community as well as provides transition between areas of different development intensity and scale with practical application through the stepping down of heights towards the lower-scale *Neighbourhoods*.

[118] Preservation of the division between the *Mixed Use Areas* lands and the *Neighbourhoods* lands are achieved in part by the uniformity of lot sizes in both designations; that is, the lots that front onto SAW are contiguous to regular-shaped lots. Most of the lots along Bogert Avenue and Harlandale Avenue also run parallel to the SAW properties. As referenced above, while the Tribunal had regard for two previous decisions where lot assembly had occurred, the Tribunal was not persuaded that OPA 367 should be modified to allow for different setbacks where the lot patterns and configuration of the abutting residential lands are already consistent within the area.

[119] The Tribunal heard no persuasive evidence from the Appellants that the Mid-Rise

Performance Standards for shallow lots should not inform the urban design policies for the Secondary Plan. These Standards, which address shallow lots, provide appropriate built form transition to the adjacent *Neighbourhoods*. And, as Mr. Sakalauskas summarized in paragraph 101 of his witness statement, “The midrise guidelines provide a built form envelope for the Sheppard Avenue West properties, to inform heights and transition that provide adequate light, view and privacy...” Also, in respect of Mid-rise Performance Standard 1, Mr. Sakalauskas could not support using a 1:1 building height ratio to match the planned right-of-way as this does not reflect the *Avenues* policies of the OP nor the direction of the Mid-rise Guidelines.

[120] The Tribunal is also persuaded by Mr. Sakalauskas’ statement that the City’s OPA 367 did not expand the boundaries of the SACASP to include *Neighbourhoods* lands for the reasons given and based on all of the evidence considered. OPA 367 preserves the City’s objective to require transition to occur on the *Mixed Use Areas* properties toward and to the *Neighbourhoods* lands, and not to use abutting residential lands to facilitate more intense development on the SAW properties.

[121] Speaking to the heights as contemplated in the Appellants’ Proposed Modifications, Mr. Sakalauskas noted that the Tall Building Guidelines “explicitly recognize”, as does OP Policy 3.1.3, that:

- Tall buildings do not belong in all locations of the city;
- When poorly located and designated tall buildings can physically and visually overwhelm adjacent streets, parks and neighbourhoods. They can block sunlight, views of the sky and create uncomfortable wind conditions in adjacent streets, parks and open space; and
- The larger the difference in scale of development, the greater the need for transition.

[122] The Tribunal finds these to be highly relevant considerations. It is evident that the City turned its mind to these factors and determined that a less-intensive form of development should occur along SAW. It is a form that represents the gradual intensification of an Avenue, meeting the provincial direction for growth and intensification, and in a manner that is reflective of the City’s vision and objectives while preserving the stable residential lands that surround SAW. And, Mr. Sakalauskas noted



the following:

The proposed locations of the tallest buildings at 120 m in the Proposed Modifications actually exceed heights set out within the adjacent NYC Secondary Plan, where the highest heights are planned for in the Urban Growth Centre (UGC). Most notably, transition also occurs within the boundaries of the NYC Secondary Plan, and provides a gradation of building types and heights to differentiate between greater scales of development, and mitigate the public realm impacts associated with sky view and pedestrian comfort of adjacent streets, parks and open space.

[123] Instead, he countered that the Proposed Modifications provide no gradual transition to the *Neighbourhoods* lands, demonstrated through the offering of a 120-m-tall building that is supposed to achieve transition with townhouses to the adjacent lands. He cautioned that, similar to the proposed 36-m-tall building, “while described as a midrise, it is greater than 80% of the right-of-way width and is considered a tall building, in *Mixed Use Area C* alone.”

[124] He noted that there is a gradation of heights from the tallest buildings located along Yonge Street to the low-rise building heights provided on the periphery of the NYC Secondary Plan, ensuring transition of the tallest building anticipated close to Yonge Street are not treated the same as building away from Yonge Street and a gradation of heights is provided to ensure context-sensitive transition. It is clear that the City has determined that the NYC is able to accommodate these higher forms of development.

[125] The Tribunal heard no persuasive evidence that the City is required to plan for higher heights for this “Arterial Corridor” because some of these lands are adjacent to a subway station located in a separate Secondary Plan. The Tribunal also heard no persuasive evidence that the City must pursue greater intensification beyond what was studied and assessed in the context of the future population and employment projections available to it. So long as the City has shown at the hearing that it has met the policies and intent of the upper-tier instruments and has followed that approach to prescribe an instrument that will facilitate gradual development that is sensitive to the *Neighbourhoods* lands around SAW, the Tribunal sees no planning justification to modify OPA 367.

[126] Mr. Sakalauskas also noted that the propose building setbacks will “help inform transition to abutting *Neighbourhoods* designations, accommodate servicing access on site and provide landscape buffers”. He explained that OPA 367 does not utilize *Neighbourhoods* lands for transitions and seeks to direct redevelopment along properties that front onto SAW. Transition is to occur entirely within the *Mixed Use Areas* that are adjacent or close to *Neighbourhoods* in accordance with OP Policy 2.3.1.2 (now Policy 2.3.1.3. through Official Plan Amendment 320) to achieve compatibility, provide a gradual transition of scale and density through the stepping down of buildings towards the setbacks from the *Neighbourhoods*, and maintains adequate light and privacy conditions for residents. This evidence further supports the Tribunal’s determination of the appropriateness of OPA 367.

[127] He added that use of the angular plan provides flexibility in the particular circumstances of SAW in that it accommodates the built form and public realm for SAW as presented through modified angular planes and certain projections. In contrast, he opined that the Appellants’ alternative plan creates built form uncertainties and eliminates the City’s vision for rebalancing a large suburban arterial or implementing public realm and improving safety of the corridor. He opined that the larger vision of OPA 367 is to revitalize this large suburban corridor.

[128] Thus, Mr. Sakalauskas’ evidence demonstrated how the City considered the local context when planning OPA 367. Specifically, the City had regard for this local context when planning for development within the community through compact built forms, achieved through differing densities, heights and building types.

[129] The concluding remarks in Mr. Sakalauskas’ witness statement opine that OPA 367 conforms with the intent of the City’s OP and reflects the City’s built environment policies. It also meets the intent of the applicable provincial and municipal guidelines. It provides for a balance of heights and compact built form that will frame SAW and encourage the development of “an animated streetscape that acknowledges the local context.”

[130] Mr. Sakalauskas also referenced several recent planning applications along

SAW (Exhibit 13, see for example Page 14) and demonstrated how other examples of active, approved and recently-constructed development applications are in fact respecting the vision implanted into OPA 367.

[131] The Tribunal was persuaded by Mr. Sakalauskas' compelling urban design testimony, particularly by his opinion that one cannot simply maximize built form. Rather, one must take into account all of the other elements—infrastructure, servicing and related elements, which OPA 367 does. Mr. Sakalauskas told the Tribunal that the City staff looked at the framework of what capacity currently existed in order to ensure that OPA 367 “works within that capacity framework”. Mr. Hussain's evidence is tangible proof of that approach.

[132] The Tribunal acknowledges that there exists the possibility that elements of the Appellants' Proposed Modifications might find legitimate expression in some future planning context. However, the most notable character of the Proposed Modifications is one of prematurity. In essence, where the City has taken a measured approach to growth—one that the Tribunal determines does not offend any of the provincial planning instruments—the Appellants seek a higher-level form of development to occur along the entirety of SAW at a far more advanced pace than that contemplated by the City. As the municipal authority over its lands and with the weighty responsibility of planning for the future growth of the whole City in a public interest fashion, great care must be taken when challenging that planned growth and the instruments that implement its vision. Latitude must also be given to the City's decision to pursue a strategy of less-intensive but gradual and incremental growth where it has where it has demonstrated through highly persuasive evidence that OPA 367 meets the requisite planning tests. The City has achieved this by way of the evidence on file, and through the evidence and opinions of its experts. Thus, the Tribunal will not modify this instrument, particularly where the Appellants' have established a private interest in seeking more intensive development—not a public one—and where their Proposed Modifications represent, as read, a fundamental alteration of the City's vision for orderly growth and intensification for SAW.

[133] The Appellants' Co-Counsel, Mr. Kussner sought to clarify for the Tribunal that although Mr. Sakalauskas had spoken to matters of building design, he is not an

architect and he is only testifying on matters of urban design. The matters related to building typology, angular planes, setbacks and similar general statements are often part of other experts' testimony, and not all experts are architects. Mr. Sakalauskas' evidence and opinions are in no way diminished because he is not an architect. He is a highly-experienced Urban Design Planner whose testimony was unshaken in cross-examination. The areas that he referenced and discussed are well within his area of expertise to proffer opinions on in the urban design context. Such matters cannot be compartmentalized into the unique purview of someone with a different expertise. Ultimately, the weight the Tribunal has assigned to Mr. Sakalauskas' statements is supportive of the Tribunal's findings that the City's instrument prescribes built form development that can achieve good urban design elements notwithstanding an architect's criticism of OPA 367.

[134] The Tribunal finds that OPA 367 is informed by good principles of urban design that were tested against the relevant planning instruments reviewed by this witness.

## **PLANNING**

[135] As the City's planner charged with the more recent work on OPA 367, Ms. Meistrich provided comprehensive information in her Evidence Outline to support her opinion that OPA 367 provides for an appropriate level of intensification with consideration given to matters including the scale, form, density and transition to adjacent areas all encouraging a variety of land uses in the *Mixed Use Areas* including a mix of housing types.

[136] She opined that OPA 367 has regard for matters of provincial interest, conforms and does not conflict with the Growth Plan 2017; is consistent with the PPS 2014; and is aligned with the principles, vision and objectives of the OP and conforms with and advances existing policies related to Shaping and Building a Successful City, Managing Growth, Built Form, Public Realm, and Transportation.

## **UPPER-TIER PLANNING CONSIDERATIONS**

[137] The Tribunal read Ms. Meistrich's written reference to Section 2 of the *Planning*

Act related to matters of provincial interest and she enumerated these in paragraph 61 of her witness statement. She opined that OPA 367 addressed these through its policy framework, vision and objectives. After a careful review of the opposing witness statements, the Tribunal is not persuaded by any opposing witness opinion that somehow OPA 367 failed to achieve these matters as evinced by Ms. Meistrich. OPA 367's purpose demonstrates how this will be achieved: creating that mixed-use Avenue, neighbourhood transition, an active streetscape and a Complete street and integrated transportation network to support "orderly development of healthy and safe communities." Reflecting upon these goals, and buoyed by the evidence of the City's witnesses flowing from the relevant planning document references, the Tribunal finds that OPA 367 has adhered to the overarching direction of the *Planning Act* and it has regard for matters of provincial interest as detailed below.

#### **PPS 2014**

[138] OPA 367 is consistent with the PPS direction for creating healthy, liveable and safe communities. OPA 367 is consistent with the policy direction on matters of provincial interest related to land use planning and development. These policies support the goal of enhancing the quality of life for all Ontarians. Key policy objectives include building strong, healthy communities; wise use and management of resources; and protecting public health and safety. The PPS recognizes that local context and character are important.

[139] Ms. Meistrich's opinions on OPA 367's consistency with the respective PPS policies that informed those opinions are outlined extensively in paragraphs 74-101 of her Expert Witness Statement and most importantly, her opinion on how the PPS policies are achieved through OPA 367 assisted the Tribunal in its determination of the evidence. The Tribunal also finds that, despite this expert witness' discomfort with the cross-examination process, her evidence and opinions were unshaken in cross-examination as was her reliance on specific PPS policies to support her opinions regarding OPA 367's adherence to the intent and direction of the PPS. The result was an established and comprehensive professional opinion from this witness on the merits of OPA 367 as supported by the documents. The Tribunal accepts as persuasive the

*viva voce* and written evidence of Ms. Meistrich that all of the PPS policies as referenced in her statement are met through OPA 367.

## **GROWTH PLAN**

[140] Ms. Meistrich next summarized how OPA 367 conforms to Policy 2.2.1.4 (paragraphs 105 to 111). She explained how it supports the objectives of this Plan, such as achieving complete communities, the efficient use of land and infrastructure and the integration of land use planning with planning for investment in public infrastructure and services. She reviewed the relevant sub-policies contained in Policy 2.2.2.4 are achieved in both the City's OP and implemented through OPA 367. She noted that the Growth Plan goal of achieving complete communities is realized through OPA 367, noting that the lands will be rezoned either through future site-specific development applications or a City-initiated Zoning By-law Amendment.

[141] The Tribunal finds that OPA 367 supports achievement of complete communities as per Policy 2.2.1.4 through improvements to the public realm and the Complete Streets approach, which support people of all ages and abilities to conveniently access most of the necessities for daily living. It provides a framework for complete communities through an appropriate mix of jobs, local stores and services as well as a range of housing, transportation options and coordination with existing *public service facilities*.

[142] OPA 367 promotes a diverse mix of land uses and housing options that allow for residential, commercial, retail, institutional and employment uses and provides convenient access to local stores, services and public service facilities as required by Growth Plan Policies 2.2.1.4 and 2.2.6.

[143] Policy 5.3.1.3 gives clear direction as to the intent of the OP related to compatibility of OPA 367 with its physical context:

Amendments to this Official Plan that are not consistent with its general intent will be discouraged. Council will be satisfied that any development permitted under an amendment to this Plan is compatible with its physical context and will not affect nearby *Neighbourhoods* ... in a manner contrary to the neighbourhood protections policies of this Plan.

**OP**

[144] Ms. Meistrich reviewed all of the relevant OP policies in paragraphs 128-185. Not only did she cite and reference the applicable policies in her Evidence Outline, she supported her opinions of the various planning merits of OPA 367 through these OP policy excerpts. In accordance with the policies as delineated in Issue 3, Ms. Meistrich reiterated her opinion that OPA 367 conforms with the intent of the relevant and applicable OP policies.

[145] In respect of Issue 4, Ms. Meistrich noted that the appropriate maximum densities are contained in OPA 367 and were established based on modelling of built form criteria including mid-rise standards and appropriate transition to *Neighbourhoods*. These densities also took into account infrastructure capacity as well as the provision of public service facilities, and the instrument provides “a clear and appropriate method” for calculating densities. While referencing the density calculation methodology, Ms. Meistrich opined that the inclusion of how density is calculated into OPA 367 would be consistent with the City’s practice in this regard (as noted in paragraphs 200-201 of the Expert Witness Statement).

[146] In respect of Issue 9, Ms. Meistrich opined that OPA 367’s height, density and built form policies provide for an adequate and appropriate form of intensification along SAW.

[147] The Tribunal is aware that even a cursory review of the lot configuration and features of SAW would indicate that the ability to include north and south-abutting lands as the Appellants desire would provide greater development potential, creating deeper lots and providing for underground parking and townhouses fronting onto Harlandale and Bogert Avenues. However, Ms. Meistrich pointed out that modifying the OPA 367 boundary to accommodate that type of development would create higher heights as a result of measuring the angular plane from a new *Neighbourhoods* boundary line, to say nothing of the inappropriateness of granting wholesale permissions for lot assembly along the entirety of SAW. Ms. Meistrich opined that it is not appropriate to expand the geographic boundary or the *Mixed Use Areas* designation to include *Neighbourhoods* to

accommodate for the same levels of growth of some other *Avenues* in Toronto, cautioning, with reference to the *Avenues* Section 2.2.3 as follows:

The *Avenues* are important corridors along major streets where re-urbanization is anticipated and encouraged to create new housing and job opportunities while improving the pedestrian environment, the look of the street, shopping opportunities and transit service for community residents. Such re-urbanization is subject to the policies contained in this Plan, including in particular the neighbourhood protection policies.

[148] The Appellants argued that the *Avenues* are, among other identified areas, to be the target of growth and intensification. This common theme ran through the resulting Proposed Modifications for higher-level development. However, as shown, Section 2.2.3 of the OP is important to understand the approach that the City has taken regarding gradual growth for SAW. This section provides the context and direction that supports the City's drafting of OPA 367 by achieving this policy direction:

Not all lands that fall within *Avenues* are designated for growth. These *Avenues* have been identified at a broad scale to help assess urban design, transit and service delivery issues. However, where a portion of an *Avenues* is designated as a neighbourhood, the neighbourhood protection policies of Chapter 4 will prevail to ensure that any new development respects and reinforces the general physical character of established neighbourhoods.

[149] This is a relevant provision of the OP in the Tribunal's view, justifying the City's inclusion of various objectives for improved development, intensification and growth along SAW in a manner it determines most appropriate for the incremental approach to future development for SAW. It also captures the City's desire to protect the stable residential lands that parallel SAW to the north and south. Further, and perhaps most instructive, is the next statement: "Not all lands that fall within *Avenues* are designated for growth (Tribunal's emphasis). These *Avenues* have been identified at a broad scale to help assess urban design, transit and service delivery issues." And: "Each *Avenue* is different in terms of lot sizes and configuration, street width, existing uses, neighbouring uses, transit service and streetscape potential. There is no "one size fits all" program for reurbanizing the *Avenues*."

[150] This section then requires that the particular circumstances of SAW be taken into account as future growth and intensification are contemplated. In this regard, the



Tribunal finds no fault in the City's adherence to this policy in that OPA 367 is a reflection of how the City considered the particular circumstances, specifications, functioning, character and context of SAW to develop OPA 367, also bearing in mind the planning tests it had to meet in creating this instrument. This witness' opinions present no evidence of a misreading or a misapplication of any the intent or direction of any of the planning instruments evidenced at this hearing.

[151] Several of the City's witnesses referenced the Eglinton Avenue corridor and distinguished it from the *Avenue* character of OPA 367, noting the redesignation of certain *Neighbourhoods* lands by virtue of the lot patterns, the relationship between the *Mixed Use Areas* to the *Neighbourhoods* and the context of funded transit improvements. In the case of the OPA 367, the context is different as described (lot patterns and the relationship between the two land use designations) and there is no context of a plan with an approved EA or funded transit improvements, which do not meet the criteria considered appropriate for redesignation. Further, SAW is surrounded by lands designated *Neighbourhoods*, which comprise modest, single-detached homes of a decades-old vintage. There is no doubt in the Tribunal's review of the evidence that Bogert Avenue and Harlandale Avenue are part of the stable residential community around SAW. OP policies in Sections 2.3.1, 4.1.5 and 4.5.2 direct that *Neighbourhoods* are to be stable, though not static, and to be protected by ensuring that adjacent development provides appropriate transition to the *Neighbourhoods* and development within the *Neighbourhoods* respects and reinforces their character. These facts contribute to the City's differentiation of this *Avenue* from others. It also supports the fact that lot assembly between designations fundamentally alters OPA 367 and would impact the adjacent, stable residential lands on either side of SAW.

[152] Ms. Meistrich further provided a comprehensive and policy-reliant planning rationale for the geographic boundaries of OPA 367 (paragraphs 214-220), which do not include *Neighbourhoods* to the north and south of SAW. However, the Tribunal notes that the City turned its mind to whether this instrument could expand the geographic boundaries to include the adjacent *Neighbourhoods* as part of *Mixed Use Areas* redevelopment sites. As noted, this formed part of its analysis as far back as 2011-2012

and further consideration was made during the more recent consultations.

[153] The Tribunal finds the City Planner's evidence in support of OPA 367 to be comprehensive and supportable through her reading of the applicable planning instruments. The Tribunal is not persuaded that modifications are required.

### **ECONOMIC VIABILITY OF OPA 367**

[154] Mr. Conway proposed that OPA 367 proposes development that is not economically feasible, opining that the City failed to understand and consider economic impacts by applying density where infrastructure is already in place to accommodate it. Most notably, he opined that there is no reasonable prospect that the form of development as contemplated in OPA 367 would actually be built. Rather, he anticipated that adoption of OPA 367 without modification would do the following:

- perpetuate the lack of investment, the existing poor quality, and disconnected nature of development which negatively impacts local land values;
- destabilize the community as investors "wait out" the current policy environment;
- leave the area with modest infill consisting of small scale stand-alone developments that do nothing to achieve the objectives of OPA 367, the OP or the PPS; and
- result in a significant waste of public infrastructure.

[155] From a market and economic perspective, Mr. Conway's evidence was that the lack of sufficient height and density in OPA 367 combined with the shallow lot depths, challenges with accommodating underground parking and attracting retail space and high construction and land costs create a significant disincentive to achieving the reinvestment in the Secondary Plan Area required to create a Mixed Use Avenue with an enhanced public realm, as intended by OPA 367. From a practical perspective, OPA 367 as adopted is insufficient to achieve its vision. As such, while OPA 367 may increase densities in the Secondary Plan Area over the existing permission, if the heights and densities are too low to practically realize meaningful residential development in this corridor, particularly on the south side, then it does not promote

transit supportive development or conform with the Growth Plan and PPS policies directing same.

[156] Summarily, Mr. Conway opined that greater heights and densities are required to feasibly achieve the intended Mixed Use Avenue in this Secondary Plan Area. Finally, the Appellants' Co-Counsels also criticized the City's failure to adduce evidence on the economic feasibility of OPA 367 and noted the City's reliance on the case of *Jannock Properties Ltd. v. Mississauga (City)* 2004 CarswellOnt 1549 ("*Jannock*").

[157] At the hearing, the City's witnesses acknowledged that the vision espoused in OPA 367 is not to plan for the tallest and most intensive land uses along SAW. The plan is for gradual and incremental development over time notwithstanding the higher-level long-term planning direction of the provincial documents for the adjacent North York Secondary Plan land uses as discussed at the hearing. The evidence demonstrates that the City was always mindful of the juxtaposition of *Mixed Use Areas* lands and *Neighbourhoods* lands and the need to permit development that could grow the area over time while still respecting the residential built forms to the north and south of the street. The City has identified a more modest form of development through commercial and residential buildings of lower heights and densities. The City determined that its form of more modest built form permissions will provide the most appropriate transition to the adjacent residential rear yards of the houses along Bogert Avenue and Harlandale Avenue.

[158] The Tribunal was aware of the Appellants' concerns with the City's approach. They criticized lower forms of development that would continue to locate parking and loading facilities for SAW lots at the rear of these lands, thus abutting the rear yards of the *Neighbourhoods* lands and causing adverse impacts on the residential properties. They noted that retaining the smaller-sized lots on the south side of SAW after the 36-m right-of-way is implemented would not permit much if any underground parking that would be required for their taller buildings. They opined that the expansion of the SAW boundary is a better approach as the transition would occur on the neighbouring residential properties (if assembled), thus providing for townhouses—a more attractive, appropriate and preferable transition to the *Neighbourhoods*.

[159] It is not simply a matter of showing the Tribunal how tall buildings can work alongside smaller residential homes, or how these tall buildings can be built within the existing *Mixed Use Areas* while using the assembled *Neighbourhoods* lands as transitional space through the provision of green space and townhouses. It is also not for the Tribunal to compare and contrast the ‘workability’ of more modest built form proposals with the Appellants’ proposal for taller buildings and towers that assemble adjacent residential lands. The Appellants must demonstrate why OPA 367 cannot be supported in the planning context. Stated plainly, the Tribunal was not persuaded that the economic viability of this instrument is a supportable method of analyzing its appropriateness in the planning context. Matters related to revenue per square foot (which in fact rises and falls according to the current economic climate), and thus the viability of development shaped by constantly-changing economic conditions are not matters upon which a municipality should be planning for its growth. Much was spoken and written about these matters at the hearing and thereafter, but not even the provincial documents countenance such an approach.

[160] The Appellants’ motivation to propose more intense development is not an undesirable one *per se*, but it is one that cannot outweigh, supplant or replace the municipal authority’s plan for incremental growth and development so long as the municipality has shown through its evidence and witnesses that the instrument responds satisfactorily to the applicable provincial and municipal planning framework. This, the Tribunal finds, has been demonstrated sufficiently by the City through its full and proper consideration and respect for the applicable and relevant planning context.

[161] In this regard, despite the Appellants’ Co-Counsels’ submissions that these appeals should be distinguished from the City-referenced *Jannock* decision, certain fundamental aspects of that decision nevertheless find appropriate application in the case of OPA 367. Certainly, the matter of what weight to attach to financial statements and related calculations to ascertain the revenue potential of expanded boundaries to permit more intense development apply. However, more importantly, the following finding of the Tribunal’s predecessor body in *Jannock* is pertinent when assessing how best to balance the public interest of a more modest form of development as

contemplated through OPA 367 and the private interest of the Appellants in developing to a maximum level:

Many other circumstances also influence a developer's decision regarding "when to" and "if to" build. The City argued that timing of development could be affected by the tax status of the particular developer, its tolerance for risk, its desire to keep its trades occupied, its access to investors and investment funds, and its willingness to proceed at a lower return on investment. The Board accepts that the public has no involvement or control over the majority of the elements influencing the private landowner's decision-making process.

[162] This really does represent for the Tribunal the dichotomy of public versus private interest. What is the public interest in reshaping OPA 367 using revisions as proffered by these groups of private Appellants? Shall the Tribunal move beyond its statutory responsibility to adjudicate the planning merits of OPA 367 to also determine the merits of permitting the Appellants to reshape the City's instrument in a form more suited to their needs? The key here is the notion of the public interest, of which the City is the steward at the municipal level, versus the private interest of a small group of landowners who argued that their Proposed Modifications represent that public interest. However, despite being couched at times in lofty planning language and with references to higher-order growth, transit, intensification, population forecasts and related elements to justify their requested amendments, the Appellants failed to provide any persuasive evidence that their Proposed Modifications to OPA 367 constitute a public interest that should supersede the only public interest established at the hearing: that of the City's authority and responsibility for municipal planning through responsible governance, analysis and concomitant public consultation. Once tested, OPA 367 is a product of public input as supported by the in-force, upper-tier and municipal planning instruments.

[163] What is more, if the Tribunal was persuaded that OPA 367 as devised failed to meet the proper planning tests and was deficient, the Tribunal is not persuaded that applying the Proposed Modifications then makes the instrument more supportable. Each approach represents a different and opposite view of how growth and development should proceed along SAW. At most, with the appeals allowed, the City would have to return to the drawing board and resolve the specific planning deficiencies, no doubt opening further opportunities for the Appellants to engage in the

public planning process. In this regard, the Tribunal finds there is a public interest in supporting OPA 367 in its current form as already realized through an exhaustive, comprehensive and otherwise thorough consultative, assessment and framing exercise as documented. OPA 367 is a final document that reflects the City's vision and objectives for SAW and it is supported in the planning context. This is a preferred approach to supporting Proposed Modifications from private Appellants, which have undergone extensive but nowhere near the same statutorily-regulated planning processes that guided the City and, it must be recognized, which derive from the financial interests of at least a majority of these Appellants. These are presumptively defined as economic interests, which supersede the public planning processes. And, no matter that they are couched in modification language and references to various planning policies, the Tribunal's end analysis is that the City represents the public interest in these appeals and OPA 367 is the culmination of this Municipality's expressed duty. The Tribunal is not persuaded that the Appellants' private interests should take precedence over public interest for the reasons given.

[164] In the end, it is the City's right to set the parameters for future development as long as it has had regard for the important tests of "consistency" and "conformity" in the context of the upper-tier and municipal planning instruments. The Tribunal will not interfere with the City's planned vision for SAW given that it has shown that it employed a viable planning methodology to draft this instrument; it undertook all of its statutory obligations to create the instrument and inform the public, in particular those most affected by the new instrument; it tested the instrument within the context of the planning regime; and through its witnesses showed how it is responsive to the existing and future planned context as it sees that context.

[165] The Tribunal is also not persuaded that the City was remiss in taking as one of its primary positions the need to protect the stable *Neighbourhoods* lands that run parallel to SAW. There is no mandated requirement for the City to meet upper-tier provincial planning intent or policies to "optimize" or "maximize" growth at the expense of residential lands. Even these upper-tier documents recognize that not all areas will be able to develop at the same levels. Each must be considered in its particular context

and according to the orderly development of the municipality in question. Such a reading of the policy framework—“optimize” and “maximize” now and to the highest level possible—is an indefensible one and it should not be presented so as to criticize OPA 367 as somehow failing to meet the intent of provincial policy. If placing more weight on preserving the abutting residential areas that comprise decades-old residential built forms is the City’s desire, and in doing so, establishes a more gradual but increased intensification of SAW, then there is nothing incorrect in the Tribunal’s view to detract from the City’s approach in refusing wholesale lot consolidation along SAW let alone adopt the Appellants’ Proposed Modifications.

[166] The Tribunal finds that the City demonstrated persuasively and forthrightly through its evidence, as presented by its experts, that OPA 367 is a supportable document that achieves the direction of the in-force planning documents at all levels and that articulates the City’s vision for incremental and gradual growth and development along SAW. While the Appellants take issue with the City’s vision, which they are of course permitted to do, it is the approach the City wishes to take—supported by its comprehensive internal planning and external consultation processes as well as rationalized through its planning evidence presented at the hearing—for the future development and growth that is anticipated along this Avenue. Put plainly, the onus was on the Appellants to show why the City’s vision is wrong and why the resulting OPA is deficient. This the Appellants have failed to do. In contrast, the extent of the City’s responsibility was to demonstrate to the satisfaction of the Tribunal how its staff rationalized OPA 367 in the planning context and how its instrument achieves the policies of the requisite in-force instruments. This, the City has done.

[167] As evidenced, the Tribunal is aware that the City will continue to receive site-specific development applications from time to time along SAW that might seek permission for assembly of lots across the aforementioned OP-designated uses. However, the Tribunal is not persuaded there has been any opposing evidence to demonstrate that expansion of the boundaries to permit wholesale lot assembly permissions and related modifications should be imposed on OPA 367 given that the instrument as framed will achieve what it is required to do.

[168] The Appellants did not agree with the degree of intensification of planning proposed for SAW through OPA 367 and they have presented evidence to show what they believe is a better way. However, that better way is irrelevant for the purposes of the Tribunal's work where the City has ably demonstrated that its approach, vision and objectives had appropriate regard to the relevant planning instruments. Adjudication of the planning merits of OPA 367 as envisioned by the City is the sole task before the Tribunal; determination of whether it meets the intent and purpose of the provincial instruments and the municipal instruments is the test. Set in this context, the City has competently and justifiably achieved what it set out to do through OPA 367. This instrument should not be modified further because a group of private Appellants do not agree with its incremental and gradual approach to growth and intensification.

## **CONCLUSIONS**

[169] Various submissions of the City Co-Counsels are reflected in the Tribunal's concluding findings below as these are persuasive and are supported by the planning evidence presented.

[170] OPA 367 has regard for matters of provincial interest. It is consistent with the PPS 2014 and conforms to the Growth Plan, 2017 and 2019. The Tribunal finds that OPA 367 supports the achievement of complete communities as per Policy 2.2.1.4 through improvements to the public realm and through Complete Streets, which support people of all ages and abilities to conveniently access most of the necessities for daily living. It provides a framework for complete communities through an appropriate mix of jobs, local stores and services as well as a range of housing, transportation options and coordination with existing public service facilities.

[171] OPA 367 promotes a diverse mix of land uses and housing options that allow for residential, commercial, retail, institutional and employment uses and provides convenient access to local stores, services and public service facilities as required by Growth Plan Policies 2.2.1.4 and 2.2.6.

[172] OPA 367 conforms with the intent of the City's OP, representing an integrated and coordinated approach to city-building. It is aligned with the principles, vision and



objectives of the OP and both meets and advances existing policies related to Shaping and Building a Successful City, Managing Growth, Built Form, Public Realm, and Transportation in the OP.

[173] OPA 367 reflects the City's objectives for *Mixed Use Areas* adjacent to *Neighbourhoods* that results in a framework for future development for an area that has potential for an appropriate level of intensification.

[174] OPA 367 is the result of the City-led public study that included public outreach and consultation with residents, landowners, and key stakeholders and has been informed by EA and related reviews; a transportation assessment; and urban design assessment

[175] OPA 367 promotes a forward-looking use of available transportation infrastructure; provides for a comprehensive and continuous active transportation network; and appropriately protects for the 36-m right-of-way on SAW as identified on Map 3 of the OP to enhance the public and pedestrian realm, implementing cycling infrastructure and establishing a complete street. It also conforms to Maps 4 and 5 in accordance with the implementing policies in the OP. OPA 367 does not preclude future development of SAW to other forms of public transit should funding be available and studies be completed.

[176] OPA 367 provides for an appropriate level of intensification with consideration to matters including the scale, form, density and transition to adjacent areas all encouraging a variety of land uses in the *Mixed Use Areas* including mix of housing types.

[177] OPA 367 appropriately re-urbanizes this *Avenue* recognizing the local context and level of intensification that can be accommodated along SAW.

[178] Finally, OPA 367 is in the public interest and represents good planning.

**ORDER**

[179] The appeals are dismissed.

*"R. Rossi"*

R. ROSSI  
MEMBER

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

**Local Planning Appeal Tribunal**

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