

Ontario Land Tribunal
Tribunal ontarien de l'aménagement
du territoire



ISSUE DATE: November 08, 2021

CASE NO(S): PL200274

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

Applicant and Appellant:	LIV Developments Ltd.
Subject:	Request to amend the Official Plan - Failure of the City of Hamilton to adopt the requested amendment
Existing Designation:	Neighbourhoods
Proposed Designated:	Site-specific – To be determined
Purpose:	To permit the development of 123 stacked Townhouses with a reduction in minimum density requirements
Property Address/Description:	157 Parkside Drive
Municipality:	City of Hamilton
Approval Authority File No.:	UHOPA-17-006
OLT Case No.:	PL200274
OLT File No.:	PL200274
OLT Case Name:	LIV Developments Ltd. V. Hamilton (City)

PROCEEDING COMMENCED UNDER subsection 41(12) of the *Planning Act*, R.S.O. 1990, c. P.13, as amended

Referred by:	LIV Developments Ltd.
Subject:	Site Plan
Property Address/Description:	157 Parkside Drive
Municipality:	City of Hamilton
OLT Case No.:	PL200274
OLT File No.:	PL210079

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

Applicant and Appellant:	LIV Developments Ltd.
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Subject: Application to amend Zoning By-law No. 05-200 and 90-145-Z - Neglect of City of Hamilton to make a decision

Existing Zoning: Agriculture (A)

Proposed Zoning: Medium Density Residential (R6), Modified and Conservation / Hazard Land (P5) Zone

Purpose: To permit the development of 123 stacked Townhouses with a reduction in minimum density requirements

Property Address/Description: 157 Parkside Drive

Municipality: City of Hamilton

Municipality File No.: ZAC-17-016

OLT Case No.: PL200274

OLT File No.: PL200275

Heard: September 27 to October 6, 2021 by video hearing

APPEARANCES:

Parties

LIV Developments Ltd.

City of Hamilton

Counsel

Russell Cheeseman
Stephanie Fleming

Patrick MacDonald

DECISION DELIVERED BY BRYAN W. TUCKEY AND ORDER OF THE TRIBUNAL

[1] LIV Developments Ltd. (“Appellant”) filed appeals regarding the failure of the City of Hamilton (“City”) to make a decision on an Official Plan Amendment (“OPA”) pursuant to s. 22(7), a Zoning By-law Amendment (“ZBA”) pursuant to s. 34(11) and a Site Plan Application (“SPA”) pursuant to s. 41(12) of the *Planning Act* (“Act”). These applications are to facilitate the development of the subject lands legally identified as Part of Lot 10, Concession 4 in the former Township of East Flamborough now in the City and are located within the Community of Waterdown. The subject lands are municipally known as 909 North Waterdown Drive (formerly 157 Parkside Drive).

PRELIMINARY MATTERS

[2] Prior to the commencement of the hearing, counsel on consent requested the Tribunal to adjourn the SPA portion of this appeal pursuant to s. 41(12) of the Act until the Tribunal issues a decision on the requested OPA and ZBA. This would allow for greater certainty on the details of the subject lands zoning should the implementation of the site plan be required because of the Tribunal's decision. The Tribunal agrees as the suggestion offers "the best opportunity for a fair, just, expeditious and cost-effective resolution of the merits of the proceedings" (s. 1.3 of the Tribunal's *Rules of Practice and Procedure*).

[3] The effect of this ruling is that Issues 18 – 20 found in the Issues List of the Procedural Order ("PO") are not dealt with in this hearing. Parties committed to advise the Tribunal within 60 days of its decision regarding the OPA and ZBA whether a contested hearing is required on the remaining site plan related issues or could the matter be resolved either through a settlement hearing or a withdrawal of the s. 41(12) appeal. Should a contested hearing be required, parties agree that revised or supplementary evidence may then be provided on these issues as required.

[4] Counsel also advised the Tribunal that expert witnesses have come to a consensus on a considerable number of the issues found in the PO's Issues List. Issues where consensus has been found and not requiring the Tribunal's adjudication are: Natural Heritage – Issue 10; Engineering – Issues 11 – 15; and Traffic/Transportation Issue 16.

[5] The Tribunal commenced the hearing agreeing, to and in keeping with, these Counsel requests.

KEY ISSUE

[6] The Tribunal heard from the outset of the hearing that the subject lands are appropriate for residential development, but it is abundantly clear that the key issue is:

1. Is a stacked townhome development, in keeping with the statutory policy objectives of the relevant Provincial and City planning policies, thereby making a redesignation of the subject lands from a High Density Residential 1 with a minimum density of 100 units per gross residential hectare (“u/ha”) to a Medium Density Residential 3 with a minimum density of 60 u/ha, appropriate?

THE WITNESSES

[7] The Tribunal has the benefit of testimony from six witnesses. This decision includes oral testimony and material found in the various expert witness statements (“WS”) and reply witness statements (“RWS”). The witnesses are as follows:

1. Land Use Planning – John Corbett for the Appellant (WS, Exhibit 3, Tab 52) and David Sajecki for the City (WS, Exhibit 3, Tab 55 and RWS Tab 60). Both are qualified to give expert evidence in the discipline of Land Use Planning.
2. Urban Design – John Richard for the Appellant (WS, Exhibit 3, Tab 54 and RWS Tab 59) and Antonio Gomez-Palacio for the City (WS, Exhibit 3, Tab 56 and RWS Tab 61). Both are qualified to give expert evidence in the discipline of Urban Design.
3. Transportation and Traffic Planning – David Argue for the Appellant (WS, Exhibit 3, Tab 53) and for the City Steve Molloy (WS, Exhibit 3, Tab 57 and RWS Tab 32). Both are qualified to give evidence in the discipline of Transportation and Traffic Planning.

SITE AREA AND CONTEXT

[8] The subject lands are in the Community of Waterdown (former Town of Flamborough) at the corner of Mosaic Drive and the newly constructed North Waterdown Drive. The total area of the subject lands is approximately 17 hectares (“ha”) in size but the net developable area is 1.85 ha because of a significant natural heritage system surrounding the subject lands, required buffers to protect the natural heritage features and takings to construct North Waterdown Drive. The remainder of the subject lands will continue to be protected within the natural heritage system which includes the Borer’s Creek.

[9] The subject lands are within the Waterdown North Neighbourhood that has a mix of land uses including residential, commercial, industrial, and institutional. Existing housing is predominately single detached dwellings but includes semi-detached, duplex dwellings and townhomes. Immediately south is a neighbourhood that has been recently developed and is known as “Kaleidoscope Phase 2”. Within a kilometre are several community related facilities including an elementary and high school, the Flamborough Family YMCA and access to trails and open space.

[10] The newly constructed North Waterdown Drive and Mosaic Drive are minor arterial roads. Transit services are operated by the Hamilton Street Railway and a bus stop is located at the corner of Parkside Drive and Duncan Avenue, approximately 550 metres from the subject lands.

[11] Surrounding the site are the following:

1. North – rural consisting of a large natural heritage system. These lands are within the Protected Countryside of the Greenbelt Plan.

2. East – a natural heritage system, Borer’s Creek, and former agricultural lands.
3. South – residential dwellings in the form of block and street townhomes (Kaleidoscope Phase 2).
4. West – currently vacant and will be the subject of future residential development at some point in the future.

THE PROPOSAL

[12] The Appellant is proposing to develop 123 stacked townhouse units with a density of 66.4 units per ha on the subject lands. The development is made up of a series of nine townhouse blocks with 9 – 18 units in each block. Individual townhouse units are proposed to range in size from approximately 48 to 68 square metres and will include both two and three-bedroom units. There are two amenity areas totalling approximately 729.9 square metres. There will be a total of 246 resident and 31 visitor parking spaces provided with each unit having a driveway. Access to units is accommodated by a 6.0-metre internal private road network.

[13] Environmental considerations are incorporated into the development’s design. An Environmental Impact Study was completed to determine the top of bank, recommended Environmental Site Assessment buffers and a 30.0-metre setback, all of which are incorporated into the site plan.

PLANNING INSTRUMENTS

[14] The subject lands are presently:

1. within the built boundary in the Urban Hamilton Official Plan (“UHOP”) and identified as “Neighbourhoods” on Schedule E-1: Urban Land Use Designations. The designation is further defined as High Density

Residential 1, Natural Open Space and Low Density Residential 2 in the Waterdown North Secondary Plan (“WNSP”); and

2. zoned as Agricultural “A” in the former Town of Flamborough Zoning By-law No. 90-145-Z.

[15] With respect to the subject lands, the Appellant seeks to:

1. amend the WNSP to a Medium Density Residential 3 designation by establishing a site specific policy to permit a minimum density of 60 dwelling u/ha, a series of required technical amendments resulting from the construction of North Waterdown Drive and refinements to the Natural Open Space Designation resulting from the detail environmental studies (Exhibit 2, Tab 50);
2. rezone to a Medium Density Residential “R6” – XXX Zone permitting Stacked Townhouses and a series of zone provisions to implement the proposal (Exhibit 2, Tab 50). The ZBA includes several technical amendments regarding the surrounding natural heritage system and the exact location of the newly constructed North Waterdown Drive; and
3. a site plan (Exhibit 2, Tab 44) which by consent is not being adjudicated at this hearing as it is considered by all parties to be premature until the final determination of the Tribunal regarding the appropriateness of the OPA and ZBA.

[16] A Standard Draft Plan of Condominium application was submitted to the City in January 2020.

BACKGROUND

[17] Suffice to say the matter has an extensive history. A brief review is as follows:

1. applications for an OPA and ZBA were submitted in December 2016 and deemed a complete application in February 2017. The original submission was based on a November 2016 concept plan;
2. between April 2019 and January 2020, four alternative concept plans were prepared and discussed with City officials as the Appellant tried to find an alternative that was acceptable. All of the concept plans consisted of either traditional or stacked townhomes, save an except the fifth submission. That submission included an eight storey apartment building on the northerly portion of the site with a series of conditions incorporated into the necessary planning instruments, should further detailed studies determine that site conditions made the construction of an apartment building not economically feasible because of potential geotechnical constraints; and
3. an appeal to the Tribunal was made in March 2020 resulting from the failure of the City to make a decision on the application.

[18] City staff have been consistent in issues identified as relevant regarding all submissions, including the proposal before the Tribunal. Issues that have been largely resolved relate to Natural Heritage Features, Cultural Heritage, and Transportation. The remaining substantive issues relate to:

1. the proposal does not conform to the current minimum density requirements of the WNSP (greater than 100 units to a maximum of 125 u/ha) and the City does not support a reduction of the density requirements;
2. with the entirety of the subject lands being developed with stacked townhouses built form, the proposal does not meet the minimum density requirements; and

3. compliance with relevant urban design policies and guidelines were noted by staff. Specific issues spoke to a land intensive development resulting in a high lot coverage, the location and design of common amenity areas, parking, and sidewalks along with missed opportunities for connection to surrounding natural features.

[19] The position of the City is supported in the evidence and analysis of Mr. Sajecki who is retained on this matter.

LAND USE PLANNING POLICY

[20] The proposal is subject to several relevant Provincial and City planning policies found in various statutory planning documents. The planning structure in Ontario is Provincially led and the Tribunal must be satisfied with all aspects of relevant planning documents in the formulation of its decision. The OPA and ZBA is before the Tribunal and their existence must be recognized. Hence, when one returns to the key issue of this hearing, much turns on whether it has appropriate regard for, is consistent with or conforms to Provincial and Municipal planning policy thereby making a redesignation of the subject lands from a High Density Residential 1 to a Medium Density Residential 3 and a reduction in the planned density for the subject property appropriate under the OPA. Only then will the consideration of the ZBA and urban design issues evaluated during the hearing will be assessed in any detail in this decision.

[21] Through the considerable planning evidence, the Tribunal is advised that the municipal planning framework, which includes and surrounds the subject site, is the result of a very robust, comprehensive, integrated, and iterative planning process. The City has been insistent from the outset that the subject lands should remain in keeping with all the relevant policies of the WNSP and its defined Urban Structure. The effect of approving the planning instruments before the Tribunal is to 'stray' from the established Urban Structure. Municipal documents that are presented to the Tribunal include the:

1. UHOP (adopted by Council in July 2009).
2. WNSP (as found in Volume 2, Part B).
3. Waterdown North Urban Design Guidelines (dated January 2007).

[22] The Tribunal had the benefit of considerable evidence from two very competent and articulate land use planners evaluating relevant planning documents and drawing from review their opinion. All nine planning issues in the PO's Issues List are thoroughly adjudicated save and except Issue 4 respecting the prematurity of the ZBA. North Waterdown Drive has been constructed which would have been the condition of removing a holding provision in an approved Zoning By-law.

PROVINCIAL POLICY

The Planning Act

[23] Mr. Sajecki in his evidence noted that the Act establishes the basis for planning in Ontario. This legislation requires that all planning matters must have regard to provincial interests and be consistent with Provincial Policy Statement 2020 ("PPS"). He made special note of provincial interests in s. 2 a), j), p) and g) of the Act. His opinion is that the proposal does not have appropriate regard for key elements of the Act including 'the provision of a full range of housing' and 'the appropriate location for growth and development'. He made note that the directions of both the PPS 2020 and A Place to Grow – Growth Plan for the Greater Golden Horseshoe ("Growth Plan") are implemented in the UHOP and the WNSP and it is inappropriate to vary these critical and comprehensive implementation tools on a site-by-site basis.

[24] Mr. Corbett did not speak to s. 2 of the Act in his testimony.

Provincial Policy Statement 2020

[25] The PPS 2020 serves to provide a framework and general direction with respect to matters of provincial interest and is a key foundational component of the Provincially led planning system. Analysis in this section deals with Issue 1 in the Issues list: “Does the proposal comply with policies 2.2.1, 2.2.2 and 2.2.6 of the Provincial Policy Statement?” Both witnesses went beyond these defined sections in their evidence including s. 1.1.1 – Healthy, livable, and safe communities; s. 1.1.3 – Settlement Areas; s. 1.4.1 and 1.4.3 – Housing; s. 1.5.1 – Public Spaces, Recreation, Parks, Trails and Open Spaces; and 2.1 – Natural Heritage.

[26] Mr. Corbett is of the opinion that the proposal is consistent with the PPS for the following reasons:

1. the subject lands are identified as an intensification area;
2. the net site area is reduced in keeping with the Environmental parameters determined by a comprehensive Environmental Impact Assessment;
3. can be supported by available City infrastructure;
4. is a compact built form and is designed to efficiently meet the needs of future residents; and
5. provides an appropriate range of housing options to meet the projected market-based housing of current and future residents. Is a mix and density better suited to the existing community and market trends and is it more compatible with the existing residential community as no other apartment buildings exist in the WNSP area.

[27] Mr. Sajecki’s opinion is the proposal is not consistent with the PPS largely based on how the City has implemented Provincial policy and directions in the creation and subsequent approval of both the UHOP and the WNSP. Changes on a site-by-site

basis may erode the integrity of the defined planning framework and therefore must be thoroughly evaluated. Important tenets of the City's planning framework are as follows:

1. planning authorities are directed to identify appropriate locations for development to accommodate a significant supply and range of housing through intensification and redevelopment. This was achieved through the Provincially approved UHOP and WNSP that determined the subject lands are appropriate to provide high density residential housing to add both to the supply and range of housing;
2. policy is constructed to ensure that: Settlement Areas are the focus of growth; growth areas that are adjacent to existing built up areas are in a compact form, have a mix of densities to ensure the efficient use of land, infrastructure and public service facilities; and promote appropriate development standards to facilitate intensification in a compact form;
3. adopted policies provide direction on the provision of an appropriate range and mix of housing unit types and densities of projected needs of current and future residents of the regional market by: permitting and facilitating housing options, having residential intensification in appropriate locations and promoting densities for new housing in locations that make efficient use of land, resources, infrastructure and public service facilities; and
4. to reduce the density at a location that is planned and deemed to be an appropriate location for high density development runs counter to the policy direction of the PPS 2020 and reduces the ability of the City to meet the requirements of current and future residents and make efficient use of land deemed appropriate for a higher level of intensification.

A Place to Grow – Growth Plan for the Greater Golden Horseshoe

[28] Evidence illustrated that the Growth Plan serves to establish a land use planning framework designed to achieve complete communities, a thriving economy, and a clean

and healthy environment. The Growth Plan builds on the principles of the PPS and provides an overarching framework with respect to where and how growth should occur in the Greater Golden Horseshoe. Analysis in this section deals with Issue 2 in the Issues list: “Does the proposal comply with A Place to Grow: A Growth Plan for the Greater Golden Horseshoe Policies 2.2.1, 2.2.2 and 2.2.6?”

[29] Both witnesses went beyond these defined sections in their evidence including s. 1.2.1 – Guiding Principles; s. 2.2.1 – Managing Growth; s. 2.2.6 – Housing; and s. 2.2.7 – Designated Greenfield Areas. As the Growth Plan is one of the main documents implementing the PPS, themes of the land use planning evidence given to the Tribunal are generally consistent with witnesses’ evaluation of the PPS.

[30] Mr. Corbett is of the opinion that the proposed development conforms to the policies of the Growth Plan for the following reasons:

1. the subject lands are not located within the built-up area but within the settlement area defined by the WNSP;
2. the proposed development optimizes existing infrastructure as it can be serviced by existing municipal water and waste-water systems;
3. the proposal contributes to a complete community as stacked townhouses will provide more affordable homes and be part of the City’s housing portfolio in an effort to meet the needs of residents during all phases of their life;
4. there are several community service facilities in the area including a YMCA recreational facility and existing elementary and secondary schools;
5. transit services are available nearby at the intersection of Parkside Drive and Mosaic Drive;

6. the development supports housing choice by achieving minimum intensification and density targets and ensuring a diverse range and mix of housing options and densities;
7. the addition of a medium density designation within the WNSP the proposal will add to the mix of housing in the community and assist the City in maintaining a three-year supply of residential units; and
8. will assist the City in meeting minimum density target as it exceeds the minimum density targets of 50 residents and jobs combined per ha in Designated Greenfield Areas. The proposal represents a compatible mix of housing options and will yield approximately the same population as the existing High Density Residential designation.

[31] Mr. Sajecki is of the opinion that the proposal does not conform to the Growth Plan. At the outset of his testimony, he took the Tribunal to the definition of Complete Communities as the policy framework of the WNSP is designed with this intent in mind. The definition is:

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

[32] The reasons why reducing the planned density on the subject lands, results in a lack of conformity to the Growth Plan are described in Mr. Sajecki's evidence and WS as follows:

1. the guiding principles include: prioritize intensification at higher densities in strategic growth areas to make efficient use of land and infrastructure, support transit viability and support a range and mix of housing options in

particular higher density housing options that can accommodate a range of household sizes;

2. optimizing the use of the existing urban land supply represents an intensification first approach to City-building as it focuses on making better use of existing infrastructure and public service facilities, rather than continuously expanding the urban area;
3. the City recognized required population and employment targets and they were allocated in a comprehensive way. Most of the growth is directed to settlement areas and developed policies in both the UHOP and the WNSP to support the achievement of complete communities;
4. the City supports housing choice and intends to achieve minimum intensification and density targets and provide a diverse range and mix of housing options to meet the projected needs of current and future residents;
5. in the City's efforts to support the achievement of complete communities, the UHOP accommodates forecasted growth; achieves minimum intensification and density targets; has a range and mix of housing options and densities and is planning to diversify the municipalities overall housing stock. It has considered all the available tools to require multi-unit residential areas to have a mix of unit sizes to accommodate a diverse range of household sizes and incomes; and
6. the City intends to meet the minimum density target not less than 50 residents and jobs per combined ha. High Density Residential designations are considered pivotal in the achievement of these minimum targets. By reducing the density on a portion of the high density areas in the WNSP, there is a risk (albeit small) that the statutory density targets of the Growth Plan may not be met.

MUNICIPAL POLICY

[33] Analysis in the Municipal Policy section of this decision addressed Issues 3, 5, 7 and 8 in the Issues list. Issue 3 – “Would the approval of the proposed OPA and Zoning By-law Amendment conform to the UHOP or the North Waterdown (*sic*) Secondary Plan?”; Issue 5 – “Is it good planning and appropriate to reduce the density identified in the Waterdown North Secondary Plan B.4.2.7 (c)?”; Issue 7 – “Does the proposal meet the intent of policy F.1.1.5 in the City of Hamilton Official Plan?” and Issue 8 – “Does the proposal comply with policy B.4.2.4.2 (b) in the North Waterdown (*sic*) Secondary Plan in terms of providing a broad range of housing with in the North Waterdown (*sic*) Secondary Plan?”

Urban Hamilton Official Plan (2013)

[34] The UHOP was adopted by City Council in July 2009 and provides a policy basis and vision for the City with respect to the designation of land use and complementary city building policies related to such matters as natural environment, transportation, infrastructure, and cultural heritage.

[35] The subject lands are designated as Neighbourhoods and Open Space on Schedule E-1 – Urban Land Use Designations in the UHOP. A portion of the lands are designated Core Area and Stream on Schedule B – Natural Heritage System. They are located within the City’s Urban Area but are outside the built-up urban area and therefore considered as Greenfield Lands. Chapter A of this plan establishes strategic directions and principles for the urban parts of the City and Section B speaks to achieving complete communities.

[36] In evidence from the planning witnesses, the Tribunal was led to the following policy sections: s. 2.3.3.3 – Greenfield Density Targets; s. 2.2.1.4 – Communities; and s. 3.2.1, 3.2.6, 3.2.7, 3.7.5 – Quality of Life and Complete Communities.

[37] Mr. Corbett is of the opinion that the proposed development conforms to the policies of the UHOP for the following reasons:

1. the Neighbourhood designation states that proposed development shall be evaluated against its compatibility with the surrounding area in terms of scale, massing, height, siting, orientation, setbacks, parking, and landscaping. The proposal “will provide a supportive scale and height based on the existing residential development...there will be sufficient parking for residents and appropriate setbacks based on the completed Environmental Impact Assessment...” The OPA and ZBA will provide an appropriate density for the subject lands which are not conducive to a higher built form;
2. the proposal has access to a minor arterial road;
3. appropriate buffering and landscaping will be provided to help shape a residential streetscape;
4. The lands are classified as ‘Greenfield Area’ as they are outside the City’s built-up area. Growth Plan targets anticipate a minimum of 50 percent of the residential development shall occur annually within the City and other selective surrounding cities or regions;
5. Greenfield Areas are to achieve an overall minimum density of 50 people and jobs per ha. On non-employment lands, densities must achieve a minimum average density of 70 persons and jobs per ha to meet the overall density target. The OPA and ZBA will meet the Province’s and City’s minimum density requirements in a building form that better fits into the existing neighbourhood character; and
6. the proposed OPA implements the intent of the UHOP by correctly aligning the location of the North Waterdown Drive and correctly illustrates its connection to Mosaic Drive.

[38] The reasons why reducing the planned density on the subject lands results in a lack of conformity to the UHOP are described in Mr. Sajecki's evidence and WS as follows:

1. the City took great care in the implementation of Provincial Policy with respect to density targets for Greenfield Areas. Established targets are: 50 people and jobs per ha with a greater target of 70 persons and jobs per ha for non-employment lands across all of the City's Greenfield areas. Section 2.3.3.3 establishes Greenfield targets as follows:

Greenfield areas shall be planned to achieve an overall minimum density of 50 people and jobs per hectare. The greenfield density target shall be measured over Hamilton's greenfield area, excluding natural heritage features designated in this Plan. The greenfield area includes designated employment areas. On employment lands, the City shall plan to meet a density target of 37 people and jobs per hectare. on non-employment lands densities will need to achieve a minimum average density of 70 persons and jobs per hectare.

2. If density targets are not met within individual neighbourhoods or communities, there are additional pressures placed on other areas of the City to make up the difference or the need for additional unnecessary boundary expansions. The UHOP requires areas for high density residential development to accommodate between 100 and 200 units per ha and the subject lands are appropriate to be in the lower end of this continuum;
3. "minimum density targets" are a tool utilised by the Province and municipalities to achieve a range of goals that together constitute "good planning";
4. strategic directions and principles are intended to create a compact and health community providing the opportunity to live, work and play thereby achieving complete communities. Policy goes on to state that a full range of housing types, forms, and densities to meet the social, health and well-being requirements of all current and future residents throughout the

urban areas of the City. The subject lands are part of the only high density designated lands in Waterdown North and should be preserved for higher density development to allow for a greater range of housing options in the community;

5. providing affordable housing is an important consideration of the UHOP and apartment style residential development tend to be more affordable;
6. Neighbourhood policy states that “High Density residential areas are characterised by multiple dwelling forms on the periphery of neighbourhoods in proximity to major or minor arterial roads”. The subject lands appropriately designated meets this criteria as they are located on the periphery of the neighbourhood and have access to a minor arterial road. The proposal of entirely stacked townhomes does not meet the principle of multiple dwelling forms;
7. reducing the planned densities within the urban area may result in unnecessary boundary expansions into rural areas and a less efficient use of infrastructure and services;
8. Plan Implementation is found in Chapter F where policy related to the consideration of amendments to the UHOP is located. A series of criteria is established and the one that directly relates to the proposed OPA is: “the impact of the proposed change on the City’s vision for a sustainable community, as it relates to the objectives, policies and targets established in this Plan”. The proposal negatively impacts the City’s vision for a sustainable community as defined in Plan policies; and
9. the City recognizes the need for growth and change reflected in its planned Urban Structure which considered a variety of factors that contribute to economic and physical changes that are occurring. The UHOP is designed to effect positive change by taking advantage of opportunities to become a more sustainable community in the future. Proper implementation of this Plan directs a concentration of growth within

a firm urban boundary to protect the viability of rural areas, agricultural resources, and defined sustainability outcomes. A reduction in a planned high density area, and by not maximizing the use of undeveloped lands, one potentially contributes to compromising the achievement of the City's vision to be a more sustainable community while having potential impacts on the rural areas of the City.

Waterdown North Secondary Plan

[39] Mr. Sajecki in his evidence described the process used to develop the Urban Structure and policies of the WNSP. This plan-making process is important to the Tribunal's consideration of the OPA and ZBA.

[40] The subject lands were part of an urban expansion initiated in 1991, which required that a secondary plan for Waterdown North along with a Transportation Master Plan be completed for the entire Waterdown Community prior to the development of lands within North Waterdown. The Transportation Master Plan was finalized in 2008 and informed the WNSP.

[41] Other studies that informed the construct of the WNSP included a comprehensive background study, an issues and opportunities paper and a study to determine the existing condition of the Borer's Creek Watershed. To ensure the planning process was fully integrated, three municipal Environmental Assessments were completed relating to Municipal Collector Roads, Water/Wastewater, and a Master Drainage Plan. Finally, the Waterdown North Urban Design Guidelines were adopted by Council in support of the WNSP.

[42] With the consideration of all the background studies, City Council adopted the WNSP in March 2007. The WNSP is designed to guide the development of Waterdown North for a period of 20 years as it established land uses, a transportation network, community facilities, infrastructure, and standards for the community. The Secondary

Plan area is planned to accommodate approximately 2,000 dwelling units and 5,000 residents along with employment, institutional and commercial uses. The two high density areas on the north side of North Waterdown Drive were planned in keeping with the policies of the UHOP.

[43] Evidence demonstrated that development within the boundaries of the WNSP to date has been in keeping with planning policy and principles found in the Urban Design Guidelines.

[44] Evidence from the planning witnesses took the Tribunal through the following policy sections: s. 4.2.1 – Principles, s. 4.2.2.1 – Residential Objectives, s. 4.2.4 – Residential Designations, s. 4.2.4.2 – General Residential Policies, and s. 4.2.4.7 – High Density Residential 1 Designation.

[45] The subject lands are designated in the WNSP as “High Density Residential 1”, “Natural Open Space” and “Low Density Residential 2. North Waterdown Drive is located south of the subject lands. The proposed OPA would designate all of the subject lands “Medium Density Residential 3”.

[46] Mr. Corbett is of the opinion that the proposal conforms to the WNSP for the following reasons:

1. it will create a safe functional and attractive residential neighbourhood and a continuous built form consistent with the character of the community that exists to the south;
2. a mix of ground related housing types will be provided in a compact urban form with an appropriate density and help deliver a complete community;
3. both the existing “High Density Residential 1” and proposed “Medium Density Residential 3” designations support townhomes as well as other forms of multiple dwellings;

4. a 15-storey height does not conform to the existing built form and remaining in a High Density designation may not provide immediate housing opportunities, whereas the proposal is more congruent with the area and provides different unit types and housing opportunities;
5. the development area is reduced to meet Provincial and City policies related to the maintenance and enhancement of a Provincially Significant Wetland and existing wildlife habitats. Therefore, it is more conducive to a medium density rather than a high-rise built form. The subject lands are not physically appropriate for high density development and will provide a mix of housing types that are more compatible to the character of the existing community; and
6. the “High Density Residential 1” designation permits townhouse dwellings. Hence, the OPA only makes a modification to the density provisions to be in keeping with the proposal. Mr. Corbett’s evidence demonstrated that the proposed townhouse development will accommodate almost the same residential population when compared with the construction of a multi-storey building. Both are significantly higher than “the City’s minimum density target of 70 persons and jobs per hectare”.

[47] Mr. Sajecki opined that the proposal does not conform to the WNSP for the following reasons:

1. a hierarchy of residential densities was established in a comprehensive manner with high density developments being expected to achieve between 100 – 125 units per net residential hectare. Most of the low and medium density areas have been developed consistent with the Secondary Plan. There are only two designated high density areas identified in the WNSP. Amending the subject lands to medium density presents a risk that the overall density targets of the UHOP may not be met and the remaining high density areas in the WNSP may not be able to

meet the minimum density target requirements across the Secondary Plan area;

2. a key principle is the “achievement of residential and employment densities that meet provincial policy requirements and support future transit networks”. The Secondary Plan is designed to meet the minimum density targets in, and support housing choice policies of, the Growth Plan, UHOP and the WNSP. By lowering the minimum densities, the proposal does not conform to either of these policy documents. Proposed developments need to meet the minimum density targets;
3. most of the WNSP has been developed with single and semi-detached dwellings and townhomes. Adding stacked townhomes to the mix does not provide the range and mix of housing that could be achieved with a building form consistent with high density development. Hence the proposal compromises the goal of achieving complete communities;
4. High density housing forms are often more suited to single person households, seniors, people with disabilities, and those that cannot afford a larger dwelling. Complete community objectives are compromised when an apartment housing form is not provided; and
5. Provincial planning documents direct the City to establish minimum density targets within built up areas. The City implemented this policy direction on a comprehensive basis with the adoption of the WNSP. Making site specific changes to this urban structure results in: not providing a housing alternative that serves a segment of the current and future population; risks to the provision of much needed affordable housing; the inefficient use of existing and planned infrastructure; and fewer housing options which may constrain the ability of segment of the population to reside in the City at certain stages of their life.

URBAN DESIGN OFFICIAL PLAN RELATED POLICY

[48] The Tribunal heard detailed urban design evidence from Mr. Richard for the Appellant and Mr. Gomez-Palacio for the City regarding the adequacy of the proposal's design when evaluated against relevant planning policy. It proved a challenge not to stray into those matters related to a more detailed Site Plan Control level of analysis not being adjudicated as part of this proceeding. The evidence of both urban designers is generally related to the UHOP and the WNSP. It is worthy of note that the Mr. Richard's firm, NAK Design Strategies, had completed the Urban Design Guidelines for both previous Kaleidoscope Phases and prepared a comprehensive series of design guidelines for Kaleidoscope Phase 3 in support of the application.

[49] Policy evaluation by the witnesses relates to s. 3.3 Chapter B – Urban Design Policies of the UHOP and s. 4.2.9 – Urban Design Policies of the WNSP, both of which recognized the importance of urban design as an essential component of city building. Waterdown North Urban Design Guidelines are intended to provide a more detailed implementation framework.

[50] Suffice to say, the City has detailed policies in place to guide built form and the public realm. The design principles that the witnesses took the Tribunal to in their testimony specifically related to the following design and built form principles arising from the proposed design:

1. policies encourage a wide range and mix of housing types and whether the proposed stacked townhouse development met this objective;
2. is surface parking throughout the subject land's desirable from an urban design perspective;
3. does the proposal adequately incorporate important existing natural heritage features and thereby enhance the access to and the visual views of, residents and the public in general;

4. is the street pattern adequate to ensure continuous and direct movement throughout the subject lands in an effort to safely integrate and facilitate pedestrian, cycling and vehicular movements throughout the subject lands;
5. policy attempts to de-emphasize the car and garages but the proposal illustrates that parking and garages are found along most of the internal roads;
6. the side elevations of flankage lots do not show entrance doors nor utility screening and therefore the design may not be adequate;
7. the design of the streetscape with respect to street trees, furniture, signage, and landscaping needs to be developed in more detail;
8. policy states that the corner of Mosaic and North Waterdown Drive is considered a “Gateway” and should an architectural entrance feature and enhanced landscaping need to be incorporated into the design;
9. design to enhance the public safety as it relates to ‘eyes on the street’ is required to improve visibility and informal surveillance; and
10. there are a series of ‘differences of opinion’ between the witnesses that could be easily addressed at the site plan stage should the proposal be accepted by the Tribunal.

[51] Mr. Richard is of the opinion is that “the proposed development reflects an appropriate response for achieving key urban design principles within the context, constraints, opportunities and area configuration, that is balanced with an efficient layout of land uses. It does so in general compliance with the Waterdown North Urban Design Guidelines”.

[52] Mr. Gomez-Palacio concluded that based on his extensive analysis of relevant planning policy related to his extensive review of appropriate ‘urban design

considerations', he does not recommend the approval of the propose OPA and ZBA by the Tribunal.

TRIBUANL ANALYSIS OF THE LAND USE PLANNING EVIDENCE

[53] The outcome of this matter depends on the planning evidence presented at this hearing with respect to Provincial and municipal planning policy and the appropriateness of the proposed OPA. All other matters (ZBA and Site Plan) before the Tribunal are dependent on this finding.

[54] To this end, the Tribunal prefers the evidence of Mr. Sajecki and finds the proposal as reflected in the OPA and ZBA does not have appropriate regard to the s. 2 of the Act; is not consistent with the PPS 2020, does not conform to the policies of the Growth Plan or the UHOP. It does not conform with the WNSP as it is not in keeping with a comprehensively developed and well-defined Urban Structure for the community.

[55] The Tribunal finds that the City has well established planning policy for the area surrounding the subject lands and followed a careful, comprehensive, and complete process to come to the land use designations found in the WNSP. The proposed OPA and ZBA by reducing the density on the subject lands results in an outcome that does not align with, nor continue a contribution to, the City's vision for the Waterdown North Community nor is it in keeping with Provincial or municipal policy.

[56] The Tribunal notes that both the UHOP and the WNSP were written and approved in keeping with the Provincially led planning system and therefore are deemed to be in conformity with all relevant Provincial Planning policy. Changes to the approved WNSP's approved structure, no matter how minor, merit a very close and careful consideration. Evidence presented to the Tribunal must be extremely compelling for a change to the planned Urban Structure to be deemed appropriate. Although well presented, the Appellants expert planning evidence was not sufficiently compelling to have it preferred by the Tribunal.

[57] It is noted by the Tribunal that it did not see a planning report to City Council on this proposal nor hear from any City planning staff regarding its deliberations on the matter. City Council therefore did not make a decision on any option put forth by the Appellant and assessed by planning staff but did consider that it somehow had sufficient information before it to provide authority to its Counsel to oppose the OPA and ZBA at this hearing. The Tribunal has, in its determination of these Appeals, had regard to matters as outlined in s. 2.1 (2) of the Act, which states:

When the Tribunal makes a decision under this Act that relates to a planning matter that is appealed because of the failure of a municipal council or approval authority to make a decision, the Tribunal shall have regard to any information and material that the municipal council or approval authority received in relation to the matter.

[58] The Tribunal notes that the urban design evidence has little impact on the fundamental Provincial and municipal planning policy related findings in this matter. The structure of the proposal is sound and most of the issues could be addressed with further detailed design and minor modifications to the site plan found in Exhibit 2, Tab 44. Since the proposal however fails on the more germane and fundamental planning policy issues, urban design principles are not evaluated in detail and therefore have little relevance in the Tribunals decision.

[59] The Tribunal finds that the proposal gives rise to the following concerns and matters of non-conformity:

1. It reduces the planned density in a portion of the two high density areas designated in the WNSP and may present a risk that the overall density targets of the UHOP may not be met and the remaining high density areas in the WNSP may not be able to meet the minimum density target requirements across the Secondary Plan area;
2. It limits the range and mix of housing options by reducing potential apartments type units thereby simply not providing a housing alternative

that would serve an important segment of the current and future population and thereby risks the provision of much needed affordable housing in the Waterdown North Community;

3. It makes inefficient use of existing and planned infrastructure and community services that was properly planned for in a comprehensive and integrated manner;
4. It may result in unnecessary boundary expansions into rural areas;
5. The evidence is clear that the WNSP has worked very well in guiding the development of Waterdown North Community for the last 20 years in keeping with the designated land uses, the establishment of a transportation network, the provision of many important community facilities, ensuring infrastructure is available for the residents when they arrive, and implementing a high standard of built form for the community. The Secondary Plan area is well on its way to accommodating the approximately 2,000 dwelling units and 5,000 residents along with complementary employment, institutional and commercial uses. The two high density areas on the north side of North Waterdown Drive are important components of the planned Urban Structure and should be maintained as planned in keeping with the policies of the UHOP and WNSP;
6. A reduction in a planned high density area and failing to optimize the use of undeveloped lands, potentially compromises the achievement of the City's vision to be a more sustainable community while having potential impacts on the rural areas of the City. As such, the proposal negatively impacts the City's vision as determined by its sustainable community policies. Density targets not met within individual neighbourhoods or communities will result in additional pressures being placed on other areas of the City to make up the difference or the need for additional unnecessary boundary expansions;

7. The UHOP is clear in its high level strategic directions to create a compact and healthy community providing the opportunity to live, work and play to achieve complete communities. Policy goes on to state that a full range of housing types, forms, and densities to meet the social, health and well being requirements of all current and future residents must be accommodated throughout the urban areas of the City. The provision of affordable housing is an important consideration of the UHOP and apartment style residential tends to be more affordable. The subject lands are part of the only high density designated lands in Waterdown North and therefore merit preservation for higher density development thereby allowing for a greater range of housing options in the WNSP; and
8. high density development on the subject site will create a safe functional and attractive residential neighbourhood that is in keeping with, and complements, the character of the community that exists to the south. A height of 15-storey in no way offends the existing built form of the North Waterdown Community. Transition policies in municipal plans are more than sufficient to manage this interface.

OTHER CONSIDERATIONS

Transportation and Traffic Engineering

[60] The Tribunal heard transportation and traffic evidence from Mr. Argue for the Appellant and Mr. Molloy for the City. With the completion of North Waterdown Drive, it is agreed by the parties that Issue 16 which asked, “is the proposal premature without a holding provision”, has been satisfied. Other than a pedestrian crossing of North Waterdown Drive at Mosaic Drive, most of the evidence focused on transportation and parking related issues relating to the proposed site plan within the subject lands.

[61] Circulation, parking configuration, locations where visibility is challenged by proposed dwelling units and the adequacy of pedestrian crossings are the major points of the witness's evidence. The proposal is a very 'urban' development that is common today in Ontario City's and the result is a series of private roads and visitor parking areas that, as Mr. Argue opined, adequately address the challenges of both vehicular and pedestrian movements within the proposed site plan (Exhibit 2, Tab 44).

[62] Mr. Argue stated in evidence that agreement could be found with the City for an appropriate form of pedestrian crossing of North Waterdown Drive.

[63] The Tribunal finds that all site related transportation, parking and pedestrian issues brought forward in expert evidence could be adequately managed through further detailed review. Since the proposal fails on the more germane and fundamental planning policy issues, these issues are not evaluated in detail and therefore have little relevance in the Tribunal's decision. All would have been appropriately dealt with at the Site Plan Control stage.

Potential Constraint on the Subject Property

[64] The Appellants brought forward the potential of possible subsurface constraints to the construction of underground parking for high density residential development because of bedrock formations being very close to the surface.

[65] The Tribunal heard no direct qualified geotechnical expert evidence on this potential constraint nor its direct impact on achieving the High Density designation of the WNSP on the subject site. Planning witnesses were questioned in cross-examination but for obvious reasons had no expert opinion on this subject matter. There are two reports found in the joint document book that speak specifically to subsurface conditions. These reports are:

1. Hydrogeologic Investigations of Kaleidoscope Phase 3 Lands completed by Terraprobe Inc. prepared as part of the complete application requirements of the City (Exhibit 2, Tab 40).
2. Geological Investigation Proposed Residential Development Kaleidoscope – Phase 2 completed by Soil-Mat Engineers and Consultants Ltd. (Exhibit 2, Tab 26).

[66] The Tribunal finds in the absence of qualified professional evidence, it can assign little weight to potential bedrock constraints that may be found on the subject lands and the potential challenges they present to any High Density proposal that may conform to the policies of the WNSP.

CONCLUSIONS

[67] With s. 2.1 (2) of the Act in mind, it is incumbent on the Tribunal to have regard for the City's position and maintain the existing High Density designation on the subject lands in the face of differing immediate market conditions effectively argued by the Appellant's Counsel.

[68] The Tribunal notes that UHOP and the WNSP were completed and approved in the Growth Plan era and if anything, the policies, and targets of subsequent versions of the Provincial documents have become more stringent. The risk of non-conformity on any single site may be small but it may result in an assault on the 2007 WNSP's Urban Structure as approved by City Council and the Province.

[69] The Tribunal also notes that the UHOP has a well established policy basis to implement relevant Provincial policy. It's defined Urban Structure is reinforced within detailed Secondary Plans tailored to a specific part of the City. Secondary Plans like the WNSP followed an integrated, comprehensive planning review process which led to a careful and considered planning policy framework for the area.

[70] The Tribunal is of the opinion that in the face of a careful, complete, and comprehensive plan making exercises for both the UHOP and the WNSP, very compelling planning reasons must be presented in evidence to change the density provisions of the WNSP. The onus is clearly on the Appellant and while evidence was well presented, it is not compelling enough to reduce the WNSP's comprehensively established Urban Structure and overall density framework on what is, in effect, a 'one off basis'.

[71] The City is continually faced with the challenges of maintaining the intent of both its and Provincial policy that as time goes on becomes increasingly challenging. City Council in the matter has directed Counsel to maintain the High Density Residential Designation on the subject lands and for the reasons outlined previously in the decision, the Tribunal agrees.

[72] The Tribunal notes that if it was not for the policies that resulted from a comprehensive, complete, and integrated planning process to create the WNSP urban structure, the proposal represents a high quality residential development. It is 'urban' in its design with many amenities both on and off the subject lands and is in a location with easy access to several existing community facilities thereby making it an attractive residential project; but for the Tribunal to come to a conclusion to approve the proposal in effect would be ignoring well established City policies.

[73] With this Tribunal finding, the appeal against the Site Plan cannot continue as it will not conform to the WNSP and therefore is appropriately dealt with in the Tribunal Order.

[74] The Tribunal prefers Mr. Sajecki's opinion and finds the proposal as reflected in the OPA and ZBA does not have appropriate regard to the s. 2 of the Act; is not consistent with the PPS 2020, does not conform to the policies of the Growth Plan or the UHOP. It does not conform the WNSP as it is not in keeping with a

comprehensively developed and well defined Urban Structure for the community. The proposal does not represent good planning, nor it is in the public interest.

[75] For these reasons, the Tribunal dismisses the appeals because of the City's failure to make a decision and does not settle or approve the site plan as presented.

ORDER

[76] Accordingly, the Tribunal Orders.

[77] **THAT** the appeal pursuant to s. 22(7) of the *Planning Act* is dismissed and the requested amendment to the Urban Hamilton Official Plan and Waterdown North Secondary Plan is hereby refused.

[78] **THAT** the appeal pursuant to s. 34(11) of the *Planning Act* is also dismissed and the requested amendment to the City of Hamilton (Flamborough) By-law No. 90-145-Z is refused.

[79] The Tribunal makes no Order at this time with respect to the Site Plan Appeal pursuant to s. 41(12) of the *Planning Act*.

"Bryan W. Tuckey"

BRYAN W. TUCKEY
MEMBER

Ontario Land Tribunal

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