

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



ISSUE DATE: January 07, 2021

CASE NO(S): PL190056

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 34(19) of the *Planning Act*, R.S.O. 1990, c. P.13, as amended

Appellant:	Lakewood Beach Community Council
Subject:	By-law No. 19-014
Municipality:	City of Hamilton
LPAT Case No.:	PL190056
LPAT File No.:	PL190056
LPAT Case Name:	Lakewood Beach Community Council v. Hamilton (City)

Heard: November 5, 2020 by video hearing

APPEARANCES:

Parties

Counsel/Representative*

Lakewood Beach Community Council Vivian Saunders*

City of Hamilton Patrick MacDonald

Silvestri Homes Inc. Scott Snider and Anna Toumanians

**DECISION DELIVERED BY DAVID BROWN ON NOVEMBER 5, 2020 AND ORDER
OF THE TRIBUNAL**

INTRODUCTION

[1] The matter before the Tribunal is an appeal filed by Lakewood Beach Community Council (the "Appellant") from a decision of the City of Hamilton (the "City") that approved a Zoning Bylaw No. 19-014 ("ZBA") amending the former Stoney Creek Zoning By-law No. 3692-92. Silvestri Homes (the "Applicant") is proposing to develop the lands known municipally as 560 Grays Road (the "Subject Lands") with a multiple unit residential building in accordance with the ZBA.

[2] The Subject Lands are bounded on all four sides by public roads, Grays Road to the west, Frances Avenue to the north, Drakes Drive to the east and North Service Road to the south. The Subject Lands have an area of approximately 1.12 hectares ("ha") and are currently vacant. Across Grays Road from the Subject Lands is a large municipally owned park known as Confederation Park. To the north and east across Drakes Drive and Frances Avenue is low density residential housing. The Queen Elizabeth Way ("QEW") highway corridor is to the south of the Subject Lands.

[3] The Subject Lands are designated Neighbourhoods in the City's Urban Hamilton Official Plan ("UHOP").

[4] The ZBA was passed by City Council on January 23, 2019 which modified the RM3-58 Zone applying to the Subject Lands to permit the development of the Subject Lands with a six-storey residential building containing a maximum of 151 dwelling units, 191 underground parking spaces and 58 surface parking spaces (the "Proposed Development"). Access to the Proposed Development is from Drakes Drive.

[5] The Appellant filed an appeal with the City on February 21, 2019.

[6] The Tribunal having considered the materials filed with the Tribunal and the submissions of the Appellant, Applicant and the City, dismisses the appeal for the reasons set out as follows.

PROCEDURAL HISTORY

[7] Bill 139 came into force on April 3, 2018 amending the *Planning Act* and enacting the *Local Planning Appeal Tribunal Act, 2017* (“LPATA”). The legislation limited the grounds of appeal for zoning by-law amendments to consistency with the provincial policies and conformity with provincial plans and official plans. Under Bill 139, parties were limited to filing appeal records containing affidavits and supporting materials, case synopses containing arguments to support their requests for relief, and, if the Tribunal ordered, final written and oral submissions. Bill 139 established hearing protocols outlining that no parties may adduce evidence or call or examine witnesses at the hearing, they may only make final oral submissions.

[8] Bill 108 came into force on September 3, 2019 amending the *Planning Act* and the *LPATA* and provided for transition regulations. Bill 108 expanded the grounds of appeal for zoning by-law amendments and the statutory tests for addressing the substantive issues under appeal were revised. Bill 108 also permitted an oral hearing at which witnesses can be called and cross-examined. Zoning by-law amendment appeals that had not yet been scheduled for a hearing on the merits as of September 2, 2019 were subject to the Bill 108 provisions.

[9] The Bill 108 transition regulations permitted appellants of a zoning by-law amendment, whose appeal had not yet been scheduled for a hearing on the merits as of September 2, 2019, to submit a revised notice of appeal with expanded grounds. The Appellant in these proceedings elected to not file a revised notice of appeal.

[10] On November 15, 2019, Ontario Regulation 382/19 (“O. Reg. 382/19”) of the *LPATA* came into effect amending earlier transition regulation O. Reg.303/19. O. Reg. 382/19 has the effect of returning this matter to the hearing format prescribed by Bill 139. Under the amending regulation, where a municipality approved a zoning by-law amendment in response to an application, and the zoning by-law amendment is appealed by a third party individual, and if a hearing of the merits of the appeal was not scheduled by the Tribunal before November 15, 2019, the procedural requirements of the *LPATA*, as it read on September 2, 2019 being the day before Bill 108 took effect, would apply. As the subject appeal had not been scheduled before November 15, 2019, the subject matter would be considered under the procedures established under Bill 139. The applicable appeal provisions of the *Planning Act* were not changed by the amending Regulation and therefore, this appeal continues to be subject to the statutory tests under Bill 108.

[11] Based on the legislation and the transition regulations, the appeal before the Tribunal is subject to the procedural requirements of Bill 139, including its restrictions on hearings, and subject to the substantive requirements in Bill 108, including the statutory tests and expanded permissible grounds of appeal.

[12] Section 3 of the *Planning Act* requires the Tribunal’s decision is consistent with the policy statements in effect on the date of the decision and conforms with the provincial plans that are in effect on that date. The Tribunal, at a Case Management Conference (“CMC”) held on July 3, 2020, identified that at the time of filing of the Notice of Appeal, Appeal Record, Case Synopsis, and Responding Case Synopsis, the previous versions of Provincial Policy Statement (“2014 PPS”) and the Growth Plan for the Greater Golden Horseshoe (“2017 Growth Plan”) were in effect. An updated Growth Plan for the Greater Golden Horseshoe took effect on May 16, 2019 (“2019 Growth Plan”); and on May 1, 2020, an updated version of the PPS came into effect (“2020 PPS”). The Tribunal requested that the Parties provide updated material in response to the changes in the 2019 Growth Plan and the 2020 PPS only in as far it

changed or amended the policies contained therein that are at issue in these proceedings.

[13] Subsequent to the July 3, 2020 CMC, the 2019 Growth Plan was further amended when Amendment 1 to the Growth Plan came into effect on August 28, 2020 (“2020 Growth Plan”).

ISSUES

[14] As set out above, Bill 108 applies to the substantive issues to be addressed in this proceeding. In making a decision on a zoning by-law amendment appeal under s. 34(19) of the Bill 108 version of the *Planning Act*, the Tribunal must have regard to the matters of provincial interest set out in s. 2 of the *Planning Act* and must have regard to the decision of the City and the information considered by the City under s. 2.1(1) of the *Planning Act*. The ZBA must be consistent with the 2020 PPS, shall conform with the 2020 Growth Plan, and shall conform with the UHOP. In view of these statutory considerations, the Tribunal must be satisfied that the ZBA represents good planning.

PRELIMINARY MATTERS

[15] Ms. Saunders raised issue with the Affidavit of John Ariens sworn October 6, 2020, evidence provided to the Tribunal by the Applicant, specifically as the Affidavit was submitted as a Reply submitted in response to the Affidavit provided by Allen Ramsay sworn September 21, 2020. Ms. Saunders contends that the Tribunal did not provide for any Reply by the Applicant and the additional information provided is prejudicial. She requested that the Reply of Mr. Ariens be disallowed and struck from the Tribunal’s record.

[16] Mr. Snider responded that the Affidavit of Mr. Ariens only addressed the impact of the changes of the 2020 PPS and the 2020 Growth Plan as they applied to the subject matter as directed by the Tribunal. The Reply was provided as the Appellant for the first time in this proceeding, provided opinion evidence from a Land Use Planner which contained new information and there was no opportunity to provide any response otherwise. Mr. Snider contends that it is necessary to have the Response before the Tribunal to ensure that the Tribunal has the complete and best evidence before it to effectively consider this matter.

[17] The Tribunal, in consideration of the request of the Appellant and having reviewed the submissions in question, is satisfied that the submissions will be allowed. The Tribunal advised that only that evidence pertaining to the 2020 PPS and the 2020 Growth Plan will be considered and any other opinions or submissions will not be considered in the context of the appeal before the Tribunal.

EVIDENCE AND SUBMISSIONS

Appellant's Evidence and Submissions

[18] The Tribunal reviewed and considered the Appeal Record and the Case Synopsis filed by the Appellant. The Tribunal further considered the supplemental documentation submitted in respect to the 2020 PPS and the 2020 Growth Plan as requested by the Tribunal and the oral argument provided at the hearing.

[19] The Appellant represents the residential community located to the north and east of the Subject Lands. The Appellant has been actively following the development proposals for the Subject Lands for many years. The Appellant's interest in the Proposed Development is documented in the Enhanced Municipal Record ("EMR") filed with the Tribunal.

[20] The Appellant's opposition to the Proposed Development is based on the compatibility with the surrounding neighbourhood, traffic impact, municipal stormwater infrastructure, and the lack of public transit.

[21] In respect to the 2020 PPS, the Appellant opined that the change in the increased density will negatively impact the quality of life of the local residents and not enhance the quality of life as directed in the 2020 PPS. The Appellant set out that the ZBA is not consistent with the directive policies of the 2020 PPS when read in their entirety. In the submission, the Appellant states that Council failed to consider the impacts of accommodating the development occurring in their area and in so doing, did not protect the overall health and safety of the population which is not consistent with the 2020 PPS. The Appellant opined that the long-term prosperity, human and environmental health and social well-being should take precedence over short term considerations as directed by the 2020 PPS and the approval of the ZBA failed to do this.

[22] The Appellant provided planning opinion evidence in the form of an Affidavit sworn by Mr. Ramsay, dated September 21, 2020. Mr. Ramsay was qualified by the Tribunal to provide opinion evidence as a professional land use planner. Mr. Ramsay's Affidavit was provided in response to the Tribunal's direction to provide evidence to address the 2020 PPS and the 2020 Growth Plan and how they impact the ZBA.

[23] Mr. Ramsay identified a change in Part IV of the 2020 PPS which states,

Planning authorities are encouraged to permit and facilitate a range of housing options, including new development as well as residential intensification to respond to the current and future needs.

[24] He opined that the ZBA alters the height and density of the permitted apartment development; however, it will not permit or facilitate a change to the range or mix of housing options to the community.

[25] In s. 1.1.1 of the 2020 PPS, the policies states,

- 1.1.1 Healthy, liveable and safe communities are sustained by:
- ...
 - b) accommodating an appropriate affordable and market based range and mix of residential types (including single-detached, additional residential units, multi-unit housing, affordable housing and housing for polder persons), ... to meet long-term needs;
 - ...
 - e) promoting the integration of land use planning, growth management, transit-supportive development, intensification and infrastructure planning to achieve cost-effective development patterns, optimization of transit investments, and standards to minimize land consumption and servicing costs.

[26] Mr. Ramsay contends that the Applicant has not provided any information describing the proposal as affordable or market driven and as such, it is not possible to determine the range of housing being provided. Further, he submits that the development does not promote the integration of transit-supportive development nor does it provide for the optimization of transit investment. The Subject Lands are not located along a major transit corridor and are not in close proximity to a transit station.

[27] Section 1.1.3.3 of the 2020 PPS directs Planning Authorities to identify appropriate locations and promote opportunities for transit-supportive development, accommodating a significant supply and range of housing options through intensification and redevelopment where this can be accommodated, taking into account existing building stock or areas and the availability of suitable existing or planned infrastructure and public service facilities required to accommodate projected needs. Mr. Ramsay opined that the ZBA is not consistent with this policy as the resultant development would not take into account the existing building stock and area as the density is significantly greater than the existing area; and thus will result in an isolated pocket of high density development that will not be integrated with the surrounding neighbourhood.

[28] Further, Mr. Ramsay submitted that the housing policies in s. 1.4.3 of the 2020 PPS have been revised as follows:

- 1.4.3 Planning authorities shall provide for an appropriate range and mix of housing options and densities to meet projected market-based and affordable housing needs of current and future residents of the regional market area by:
- ...
- e) requiring transit-supportive development and prioritizing intensification, including potential air rights development, in proximity to transit, including corridors and stations;...

[29] The Subject Lands are not located along a major transit corridor and are not in close proximity to a transit station. The Housing Policies found at s. 1.4.3 of the 2020 PPS provide direction to the municipality to achieve an appropriate range and mix of housing. He submitted that these policies represent municipal wide objectives and are not necessarily to be achieved on an individual property basis. He referred to the UHOP as the means of implementing these policies.

[30] Mr. Ramsay concluded that the ZBA is not consistent with the 2020 PPS.

[31] In respect to the 2020 Growth Plan, Mr. Ramsay submitted that the Subject Lands are not located within a Strategic Growth Area and the Subject Lands are not located in an area identified as a priority area for intensification. The 2020 Growth Plan requires municipalities to develop a strategy to achieve minimum intensification targets required by the Plan throughout the Delineated Built up Area. This work has not yet been undertaken by the City; however, the 2020 Growth Plan does focus on directing intensification to Strategic Growth Areas.

[32] Mr. Ramsay opined that the Subject Lands are not located within a Strategic Growth Area and are not suitable for higher density intensification.

[33] Ms. Saunders submissions contained within her Case Synopsis state that the ZBA directs unplanned population growth to an area outside of a Strategic Growth Area

and she concludes that the ZBA will negatively impact housing affordability by proposing condominium apartments to an area that has no primary rental housing stock.

[34] In respect to conformity with the UHOP, Ms. Saunders submitted that the Subject Lands were zoned with a medium density residential designation and the ZBA changed that designation to high density residential designation. The high density designation does not conform to policies which designate the lands Neighbourhood and permit residential dwellings and the area to function as a complete community as there are already high density uses in the area. She acknowledged that the UHOP permits high density residential uses with a density up to 200 units per hectare (“uph”) on the Subject Lands; however, Ms. Saunders contends that the zoning should have been changed to an RM4 or RM5 Zone as the RM3 does not conform to the principles of the UHOP.

[35] Ms. Saunders submits that the Policy E.3.6.4 of the UHOP requires that high density residential uses shall be located within safe and convenient walking distance of existing or planned community facilities and services and the Subject Lands do not meet this requirement. Further, the Staff Report indicates that the Subject Lands are in close proximity to the proposed Confederation GO Train station and that the proposed increase will support ridership. She submits that this statement is speculative and is inconsistent with the definition of transit supportive as it applies to the major transit station areas. Ms. Saunders opined that most residents will require an automobile as there is no transit service to the area and therefore will not use the GO Train.

[36] Ms. Saunders directed the Tribunal to Policies B.2.4.1.4 and B.2.4.2.2 which set out that residential intensification shall be evaluated on the criteria of compatibility to existing neighbourhood character, infrastructure, and transportation capacity. She opined that Council was not provided with sufficient details to evaluate the proposed development as there is a lack of infrastructure, public amenities, and transit to support the development. The City has no plans to provide transit service to the area and the

storm water management is failing which will negatively impact the “Big Pond” located north-east of the Subject Lands.

[37] A concern with the increased height not transitioning to the detached homes on the adjacent was raised and Ms. Saunders indicated that this will impact the neighbouring properties which is an issue to be addressed as identified in Policy B.3.3.3.2 of the UHOP.

[38] In respect to storm water management, Ms. Saunders indicated that this issue has been deferred to the Site Plan approval stage of the process. She noted that at the time of the processing of the previous zoning amendment application, Council required a Class B Municipal Assessment to assess storm water impacts. The City has not requested any additional assessment work be completed and she submits that this is not in conformity with the UHOP. Further, Ms. Saunders expressed concern that the impact of the development of the vacant lands on the watershed has not been considered. She opines that the UHOP requires a sub-watershed study to be completed as part of the review of the proposal as set out in Policies F.3.1.6, F.3.1.6.2 and F.3.2.1.2.

[39] In respect to transportation, traffic and transit, Ms. Saunders submitted that there have been no road improvements to surrounding road network in 30 years as this is an issue that was identified in an Ontario Municipal Board Order of J. A. Fraser issued December 4, 1991 under OMB File Nos. O900071 and Z900221. Member Fraser in his Order notes,

... acknowledges the configuration of Grays Road, Frances Avenue, Drakes Drive and North Service Road loop formation providing access to the Queen Elizabeth Way is a most undesirable, even though existing, pattern of traffic use through an area abutting residential neighbours.

[40] Ms. Saunders contends that the congestion is still an issue and the unsafe road network and lack of sidewalks contributes to a car dependent neighbourhood that is not

pedestrian friendly. The additional units proposed will result in an estimated 108 additional vehicles at the site impacting on-site parking and exacerbating the traffic congestion in the area contributing to the safety concerns.

[41] Ms. Saunders submitted that the Subject Lands are greater than 800 metres from the planned transit station on Centennial Parkway and that it is approximately a 40-minute walk from the Subject Lands to the proposed Go Station. The Subject Lands are not located within the primary or secondary corridor areas identified for high density development to support the investment in the transit station. The Subject Lands are not in an area identified for higher order transit investment.

[42] Ms. Saunders continued that the area is not served by conventional transit. She explained that the area, including the Subject Lands, is serviced by the City's Transcab service. Ms. Saunders contends that the Transcab service is not public transit as envisioned in the UHOP. The Appellant advised that the Transcab service is funded by the City and she submits it is inefficient and results in more vehicles on the roads, not less.

[43] Ms. Saunders concluded that it is the Appellant's position that Council did not have sufficient information to make an informed decision and the process was flawed resulting in a decision that did not properly take into consideration the public submissions.

The Applicant's Evidence and Submissions

[44] The Applicant provided planning opinion evidence in the form of an affidavit sworn by Mr. Ariens, dated September 3, 2020. Mr. Ariens was qualified by the Tribunal to provide opinion evidence as a professional land use planner. Mr. Ariens' Affidavit was provided in response to the Tribunal's direction to provide evidence to address the 2020 PPS and the 2020 Growth Plan and how they impact the ZBA.

[45] Mr. Snider submitted that the ZBA which is the subject of the Appeal before the Tribunal permits an additional two storeys and 44 units to the already permitted mid-rise residential development on the Subject Lands. He submitted that any impact resulting from the ZBA is the same as that which would be experienced by the previously permitted development.

[46] Mr. Snider referred to Policy 4.6 of the 2020 PPS wherein it states that the official plan is the most important vehicle for implementation of the PPS. He advised the Tribunal that the ZBA does not require an amendment of the UHOP. The City has confirmed that the ZBA conforms to the policies of the UHOP. The City Staff Report contained at Tab 77 of the EMR confirms that the density approved in the ZBA is within the permitted range identified in the UHOP. Mr. Snider concludes that the UHOP implements the 2020 PPS and therefore, as supported by the Affidavit of Mr. Ariens, the ZBA is consistent with the 2020 PPS.

[47] Mr. Snider again directed the Tribunal to the Staff Report at Tab 77 of the EMR, which he submitted contains a fulsome review of the application in respect to the 2014 PPS, the 2017 Growth Plan and the UHOP and recommended approval to the City Council. At Tab 82 is a copy of the ZBA approved by City Council. Section 2.1 of the *Planning Act* requires the Tribunal to have regard for the decision of the Council and the materials considered by the Council. Mr. Snider contends that the Council approved the ZBA having reviewed the materials, all of which support the ZBA, and having taken into consideration any issues raised by the area residents, including the Appellant.

[48] Mr. Snider reviewed the Affidavit of Mr. Ramsay and submitted that the range of housing options in the area does not change with the increase of the number units in the Proposed Development. Further, he submitted that apartment dwellings are more affordable than other forms of housing in the area and is a more cost-effective development contrary to the assertions of Mr. Ramsay. The 2020 PPS directs that a

range of housing types is to be accommodated and the Proposed Development is consistent with the policy direction. The submission that the Subject Lands are not located on a major corridor is not a requirement for intensification in either the 2020 Growth Plan or the 2020 PPS. Mr. Snider also notes that the site is serviced and can accommodate the intensification being proposed. Mr. Snider suggested to the Tribunal that there is no substantiation for the opinions offered by Mr. Ramsay.

[49] In consideration of the UHOP, Mr. Snider again directed the Tribunal to the Staff Report at Tab 77 of the EMR. The City planning staff in their review of the application conclude that the ZBA results in a density that is within the permitted range and proposes a high density development on the periphery of the neighbourhood. Further, the ZBA proposes a high density residential use within a safe and convenient walking distance of existing or planned community facilities/services, including public transit, schools, and active or passive recreation facilities, and is in proximity to designated Employment Areas which is considered desirable.

[50] The UHOP provides that all areas are to be considered for intensification and Mr. Snider submits that Mr. Ariens in his Affidavit opines that the 2020 Growth Plan supports that flexibility where it provides for more affordable housing.

[51] The professional planning evidence of the City and Mr. Ariens supports the ZBA and concludes that it is consistent with the 2020 PPS and conforms to the 2020 Growth Plan. Mr. Snider requested that the Tribunal not accept the unsubstantiated assertions of Mr. Ramsay and accept the planning evidence of Mr. Ariens and the City.

[52] Mr. Snider responded to the allegations that Ms. Saunders suggests that the neighbourhood is unsafe for pedestrians advising that the Subject Lands are in very close proximity to the multi use trail through Confederation Park which is designated within the City Pedestrian Mobility Plan. There is no evidence that the area is unsafe and no concerns were raised by the City during their review of the application. In

respect to the concern in respect of public transit, Mr. Snider submitted that the Transcab service is funded by the City and is a form of public transit.

[53] Mr. Snider stated that a Transportation Impact Study was completed by a qualified professional engineer and the methodology and conclusions were accepted by the City's experts. The Transportation Impact Study concluded that the increase in traffic volumes generated by the Proposed Development are relatively minor.

[54] In respect to the stormwater management issues raised, Mr. Snider referred to Tab 54 of the EMR which contained the Functional Servicing and Storm Water Management Report prepared by Professional Engineers. The Report concludes that the proposed stormwater management strategy will result in no net impact to the Teal Avenue Pond.

[55] Mr. Snider noted that a Noise Impact Statement has been completed and accepted by the City and there is a very large municipal park directly across Grays Road from the Subject Lands. The concern related to the payment of cash-in-lieu of parkland is not a relevant consideration for the Tribunal.

[56] Mr. Snider concluded that the evidence supports the proposed mid-rise residential building which will be very well located on the periphery of the residential area and complies with the policy criteria set out in the UHOP.

[57] Mr. Snider requested the Tribunal to dismiss the appeal filed against the ZBA.

The City's Evidence and Submissions

[58] Mr. MacDonald, counsel for the City, advised that the City has filed its Response submission as required setting out the City's position in support of the ZBA and the Tribunal reviewed and considered the submissions contained therein.

[59] Mr. MacDonald submitted that the Appellant's opinions are not supported by any expert opinion evidence. The City's review and consideration of the Development Proposal resulted in expert overview and opinion being provided to Council in advance of their decision to approve the ZBA. There are no changes in the approved instrument being requested before the Tribunal.

[60] Mr. MacDonald confirmed that no amendment to the UHOP was required as City staff deemed the application to conform with the UHOP.

[61] Mr. MacDonald submitted that there was no procedural defect in the manner in which the matter was considered by the City despite the allegations of the Appellant and there was no evidence proffered to support the allegations.

ANALYSIS AND FINDINGS

[62] The Tribunal has considered the submissions and arguments provided by the Parties.

[63] The Tribunal further considered the City Staff Report contained in the EMR and the reports and submissions relied upon by the City Council in consideration of the application to amend the Zoning By-law.

[64] The Tribunal received two affidavits from qualified land use planners to address the changes resulting from the 2020 PPS and the 2020 Growth Plan in the context of the ZBA appeal. The Appellant's planner focussed on the impact of the changes in the context of transit-supportive development and the range and mix of housing types. The Applicant's planner acknowledged these changes and concluded that the ZBA is consistent with the 2020 PPS and conforms to the 2020 Growth Plan. The Tribunal prefers the evidence of the Applicant's planner.

[65] The Tribunal accepts that the intensification permitted by the ZBA provides for the addition of two floors and additional residential units to the previously permitted multiple unit residential building. The Tribunal finds that this intensification does not alter the range of housing types, but it does impact the number of residential units which will impact the mix of housing units in the area.

[66] The Tribunal, in reviewing the context of the area which the Tribunal interprets as extending eastward to Green Road, notes there are other examples of apartment houses, row houses and mid-rise residential developments. The higher densities are generally located along the periphery of the neighbourhood. The Tribunal is satisfied that the Proposed Development will contribute to the range and mix of housing types within the area consistent with the policies of the 2020 PPS and in conformity with the 2020 Growth Plan.

[67] In respect to transit supportive development, the Appellant submitted that the area is not serviced by public transit. The Appellant asserted that the Subject Lands are not within walking distance of the proposed GO Train station and will require residents to drive to access the GO Train facilities. She further explained that the nearest transit stop is on the south side of the QEW. The City's Transcab service is not public transit in her opinion and therefore concludes that the intensification is not transit supportive development.

[68] The Applicant submits that the Transcab service is funded by the City and constitutes public transit. Further, the Applicant submits that the Subject Property is in proximity to the proposed GO Train station. The City Staff Report supports this position and goes farther to conclude that the proposed increase in density will support ridership of the Go Train.

[69] The Tribunal considered the 2020 PPS policy directive which states that land use patterns within settlement areas shall be based on densities and a mix of land uses which are transit supportive where transit is planned, exists or may be developed. The 2020 PPS also directs planning authorities to identify appropriate locations and promote opportunities for transit-supportive development, accommodating a significant supply and range of housing options through intensification where this can be accommodated taking into account existing building stock or areas and the availability of suitable existing or planned infrastructure and public service facilities required to accommodate projected needs.

[70] The 2020 PPS anticipates that intensification may occur prior to the availability of infrastructure and public service facilities. The policy contemplates that as opportunities for intensification arise, the City will evaluate projected needs and plan accordingly. The Tribunal acknowledges the development in the area has increased the demand for the City to provide additional infrastructure and public service facilities which may include the provision of public transit in the form of bus service. In the interim, the Tribunal finds that the City has chosen to provide the Transcab service to the area to address public transit needs. In respect to the proximity to the proposed Go Train station, the Tribunal accepts the interpretation of the City and the Applicant that the Proposed Development is consistent with the 2020 PPS. Further, the 2020 Growth Plan directs municipalities to prioritize intensification in strategic growth areas to make efficient use of land and infrastructure and support transit viability. The Tribunal accepts the position of the Applicant that the 2020 Growth Plan does not prohibit intensification outside of strategic growth areas and the Proposed Development will achieve the objective of a compact built form and intensification efforts go together with more effective transit networks and are fundamental to where and how we grow.

[71] Turning to the UHOP, the Tribunal accepts the analysis undertaken by the City demonstrating conformity with the UHOP policies. The Tribunal finds that the Proposed Development conforms to the UHOP as it contributes to a complete community by providing a mix of dwelling unit types in the area, the proposed built form provides an appropriate transition to the adjacent residential community from the QEW highway corridor as the Subject Lands are situated on the periphery of the community on a minor arterial road. Further, the Tribunal finds that the proximity of the Subject Lands to the future GO station and the increased density will support ridership.

[72] The Staff Report also reviewed the urban design policies contained within the UHOP identifying the siting of the proposed building as providing a buffer from the QEW highway corridor to the adjacent community to the north and the design of the proposed building, stepping down towards the adjacent residential properties will result in a compatible built form with the adjacent two storey single detached residential area with the setback providing ample opportunity for landscaping. The Tribunal accepts the conclusions of the City and finds that the Proposed Development is compatible with the surrounding neighbourhood and in conformity with the policies of the UHOP.

[73] The Tribunal in reviewing the submissions of the Appellant notes that merely stating the policy is not sufficient to call into question the conformity with that policy. An appellant must describe how the proposed development impacts the policy and offer a conclusion arising from the identified impact.

[74] The Tribunal, in consideration of the traffic concerns raised by the Appellant, referred to the EMR and the Staff Report at Tab 77 which contained a Traffic Impact Study completed in support of the Proposed Development. The EMR also contained a Parking Justification Report and Transportation Demand Management Report supporting the Proposed Development. The City staff comments contained in the EMR identified no issues or objections with the findings and conclusions contained within the reports. The Appellant questioned the reliability of the Applicant's Parking Study without

offering any contradictory evidence to support their assertion. The Tribunal accepts the conclusions of the City and finds that the issues surrounding parking and traffic have been satisfactorily addressed.

[75] The Tribunal notes that the observations by the Appellant are not conclusive of issues with regard to traffic use around the Subject Lands. The Staff Report indicates that City staff has reviewed the proposed parking and anticipated traffic demands and concluded that the road network is safe and functioning appropriately.

[76] The Tribunal in consideration of the storm water management concerns raised again referred to the EMR where the Applicant's Storm Water Management Report is included. The City and the Hamilton Conservation Authority both reviewed the reports and raised no objections to the conclusions and recommendations contained therein as it related to the Proposed Development. The Appellant's concerns in respect to the Teal Avenue Pond were unqualified and were not supported with data to support her assertions. The Tribunal accepts the conclusions and recommendations of the City and the Hamilton Conservation Authority staff. The Tribunal finds that the storm water management matters have been adequately addressed and the balance of the matters to be finalized will be properly addressed at the Site Plan Approval stage of the approval process.

[77] The Tribunal concludes that the ZBA is consistent with the 2020 PPS and conforms with the 2020 Growth Plan. The Tribunal finds that the ZBA will permit a development of the Subject Lands in a manner that conforms with and implements the goals and objectives of the UHOP. In consideration of the foregoing, the Tribunal finds that the ZBA represents good planning and is in the public interest. Accordingly, the Tribunal dismisses the appeal filed against the ZBA.

ORDER

[78] The Tribunal Orders that the appeal against Zoning By-Law No. 19-014 of the City of Hamilton is dismissed.

“David Brown”

DAVID BROWN
MEMBER

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

Local Planning Appeal Tribunal

A constituent tribunal of Ontario Land Tribunals

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