

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



ISSUE DATE: July 11, 2018

CASE NO(S): PL161244

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

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

Applicant and Appellant:	First Urban Inc.
Subject:	Application to amend Zoning By-law No. 2020 - Refusal of Application by City of Burlington
Existing Zoning:	R1.2
Proposed Zoning:	RM2
Purpose:	To permit the development of 35 townhouses and 4 semi-detached units
Property Address/Description:	143 Blue Water Place; 105 Avondale Court
Municipality:	City of Burlington
Municipality File No.:	520-07/16
OMB Case No.:	PL161244
OMB File No.:	PL161244
OMB Case Name:	First Urban Inc. v. Burlington (City)

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

Referred by:	First Urban Inc.
Subject:	Site Plan
Property Address/Description:	143 Blue Water Place; 105 Avondale Court
Municipality:	City of Burlington
OMB Case No.:	PL161244
OMB File No.:	PL170658

Heard: May 14 to 18 and May 22, 2018 in Burlington,
Ontario

APPEARANCES:**Parties****Counsel**

First Urban Inc. and Bloomfield
Developments Inc.
("Applicant" / "Appellant")

Russell Cheeseman

City of Burlington ("City")

Blake Hurley

Region of Halton ("Region")

David Germain

Halton Region Conservation Authority
("HRCA")

Harold Watson

DECISION DELIVERED BY S. TOUSAW AND ORDER OF THE TRIBUNAL

INTRODUCTION

[1] A townhouse development is proposed on a lakefront property in the City's Shoreacres residential area. Local residents and City staff are concerned that the development is not compatible with the neighbourhood.

[2] The City refused the Applicant's Zoning By-law Amendment ("ZBA") and did not make a decision on a subsequent Site Plan Application ("SPA"). The Applicant appealed both instruments to the Ontario Municipal Board ("OMB"), now the Local Planning Appeal Tribunal ("Tribunal").

[3] The development proposal evolved as the applications were processed by the City. In response to the original application, according to the Notice of Decision, the ZBA was refused by Burlington Council because "the application represents an over intensification of a stable low-density neighbourhood" and it also cited concerns over infrastructure, shoreline protection, and impact on adjacent properties.

[4] Prior to the hearing, the Applicant resolved the issues raised by the Region and HRCA which resulted in Minutes of Settlement ("MoS") signed by those agencies. The

Region is satisfied with the provisions for water and sewer infrastructure, the process to confirm the presence of protected Butternut trees, and clearance of archaeology requirements. The HRCA is satisfied with the proposed shore protection works, shoreline engineered development setback, and conveyance of the hazard lands plus 15 metre (“m”) setback to the City. The foregoing requirements would be completed before the City removes the Holding provision from the ZBA.

[5] With their issues resolved, the Region and HRCA did not attend the hearing after their initial appearance, but their counsel offered to return with further information or witnesses during the hearing if requested by the Tribunal. No further appearance of these parties was requested during the proceedings.

[6] The Tribunal commended the Parties for their success in reducing the hearing time from a scheduled 15 days to 6 days. Contributing to the efficiency of proceedings were the two MoS noted above, agreed statements of facts among the Parties’ Planners and Engineers, and a joint document book filed by the Applicant and the City. This pre-hearing effort enabled the hearing to focus on the planning merits of the applications.

[7] Several neighbourhood residents were identified as Participants during a Pre-Hearing Conference (“PHC”) and provided oral statements and exhibits at the hearing: Val Cambre at 153 Blue Water Place (“BWP”) abutting the north side of the site, Sharron Langford at 113 Avondale Court (“Avondale”) abutting the east side of the site, Lori Haines and Ben King at 4342 BWP abutting the east side of the site, Lawrence Hambly at 154 BWP two doors northwest of the site, and Mary Alice St. James, also speaking for her spouse Ron Fleming, at 225 Oak Crescent in the subdivision across Lakeshore Road (“Lakeshore”) to the north of the site. During the hearing, Isabella Fattore, at 123 Avondale to the east of the site, was added as a Participant.

[8] Although the revised proposal presented to the Tribunal has attempted to address the City’s concerns and has satisfied the Region and HRCA, the Tribunal will dismiss the appeal of the ZBA for its failure to conform with the Burlington Official Plan (“OP”), and in the absence of a ZBA, the Tribunal will necessarily dismiss the SPA as

premature, for the reasons set out in this Decision.

THE APPLICATIONS

[9] The applications affect two properties intended to be consolidated for the purposes of redevelopment. 143 BWP fronts on Lakeshore by way of an arm of the property, known as BWP, extending from Lakeshore to the development site. 143 BWP does not abut Lake Ontario except for a narrow lane to the shore. 105 Avondale is a lakefront property with street frontage at the terminus of Avondale. Each property contains a detached dwelling at present. Together, these properties comprise the development site (the “property” or “site”).

[10] Since the original ZBA application in 2016, the development proposal underwent various revisions in response to neighbourhood and agency comments. Originally a 39-unit development of townhouses and semi-detached dwellings with a shared underground garage, the form changed to 28 units in the form of townhouses with integrated garages at grade when the SPA was submitted in 2017.

[11] The final proposal in front of the Tribunal involves 26, 3-storey units in five townhouse blocks. The units would face towards an internal private street and back onto the perimeter lot lines of the property. Each unit would contain a private garage at grade. A future application for condominium is proposed to establish a standard condominium with common elements for the street, visitor parking and open space.

[12] Of importance to this matter is the ownership of BWP. BWP functions as a street providing vehicular access to 10 properties, including the subject 143 BWP, and also contains several private water lines connecting to municipal water on Lakeshore, and at least one sanitary sewer connection also to Lakeshore. However, BWP is owned by and part of 143 BWP and thus part of the development site.

[13] Rights-of-way and easements are not registered on BWP in favour of the adjacent benefitting lots. The evidence is that these informal arrangements date back

many years to when the lots were created originally as a lakefront cottage area. Nevertheless, the Applicant is not suggesting that the nine lots have no rights in or over BWP. On the contrary, to satisfy the Region's servicing requirements, the Applicant is prepared to provide water and sewer services to the lot line of the properties directly abutting BWP, and a connection at the elbow in BWP where the private street becomes part of a different property.

[14] The total site area of 1.61 hectares ("ha") includes the following elements:

- 0.86 ha development area
- 0.24 ha BWP "street"
- 0.15 ha dedication to the City for the Waterfront Trail (parkland dedication) being a 15 m wide strip landward of the stable top of bank
- 0.14 ha dedication to the City of hazard lands lakeward of the stable top of bank, and
- 0.22 ha watercourse/drain and existing driveway to Avondale (the south sections of this area would become part of the parkland and hazard land dedications to the City noted above).

LEGISLATIVE TESTS

[15] In making a decision under the *Planning Act* (the "Act") with respect to these appeals, the Tribunal must have regard to matters of provincial interest as set out in s. 2 of the Act, and must have regard to the decision of the approval authority and the information considered by the approval authority under s. 2.1(1) of the Act. The decision must be consistent with the Provincial Policy Statement (the "PPS") and must conform with the Growth Plan for the Greater Golden Horseshoe ("GP") under s. 3(5) of the Act.

[16] In addition to the above, the ZBA must also conform with the Halton Region Official Plan (the "ROP") and with the Burlington Official Plan ("OP") under s. 24(1) of

the Act. The SPA is subject to s. 41 of the Act and the relevant guiding policies in the OP.

ISSUES AND ANALYSIS

[17] Planning evidence was provided by two Registered Professional Planners (“RPP”) both of whom were qualified to provide opinion evidence in the area of land use planning. Martin Quarcoopome, RPP, is a consulting planner who testified in support of the applications. Rosalind Minaji, RPP, is the Coordinator of Development Review with the City and testified in opposition to the applications.

[18] The Planners’ agreed statement of facts resolved several matters and allowed the planning evidence to focus primarily on key sections of the OP. The Planners agree that townhouses constitute “ground oriented attached housing” and may be permitted in low density areas, subject to applicable policies in the OP. They also agree that a Holding provision in the ZBA is a suitable means of ensuring compliance with archaeological requirements and butternut tree protection if necessary. Also, based on the MoS, both Planners are satisfied that the ZBA conforms with the ROP and that the natural hazard and shoreline protection requirements of the HRCA are met.

[19] The Planners disagree on two broad issues: 1, whether the development conforms with the density, compatibility and infill criteria of the OP, and 2, whether the development is consistent with the PPS and conforms with the GP. The substance of the matter is in Issue 1, and the Planners rely on their view of Issue 1 in developing their opinion on Issue 2.

[20] For the reasons outlined in this Decision, the Tribunal finds that the proposal exceeds the permitted density in the Residential – Low Density designation, and falls short of satisfying the OP’s criteria for ground oriented housing and intensification.

Official Plan

[21] In the agreed statement of facts, the Planners' evidence was limited to the residential policies of s. 2 of the OP, including density, compatibility and intensification criteria for infill developments.

[22] Section 2 sets out three categories of Residential land use on Schedule B, the Land Use Plan, being low, medium and high density residential, in part to "provide for compatibility issues to be suitably addressed." This neighbourhood is located within a large swath of Residential – Low Density designation covering much of the southeast part of the city.

[23] In response to provincial growth management objectives, s. 2.2.1 includes as residential objectives:

(a) To encourage new residential development and residential intensification ... while recognizing that the amount and form of intensification must be balanced with other planning considerations, such as infrastructure capacity, compatibility and integration with existing residential neighbourhoods.

(f) To encourage the integration of a wide range of housing types and tenure and discourage large concentrations of higher density residential blocks.

[24] Specific density and compatibility requirements are established by policy 2.2.2(c) (and reiterated in the built form policy 2.2.2(g)):

(c) In Residential – Low Density areas, single-detached and semi-detached housing units with a density to a maximum of 25 units per net hectare shall be permitted. In addition, other forms of ground oriented housing units with a density to a maximum of 25 units per net hectare may be permitted, provided that these forms are compatible with the scale, urban design and community features of the neighbourhood.

[25] The OP defines net density as:

The overall density of a site excluding public roads and widenings, public parks, creek blocks, school sites and similar public land areas.

[26] Section 2.2.2 also sets out the density ranges for medium and high density

residential designations, being 26 – 50 units per net ha (“u/ha”) and 51 – 185 u/ha respectively.

[27] Section 2.5 encourages housing intensification through infill and redevelopment, subject to the same compatibility tests as s. 2.2.2. Section 2.5.2 sets out mandatory criteria for “evaluating proposals for housing intensification within established neighbourhoods.” Intensification, by definition, includes redevelopment on vacant or underutilized lands “at a higher density or intensity than permitted under the existing zoning.” The Parties agree that the primary issue pertains to subsection (v):

(v) compatibility is achieved with the existing neighbourhood character in terms of scale, massing, height, siting, setbacks, coverage, parking and amenity area so that a transition between existing and proposed buildings is provided.

[28] Secondary issues from the list of mandatory criteria include (iv) proximity to transit, (vi) minimizing effects on vegetation, (viii) access to shopping and services, (ix) buffering, (x) tertiary plan, and (xi) protection of natural features.

[29] Similar provisions are carried through s. 2.5.4 which encourages ground-oriented infill development within existing neighbourhoods and reiterates several compatibility criteria. Infill, by definition, is redevelopment “in conformity with the existing zoning.” In this case, townhouses are not permitted by the existing R1.2 zone, which places these applications in the category of intensification above.

[30] The definition of compatible in the OP is under appeal and not in force. The Planners agree that the definition established by OMB Member A. Chapman in *Motisi v. Bernardi* 1987 CarswellOnt 3719, is a similar and commonly used definition and appropriate in these circumstances:

Being compatible with is not the same thing as being the same as. Being compatible with is not even the same thing as being similar to. Being similar to implies having a resemblance to another thing; they are like one another, but not completely identical. Being compatible with implies nothing more than being capable of existing together in harmony.

Density

[31] There is no dispute that the OP caps development in low density areas at 25 u/ha. The dispute is over the area of the property that may be used in the calculation of density.

[32] The definition of net density excludes certain features from lot area for calculating density. The Planners agree that the hazard land and park dedication along the waterfront shall not be included in lot area according to Waterfront policy 9.4.2(c). They disagree on whether BWP and the creek area should be included in lot area for the purpose of calculating permitted density.

[33] At the maximum density of 25 u/ha, Mr. Quarcoopome considers the site eligible for up to 33 units by including BWP and the creek area, as well as the main development site, in the contributing lot area. He does not subtract the area of BWP from lot area because he considers the net density definition to exclude public roads only, citing BWP as a private road. He also does not include the area of the watercourse because he does not consider it a creek, preferring to call it an outfall for drainage.

[34] With 26 units proposed, Mr. Quarcoopome calculates that the density would comply even if one of BWP or the creek area were excluded. With one of the features excluded, the site could accommodate approximately 27 units, and the proposal still complies. If both were excluded, the development area alone would support 21 units, according to Mr. Quarcoopome's analysis.

[35] Ms. Minaji excludes BWP and the creek area from lot area and calculates the resulting density of the development site to be 30 u/ha, exceeding the permitted maximum of 25 u/ha. The City's preference is for BWP to become a municipal street from Lakeshore to the development site, as included in the agreed statement of facts of the Engineers. Ms. Minaji recommends this dedication because BWP functions as a public space providing access to properties and services at present, will be improved to

City and Regional standards for streets and services as part of the development, and in her opinion such facility should not be in the private control of a condominium corporation.

[36] Ms. Minaji considers the watercourse to constitute a creek, and, like many similar small watercourses draining into Lake Ontario in the City, she sees the creek as providing a stormwater management function and should be part of the City's drainage system. She excludes the creek area, including its 7.5 m development setback, from lot area based on the definition of net density excluding "creek blocks."

[37] The Tribunal accepts and prefers the evidence of Ms. Minaji that the lot area for the calculation of density should be limited to the development area of the site. BWP is privately owned but functions as a public space, at least for the 9 other lots it serves. If this development were to proceed, 26 more owners would utilize BWP as their sole means of vehicle access. BWP would be improved as a street, complete with storm drains, curbs and sidewalk, and would contain Regional sewer and water services within the right of way. For all intents and purposes, BWP functions now and would function after development like other public stub streets extending south of Lakeshore.

[38] Ms. Minaji testified that in greenfield developments, all proposed streets are deducted from total area for the purpose of density calculations. The density permitted on townhouse sites would be net of those streets. The Tribunal finds the same circumstances here. BWP is currently private land, will become a public street (if the City has its way), or at least will function like a public street for up to 30 homes (9 existing plus 21 potential new) for the purpose of access and services. The Tribunal finds that land that will be or should be a public road must be deducted from lot area for density purposes. Mr. Quarcoopome testified under cross-examination that, based on good planning principles, it would be preferable for streets like BWP to be in public ownership.

[39] If the foregoing were not sufficient justification, the definition of net density also excludes "similar public land areas." The Tribunal finds BWP to operate as a public land

area (albeit privately owned) similar to a public road. The Tribunal finds that BWP should be excluded from lot area as a “similar public land area” whether or not BWP will be conveyed eventually to the City. This finding underscores the separation of density from dedication. Certain exemptions under the density provision may be found irrespective of dedication to a public body.

[40] Finally, on the road issue, Mr. Hambly lodged a pertinent point during his Participant testimony. He noted that the area of BWP itself allowed for 6 units on the site. By extension, he asked if BWP were 10 times longer, would it support 60 units on the site? Answering his own question, Mr. Hambly felt it unreasonable to include a road in the tallying of permitted units on the developable area of a site. The Tribunal agrees and finds Mr. Hambly’s conclusion supported by the OP.

[41] As for the creek area, the Tribunal finds the creek or the drainage outfall to be considered a “creek block” under the meaning of the OP for density purposes. Ms. Minaji explained that creek areas are not developable lands and that the OP intends to permit density based on the developable area of a lot.

[42] Several participants described the creek and provided photographs of its character and occasional flooding. They testified, without contradiction, that the creek flows year-round, that it supports wildlife, and that its water level often reaches bankful after rain events and floods after larger storms.

[43] Mr. Quarcoopome refused to acknowledge that the “outfall” is a creek. He did concede that the feature appeared to be channelized water from an unknown catchment area to the north of the site. His Planning Justification Report refers to “an unregulated water course” which functions as a “stormwater outlet” ... “then discharges into Lake Ontario” (Exhibit 6, p48). The Tribunal finds it untenable, especially given the local knowledge of the Participants, that the watercourse is not a creek. The creek and its setback area constitute a “block,” whether dedicated to the City or not, that the Tribunal finds is required to be excluded from lot area for the purpose of calculating density.

[44] With BWP and the creek excluded, the resulting density of 30 u/ha is well into the medium density range set out in the OP, and the Tribunal finds that a 20 per cent increase in permitted density neither generally conforms with the low density maximum nor is within a reasonable range for interpreting conformity in this location. Further, the Tribunal accepts Ms. Minaji's view that if an official plan amendment had accompanied these applications, she could not find support in the OP for a medium density development on this site.

[45] Having found the applications to not conform with the OP based on density, the Tribunal could stop the analysis there. However, considerable evidence was heard about the compatibility of the development with the neighbourhood, and the Participants' main concerns relate to measures of compatibility. Accordingly, the Tribunal will outline the remaining issues and findings.

Compatibility

[46] Conformity with the OP has much to do with the character of the existing neighbourhood. The reference neighbourhood used by the Planners encompasses three stub streets extending south of Lakeshore. Each stub stops short of the lake when it reaches the north side of lakefront properties. Secord Lane is a public street at the west limit of the neighbourhood where it abuts Paletta Park to its west. BWP is a private street in the centre of the neighbourhood and is the proposed access to the site. Avondale is a public street on the east side. The lots abutting each of these streets and the lots abutting Lakeshore between these streets comprise the reference neighbourhood.

[47] The neighbourhood reflects its OP designation of Residential - Low Density and its zoning of R1.2. Each of the 39 lots, including this site, contains a detached dwelling. The houses on Secord Lane and BWP are generally one- and two-storey dwellings that have been established for many years. While some similar homes remain along Lakeshore and Avondale, many of the lots on these streets have been redeveloped with larger two-storey executive-style homes. By urban standards, the lots are large, with

many in the range of 0.25 ha lot area. Even where larger homes have been built, the large lots allow for wider yards and setbacks than required by the ZBL. Mature trees and open greenspace are found throughout the neighbourhood. The resulting development pattern is low density with leafy open spaces that create a suburban environment with interspersed natural landscape features, including treed areas, a watercourse, and Lake Ontario.

[48] As quoted earlier, OP Section 2.2.2(c) requires the proposed townhouses to be compatible with the “scale, urban design, and community features of the neighbourhood.” Section 2.5.2(v) expands this terminology to require compatibility “with the existing neighbourhood character in terms of scale, massing, height, siting, setbacks, coverage, parking and amenity areas.” Importantly, this section goes on to establish the desired end result: “so that a transition between existing and proposed buildings is provided” (emphasis added).

[49] This notion of transition is consistent with the Planners’ agreement on the definition of compatibility, accepted as “capable of existing together in harmony”. The OP requirement for transition implies that the character of intensified development may be different than the existing neighbourhood, but it must achieve compatibility to the extent that a transition in form or character occurs.

[50] The Tribunal accepts the Applicant’s argument and agreement of both Planners that a common approach to assessing compatibility is by way of unacceptable adverse effects. All development will have effects on a neighbourhood, and the test asks: are those effects adverse and unacceptable?

[51] Mr. Quarcoopome’s opinion is that the proposed development is compatible with each of the criteria, based on the Urban Design Brief and the Tree Preservation Report, both prepared for an earlier version of the development. He feels that the many perimeter trees on the site and on abutting properties, the proposed setback of 9.4 m (9.3 m in one location), and a wood privacy fence, will sufficiently screen and provide a transition for the development from neighbouring properties. He arrives at the same

conclusion when taking into account that the east side of the site is 2 to 3 m higher than 4342 BWP, and higher yet from 113 Avondale. Mr. Quarcoopome considers the design and massing of each townhouse block to be similar to the large homes on redeveloped properties in the neighbourhood. Although relief is sought from the yard and height provisions of the requested RM2 zone, Mr. Quarcoopome notes that the proposed development is similar to existing yards and setbacks in the area, and is neither as high nor as close to a lot line as permitted as-of-right for a detached dwelling in the R1.2 zone. Mr. Quarcoopome concludes that no unacceptable adverse impacts will result from the development.

[52] Ms. Minaji's opinion is that the site design is not compatible and does not achieve a transition with the character of the immediate area, including the abutting lots. In support of this position, she notes the proposal's long townhouse blocks, narrow separation between blocks, three storeys, reduced setbacks, and high coverage of hard surfaces leaving limited landscaped open space. In contrast, Ms. Minaji emphasizes the neighbourhood's one- to two-storey houses with spacious yards and green space. She considers the proposed scale to be out of proportion with abutting properties, and exacerbated by the higher elevation of the site and the imperfect screening afforded by any remaining trees. Ms. Minaji prefers the RM3 zone's 12 m setback from an R1 zone for three-storey townhouses, rather than the RM2 zone's minimum 9 m setback, even though Mr. Quarcoopome responded that Table 2.7.1 of the ZBL refers to the RM2 zone regulations for 3 storey townhouses in the RM3 zone. Ms. Minaji concludes that the resulting development will create unacceptable adverse impacts in the form of privacy and overlook out of character for the area resulting from many households in three-storey buildings with minimal setbacks from neighbour's yards and houses, and inadequate buffering in relation to massing and scale.

[53] The Tribunal accepts and prefers the evidence of Ms. Minaji that the development, in its current form, fails to satisfy the OP requirements for compatibility and transition. The Tribunal agrees with Ms. Minaji that townhouses are permitted within low density neighbourhoods subject to the requirements of the OP, but that this

proposal does not sufficiently balance intensification with integration in the existing neighbourhood. The features of the community include separations between dwellings with spacious yards and landscaped or treed open space. Despite some merit to Mr. Quarcoopome's emphasis on trees and fencing as buffers, the Tribunal finds insufficient transition is provided between the individual dwellings on large lots and 26 townhouses in their proposed form. Other than a building height inventory, Mr. Quarcoopome did not conduct a quantitative analysis of the neighbourhood for lot area, density, coverage, and setbacks to support his opinion.

[54] The Tribunal finds the applications to be lacking in that an updated Urban Design Brief and Tree Preservation Plan were not conducted for the proposal in front of the Tribunal. Final tree preservation plans were promised later by way of conditions to site plan approval. The existing documents are a significant pillar in support of the Applicant's case and relied upon extensively by Mr. Quarcoopome. However, when weighing the evidence in the assessment of the OP requirements, the Tribunal is unable to accept that an Urban Design Brief and Tree Preservation Plan based on a different development layout and building form are reliable sources of conclusions for this development.

[55] Determining compatibility and transition is not a function of each individual element, but the combined effect of many elements of a development and a site. Here, the number of units, taller buildings, minimum or reduced setbacks, higher land elevation, and the partial loss of existing tree screening, together result in a development form that is not "compatible with the scale, urban design and community features of the neighbourhood."

[56] As agreed by both Planners, some form of intensification on this site is permitted by the OP. That form may be townhouses which could be designed and positioned to ameliorate the deficiencies of the current proposal. This Decision cannot presuppose what may be required in a future application to find conformity with the OP in the context of this neighbourhood. Such assessment can only be conducted on the merits of a

future application.

Provincial Policy Statement and Growth Plan

[57] The Planners agree that provincial policies encourage densities and a mix of housing types that utilize land and infrastructure efficiently. Municipalities are directed to plan for intensification throughout built-up areas. Burlington's growth management strategy is incorporated into its OP and directs a significant amount of intensification to the mixed use centres and intensifications corridors, but also allows intensification within low density neighbourhoods based on numerous criteria as noted earlier.

[58] Ms. Minaji considers the intensifying nature of these applications to be consistent with the PPS and to conform with the GP, but because she considers that the applications do not conform with the OP, she also concludes that they fail to fully satisfy provincial policies. Ms. Minaji refers to such PPS references as "where this [intensification] can be accommodated" (s.1.1.3.2), "appropriate locations" for intensification (s. 1.1.3.3), "appropriate development standards" (s. 1.1.3.4), and the GP's references to local policies (s. 5.2.5.6 and 5.2.5.8) to support her view that failure to satisfy the OP also results in lack of consistency or conformity with provincial policies.

[59] The Tribunal has considered the case argued by the City and distinguished by the Applicant (*Sheng v. Toronto (City)*, [2014] O.M.B.D. No. 998, 2014 CarswellOnt 18251, 82 O.M.B.R. 422). However, the Tribunal finds that given the earlier determinations in this Decision, the outcome of these appeals does not turn on PPS consistency and GP conformity. The Planners agree that these applications satisfy the intensification principles of the provincial documents but disagree on their implementation assessment through the OP. If Ms. Minaji were to find an application in conformity with the OP, all other things being equal, she would presumably also find consistency and conformity with provincial policies. The Tribunal respects the position of both Planners where they apply their OP opinion to inform their PPS and GP opinion. The Planners' approach allows for each to be internally and logically consistent and does not require adjudication in these circumstances.

Other Issues

[60] Given the findings on the primary issues above, the secondary issues do not require resolution here. Matters of transit, shopping access, and vegetation protection will be addressed again by an applicant and the City should another development application be submitted for the site. The informed neighbourhood, as validated by the well-prepared Participants in this hearing, will no doubt engage fully in any future public process.

[61] Several other important planning matters remain unresolved in the draft conditions to the SPA. The Parties remain far apart on these issues and further discussion will be required in the context of any future development application. Those matters include the eventual ownership of BWP, a public walkway through the site to the lakefront park, and whether the City may impose new conditions as plans evolve. BWP and a public access to the park, as complex legal and planning issues, are best addressed through consensus around a suitable development proposal.

Conclusion

[62] The Tribunal finds for the City based on the applications failing to conform with the density, compatibility and intensification policies of the OP. The density calculation envisioned by the OP is found to not rely on the legislated or actual dedication of land for that land to be excluded from the calculation. In this case, BWP and the creek area are properly excluded from the density calculation regardless of their future ownership.

[63] The complex of factors related to compatibility combine in this case to not satisfy the OP criteria. The proposal's massing, scale and buffering do not achieve a suitable transition, are found to be incompatible with the "features of the neighbourhood" and result in a built form that creates unacceptable adverse impacts related to privacy, overlook and sense of open space.

[64] The Tribunal's finding that the ZBA does not conform with the OP leads to the

necessary dismissal of the application under s. 24(1) of the Act. In the absence of the ZBA, the accompanying SPA is also dismissed as premature.

[65] The City's issues of infrastructure and shoreline protection in its Notice of Decision were largely addressed by the Applicant. In arriving at this Decision, the Tribunal has had regard to the City's issues of intensification and impacts on area properties.

ORDER

[66] The Tribunal orders that the appeals are dismissed.

"S. Tousaw"

S. TOUSAW
MEMBER

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

Local Planning Appeal Tribunal

A constituent tribunal of Environment and Land Tribunals Ontario

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