

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



**ISSUE DATE:** April 07, 2021

**CASE NO(S):** PL190517

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

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

Applicant and Subject:	J & B Developments LP Request to amend the Official Plan - Refusal of request by City of Hamilton
Existing Designation:	M-4
Proposed Designated:	Site specific (To be determined)
Purpose:	To permit a 9 storey mixed use building
Property Address/Description:	600 James Street North
Municipality:	City of Hamilton
LPAT Case No.:	PL190517
LPAT File No.:	PL190517
LPAT Case Name:	J & B Developments LP v. Hamilton (City)

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

Applicant and Appellant: Subject:	J & B Developments LP Application amend Zoning By-law No. 6593 - Refusal of Application by City of Hamilton
Existing Zoning:	H/S-1783-HCommunity Shopping and Commercial
Proposed Zoning:	Site specific (To be determined)
Purpose:	To permit a 9 storey mixed use building
Property Address/Description:	600 James Street North
Municipality:	City of Hamilton
Municipality File No.:	ZAC-18-024
LPAT Case No.:	PL190517
LPAT File No.:	PL190518

**Heard:** February 8-12, 16, 17 and March 4, 2021

**APPEARANCES:**

**Parties**

**Counsel**

J & B Developments LP

D. Baker  
C. deSereville

City of Hamilton

B. Duxbury

Harbour West Neighbours Inc.

H. Turkstra

**DECISION DELIVERED BY S. TOUSAW AND ORDER OF THE TRIBUNAL**

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**INTRODUCTION**

[1] This case is nuanced in both substance and process. A brief review of the various stakeholders' positions illustrates the point.

[2] J & B Developments LP ("Applicant") sought approval from the City of Hamilton ("City") on applications for Official Plan Amendment ("OPA") and Zoning By-law Amendment ("ZBA") to permit a 9 storey mixed-use building at 600 James Street North ("site") within an area known as the North End Neighbourhood ("North End"). The City planning and engineering staff, after considerable review and resulting changes to the applications, recommended approval of the OPA and ZBA. Despite that recommendation and previous City approvals in the area for buildings of similar height, the City denied the OPA and ZBA, citing in part a failure to satisfy City policies and studies. Harbour West Neighbours Inc. ("HWN") supports the City's denial, yet has itself responded differently to other developments in the neighbourhood.

[3] These varied positions suggest that the issues in dispute here constitute fine lines that warrant careful and thorough review. Such is the Tribunal's task in this Decision.

[4] Many land use, urban design and transportation issues were examined at length during the hearing in the course of the Parties' focus on three primary and inter-related issues: height, transition, and parking. Paramount among these is height.

[5] This hearing spanned eight days with extensive evidence from several experienced professionals and thoughtful concerns expressed by three residents. Given the divergent professional opinions on the finely nuanced issues, counsel for all three Parties provided extensive argument, including reference to Tribunal Decisions and related case law.

[6] For the reasons set out herein, the Tribunal will allow the appeal and approve the requested OPA and ZBA. This result has not come hastily to the Tribunal and arises only after a thorough and careful review of the issues against the legislative requirements that were so capably advanced by the witnesses and counsel.

[7] At its core, this case is about 3 extra storeys on a main street building. The City would have accepted 6 storeys and the Applicant requests 9. As detailed in this Decision, the Tribunal finds that the most relevant planning documents here allow for the consideration of additional height and density where appropriate. As will be explained, the additional 3 storeys of the building will have a decreasing footprint with height, resulting in a massing and street appearance similar to a 6 or 7 storey building.

## **LEGISLATIVE TESTS**

[8] In making a decision under the *Planning Act* ("Act") with respect to these appeals, the Tribunal must have regard to matters of provincial interest as set out in s. 2. Under s. 2.1(1), the Tribunal must have regard to any decision of City Council made under the Act that relates to the same planning matter, and the information considered by City Council in making those decisions. Under s. 3(5), the Tribunal's decision must conform with or not conflict with an applicable provincial plan, being A Place to Grow: Growth Plan for the Greater Golden Horseshoe, 2020 ("GP") in effect at the date of this decision. Also under that section, the Tribunal's decision must be consistent with the

provincial interests expressed in policy statements, being the Provincial Policy Statement, 2020 (“PPS”) in effect at the date of this decision. In addition, the ZBA must conform with the City’s relevant Official Plan under s. 24(1) of the Act.

## **EVIDENCE**

[9] Each of the Parties tendered professional evidence through qualified experts in their field who referenced a joint document book (Exhibits 1A and 1B) nearly 1,600 pages in length. A further 14 Exhibits were entered into evidence during testimony.

[10] Without objection from any Party, the Tribunal qualified each of the professional witnesses to provide opinion evidence in their field of expertise noted below.

For the Applicant:

- David Falletta, Registered Professional Planner (“RPP”) – land use planning
- Tom Kasprzak, RPP – urban design
- Stewart Elkins – transportation planning

For the City:

- Kevin Eby, RPP – land use planning
- Stephen Brook, Professional Engineer – transportation engineering

For HWN:

- Anne McIlroy, RPP – urban design.

[11] In addition, three area residents testified for HWN: Stephen Park, Elizabeth Poynter and Werner Plessl. A further three residents filed written Participant

statements.

## **POLICY ENVIRONMENT**

[12] Not uncommon in municipal planning is an evolving set of policy documents that guide planning decisions. Hamilton is no exception. The experts agree on the policies and guidelines applicable in this case, subject to some differences of opinion on the weight that should be applied to various documents. While those details are addressed later, the following summary highlights the mix of documents in effect here.

[13] At the provincial level, the experts reference several principles from s. 2 of the Act and several common policies in the GP and the PPS.

[14] At the municipal level, several documents are referenced. The Urban Hamilton Official Plan (“UHOP”), while in effect for much of the City since 2013, expressly does not apply to the area affected by the West Harbour (Setting Sail) Secondary Plan (“SP”) applicable here. The SP was adopted by the City in 2005 but remained under appeal when the UHOP was adopted in 2009. In 2011, the SP came into effect upon a Decision of the (then) Ontario Municipal Board and remains in effect today.

[15] With the SP in effect, but not under the current UHOP, it continues the applicability of the Hamilton Official Plan (“HOP”) and the Hamilton-Wentworth Official Plan (“HWOP”), both of which predate the amalgamated City of Hamilton. The planning witnesses agreed in advance of this hearing that this OPA and ZBA raise no issues with the HWOP. In evidence, they similarly noted that little was at issue with the HOP. The SP, however, remains central to the issues.

[16] Also at play here is the James Street North Mobility Hub Study (“MHS”) accepted by the City in 2014 to consider the planning issues and opportunities related to the then provincial announcement of the GO Station for transit planned, and now built, at the intersection of the railway and James Street North (“James St.” or “James”). While the MHS is used by these Parties and others to guide development plans and decisions, it

remains a study and has not been transposed into policy through a City official plan amendment, despite the lengthy existence of the MHS.

[17] Reference is also made to the City-wide Corridor Planning Principles and Design Guidelines (“City Guidelines”), which, again due to the UHOP’s absence of application here, do not directly apply but are referred to by certain witnesses.

[18] Lastly, the City is now conducting a Municipal Comprehensive Review (“MCR”) as directed by the GP, which, among other things, should lead to delineating the boundaries of a Major Transit Station Area (“MTSA”) to encircle the James St. GO Station, and identify Strategic Growth Areas (“SGA”) for intensification.

## **PARTY POSITIONS**

[19] The opposing positions of the Parties are summarized here based on the oral and written evidence received on the three main issues. The details of these positions are examined later in this Decision.

[20] The Applicant requests acceptance of the appeal and approval of the OPA and ZBA for the following reasons:

- Based on the SP and MHS, the James St. corridor and this intersection in particular are envisioned for taller midrise buildings;
- An OPA at this site, to permit 4 storeys more than the 5 storey limit in the SP, and to permit 2 storeys more than the 7 storeys possible as guided by the MHS, is appropriate given the similar height office building across James to the west, and tall residential towers in the immediate neighbourhood;
- The GP requires municipal planning to promote and address appropriate intensification within an MTSA and other SGAs;

- On three other sites in the SP area, including one fronting on James, City Council has approved 8 and 10 storey buildings through amendments to the SP;
- Appropriate transition to adjoining properties is achieved at this site by setbacks, stepbacks, window and terrace placement, landscaping, fencing, and two street-front dwelling units, all to achieve no adverse impacts;
- Internal parking for 32 vehicles is sufficient to meet the anticipated needs of the residential occupants, while promoting reliance on active transportation and public transit in this walkable, complete community.

[21] The City requests denial of the appeal and applications for the following reasons:

- Building height is limited by the SP, with some opportunity for minor additional height as guided by the MHS, such that 6 storeys is the maximum eligible for consideration;
- Site-specific OPAs should not be considered until the City's MCR is completed and implemented through a comprehensive OPA incorporating the SP area into the UHOP, all in accordance with the GP;
- The existing policy framework enables substantial intensification along James in keeping with the GP;
- With reduced setbacks and near complete lot coverage at this site, the building fails to achieve appropriate transition with the lots to the north and east.
- Parking spaces, in number and functionality, will limit this site's ability to accommodate all types of households, and the absence of visitor and patron parking may exacerbate the limited on-street supply of parking.

[22] HWN adopts the positions advanced by the City with additional focus as follows:

- The tall height and insufficient transition fail to enhance the character and sense-of-place in this already complete community;
- An approval here will set a new standard and may be duplicated in other developments all along James, in advance of the necessary comprehensive, community-based policy update following completion of the MCR.

### **PROVISIONS, POLICIES, GUIDELINES**

[23] The professional witnesses in testimony, and counsel in argument, referred to several sections of the relevant documents in support of their positions.

### **Planning Act**

[24] Under the Act, matters of provincial interest are established by s. 2:

2 The Minister, the council of a municipality ... and the Tribunal ... shall have regard to ... matters of provincial interest such as,

...

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

...

(p) the appropriate location of growth and development;

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

(r) the promotion of built form that, (i) is well-designed, (ii) encourages a sense of place, and (iii) provides for public spaces that are of high quality, safe, accessible, attractive and vibrant;

[25] The Act requires the Tribunal to have regard to decisions of the City and to the

information it considered:

2.1(1) When an approval authority or the Tribunal makes a decision under this Act that relates to a planning matter, it shall have regard to,

(a) any decision that is made under this Act by a municipal council or by an approval authority and relates to the same planning matter; and

(b) any information and material that the municipal council or approval authority considered in making the decision described in clause (a).

### **Provincial Policy Statement (“PPS”)**

[26] Several sections of the PPS were cited, although the witnesses addressed the primary issues with a focus on the same themes as contained in the GP. In the PPS, s. 1 Building Strong Healthy Communities includes s. 1.1.3 Settlement Areas where:

1.1.3.4 Appropriate development standards should be promoted which facilitate *intensification, redevelopment* and compact form, while avoiding or mitigating risks to public health and safety.

[27] Under s. 1.2 Coordination, the City is responsible for the matters of s. 1.2.4, including:

b) identify areas where growth or development will be directed, including the identification of nodes and the corridors linking these nodes;

...

d) where major transit corridors exist or are to be developed, identify density targets for areas adjacent or in proximity to these corridors and stations, including minimum targets that should be met before expansion of the boundaries of settlement areas is permitted in accordance with policy 1.1.3.8;

[28] Under s. 1.6.8 Transportation and Infrastructure Corridors:

1.6.8.3 ... *New development* proposed on *adjacent lands* to existing or *planned corridors* and transportation facilities should be compatible with, and supportive of, the long-term purposes of the corridor and should be designed to avoid, mitigate or minimize negative impacts on and from the corridor and transportation facilities.

[29] In s. 1.7, Long-Term Economic Prosperity is to be supported by:

e) encouraging a sense of place, by promoting well-designed built form and cultural planning, and by conserving features that help define character ...

## Growth Plan

[30] As noted earlier, how to conform with the GP is the focus of disagreement between the Parties. They refer to several sections that the planning witnesses agree build on the intensification themes found in the PPS.

1.2.1 ... The policies of the Plan ... are based on the following principles:

- Support the achievement of *complete communities* that are designed to support healthy and active living and meet people's needs for daily living throughout an entire lifetime.

...

- Provide for different approaches to manage growth that recognize the diversity of communities in the GGH. ...

2.2.1.2(c) within settlement areas, growth will be focused in:

- i. *delineated built-up areas*;
- ii. *strategic growth areas*;
- iii. locations with existing or planned transit, with a priority on *higher order transit* where it exists or is planned; and
- iv. areas with existing or planned *public service facilities*;

2.2.2.1 By the time the next *municipal comprehensive review* is approved and in effect, and for each year thereafter, the applicable minimum intensification target is as follows:

- a) A minimum of 50 per cent of all residential development occurring annually within each of the Cities of ... Hamilton ... will be within the *delineated built-up area*; ...

2.2.2.3 All municipalities will develop a strategy to achieve the minimum intensification target and *intensification* throughout the *delineated built-up*

areas, which will:

a) identify *strategic growth areas* to support achievement of the intensification target and recognize them as a key focus for development;

b) identify the appropriate type and scale of development in *strategic growth areas* and transition of built form to adjacent areas; ...

4.2.10.1 ... municipalities will develop policies in their official plans to identify actions that will reduce greenhouse gas emissions and address climate change adaptation goals ... that will include:

a) supporting the achievement of *complete communities* as well as the minimum intensification and density targets in this Plan;

b) reducing dependence on the automobile and supporting existing and planned transit and *active transportation*; ...

5.2.5.3 For the purposes of implementing the minimum intensification and density targets in this Plan, ... municipalities will, through a *municipal comprehensive review*, delineate the following in their official plans, where applicable:

...

c) *major transit station areas*;

### **Hamilton Wentworth Official Plan (“HWOP”)**

[31] In the Agreed Statement of Facts signed by all planning witnesses, the Planners agree that there are no issues with the HWOP arising from these applications.

### **Hamilton Official Plan (“HOP”)**

[32] The HOP contains guidance policies that direct and support the details found in the SP. In section C.7, policy 7.3 encourages a variety of housing forms to meet the needs of current and future residents, by supporting infilling and redevelopment (policy iii) and a range of dwelling types (policy v), all of which is to:

iii) and v) ... recognize and enhance the scale and character of the existing residential area by having regard to natural vegetation, lot frontages and

areas, building height, coverage, mass, setbacks, privacy and overview.

### **West Harbour (Setting Sail) Secondary Plan (“SP”)**

[33] The planning witnesses refer to several relevant sections of the SP set out below that are the focus of disagreement in this case.

[34] In the Introduction of the SP for the West Harbour planning area, s. A.6.3.1 notes the opportunity to “attract new types of development for the betterment of the local community and the city as a whole.” In addition to three “major change” areas, it references a focus on “commercial and mixed-use corridors within the area, where strategic redevelopment and streetscape improvements would strengthen the economic vitality of the corridors.” Outside these areas, residential areas are considered “Stable Areas” where any small-scale change permitted must “preserve their predominant residential character.”

[35] The SP’s principles in s. A.6.3.2 “balance the aspirations of the City and the local community for West Harbour” based on “extensive public consultation.” Principle 2, “strengthen existing neighbourhoods” seeks that “diversity within the neighbourhoods, physically and socially, reflecting the area’s rich and varied history” be “protected and enhanced.” “As changes in West Harbour continue,” the list of important considerations includes:

- i) ensure new development respects and enhances the character of the neighbourhoods;
- ...
- iii) encourage compatible development on abandoned, vacant and under-utilized land;
- iv) support James Street as the area’s main commercial street;
- ...

[36] Principle 7, “celebrate the City’s heritage” calls for “conserving and strengthening

the overall character of the West Harbour neighbourhoods and streetscapes.” And similarly, Principle 8, “promote excellence in design,” calls for “buildings that respect, complement and enhance the best attributes of West Harbour.”

[37] Central in this appeal are the General Land Use policies of s. A.6.3.3.1 of the SP. Policy 1 (i.e., A.6.3.3.1.1) delineates areas depicted on Schedule M-1 which identifies the land abutting both sides of James, from the railway overpass to the harbour, as a “Corridor of Gradual Change.” Policy 3 references Schedule M-2 as showing the official land use designations in West Harbour, with this site designated as Prime Retail and most of the lands fronting James, north of the railway, designated as Medium Density Residential 1 or Mixed Use.

[38] Policy 4 sets out building height limits with reference to the height map:

A.6.3.3.1.4 All new development in West Harbour shall be subject to the height limits shown on Schedule M-4, Building Heights, and prescribed in the specific policies of this plan.

[39] All along James, from the railway to just south of this site, Schedule M-4 permits “2-4 Storeys.” The intersection of James and Burlington is the exception, where the northeast corner (this site), southeast corner and southwest corner are permitted “3-5 Storeys” and the northwest corner, extending the full block to the north limit of James, is permitted “4-6 Storeys.”

[40] Of interest is that Policy 13(iii) permits a “range from 3 to 5 storeys” within the Medium Density Residential 1 designation, some of which also exists along James. Also, Medium Density Residential 2 designation, on the harbour pier lands for example, permits up to 8 storeys.

[41] Policy 5 clarifies that these height limits “shall prevail” in the event that the permitted density for a site may suggest permission for a larger building.

[42] Policy 18 sets out James as one of the “prime retail streets” where “mixed-use

developments with ground-floor, street-related commercial and community uses are permitted and encouraged.” The detailed policies require “eyes on the street” where street-level commercial uses enhance the public realm with windows and doors along a streetwall built close to the front property line. Ground and second floors may contain retail, restaurant and personal service uses, and upper floors are for office or residential uses. Building height is governed by Schedule M-4.

[43] James North and Burlington East are identified as Primary Mobility Streets on Schedule M-5 to:

A.6.3.3.2.4i) provide for the mobility of through traffic, people and goods, connecting major activity centres and neighbourhoods within West Harbour, and connection to points outside the area. The right-of-way width of Primary Mobility Streets shall be 20 metres ...

[44] The Urban Design policies are found in s. A.6.3.3.4 and reiterate that development “shall respect, complement and enhance the best attributes of West Harbour” and design for the pedestrian environment, appropriate parking locations, streetwalls and barrier-free access. Central to this case is policy 1iii):

A.6.3.3.4.1iii) Respect the design, scale, massing, setbacks, height and use of neighbouring buildings, existing and anticipated by this plan.

[45] The SP policies for Corridors of Gradual Change, including James as shown on Schedule M-1, are contained in policy A.6.3.6:

A.6.3.6 ... The intent ... is to enhance these corridors through positive, incremental change, acknowledging and reinforcing their mobility function ... Redevelopment of private lands and public improvements within the municipal right-of-way provide opportunities to improve their vitality as commercial streets, their character and image, and their pedestrian environment.

[46] In keeping with the SP’s principles and policies noted previously, the general policies here direct that:

A.6.3.6.1.4 Redevelopment ... shall respect the scale and character of existing development in adjacent Stable Areas, providing an appropriate transition in the height and massing of buildings; screening any surface

parking, loading and service areas; and minimizing traffic impacts on local streets.

[47] Policies specific to James are set out in policy 5, including:

A.6.3.6.5.1 James Street is the primary retail street in West Harbour. Redevelopment and improvements with the James Street Corridor shall reinforce this function, preserve historic buildings and enhance the character of the street.

A.6.3.6.5.2 The City may reduce the parking requirement for commercial uses on James Street to help preserve and continue the historic pattern of development in portions of the corridor.

### **James Street North Mobility Hub Study (“MHS”)**

[48] The MHS was completed in 2014 but to date has not been incorporated into policy for the SP area. The planning witnesses agree that the MHS is a study and, at most, is used as a guideline for assessing development applications. They refer to several common sections in reference to their positions.

[49] The Study Purpose in s. 1.1 explains that it arose from the provincial announcement for a new GO Station on James:

Mobility Hubs are major transit station areas [MTSA] that serve a critical function in the regional transportation network. They are areas that are expected to see significant revitalization in local community development in the form of building intensification ... with improved multi-modal connectivity will support regional growth management and transit-supportive development goals.

[50] The Study Purpose notes the provincial mandate to conduct a comprehensive review for Mobility Hubs to identify “opportunities and constraints related to intensification, land uses, ... place-making ... and quality of life.” The MHS objectives include:

2. Identify key design principles that provide guidance to the City for reviewing development applications and assisting in the identification of gaps in existing municipal design guidelines.

[51] The Policy Framework of s. 2.1 notes that the study falls under the 2014 PPS and the 2006 GP in effect at that time. It also refers to the SP as encompassing the entire James Street North Mobility Hub with James identified as a Corridor of Gradual Change and setting out land use designations and minimum and maximum heights.

[52] The MHS describes, in s. 2.3, the City's rapid transit plans for its A Line to run the full length of James, from the waterfront in the north, through the James GO Station and Downtown, and on to the Hamilton International Airport in the south.

[53] The study area in s. 2.4 describes the North End Neighbourhood as one of five neighbourhoods studied within the James Street North Community, noting its long history associated with industrial activity at the harbour and now being primarily a low density residential area with several high density apartment buildings. The area's population, with its higher proportion of young adults and children than the wider City, is expected to increase substantially in the coming decades across various age groups (s. 2.4.2).

[54] The Vision in s. 3.1 of the MHS is for "a seamless multi-modal community ... linking residents and visitors to opportunities with the Hub and across the region" while also:

As the Mobility Hub continues to change, growth will be accommodated along lively and animated mixed-use and mid-rise main streets, which will anchor adjacent stable residential neighbourhoods.

[55] The Guiding Principles in s. 3.2 include protecting stable neighbourhoods from undesirable development and intensification, with taller buildings designed to minimize shadowing, overlook and other adverse impacts. Intensification is "encouraged, where appropriate, through low-impact density and within close proximity to transit." Specific mention is given to James here:

5 ... Development will repair gaps in the built environment and be sensitive to community context and character, such as the existing James Street North streetwall.

[56] Additional guiding principles include design excellence for buildings that “need not mimic existing building materials and style but will maintain the rhythm and scale of the neighbourhood and integrate existing built, natural and heritage elements” (s. 3.2.6). Further, the MHS aims “to create a vibrant mixed use community that supports existing and new transit infrastructure” (s. 3.2.7)

[57] The MHS promotes “appropriate intensification, generally in the form of mid-rise development” (s. 3.3) but indicates further that “in some areas, tall buildings may be appropriate, given adjacent land uses, lot characteristics and context ...” but “only recommended where site conditions and context are appropriate” (s. 3.3). Such locations are labelled Focus Areas in s. 3.4 and include “Focus Area A: James Street North from the GO Station to the Waterfront.”

[58] The MHS, s. 3.4.1, uses “opportunity sites” to illustrate the types of appropriate intensification that it promotes. The built form envelopes for the opportunity sites were based on a 4.5 metre (“m”) ground floor height, 3.0 m residential floor heights above, and a 7.5 m rear yard setback. Section 3.4.1 notes the potential for additional height:

... Under special circumstances, additional heights of up to two storeys beyond what is identified may be allowed within larger Opportunity Sites if the development can demonstrate conformity with the Criteria for Taller Buildings in Appendix D. ...

[59] The MHS notes the 1,600 new residential units planned at Pier 8 and calls for “enhanced design standards” to “reinforce James Street North as a pedestrian link between the GO Station and the waterfront.

[60] For the James focus area, the MHS references the heights permitted by the SP, being 2-4 storeys along much of James, 3-5 storeys for three of the corners at the subject intersection of James and Burlington, and 4-6 storeys for the northwest corner. The MHS suggests midrise buildings be “generally defined as being no taller than the width of the street right-of-way [“RoW”] or between 5 and 11 storeys” (s. 3.4.2.1). This 1:1 ratio would define the maximum height permitted, tempered by angular planes on the front and rear. Physical constraints may prevent some sites from achieving the

maximum height. Noting James as 20 m wide, the MHS recommends not more than 6 storeys and within a 45 degree angular plane from grade at the far side of the RoW.

[61] The Implementation Strategy recommends amendments to the City's Official Plan and Zoning By-law (s. 5.1.10) to implement the MHS, and promotes such other actions as the City's Design Review Panel review new developments, review vehicle parking standards with the view to increasing transit ridership, and require bicycle parking facilities.

### **Corridor Planning Principles and Design Guidelines ("City Guidelines")**

[62] These "city-wide" guidelines dated April 2012 relate to properties along corridors identified in the UHOP. Although the UHOP identifies James as a corridor, the SP area has not been amended into the UHOP to date. The planning witnesses agree that these guidelines do not apply here, although given Ms. McIlroy's opinion that their application here results in improved transition, a brief explanation of their content follows.

[63] The guidelines tabulate various lots sizes with typical building height, showing that a lot of 1,020 square metres could support a building up to 12 storeys. A 45 degree angular plane is suggested from the rear property line where the site abuts one- and two-unit dwellings. Height should be limited by a 45 degree angular plane beginning across the street at 80% of the RoW width, such that wider streets can accommodate higher buildings. Lot line fencing and landscaping are recommended to screen views, maximize privacy and filter noise. Reduced parking requirements should be considered along higher order transit corridors or where car-share or bicycle storage are provided. Details are provided for appropriate street walls and the pedestrian environment. Side yards resulting in blank side walls are discouraged such that a consistent street wall is maintained, with suggestions for suitable height limits in relation to adjacent building heights. Shadow impacts should be evaluated if the building height guidelines are to be exceeded, and should not reduce sunlight on one side of the street below 5 hours on March 21.

## **EVIDENCE**

[64] The opinion evidence of the experts is summarized here along with the views of the residents, according to the three primary issues. For the most part, the witnesses analyzed the OPA and ZBA collectively, without specific analysis of the detailed ZBA provisions which quantify the issues considered.

[65] Through the Planners' Agreed Statement of Facts and their oral evidence, the issues here are focussed through the following findings, as generally agreed by the Planners:

- for provincial policy here, the PPS applies but the GP is the focus given its greater emphasis and direction on intensification and transit areas;
- the SP is the primary focus for local policy in this case;
- the MHS may be applied for guidance purposes;
- the City Guidelines are not applicable here; and
- as an identified corridor, James St. within 800 m of the GO Station will become part of the MTSA when identified by the City under the GP.

## **Height**

[66] Mr. Falletta for the Applicant opines as follows. A 9 storey building at this intersection of two minor arterial roads and on the James St. corridor is compatible with, maintains and enhances the character of the area. The neighbourhood consists of low, medium and high density residential uses along with commercial and office uses along James. Across James to the west of the site is a 6 storey office building with floor heights that result in a total building height estimated to be 24 m, similar to the 27 m height proposed here, especially given the office building's elevated site from the street.

On the next block further west is an 18 storey apartment building, and two blocks to the northeast of the site are two residential apartments of 19 and 22 storeys. Abutting the site to the north is a 6 storey residential building fronting Guise Street (“Guise”). Across Burlington to the south of the site is a commercial plaza with surface parking (southeast corner of intersection) and across James from it is a vacant parcel (southwest corner). Also considered in the character analysis are recent approvals of the City for an 8 storey mixed-use building at 468 James, and 10 storey buildings at 282 MacNab Street and 41 Stuart Street, close to and southwest of the James GO Station.

[67] On the evidence of Mr. Kasprzak and Mr. Elkins, Mr. Falletta considers the design, massing and transition of the building and the method and number of parking spaces to be suitable for the area without generating undue impacts. The immediate area along Burlington to the east of the site consists of 1 and 2 storey dwellings with shallow setbacks and narrow side yards.

[68] Mr. Falletta considers the neighbourhood to be in transition from underutilized properties, such as this site, toward more compact, higher density development. An example is a large site referred to as Jamesville, on the west side of James just north of the GO Station, for which a concept plan is under discussion that includes at least one building of 8 storeys in response to the City’s request for proposals. Other examples include the 8 and 10 storey approvals noted earlier.

[69] For alliance with provisions and policies, Mr. Falletta opines as follows. The applications have appropriate regard for the provincial interests of s. 2 of the Act, by assisting in the provision of a full range of housing, in a location appropriate for growth and development, in support of transit, and of a built form that is well designed, encourages a sense of place, and enhances public spaces. The applications are consistent with the PPS policies related to compact form, intensification, support for existing and planned transit, and well-designed built form. In conformity with the GP, the height and resulting density contribute to achieving a complete community, in a location with existing and planned transit, and one where, while not yet so identified,

falls within the MTSA of the James GO Station and as a SGA. Municipalities are to reduce dependence on the automobile and support existing and planned transit and active transportation.

[70] Mr. Falletta emphasizes that the OPA is to amend only the permitted height for this site, and that it conforms with all other SP policies. He notes that the UHOP identifies James as a primary corridor and a transit way which have not been implemented for the SP area to date. In light of satisfying all of the above-noted provincial policies, Mr. Falletta considers the amendment to the SP to further provincial policy in a manner otherwise in conformity with the SP. He considers the SP height policy to not be rigid, in part because of its broader policies and other OPAs approved for taller buildings in the area.

[71] Mr. Falletta views the MHS as supportive of taller buildings, even though it is but a study and not implemented into planning policy. It suggests taller buildings at this intersection and references opportunities for greater heights where suitable. He considers the study reflective of the then GP intentions for higher density targets but notes that the current GP now imposes yet a higher growth allocation in settlement areas and the further need to support intensification in a MTSA.

[72] Mr. Falletta views the SP as outdated, given the two subsequent amendments to the GP increase its emphasis on transit-supportive density and intensification. He opines without doubt that the SP area, when updated to the current GP, will necessarily permit higher midrise buildings along James to both support the City's intensification targets and to support existing and proposed transit.

[73] To the contrary, Mr. Eby for the City views the SP as being ahead of its time by envisioning the gradual transition of James to reasonably heighted midrise, mixed-use buildings suitable to the wider neighbourhood. He considers the height limits of the SP to conform with the GP's current requirements for intensification and transit-supportive development. Mr. Eby contends that exceptions to height should not be granted under the SP until a comprehensive planning exercise with extensive community input is

undertaken, as was done for the SP itself.

[74] In support of his opinions, Mr. Eby testified as follows. The City is now working on a MCR as directed by the GP and the comprehensive approach to new policy development envisioned by the GP should be followed. The City has already responded to the James GO Station through the MHS, again with substantial community input, resulting in non-policy guidance for marginally higher buildings than permitted by the SP. Since the existing SP and MHS enable accommodating thousands more people in the North End, further height is neither appropriate nor necessary. Taller buildings than currently allowed should not be permitted unless supported in future by the MCR and resulting policy.

[75] On this site, Mr. Eby considers the wider RoW an anomaly that should not warrant a taller building. He cites the MHS reference to James being 20 m wide resulting in a recommended 6 storey height based on the 1:1 ratio. Mr. Eby acknowledges that the wider RoW here allows for some consideration of 7 storeys and that the proposed 27.5 m is 4 m higher than the 23.5 m RoW here. However, he views the SP as not anticipating higher midrise buildings along James given its absence of policies for reviewing such applications. Mr. Eby concludes that the proposed height of 9 storeys, being 50% higher than the 6 storeys permitted by the SP and MHS, is outside the reasonable range for consideration in these circumstances. He further relies on the position that this site at the limit of the planning area for a MTSA, being 800 m, should not exceed existing permitted intensification because it may reduce the demand for same closer to the James GO Station.

[76] Ms. McIlroy focusses mainly on transition, but in that context opines that overall height should not exceed the 6 storeys anticipated by the MHS to respect the scale and character of the broader neighbourhood, and for better consistency with the lower building heights anticipated along James to the south of the site.

[77] Stephen Park advises that HWN supports coherent development based on existing policies and disagrees with a case by case approach to planning. He is

concerned that heights will creep up, such as this 9 storey request following a previous 8 storey approval, and advises that HWN is filing a position with the City in support of retaining a 6 storey policy limit along James from the GO Station to Guise. He considers the resulting potential intensification to exceed the North End's responsibility for accommodating population growth.

### **Transition**

[78] Mr. Kasprzak's opinion evidence on urban design, called by the Applicant, is summarized as follows. The neighbourhood consists of a mix of building heights, with midrise and tall buildings coexisting with a variety of low-rise dwelling types. An acceptable transition for the dwellings to the east of the site is accomplished by the two townhouse-style units fronting on Burlington with their 3 m recessed facades, a side yard of 3 m adjacent to the abutting house, the absence of east facing windows for the first 4 storeys, and east side stepbacks beginning at the fifth storey in accordance with an angular plane commencing from 11 m above the east lot line. The use of the stepbacks as outdoor terraces result in views from the adjacent windows being horizontal rather than downward, thereby reducing overlook on adjacent dwellings and yards.

[79] For the street-side facades, Mr. Kasprzak opines that the commercial space doors and windows and wide sidewalks support the desired pedestrian and retail streetscape along James. The building steps back at the sixth storey and above along James and Burlington based on an angular plane commencing from street level at 80% of the RoW width, resulting in less visible upper storeys and reduced shadowing. The prominent streetwalls along both streets help to define this important intersection at the north end of James.

[80] The City Guidelines, while not applicable here, are referenced in relation to shadowing. At the March 21 and September 21 equinoxes, the shadow withdraws from the opposite sidewalk on James by late morning, ensuring at least 5 hours of direct sunlight noted by the City-wide Guidelines, and no appreciable shadows on the

residential yards to the northeast until 5:00 p.m. or later. Further, because of the building's setbacks, these shadows are not significantly different than a permitted 5 or 6 storey building if built on this site.

[81] Mr. Kasprzak considers the north lot line being identified as the rear property line as appropriate given that a continuous street wall is desirable along both James and Burlington, and because the north lot line abuts a parking lot serving the 6 storey apartments on Guise. The ZBL allows for the choice of front lot line for corner lots, designated as Burlington here with support of City staff, resulting in the north lot line as rear. Given the lower width side yard on the east side, the building responds with the features noted above to achieve a suitable transition.

[82] Mr. Kasprzak concludes that this midrise building, similar in height to the office building across James and appropriate for the RoW width, enhances the public realm, ameliorates the effects of upper storeys, responds appropriately to the existing and planned context, and transitions well towards adjacent dwellings.

[83] In contrast, Ms. McIlroy, called by HWN, does not find the proposed design to adequately address the need for compatible transition to the east and north of the site, nor to respect the anticipated lower heights along James to the south of the site.

[84] In addition to the SP and MHS, Ms. McIlroy considers the City Guidelines as a suitable reference for guidance here, noting that all of these documents plan for midrise forms of development along main streets to spread density more evenly along corridors. Ms. McIlroy emphasizes that the design considerations of setbacks, setbacks and angular planes must promote a human scale along the corridor and protect adjacent stable neighbourhoods.

[85] Ms. McIlroy details her position as follows. James, as the primary corridor, should be fronted by a continuous street wall, with the vehicle access lane moved to the Burlington side. Although choice of front lot line is enabled by the ZBL, James should be the front lot line such that the opposite lot line abutting the residential lots to the east

is the rear lot line. The MHS suggests a 7.5 m setback for such interface. As illustrated in the City Guidelines, the angular plane should commence at grade from this rear lot line, resulting in stepbacks on lower floors than that proposed at the fifth floor. Along the north lot line, larger setbacks are recommended to provide separation from any potential future development in the abutting parking lot area.

[86] Mr. Eby opines that the penthouse and roof-top outdoor amenity area result in yet a taller structure related to massing and overlook.

[87] For HWN, resident Mr. Park emphasizes that the neighbourhood's strong sense of community, based on its history and its walkable location between the harbour and downtown, should be nurtured and enhanced. Ms. Poynter, who resides across Burlington just east of the site, considers the proposed building suitable for downtown but not suitable here, given its height, massing and limited setbacks. Ms. Poynter strongly dislikes the blank east wall of the proposed building. Mr. Plessl doesn't accept the shadow study findings and maintains that the design will cause excessive shade and overlook on his and other residential properties. The Participants recognize an opportunity for a 6 storey building but oppose a taller structure.

## **Parking**

[88] Mr. Elkins, for the Applicant, focusses on parking supply and means, noting that no issues remain related to traffic demand management. He conducted the transportation studies for the Applicant and opined that the following results were appropriate and acceptable in support of his conclusion that no negative parking impacts will result.

[89] The proposed 32 parking spaces for 55 dwelling units result in a parking rate of 0.58 spaces per unit. Given existing transit, surveys of similar sites, and experience with other Hamilton developments, such parking rate is adequate. The parking rate complies with and slightly exceeds the Institute of Transportation Engineers' rate for midrise residential buildings. By another measure, the rate is just three spaces short

based on the incidence of vehicle ownership by apartment residents in this area. Surveys of other sites in the City considered reasonable comparisons, including the abutting apartments at 2 Guise Street, supported the sufficiency of 0.58 spaces per unit. This rate supports the use of existing transit, both along James and at the James GO Station, and is further supported by ample on-site bicycle parking. Such arrangements support a move away from an “auto-centric environment.”

[90] The absence of parking for visitors and patrons to the building is supported by the sufficient availability of on-street parking on area streets, based on the completed study. Further, the ZBL does not require parking for a commercial use (this position was later clarified to be no parking for a retail use).

[91] A loading space for service vehicles, while tight and requiring competent drivers, complies with the required turning radius of a typical mid-sized garbage truck or moving truck.

[92] The means of providing parking spaces is by a stacker system (“stacker”) whereby drivers enter an open door at grade, park their car on a rack, and following their exit from the vehicle, the rack rotates into storage. The building would have two, three-level stackers, one for 8 cars along the west end of the access lane, and one for 23 cars along the east end of the lane. One additional grade-level space will be located beside the loading space, for a total of 32 spaces.

[93] The stacker spaces are slightly smaller than required by the ZBL but will still accommodate up to a typical sport utility vehicle (SUV) size with suitable front, back and side clearances. The stacker will accommodate up to the 85<sup>th</sup> percentile of the dimensions of the top ten cars and top ten SUVs sold in Canada. He acknowledges that the system may be inconvenient or problematic for a person with limited mobility or for a parent accompanied by young children. While not suitable for all households, purchasers of a residential unit can decide whether the offered parking suits their needs and preferences.

[94] The City has approved the use of stackers at other developments and such systems will be regulated like elevators by the Technical Standards and Safety Authority.

[95] Mr. Brook, for the City, acknowledges little issue with the parking rate, other than contending this it is at the low end of acceptable and that more would be preferred. He focusses his opinion evidence on concerns for the proposed stacker system, as follows.

[96] Given the 85<sup>th</sup> percentile of common vehicles used for sizing, it will not accommodate larger common vehicles such as medium-sized SUVs or pickup trucks. Parking for residential uses should accommodate the range of vehicles known and expected to be owned by the occupants. In the absence of parking, owners must find an alternative such as on-street parking. The inconvenience of a stacker encourages users to park on the street between their car trips during the day. These issues should be addressed by the Applicant in the form of alternative parking arrangements, given that overnight on-street parking will not be available to the building's occupants.

[97] The use of stackers may be difficult or introduce safety issues for families with children, will cause on-street parking and inconvenience during stacker breakdowns or routine maintenance, and may cause delays accessing the property when several owners attempt to park at the same time.

[98] Mr. Brook opines that accessible parking spaces should be provided, even if not required by the City, given the aging societal demographics.

[99] Mr. Brook emphasizes that the turning radii for trucks using the loading space extends from wall to wall, or post to wall, such that vehicle scraping will inevitably result. He recommends that offsets be provided adjacent to the building's vertical obstacles.

[100] For HWN, Ms. Poynter clarifies that no parking is permitted along either side of Burlington adjacent to this site, given its proximity to the intersection and the presence of a fire hydrant. Mr. Plessl advises that on-street parking is in high demand because

several homes in his block of Hughson Street, the first street east of the site, have no off-street parking space and visitors to the area also use the on-street parking. Two of the Participants reside to the east of the site on Burlington and similarly note that several homes do not have off-street parking, and on-street parking is in short supply.

[101] One of the Participants resides at 2 Guise and expresses concern that the number and type of parking for the site's residents and the absence of retail parking will result in people using the adjacent parking lot at 2 Guise.

### **ANALYSIS AND FINDINGS**

[102] After careful consideration of the opposing opinions on the three primary issues, the Tribunal finds for the Appellant. For the reasons that follow, the opinions of the Appellant's experts are accepted over those of the City and HWN. Before examining the three primary issues, two fundamental matters warrant review here, being whether OPAs like the current file should await the City's MCR, and the role of the SP in assessing an amendment to it.

[103] A substantial component of Mr. Eby's opinion is based on his view that, before such OPAs as this are considered, the City's MCR should be completed and subsequently implemented through a comprehensive public process to draft and adopt necessary amendments to the SP and/or UHOP. In his view, such GP-mandated process is warranted first, because the current SP with its height limits was developed through a similar process under the GP at the time. The Tribunal understands the basis for Mr. Eby's conclusions as the GP provides considerable instruction to municipalities on where and how to plan for intensification.

[104] However, the Tribunal prefers the conclusions of Mr. Falletta and finds that the GP is to be conformed with today in the context of this OPA, not at some future date. Supporting such finding is the Planners' agreement on the following: the GP now, as compared to previous versions, requires municipalities to increase their intensification plans (e.g., 50% of residential growth to be within built-up areas); the UHOP, albeit not

in force for the SP area, identifies James as a corridor for intensification; and this site will be within the MTSA when so delineated by OPA under the GP. Such conclusion results in the acceptance to consider an OPA in advance of the comprehensive MCR process being completed. The Tribunal is reminded of its legislative obligation by s. 1.2.2 of the GP stating that “all decisions in respect of the exercise of any authority that affects a planning matter will conform with this Plan ...” (emphasis added).

[105] The Tribunal accepts that the City’s planning processes are complex and time-consuming as directed by the GP, but that same GP must be considered when evaluating an OPA. In this context, awaiting the MCR and its policy implementation opined by Mr. Eby could well involve years of non-consideration of new developments. Already, some seven years have passed since the completion of the MHS. While the Tribunal agrees that the existing SP does allow for some intensification, it finds that the GP intentions for comprehensive planning do not over-ride a landowner’s right to apply for an OPA under s. 22 of the Act. Further, no such postponement of the City on other similar OPAs was proffered in evidence to support the City’s argument. On the contrary, the City has received and approved other intensification applications in the SP area, including one for 8 storeys on James (now under appeal), and as noted above, these applications were similarly required to conform with the GP.

[106] This finding is directed by the GP itself. As stressed in the Applicant’s closing submissions, a guiding principle of the GP s. 1.2.1 is to “prioritize intensification and higher densities in *strategic growth areas ...*” (emphasis added) in pursuit of complete communities, the efficient use of land and, importantly here, to support transit. As arose in oral evidence, given that the City has not completed the studies and amendments anticipated by the GP, Mr. Falletta emphasizes this paragraph in s. 5.1:

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

[107] In other words, the directions of the GP to be implemented comprehensively by

the City must also be applied to this OPA and ZBA in order to conform with the GP. The Tribunal finds that a Decision here to deny or defer the OPA indefinitely would not conform with the GP.

[108] Also central here is the role of the SP in assessing whether an amendment to it is appropriate. Both Mr. Falletta and Mr. Eby provided their opinions on this question and the Tribunal prefers that of Mr. Falletta. The Tribunal accepts the concurrence of both planners that the SP sets a firm height limit of 5 storeys for this site and thus requires an OPA. Such OPA should be evaluated under the purpose and intent of the SP, which, applicable to this case, includes policies that: permit marginally taller buildings at this intersection than elsewhere on James; recognize the similar height office building directly across from this site; allow 8 storey buildings at the harbourfront; and permit 8 and 10 storey buildings by recent approvals on other sites in the area.

[109] The SP in its present form relevant to this dispute contains general directional policies for height, as well as policies that permit marginally taller buildings in certain locations. Thus, the policy context here is a SP that permits a range of building heights, based on policies of principle and intent as well as full consideration of individual site characteristics. The previous OPAs are not precedents but do result in a SP that permits a range of heights based on its policy vision and site circumstances. They result in both a policy and community context that includes a range of building heights, within which these applications may be evaluated. This finding now enables a full consideration of the three primary issues in dispute.

## **Height**

[110] As noted above, the SP is not a barrier to considering an OPA for height. The SP contemplates a modest 5 storeys at this site while also allowing taller buildings on other sites. The MHS contemplates allowing 6 storeys at this site with reference to a standard 20 m RoW, and also leaves open the opportunity for taller buildings "... given adjacent land uses, lot characteristics and context ..." (s. 3.3) within various areas including "Focus Area A: James Street North from the GO Station to the Waterfront" (s.

3.4). Also as noted above, the GP is found to support density and intensification, especially in proximity to inter-regional transit. The planners agreed that this site on James will be within a MTSA when so considered under the GP, and will also be within a SGA given James' existing status under the SP, recognition as a corridor in the UHOP, proximity to the GO Station, and the existing and planned City transit systems.

[111] Given the above context, the question remains whether a 9 storey building on this site is appropriate. Here, the overall issue of height is addressed and the detailed transition matters are examined later.

[112] The Tribunal finds that the immediate neighbourhood context supports the request for a midrise building of 9 storeys here. Taller buildings are not absent in the immediate neighbourhood, given the residential towers to the west and northeast of the site, and the potential for future tall buildings on the harbourfront pier lands as noted by the Applicant and HWN. As noted earlier, the City has either approved or is considering midrise, 8 storey buildings further south along James (468 James and Jamesville). Of significance is the office building across James to the west of this site, being of similar height to that proposed here. Although that office building is set back from the street, its existence remains and results in the proposed building closely matching the height of a building directly across the street. As supported by all the Planners here, current planning supports buildings sited up to the street line in support of mixed uses, a pedestrian friendly environment, and consistent streetwall. The proposed front wall stepbacks based on a 1:1 RoW ratio help to mask the higher storeys when viewed from nearby street level, resulting in an apparent building façade of 6 or 7 storeys.

[113] Given the foregoing context, the Tribunal finds that a well-designed 9 storey building on this site will maintain and not negatively affect the character of the neighbourhood. While the Tribunal acknowledges the contrary opinion of HWN's "resident experts" as titled by their counsel, who testified to their sense of place, the policy and physical environments lead to a finding that this development conforms and is compatible.

[114] Mr. Eby acknowledged the potential to consider 7 storeys at this site given the adjacent RoW width. That evidence leaves this dispute to the top 2 storeys. As addressed in more detail below, the Tribunal finds that, in the context of this neighbourhood's mixed building heights, the reduced footprint and position of the top 2 storeys respect the character of the neighbourhood and do not result in adverse impacts to adjacent properties.

### **Transition**

[115] The Tribunal finds that the urban design of the proposed building sufficiently addresses the tests for appropriate transition, maintaining or enhancing the character of the neighbourhood, and not resulting in unacceptable negative impacts on adjacent uses or the broader neighbourhood.

[116] Along both streetlines of this prominent corner lot, suitable streetwalls will frame the street and pedestrian environment, as further supported by grade level commercial space. Stepbacks at the seventh and ninth storeys assist in masking the upper floors from view from the street. The resulting façade massing presents more like a 6 or 7 storey building as envisioned by the MHS. While not consenting to an outcome, Mr. Eby agreed that a 7 storey building could be considered and Ms. McIlroy conceded that some aspects of the streetwalls satisfy the City Guidelines, although not technically applicable here.

[117] Along the north property line, other than the access lane structure and its rooftop terraces for adjacent units on the third floor, the building maintains a reasonable setback of 5.25 m. The Tribunal accepts the evidence of Mr. Kasprzak that this design does not preclude future development on the current parking lot area to the north. For example, streetwalls at ground level could potentially join, appropriate functions could abut the access lane on this site, and upper floors could account for this building by reasonable setbacks and suitable unit layouts.

[118] At greatest issue in evidence is the transition to the low-rise residential uses to

the east of the site. On the evidence of Mr. Kasprzak, the Tribunal finds that no undue negative impacts are imposed onto adjacent properties from this site and that the design respects the character of the neighbourhood. First, a transition in land use has been incorporated by the 2 storey residential units at grade which will function as street-front townhouses not unlike other dwellings along Burlington.

[119] Next, the building responds to an 11 m high angular plane from the east lot line, resulting in sizable, cumulative setbacks above the fourth storey. Such massing results in a declining height towards the low-rise neighbourhood and a reduction in perceived and real overlook and shadows. The Tribunal heard that a similar approach has been accepted and applied in other midrise developments within the SP area. Here, to further reduce overlook, the east side of storeys 1 through 4 will contain no windows. To Ms. Poynter's concern that the resulting blank wall is unacceptable, many options are available for consideration by the City at the time of site plan control. Wall texture, fencing, well-sized trees, or public art are examples of common approaches to masking or enhancing such walls.

[120] To Mr. Plessl's concern for excessive shadowing on area residential properties, the Tribunal relies on the uncontested shadow study prepared in accordance with conventional practices. At the equinoxes, the building's shadow will not reach dwellings along the west side of Hughson Street North until after 5:00 pm, and the building's setbacks result in shadows in the rear yards of those dwellings not substantially different than would be produced by a 5 storey building on this site.

[121] Also related to transition is the issue of designating the front lot line under the ZBL. The Tribunal finds, as agreed by the witnesses, that the ZBL enables such choice and that City staff, in consultation with the Applicant, concurred that Burlington is the preferred front, accounting for preferred access location and consistent streetwalls. To Ms. McIlroy's preference for a rear yard adjacent to the abutting residential area, the Tribunal prefers the proposed streetwall approach here, as supported by the acceptable transition in design reviewed above. Such placement is consistent with the tight side

yards that are common along this section of Burlington and found to satisfy the SP's emphasis for streetwalls, particularly at this more prominent intersection.

## **Parking**

[122] On the issues of parking supply and format, the Tribunal finds for the Applicant. While Mr. Brook raised a variety of shortcomings of the proposed stacker, the Tribunal finds Mr. Elkins' responses to those issues as reasonable and consistent with relevant policies, as reviewed below.

[123] The primary documents involved here, being the GP and the SP, present a strong focus for transit-oriented development. The experts acknowledge that transit services and residential density are mutually supportive. Existing transit both benefits from and supports the creation of higher density housing. The reverse is also true: higher density both benefits from and supports existing and future transit. This site is a model example involving transit, with the existing City bus service at this intersection, the existing GO Station on James within walking distance, and the City's intent to enhance the James corridor in future with a rapid transit line from the harbour in the north to the airport in the south.

[124] On the parking rate of 0.58 spaces per unit, the Tribunal is satisfied with the rationale provided by Mr. Elkins' studies. Such rate is comparable to similar sites studied, is similar or higher than recent City approvals, including in this neighbourhood, and reflects the incidence of automobile ownership of apartment dwellers. Of importance is the relationship of this rate to the policy goals of transit supportive development, the efficient use of land, and environmental protection. The clear policy direction is to discourage automobile use and encourage transit use. Mr. Elkins captures the concept well with his reference of the need to address the "auto-centric environment" with appropriate discouragements to automobile ownership and use. The Tribunal sees the GP's policy of "reducing dependence on the automobile" to be illustrated here: up to 32 of the residential units may have a car, and at least 23 will not.

[125] A similar influence arises from the potential inconveniences associated with a stacker. Car owners choosing to purchase a residential unit here must accept the logistics of using the stacker, including its effect on vehicle choice, in-out convenience, operational cost, the need for user training, and the absence of visitor spaces. In this sense, the stacker provides necessary parking while also supporting the use of transit.

[126] The Tribunal accepts that visitors who drive to the residential units or patrons who drive to the commercial space must find available on-street parking. Mr. Elkins' uncontested study demonstrates available spaces, although the residents warn that such spaces are well-used. As clarified by Mr. Falletta, retail uses along James are exempt from providing parking spaces, while other uses may require them. This may dictate what commercial uses choose to locate at this site. The absence of visitor spaces, as noted above, will be part of the purchase decision, and again supports existing and future transit as intended by the GP and SP.

### **City Decisions**

[127] As noted at the outset, under s. 2.1(1) of the Act the Tribunal must have regard to any decision of City Council made under the Act that relates to the same planning matter, and the information considered by City Council in making those decisions. This obligation has two facets in this case: the decision of the City refusing these applications, and other decisions of the City that "relates to the same planning matter" being the issue of permitted heights under the SP.

[128] The Tribunal has had regard to the City's five reasons explaining its refusal of these applications, in short being: not conforming with the SP, inadequate parking, inappropriate height, unacceptable shadows, and conflicts with the MHS. Each of these matters is addressed throughout this Decision.

[129] The Parties provided argument on the relevance of oral and written evidence pertaining to recent City decisions on building height in the SP. The Applicant argues that these decisions underscore the SP's variable height requirements based on the

merits of individual cases. HWN argues that those same decisions illustrate the danger in deviating from the SP because the heights requested will continue to rise. The City acknowledges that each case will have its own distinguishing details and argues that the planned context, as expressed through the SP, should be upheld.

[130] The Tribunal considers neither those recent OPAs nor this Decision to be precedent-setting. Each case must be determined on its own merits. As reviewed earlier, of importance here is that the relevant SP contains a variety of heights, some by original policy and some by amendment, which collectively provide both a policy framework and a built environment for consideration of the requested 9 storeys.

### **Case Law**

[131] The above point is further illustrated by the Parties' reference to this Member's Decision in *2915 Bloor Street West Limited Partnership v Toronto (City)*, 2019 CanLII 42152 (ON LPAT). On the surface, that case appears highly similar to this case, being a question of whether two extra storeys should be permitted on a midrise building along a main street served by transit. However, upon delving into the details of both the policy and neighbourhood context, these cases are entirely different. Each has been decided on the unique contextual merits of the case as evaluated against prevailing policy and local circumstances.

[132] HWN argues that the approval of more storeys will set sequential precedents for further height along James. The Tribunal has reviewed above how the built environment and the policy framework are fundamental to the assessment of applications, but the Tribunal maintains its legal duty here to assess each case on its own merit, as cited in the Tribunal decisions provided by the Applicant.

[133] The City refers to other Decisions of the Tribunal (and its predecessor OMB) where questions of over-intensification were considered, arguing that such is the result here by rising 3 storeys, or 50% over the acknowledged SP and MHS height of 6 storeys. Again, in the context of this case, no such over-intensification is found given

the corridor location, proximity to City and regional transit, the mixed heights of surrounding buildings, and acceptable transition to adjacent lower scale houses.

### **Summary**

[134] In summary, the Tribunal finds the OPA and ZBA to result in development that contributes to a complete community. After careful consideration of the policy and neighbourhood environment and related decisions of the City, the Tribunal finds that the height, transition and parking proposed by the Applicant represent good planning in the public interest.

[135] The Tribunal finds the OPA and ZBA to have regard for the provincial interests of s. 2 of the Act, to conform with the GP, to be consistent with the PPS, and to conform with the HWOP and the HOP. Further, the Tribunal finds the OPA to adequately address and complement the vision, goals and planned context of the SP, and finds the ZBA to conform with the SP as amended.

### **ORDER**

[136] The appeals are allowed and the OPA and ZBA are approved as set out in Tab 69 of Exhibit 1B, to which the City Clerk may assign document numbers as necessary.

*“S. Tousaw”*

S. TOUSAW  
MEMBER

If there is an attachment referred to in this document,  
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### **Local Planning Appeal Tribunal**

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