

Ontario Municipal Board
Commission des affaires municipales
de l'Ontario



ISSUE DATE: October 25, 2016

CASE NO(S): PL150360

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

Applicant and Appellant:	VIVA Retirement Communities
Subject:	Application to amend former Leaside Zoning By-law 1916 and Zoning By-law No. 569-2013 - Neglect of City of Toronto to make a decision
Existing Zoning:	Commercial – General (C1) under the former By-law, and CR 2.0 (c2.0; r1.3) SS3 (x1163) under Zoning By-law 569-2013 (not in force)
Proposed Zoning:	Site Specific (To be determined)
Purpose:	To permit the development senior housing
Property Address/Description:	146-150 Laird Drive
Municipality:	City of Toronto
Municipality File No.:	14 169650 NNY 26 OZ
OMB Case No.:	PL150360
OMB File No.:	PL150360
OMB Case Name:	VIVA Retirement Communities v. Toronto (City)

Board Rule 107 states:

107. Effective Date of Board Decision A Board decision is effective on the date that the decision or order is issued in hard copy, unless it states otherwise.

Pursuant to Board Rule 107, this decision takes effect on the date that it is e-mailed by Board administrative staff to the clerk of the municipality where the property is located.

Heard: February 29 and March 1, 2016 in Toronto, Ontario

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

VIVA Retirement Communities

E. Costello and L. Dean

City of Toronto

R. Kallio

DECISION DELIVERED BY M. A. SILLS AND INTERIM ORDER OF THE BOARD

[1] The matter before the Board is an appeal by VIVA Retirement Communities (“VIVA”) resulting from the failure of the City of Toronto (“City”) to enact a Zoning By-law Amendment (“ZBA”) for the lands located at 146 – 150 Laird Drive (“subject lands” or “site”).

[2] The subject lands are designated Mixed Use Areas in the City Official Plan (“OP”), and zoned Commercial General (C1) by the former Town of Leaside Zoning By-law No. 1916, and Commercial Residential (CR 2.0) by City Zoning By-law No. 569-2013 (“ZBLs”). The Mixed Use Areas designation permits a wide range of residential, commercial, and institutional uses within mixed use or single use buildings, and with main entrances directly accessible from the street.

PRELIMINARY MATTERS**Request for Party Status and an Adjournment**

[3] At the commencement of the hearing, Geoff Kettel made the following requests on behalf of the Leaside Property Owners Association Incorporated (“LPOA”):

- 1) For a deferral of the hearing due to the apparent “settling” of two matters (Heritage, and, Traffic, Access, Parking, and Servicing) between the applicant and the City.

2) For party status

[4] By way of background, the LPOA was granted participant status in this matter at a prehearing conference (“PHC”) held on September 22, 2015.

[5] At that PHC, Mr. Kettel originally sought party status, but was not prepared to say whether the LPOA intended to retain expert witnesses and/or legal counsel. Rather, he said the LPOA was going to wait for the City to formulate its issues list before deciding which issues it intended to bring to the hearing.

[6] VIVA took the position that the request for party status was premature given that the LPOA was uncertain about the nature of its issues and/or its intentions in regard to retaining expert witnesses. The presiding Member (differently constituted) agreed and, instead, granted the LPOA participant status.

[7] The Member also stipulated that in the event the LPOA decided to pursue party status “it will be required to bring a motion to that effect, in accordance with the Board’s procedures and prior to the next PHC”. Consequently, a second PHC was scheduled for November 13, 2015 for that purpose. The corresponding Order for the September 22nd PHC (issued October 1, 2015) indicated that “Mr. Kettel was content with this arrangement”.

[8] As motion materials had not been filed by the LPOA within the statutory timeframe established by the Ontario Municipal Board (“OMB”) *Rules of Practice and Procedure* (the “Rules”), Case Coordinator Sandra Chan contacted Mr. Kettel by telephone (November 6, 2015), at which time he confirmed the LPOA would not be seeking party status “at this time”. As a result, the scheduled November 13, 2015 PHC was cancelled.

[9] These proceedings are subject to a Procedural Order (“PO”) which came into force and effect by an Order of the Board issued January 6, 2016. Among other things, the City’s Issues List, as provided in the PO, included development specific issues

respecting (1) Heritage, (2) Planning - Land Use and Urban Design, and (3) Traffic, Access, Parking and Servicing.

[10] VIVA and the City continued to engage in dialogue aimed at resolving some or all of these issues, and ultimately, the City's issues respecting (1) Heritage, and (2) Traffic, Access, Parking and Servicing were resolved. This was communicated to the LPOA and local residents at a meeting with City officials (Ray Kallio, Guy Matthew, and Ward Councillor Burnside) held on February 1, 2016.

[11] In the late evening on Sunday, February 28, 2016, on the eve of the hearing Mr. Kettel sent email correspondence to Ms. Chan (copied to Mr. Kallio) informing of his intent to request a deferral and party status on behalf of the LPOA at the commencement of the hearing the following day. Ms. Costello confirmed the same email notification was received at her law office at approximately 10:30 p.m. on that same date.

Submissions

[12] The LPOA "believes it is unfair behavior of the City in settling with the developer on key issues (heritage, transportation) without consulting with the community that had agreed with and relied on the City to carry these issues". The LPOA contends the community has no knowledge of what has been agreed to, and that it is too late for it to obtain its own experts.

[13] The LPOA submits "this has everything to do with how the City regards its citizens and tax payers who expect fair practices from their government". In this case, "the residents are left without support to defend the community interests through no fault of their own".

[14] The LPOA's decision in regard to status (participant versus party) was premised on the City's Issues List as provided to the Board and approved in the PO. On the basis

of that list, the LPOA did not find it necessary to bring forward a motion for party status at the time of the scheduled November 13, 2015 PHC.

[15] It was not until a meeting with City representatives on February 1, 2016, that the LPOA and local resident representatives were informed for the first time that the City no longer had any issues with the heritage, traffic and transportation aspects of the proposal.

[16] In correspondence to Mr. Kallio on February 12, 2016, Mr. Kettel wrote:

The LPOA needs to understand any changes to the proposal and any related concessions made by the City. If such access is not provided, or if it is deemed inadequate to evaluate the rationale for the City's change in position, then the LPOA will be forced to seek Party status at the Board in an effort to safeguard the interests of the neighbours to the development proposal, and that of the broader Leaside Community.

[17] Mr. Kallio acknowledged receipt of this correspondence on February 16, 2016, and invited Mr. Kettel to contact City planner Guy Matthews to review the revised plans after his return from vacation on February 18, 2016.

[18] Mr. Kettel said he met briefly with Mr. Matthews on February 18, 2016, but the planner was not able to provide any information at that time. In fact, it was not until February 26, 2016 that the revised plans "issued for the OMB settlement" were made available to the LPOA.

[19] The LPOA maintains "this is clearly too little too late and is patently unfair and unjust to the LPOA and residents; it seriously prejudices the position of the residents who have relied on the City with its experts and resources and leaves them unable to obtain the information or the resources to provide effective factual evidence on the issues".

[20] The LPOA asserts "this is about our right to a fair hearing which is not possible in the circumstances, left as we are 'in the lurch' by the City". Mr. Kettel said he expects

the City will support their requests for deferral and Party status in the interest of fairness, “regardless of the terms of their undisclosed settlement with the Applicant”.

[21] VIVA is opposed to the requests for party status and an adjournment. Ms Costello submitted that the LPOA has had ample time and opportunity to bring a motion seeking party status (and an adjournment), and even as of yet, has not done so as directed by the Board and in accord with the Rules. Rather, Mr. Kettel simply provided an email late in the evening (Sunday) the day prior to the start of the hearing indicating the LPOA would be requesting party status and an adjournment at the start of this hearing, which is not acceptable.

[22] Ms. Costello submits that VIVA is fully prepared to proceed and should not be made to suffer any further delay in these proceedings as a result of the LPOA’s failure to adhere to the direction of the Board and comply with the Rules.

[23] Principally, Mr. Kallio was adamant that he has, at all times and in many instances, made it abundantly clear that he represents the City; not the local residents and not the LPOA. That being said, Mr. Kallio said the City would not oppose the requests for party status and adjournment.

Ruling

[24] The Board has carefully considered the requests in the context of delivering efficient and balanced administrative justice. In these particular circumstances, the Board does not accept the LPOA’s assertion that the community is being prejudiced or that otherwise, the LPOA and community are being denied a fair hearing due to the actions of the City.

[25] The LPOA attempts to defend its last minute request for party status and an adjournment on the basis that the City settled with the developer on the heritage and traffic/transportation issues “without consulting with the community”, and then failed to deliver the revised plans to the LPOA in a timely manner.

[26] Firstly, it is widely known that the Board encourages parties to an appeal to work towards resolution of some or all of the issues in dispute. This is established in the PO at sections:

4. The length of the hearing will be 10 days. The length of the hearing may be shortened as issues are resolved or settlement is achieved; and
7. The issues for the hearing are set out in the Issues List included as Attachment 3. The Issues List may be further scoped and modified on consent and with the Board's permission [emphasis added].

[27] While it was made apparent by the submissions of Mr. Kettel that the LPOA takes great exception to having been excluded from the settlement discussions, these discussions are typically conducted on a without prejudice basis and are subject to solicitor client privilege. The City was not obligated to either consult or seek approval from the LPOA or the local residents.

[28] Similarly, as the LPOA was not a party to this appeal neither the City nor VIVA was obligated to make the revised plans available to the LPOA. However, the City did forward the plans promptly following receipt from VIVA (February 26, 2016). Notably, the revised plans are date-stamped February 25, 2016.

[29] The fact that the circumstances which the LPOA claims lead to the current request for party status (and adjournment) occurred after the time of the November 2015 PHC, is irrelevant. There was ample time and opportunity for the LPOA to file a motion(s) in accordance with the Rules (Nos. 34 to 43) after first being informed (February 1, 2016) that the City's issues in regard to heritage, traffic, access, parking and servicing aspects of the project (as listed in the PO) had been resolved.

[30] The Board recognizes the value of citizen engagement in community planning matters. In the case of the LPOA, its advocacy of the Leaside community and its constituents is laudable. The LPOA regularly participates in OMB hearings involving

planning applications affecting the Leaside community, and the Board welcomes its involvement.

[31] At the same time, individuals and/or entities choosing to involve themselves in OMB proceedings are expected to familiarize themselves with hearing protocols, practices and processes, to adhere to the direction of the Board and to act in accordance with Rules. As a group that regularly appears before the Board, the LPOA should have known this.

[32] In this case, the direction of the Member at the initial PHC was explicit: “should the LPOA intend to seek party status it will be required to bring a motion to that effect in accordance with the Board’s procedures [Rules] and prior to the next PHC” [emphasis added by the Board].

[33] The LPOA was first informed about the settling of issues on February 1, 2016. On February 12, 2012, Mr. Kettel wrote to Mr. Kallio setting out that:

The LPOA needs to understand any changes to the proposal and any related concessions made by the City. If such access is not provided, or if it is deemed inadequate to evaluate the rationale for the City’s change in position, then the LPOA will be forced to seek Party status at the Board in an effort to safeguard the interests of the neighbours to the development proposal, and that of the broader Leaside Community.

[34] Although evident from this correspondence that the LPOA was contemplating seeking party status at that time, no action was taken to properly bring a motion to that affect, which incidentally, could have been done in compliance with the Rules (Rule 63).

[35] Instead, on the eve of the hearing (February 28, 2016) the LPOA simply sent an email to VIVA and the Board (copied to Mr. Kallio) indicating that it intended to request an adjournment and party status at the beginning of the hearing. Even then, the LPOA made no attempt to file proper motion materials with the parties or the Board. It was given every opportunity to act to safeguard its interests and exercise its rights. For reasons unknown to the Board, it chose not to. Rights come with responsibilities. In

this case, those responsibilities were disregarded. The Board, therefore, cannot countenance its Rules and its clear directions being ignored.

[36] Accordingly, the request by the LPOA for party status is denied.

[37] Notwithstanding, that only a party has standing to seek an adjournment, it is to be recognized that there is no constructive purpose for granting party status to the LPOA unless the Board would also be prepared to grant an adjournment. Given that VIVA and the City are represented by legal counsel and will provide expert and technical evidence, a credible challenge by the LPOA will require, at minimum, that it retain experts.

[38] The relevant Rules regarding adjournments are as follows:

Rule 61. Hearing Dates Fixed

Hearing events will take place on the date set unless the Board agrees to an adjournment.

Rule 63. Requests for Adjournment Without Consent

If a party objects to an adjournment request, the party requesting the adjournment must bring a motion at least 10 days before the date set for the hearing event. If the reason for an adjournment arises less than 10 days before the set date for the hearing event, the party must give notice of the request to the Board and to the other parties and serve their motion materials as soon as possible. If the Board refuses to consider a late request, any motion for adjournment must be made in person, at the beginning of the hearing event [emphasis added by the Board].

Rule 64. Emergencies Only

The Board will grant last minute adjournments only for unavoidable emergencies, such as illnesses, so close to the hearing date that another representative or witness cannot be obtained. The Board must be informed of these emergencies as soon as possible [emphasis added by the Board].

[39] The PO specifically calls attention to these Rules, as follows:

20. No adjournments or delays will be granted before or during the hearing except for serious hardship or illness. The Board's Rules 61 to 65 apply to such requests.

[40] As such, the circumstances in this case do not rise to the standard necessary to warrant an adjournment.

[41] It is important to recognize that the Rules are informed by the principles of natural justice and serve to ensure procedural fairness in the proceedings.

[42] A delay of the proceedings would be demonstratively unjust to VIVA. In this regard, the consultation process was initiated in 2012. The original application was submitted to the City on June 4, 2014 and deemed complete on June 6, 2014. The statutory public consultation meeting was held on February 9, 2015, and the current appeal was filed on April 27, 2015 pursuant to s. 34(11) of the *Planning Act*, R.S.O. 1990, c.P.13, as amended ("PA") – the City's failure to make a decision on the application within the requisite timeframe. The first PHC was conducted on September 22, 2015, and the PO was brought into force and effect by Order of the Board issued on January 6, 2016.

[43] Taking into account the time that would be required for the LPOA to retain expert witnesses, and then for these experts to conduct studies, prepare and exchange documents, in combination with current scheduling pressures on the Board's calendar, an adjournment would result in these proceedings being delayed for several months.

Request for Participant Status

[44] By way of background, the PO establishes, January 29, 2016 as the deadline for the filing of Participant Statements. The LPOA and ten other individuals were granted participant status at the initial PHC. Of these, the LPOA and eight individuals filed Participants Statements with the Board in accordance with the stated deadline.

[45] Subsequent to the January 29, 2019 filing deadline, Mr. Kettel submitted Participant Statements on behalf of two other individuals Paul Denter (February 21, 2016) and Mike Linthicum (February 25, 2016) who had not been granted Participant by the Board. A third individual who had not been granted Participant status, Paul Martin, emailed a Participant Statement on February 1, 2016.

[46] In an email addressed to the Board (copied to Mr. Kallio and Mr. Kettel) on February 26, 2016, Ms. Costello expressed concern that Mr. Kettel was continuing to file Participant statements from individuals who are not approved participants.

[47] Ms. Costello asked that the Board disregard these statements, or in the alternative, that these individuals be required to attend the hearing and seek Participant status in order to file their respective statements.

[48] In a reply letter to the Board (copied to Mr. Kallio) dated February 28, 2016, Mr. Kettel wrote "it is indeed their intention to seek participant status, that is except for Mr. Linthicum, whose distant place of residence precludes him from appearing and whose statement specifically mentions his authorization for me to read his statement".

[49] Only Mr. Denter attended and requested participant status at the start of the hearing. On consent, the Board granted the request for status and accepted the Participant statement of Mr. Denter.

[50] Mr. Kettel then asked that he be permitted to read aloud the Participant Statement of Mr. Linthicum, who was unable to attend because he resides in the State of Florida (USA).

[51] Ms. Costello objected, and the Board declined the request on the basis that Ms. Costello and Mr. Kallio would not be given an opportunity to cross-examine Mr. Linthicum on his evidence, as they are entitled to do.

Site Context

[52] Michael Bissett is a professional planner, and a Member of the Canadian Institute of Planners and the Ontario Provincial Planners Institute. He provided contextual and land use planning opinion evidence in support of the application and proposal.

[53] The subject property is located on the west side of Laird Drive and south of McRae Drive, in the former Town of Leaside. Laird Drive is a four-lane major street with a planned right-of-way width of 27 metres (“m”). The Eglinton Crosstown LRT stop at Laird and Eglinton Avenue is located approximately 450 m from the site.

[54] This is a rectangular-shaped site approximately 6,762 square metres (“sq m”) in area, with approximately 170.4 m frontage on Laird Drive and a depth of 39.6 m. The depth of the site will be reduced by 3.44 m due to a road widening that will be conveyed through the development application. There is a slight downward slope in the property from the west to the east.

[55] The site is comprised of two properties, and is currently occupied with two buildings accessed from Laird Drive via three access points – one at the northerly end, one in between the two existing buildings, and one on the southerly portion of the property at the signalized intersection of Laird Drive and Commercial Road. There are existing curb cuts at all three access points. There is a public concrete sidewalk and landscaped strip (inclusive of trees) extending along the length of the frontage of the property, and several tall mature trees line the rear property line.

[56] The southerly property (146 Laird Drive) currently maintains a two to three-storey mixed use building constructed generally to the street, with a restaurant on the ground floor and commercial uses above, and an 80-space surface parking lot.

[57] The northerly property (150 Laird Drive) maintains the historic Durant Building, a two and one half-storey building constructed in 1928. The Durant Building is setback approximately 12 m from the street, providing for a landscape area along Laird Drive.

This property contains 20 parking spaces, including four spaces at the northern end, four spaces at the southern end (between the building and the street), and 12 spaces in the rear. The Durant Building once served as the headquarters for Durant Motors of Canada and was listed on the City's Inventory of Heritage Properties in 2007.

[58] The site is located at the interface between the Leaside residential community to the west and opposite to the western boundary of the Leaside Business Park to the east. The rear of the property abuts a residential street known as Randolph Road. Properties 181 – 205 Randall Road back directly onto the site. These properties are each approximately 40 m in depth and contain one and two-storey, detached and semi-detached dwellings.

[59] This section of Laird Drive has generally maintained its industrial/commercial, visually unattractive character and presently is not evolving in a similar manner to the northern portion of the street. One exception is the recently approved seven-storey mid-rise (26.4 m in height including mechanical), mixed use building located on Laird Drive at Millwood Road (2 Laird Drive).

The Development Proposal

[60] VIVA is proposing to develop the site with two complementary mid-rise buildings orientated towards Laird Drive, and planned in two Phases.

[61] VIVA has built several mid-rise seniors buildings providing a range of care levels, including independent living, assisted living and respite care housing. These facilities provide three daily meals in a main dining room and offer a broad range of services and amenities geared to seniors, including: fitness facilities and equipment; activity centres (libraries, craft kitchen, a theater); personal care services (spa, laundry room and doctor's office); as well as opportunities for social interaction (24 hour café, pub and games room) and meeting/activity rooms for use by residents and their guests.

[62] As is the case with all VIVA residences, the proposed facility contains a Victorian Garden with attached greenhouse where flowers and vegetables can be grown and harvested. Residents are permitted to have small domestic pets and each residence features a dog grooming station.

Phase 1

[63] The Phase 1 development (146 Laird Drive) involves a seven-storey rental retirement building offering independent and assisted living facilities. Independent living units (119) are proposed for Levels 3 through 7, with assisted living units (30) on Level 2 and amenity space on the ground floor. The majority of the ground floor is comprised of common amenity space including the dining room with direct access to the approximately 585 sq m rear outdoor amenity and patio and garden area, a pub, a games room, fitness facilities, a salt-water pool, spa/beauty salon and a craft kitchen.

[64] The height of this building is 24.51 m not including mechanical and rooftop amenity spaces or parapet, and 27.86 m inclusive of these features. Notably, the City classifies this structure as an eight-storey building due to the rooftop greenhouse. The greenhouse is approximately 140 sq m, and is at a distance of approximately 21.7 m from the rear property line.

[65] The ground floor of the Phase 1 building will be setback the required 7.5 m from the rear property line, and each floor above Level 2 is stepped back; at Level 7 the building is setback approximately 19.2 m from the rear property line. The south side yard setback will be 1.6 m at grade, then varying between 3 m and 5.5 m for the majority of the south façade.

[66] The Phase 1 building comprises a total of 11,456 sq m of gross floor area, of which 2,537 sq m is dedicated to indoor amenity space. This building will feature a 431 sq m outdoor amenity area associated with the Victorian Garden and a 140 sq m indoor amenity space (greenhouse).

[67] Notably, several revisions have been made to the proposed Phase 1 building since the time of the original application. By comparison: the height has been reduced from 27.8 m (eight storeys) to 24.51 m (seven storeys), not including mechanical, and from 31.81 m to 27.86 m inclusive of mechanical; in part, the front yard (east) setback has been increased from 0.0 m up to 3.9 m (measured from the 3.44 m road widening); the rear yard (west) setback has been increased from 6 m to the standard required 7.5 m; the (south) side yard setback has been increased from 0.0 m to 1.6 m; the residential gross floor area (“gfa”) has been reduced from 15,440 sq m to 11,456 sq m (including amenities); the number of units has been reduced from 175 to 149; the indoor amenity area has been increased from 2,458 sq m to 2,537 sq m; and, the outdoor amenity area has been increased from 1,047 sq m to 1,388 sq m.

Phase 2:

[68] The Phase 2 development (150 Laird) involves an eight-storey building, and includes the conservation of the Durant Building, *in situ*. This building is comprised of 104 seniors condominium units on all levels, eight of which are partially below grade (P1 Level of the Durant Building). No parking is proposed beneath this building, and there will be no excavation below grade beyond the depth of the existing building. This building will be connected to the Phase 1 building by way of shared lobby and amenity area at ground level, and two linking corridor hallways on the second and third storeys. There is no indoor amenity space planned for this building.

[69] The existing Durant Building is setback 8.7 m from the front property line and 5.5 m from the north property line. At ground level, the new addition above the Durant Building will be located approximately 10 m from the north property line and 5.5 m from the west property line, and will feature a garden/terrace between the building and rear (west) property line. At Level 5, the building steps back to provide a setback of 7.4 m from the west property line.

[70] Several revisions have also been made to the Phase 2 building design in an effort to enhance the heritage attributes of the Durant Building. The new addition above the Durant Building will step back 4 m from the front façade, and 3 m from the side walls of the Durant Building as a means to emphasize the dominance of the Durant Building. The historic wrought iron light fixtures on the entrance/landing to the front door of the Durant Building will be restored and reinstalled, and the lower window wells are no longer proposed to be extensively terraced. The original entrance at 150 Laird Drive is to be maintained and restored so as to function as an entrance to the Durant Building, and the linking corridor bridge between the buildings has been moved back from Laird Drive to more fully reveal the southerly façade of the Durant Building.

[71] Other revisions to the Phase 2 building include: the height has been increased from 26.96 m (seven storeys) to 30.25 m (eight storeys) not including mechanical, and from 30.86 m to 34.1 m inclusive of mechanical (3.5 m of the height of this building is directly attributable to the preservation of the Durant Building); the residential gfa has been reduced from 8,069 sq m to 7,511 sq m; and, the number of units has been decreased from 109 to 104.

[72] The proposal includes the provision of a total of 174 parking spaces within three underground levels, all beneath the Phase 1 building. The number of parking spaces to be provided exceeds the by-law requirement of 160 spaces. The underground parking garage is accessed via the southerly curb-cut at the signalized intersection with Commercial Road.

[73] The southerly driveway will provide access to servicing facilities, including one Type G loading space. A drop-off area is proposed between the two buildings at the shared lobby, and no surface parking is proposed between the buildings and the streetline. The proposal includes bicycle parking in accordance with the Tier 1 standard for the condominium building, modified to reflect the tenancy of the seniors building.

[74] Overall, the revised development has a combined gfa of 21,486 sq m (7,624 sq m residential and 11,451 sq m institutional), resulting in an overall density of 3.48 floor space index. The location and amount of indoor and outdoor amenity space exceeds the minimum standard of 2 sq m per unit required by the ZBL.

CONCERNS OF THE PARTICIPANTS

[75] Participant statements were provided by Susan Boudreau, Jamie Cairns, Cheryl Griffin, Brian Healey, Liam Kenny, Ian MacMillan, John Morgan, Andrew Smyth, Paul Denter, and Geoff Kettel (on behalf of the LPOA). With the exception of Mr. Smyth and Susan Boudreau who were not in attendance, all of these individuals made oral presentations at the hearing.

[76] Eight of these individuals reside on Randolph Road (the street adjacent to the rear of the subject site) and are concerned that the proposed building is overly large and will negatively impact their properties. Common among their concerns is the loss of sunlight/shadowing, the potential for impact to existing trees and vegetation, overlook, and loss of skyview and backyard privacy.

[77] Several residents expressed the view that the proposal does not provide an appropriate setback and transition to their adjacent, low density residential neighbourhood. In one instance, the proposal was characterized as a “towering complex” which would be “out of place amongst its community neighbours”.

[78] Some residents are concerned the development will damage their backyard lawn and gardens and result in the destruction of mature trees. Others expressed concern about increased neighbourhood traffic and over-flow street parking.

[79] One individual was critical of the developer for not consulting with the residents of Randolph Road; another was concerned that the proposal did not include retail space; one feared his home and property would lose the “Leaside small town community character”; one maintained that VIVA would not be lawfully permitted to limit

occupancy of the building to “seniors”; and one resident listed the heritage building (Durant Building) as a serious issue.

[80] Mr. Denter is a Charter Member of the Toronto Historical Association, an Affiliate Member of the Ontario Historical Society and a Charter Member of the Specialty Vehicle Association of Ontario. He provided an insightful accounting of the history of the Durant Motors Company, highlighting the significant role it played in the industrial/commercial history of Toronto, Ontario and Canada.

[81] Mr. Denter maintains the Durant Building is one of the last vestiges of an important automotive industry that thrived in Toronto in the last century. He pointed out that this “striking” building retains the look it had as designed and built in 1928, and it is his hope that it will not be added to “the list of those that we have to consult archival photographs to see”. In closing he asserted that heritage preservation of the Durant Building involves more than just saving one wall of the building.

[82] That comment prompted the Board to ask Mr. Denter if he was aware that the current proposal basically entails the preservation of the Durant Building in its entirety, to which he responded he “was not aware of that”.

[83] On behalf of the LPOA, Mr. Kettel offered comment regarding several aspects of the proposal, including: the non-conformity with Mixed Use Areas policies of the OP; the massive over-development of the site and poor urban design; the land use incompatibility between the proposed development and neighbouring uses; the need for a comprehensive planning study; the loss of value and quality of the employment on the site compared with existing employment; the significance of the existing Durant Building and the unacceptably low level of its heritage conservation; and, transportation issues.

[84] Specifically, the LPOA takes the position that an eight storey building would not be appropriate in this Mixed Use Area, and on a street that is not designated an Avenue. The LPOA submits that it would not appear to be the intent of the OP to allow such a massive “single use” residential complex that other uses are precluded from

approximately two-thirds of the frontage on the west side of Laird Avenue between McRae Drive and Markham Avenue.

[85] The LPOA asserts the proposed buildings are monolithic in the context of the existing mixed commercial format on Laird Avenue and the single detached dwellings to the west. The massing, height and length of the development would overpower surrounding uses and create unacceptable shadowing and loss of privacy for the residents of Randolph and McRae Drives. The LPOA maintains that little thought has been given to how the development could truly fit into the neighbourhood.

[86] The proposed use also has the potential to negatively impact existing neighbouring industrial uses. Ongoing development in the area, particularly residential development, will make it impossible for existing uses to expand and provide additional opportunities for employment, and may contribute to the erosion of the Employment Uses in the Leaside Business Park.

[87] The LPOA's concern with respect to the original proposal was that the distinctiveness of the Durant Building in its setting was being radically diminished by the "attempt to blend the south building's façade [Phase 1 building] with that of the heritage building to the north". It feels this is inappropriate and contrary to recommended heritage conservation practice.

[88] The LPOA concedes that the revised (current) proposal appears to make an effort to reflect a different principle, in that the Durant Building will be distinguishable as opposed to blended. However, the heritage attributes approved by City Council on December 6, 2015 include "all elevations, including ...the rear elevation facing west". This attribute, which provides for retention of the entirety of the building (other than the roof) has been compromised in the revised proposal.

[89] The LPOA submits that the Leaside community is experiencing major increases in traffic on Laird Drive and local streets such as Randolph Road. Several questions were raised at the community consultation meeting regarding traffic volumes, pedestrian

safety, parking standards and site ingress and egress, and the LPOA asserts these have not been adequately addressed by the proponent.

[90] Lastly, the community consultation meeting registered a remarkable level of unanimity with respect to opposition/lack of support for the project. Similarly, a petition undertaken by local residents has garnered a high level of engagement.

[91] The LPOA is requesting that the application be refused; that a comprehensive planning study be undertaken by the City and that revised OP policies be developed for this area; and, that the City's heritage designation report for 150 Laird Drive (August 2015) with its clear identification of heritage attributes be firmly adhered to in order to ensure that the integrity of the "whole" Durant Building is maintained, and a high standard of conservation is ensured.

EVIDENCE OF THE EXPERTS

Heritage

[92] Philip Goldsmith is a registered Architect and a member of the Ontario Association of Architects and the Canadian Association of Heritage Professionals. He has a specialty and extensive experience in heritage architecture and the conservation and adaptive reuse of historically significantly and/or designated buildings. He provided evidence and opinion in support of the proposal as it relates to the planned preservation of the Durant Building.

[93] Mr. Goldsmith's evidence included a fulsome review of the proposal with a view to examining the impact of the overhead addition and new rear building construction on the heritage attributes of the Durant Building and the site.

[94] It is his professional opinion that the design of the proposal has achieved a balance between the need for the proposal to succeed as a retirement community facility and the desire to preserve the Durant Building as a heritage resource.

[95] Mr. Goldsmith pointed out that most of the heritage attributes of the Durant Building are being preserved, including its location, front yard landscape, three full elevations, all of the design detail of the building on all visible elevations, and the views from both public streets (Laird and McRae Drives). The impacts of the proposed addition are primarily the loss of much, but not all, of the rear elevation, and the alteration of the height profile of the building.

[96] Mr. Goldsmith contends that the rear elevation was largely obscured from public view with the later development of the residential area of Leaside to the west and the more recent residential development to the north on McRae Drive. It is his contention that this elevation, although visible at the time of construction, and therefore designed to match other elevations, diminished in significance many years ago.

[97] Mr. Goldsmith concedes that some additional shadowing on the Durant Building will occur due to the positioning and height of the new Phase 1 building. However, it is his opinion that this additional shadowing will not be significant and will not detract from the heritage attributes of the property.

[98] Currently, the Durant Building is a period two and one half storey industrial administrative building design. With the proposed new addition the height of the building will change to eight storeys. However, through the introduction of step backs at the existing roofline, and through use of light material and a simple design, the scale and form of the Durant Building is clearly legible, preserving an understanding of the original building and its relationship to the industrial heritage of the area and its context.

[99] In summary, it is Mr. Goldsmith's professional opinion that all conservation issues identified by the City have been satisfied. In any event, the proposal will be subject to a Heritage Conservation Plan.

Traffic, Access, Parking and Servicing

[100] Dan Cherepacha is a professional engineer with 51 years experience in transportation planning and traffic engineering. Mr. Cherepacha, who prepared the related Traffic Impact Study (“TIS”), provided detailed technical and expert opinion evidence on the traffic, parking, and access aspects of the proposal.

[101] The Board was told that the City reviewed the original TIS (submitted May 2014) and requested additional information. A revised TIS was provided on November 2015 which effectively satisfied all the concerns of the City’s Transportation Services staff.

[102] The TIS indicates that the traffic generated by the proposed development will be relatively minor, and the total volume is expected to be about the same as is now generated by the two existing uses on the site. As a seniors building does not generate typical peak time rates of traffic, there will be negligible impact on the external road system in peak hours. The TIS indicates there will be no change in the level of service at the signalized intersections at Laird Drive/Commercial Road, and Laird Drive/McRae Drive.

[103] The proposed access driveways to the site will operate at a good level of service; there will be very little difference in conditions from the existing driveway operations. As access to the site is from Laird Drive there is expected to be negligible, if any, infiltration of site traffic into the residential area to the west.

[104] Circulation within the site has been evaluated (vehicle turning path) and found to provide good movement. This includes cars going to and from the underground parking garage, and trucks going to and from the on-site loading space. Truck deliveries are only expected to occur one to two times daily and will have little, if any, impact.

[105] The proposed development provides parking in excess of what is required by the by-law, as well as loading spaces as required by ZBL 569-2013. The 3.44 m road widening allowance required by the OP will be conveyed to the City.

Planning and Urban Design Evidence - VIVA

[106] Mr. Bissett and Roland Rom Colthoff provided land use planning and urban design evidence and opinion on behalf of VIVA. Mr. Colthoff is a registered architect with over 25 years experience, including extensive experience with this type of seniors building. Mr. Colthoff is a Full Member of the Ontario Association of Architects, as well as the Alberta and Nova Scotia Association of Architects.

[107] Mr. Colthoff emphasized that this is not a standard condominium project; rather, the proposed development is a seniors-specific facility designed and equipped to allow for its residents to age gracefully in place. One of the principal features of this development is that it is intensively managed for the benefit of its residents, making it a quiet and dignified neighbour.

[108] The Building Program being proposed is relatively complex due to the operational requirements of providing varying levels of care to residents in a residential building while ensuring that certain institutional standards are addressed.

[109] The proposed development offers varying levels of accommodation, including independent living condominium units, assisted living units, and full time supervised care for those individuals who are no longer able to live independently and require extensive 24 hour care. These buildings will provide amenities geared toward senior living such as on-site service and entertainment opportunities, and offer design-specific features such as wider corridors and elevators to accommodate scooters and wheelchairs, etc.

[110] Mr. Colthoff reiterated that several design modifications have been made to the proposal to address the concerns of the community and City staff. Most of the recent changes result from detailed discussions with Heritage Preservation staff and relate to the new construction at the Phase 2 building, and the relationship of the Phase 1 and Phase 2 buildings.

[111] Laird Drive is a Major Street characterized by ground floor retail and commercial uses, and is transitioning from a suburban auto oriented environment to a more urban and pedestrian friendly zone. Mr. Colthoff told the Board that current urban design thinking for new buildings is that they should line the street and form a strong urban edge appropriate for a Major Street. It is his opinion that the design of the proposal achieves this.

[112] Mainstreets are largely characterized by relatively continuous street façades in a rhythm which welcomes pedestrian activity, and of a scale that usually echoes the width of the street to give it a recognizable edge. It is Mr. Colthoff's opinion that the proposed development is an appropriate addition to this street and anticipates and encourages the future development of Laird Drive as a Major Street.

[113] The proposal has been designed to form a streetscape appropriate for a Major Street while at the same recognizing the important punctuation of the Durant Building. Recessed balconies and a series of projecting bays create a rhythm appropriate to the street. The locating of the dining, pub and café areas along the street provides animation, and visual connections between these activities and the sidewalk.

[114] Setbacks and stepped massing to the north and south allow for the on-going evolution of Laird Drive. The front façade has been designed having regard to the Guidelines and provides appropriate scale along the street. The Phase 1 building recesses back 0.3 m at the third floor to create a street related component and then steps back 1.8 m at the seventh floor to ensure the appropriate height for the street façade in scale with Laird Drive. Recessed balconies and a series of projecting bays create a rhythm appropriate to the street.

[115] A 2.2 m setback is being provided at Commercial Road to break the apparent mass of the Phase 1 building into a contextually appropriate increment. Shadow studies have been provided to demonstrate that sunlight is preserved on the east sidewalk of Laird Drive at key times of the day for pedestrian activities.

[116] Mr. Colthoff submits that while Laird Drive is not designated an Avenue in the Guidelines, it shares many of the characteristics of an Avenue. In this regard, City staff has agreed that the Guidelines are an appropriate guide for assessing matters of scale, built form, overlook, etc.

[117] The massing of the proposal has been modulated to maintain the clear reading of the form of the Durant Building, to provide appropriate scale and rhythm along Laird Drive, and to mitigate any shadow and/or overlook onto the neighbouring properties to the west. It is Mr. Colthoff's professional opinion that the form and siting of the proposal is appropriate.

[118] The proposal largely flanks Laird Drive in order to allow for an effective transition to the neighbourhood to the west. Those elements which extend westward are held generally below the line of the angular plane. The leading edge of the outdoor terrace will be landscaped to prevent any overview into the neighbouring yards.

[119] The site has been carefully organized to simplify vehicular access using the traffic light at Commercial Road. A small drop off area south of Building 2 will serve both buildings.

[120] The subject buildings have been designed having regard to the Guidelines for height of the street façade and overall building height. The rear yard setback and terracing of the upper floors on the north and south wings from the south fall roughly under the angular planes suggested by the Guidelines.

[121] Mr. Colthoff indicated it is not possible to have the ground floor follow changes in grade in seniors' buildings where steps and changes in level must be avoided. However, the proposal has been designed to take advantage of the 1.2 m change in grade to minimize the impact of the loading and vehicle area.

[122] Mr. Bissett provided detailed planning evidence and opinion in regard to Provincial and City planning policies, including the *Planning Act*, R.S.O. 1990, c.P.13,

as amended, (“PA”) the Growth Plan for the Greater Golden Horseshoe (“GP”), the Provincial Policy Statement, 2014 (“PPS”) and the City’s OP.

[123] Overall, it is Mr. Bissett’s professional opinion that the proposed development is an appropriate form of intensification which represents good land use planning and is in the public interest.

[124] The site is located within a built-up Mixed Use Area where growth is to be accommodated and change is expected to occur. The height, massing and density of the proposed development are appropriate and compatible with the surrounding existing and planned context.

[125] The proposal makes efficient use of an underdeveloped property and represents intensification within a major transit station area, and has the potential to contribute additional ridership to the newly constructed Eglinton LRT. The proposal will provide future employment opportunities with an estimated 20 full-time jobs and up to 60 jobs in total.

[126] The proposed development has appropriate regard to matters of provincial interests. The proposal results in a heritage building being conserved (s. 2(d) PA), will provide facilities and services for seniors in the form of institutional, assisted and independent living accommodations (s. 2(h) PA), and has been designed to be accessible (s. 2(h.1) PA). The site is within a built-up Mixed Use Area where change is expected to occur (s. 2(p) PA) and is highly accessible to a major transit station (s. 2(q) PA).

[127] The proposal is consistent with PPS policies regarding healthy, liveable and safe communities (s. 1.1.1). The proposal provides a mix of housing opportunities within a built-up area planned for growth and with sufficient infrastructure available to accommodate the development. In this regard, the proposal is supported by a Functional Servicing and Stormwater Management Report, a Traffic Study, and a Heritage Impact Assessment.

[128] The proposal complies with the intentions of the GP as set out in 2.1: making better use of lands and infrastructure, intensification of built-up areas, building complete communities that are well-designed, offer transportation choices, accommodate people at all stages of life and have the right mix of housing, a good range of jobs, and easy access to stores and services to meet daily needs.

[129] Laird Drive is at the interface of a primarily residential area and a business park. In terms of use, it has evolved to include mostly newer, larger-format retail centres along the east frontage, with smaller scale commercial and automobile related uses along the west frontage. The proposed use will introduce residential and institutional uses which are compatible with the area at a scale that will provide for intensification of a mid-rise typology. This form of development is generally considered appropriate for Mixed Use Areas and along Major Streets.

[130] The objective of the OP with respect to transitioning is to protect adjacent residential Neighbourhoods from negative impacts by maintaining adequate light, view and privacy. The Guidelines sets out urban design standards for evaluating the mid-rise typology for transition to a Neighbourhood designation.

[131] The Phase 1 building has been massed to provide a transition to the lower scale residential neighbourhood to the west through the application of a rear yard angular plane that results in a stepping down of height from seven storeys at the east of the property to two storeys at the west. This building's 7.5 m setback from the rear (west) property line complies with the established standard, and the proposal generally falls within the mid-rise range 45 degree angular plane for shallow lots.

[132] The stepbacks introduced from the west property line in combination with the large rear setbacks of adjacent lots and large mature trees along the property line, mitigate light, view and privacy impacts. The separation of the Phase 1 building to the low-rise residential homes to the west is over 20 m to the closest rear wall of homes along Randolph Road. The angular plane transition along the west façade of this

building will reduce impacts related to overlook and skyview for the adjacent residential homes.

[133] The Phase 1 building height of 24.5 m (excluding rooftop mechanical and amenity area) is below the 27 m right of way width of Laird Drive. The Phase 2 building at a height of 30.26 m (exclusive of mechanical), while marginally higher than the right of way, is setback from the front property line by 12 m and will be constructed of a light material to reduce its apparent mass along the street.

[134] The Phase 1 building is approximately 90 m in length, which exceeds the Guidelines standard of 60 m. However, the appearance of the building's length is mitigated by a varying 2.8 m deep setback at the centre of the structure, and the front façade includes vertical and horizontal articulation through the use of setbacks and materials to break up the length of the building. On balance, the Phase 1 building will be an improvement over the existing surface parking lot and adjacent larger format retail development to the east.

[135] Ground floor uses will include a fitness room, pub, dining area and pool. The larger façade will be largely glass construction with views onto the street. The main entrance faces the street and landscaped areas are being provided for pedestrian comfort along the street edge. The 2.8 m by 15 m landscape open along the frontage of the Phase 1 building serves to break up the apparent length of the structure and achieves some pedestrian relief with benches and plantings.

[136] The proposal has been massed to frame Laird Drive with good proportion and to limit shadow impacts on adjacent streets and neighbourhoods. The angular plane along the west façade of this building will reduce impacts in terms of overlook and skyview for the adjacent residential homes. The Shadow Study confirms that shadows on the rear yards of the properties to the west will be for only a very short period in the morning during the months of March to September. The east side of Laird Drive will be provided

with five hours of sunlight during the same period. In both cases, the Guidelines are met.

[137] The new addition to the Phase 2 building will be stepped back from Laird Drive and from the front and side façades of the building to emphasize the prominence of the Durant Building and landscape courtyard.

[138] This building is located approximately 6 m from the flankage wall of the townhouse units to the west. This flankage wall is a party wall with no primary windows. This separation results primarily from the setting back of the new building construction in order to conserve the Durant Building, and represents an appropriate separation between lots designated Mixed Use.

[139] Mr. Bissett pointed out that new development is expected to provide amenity for adjacent streets and open spaces to make these more attractive, interesting, comfortable and functioning for pedestrians. The proposal achieves this through the provision of new trees and plantings, landscape setbacks and permeable paving along the street frontage. As well, indoor and outdoor amenity space is being provided in excess of the ZBL minimum standard.

[140] It is Mr. Bissett's professional opinion that the proposed development represents an appropriate form of intensification.

Planning and Urban Design Evidence - City

[141] Guy Matthew and Sasha Terry provided evidence on behalf of the City. Mr. Matthew is a registered professional planner and a Full Member of the Canadian Institute of Planners. Ms. Terry has been employed as a Planner – Urban Design for the City since 2013.

[142] Mr. Kallio sought to have Ms. Terry qualified as an expert Planner - Urban Designer. Ms. Costello opposed qualification on the basis that Ms. Terry is neither a

professional planner nor an architect. The Board, finding no academic accreditation and/or experience tenure by which to qualify Ms. Terry as an expert, declined the request. However, the Board will take into account her past involvement with urban design aspects of City planning applications.

[143] Fundamentally, it is Ms. Terry's view is that the proposed development does not represent good urban design and should not be permitted. The proposal does not conform to the Public Realm, Built Form, and Mixed Use Area policies of the OP; does not fit within the existing or planned context of the area; and represents an overdevelopment of the site. In her view, approval of the development would create an undesirable precedent along Laird Drive.

[144] Ms. Terry told the Board that she has four "major concerns" with the development proposal: (1) building setbacks and grading, (2) building height, (3) building length, and (4) building transition.

[145] Ms. Terry described the character of Laird Drive as being defined by one and two-storey buildings with front and side relationships to the street. While the east side of the street has seen recent development with large format retail, there has been little development on the west side.

[146] The emerging context along Laird Drive reflects building setbacks ranging from 2.5 m to 5 m. It is her position that taking into account the right of way, the proposed setback of the Phase 1 building from Laird Drive is predominantly 0 m. The exception is a 25.5 m section (which accounts for approximately one quarter of the total building frontage) where a 2.8 m setback is being provided. In her opinion this is not a proper building setback because portions of the building including habitable space and balconies on Levels 3 to 6 are cantilevered above. Landscape improvements such as tree planting are compromised due to these building projections and the 6 m wide driveway access.

[147] The lack of a predominant setback limits the ability to provide transition between public and private space and improve adjacent boulevards and sidewalks to make them attractive, interesting, comfortable and functional for pedestrians through the use of trees, shrubs, etc., and limits the provision of a significant amount of outdoor amenity and landscaped open space for residents. This setback limitation results in a majority of the proposed landscape improvements being provided on the City right-of-way where servicing access can require removal at any time.

[148] It is Ms. Terry's opinion that the proposed eight storey building heights for the Phase 1 (28.69 m) and Phase 2 (31.25 m) buildings do not meet the intent of the Built Form policy (s. 3.1.2.3) and Mixed Use policy (s. 4.5.2) with regard to fitting harmoniously into its existing and/or planned context, respecting the existing street proportion, and framing the street in good proportion.

[149] Ms. Terry maintains the proposed eight-storey buildings would be significantly greater in height than what is seen in the existing local context (one to two storeys) and permitted by the planned context (four storeys). The ZBLs permit a maximum height of 12.2 m (four storeys) using 3 m floor to ceiling heights.

[150] Regarding the Guidelines, Ms. Terry takes the position that anything over the 27 m height established by the 1:1 ratio is not appropriate. At heights of 28.69 m (Phase 1) and 31.25 m (Phase 2), the height of both buildings would be greater than the 27 m planned right-of-way for Laird Drive. Notably, the differential in building height as calculated by the City (plus 0.83 m for the Phase 1) results from the manner in which the City measures height - from average grade as opposed to main floor elevation.

[151] Ms. Terry indicated that although the Phase 1 building generally conforms to the Guidelines in terms of height and front angular plane, removal of the enclosed greenhouse would result in a seven storey building which would be acceptable to the City.

[152] For the 5 m portion of the Phase 2 building abutting the Neighbourhoods designation, a shallow lot angular plan described in the ZBL 569-2013 applies. At 31.25 m, the building height is significantly greater than the 27 m 1:1 ratio. The building height complies with a front angular plane due to the large front yard setback of the Durant Building; however, this building significantly does not comply with either the setbacks or angular planes set out in ZBL 569-2013. With the current location of the building footprint, compliance to the rear angular plane limits the building height to a four to five storeys building, for the 5 m portion of the Phase 2 building.

[153] It is Ms. Terry's opinion that the portion of the Phase 2 building abutting the Mixed Use Areas designation, a transition through setback rather than an angular plane is appropriate. At 31.25 m, the building is significantly greater in height than the 1:1 ratio (one storey).

[154] Ms. Terry submits the proposed buildings do not reflect the existing pattern or the planned context for building lengths. The existing context illustrates varied building lengths ranging from 5 m to 54 m. (Durant Building). Within the immediate context (Parkhurst to Industrial Streets) the average building length is 30 m. In terms of the emerging context, the new commercial development along Laird Drive consists of building lengths of 10 m to 38 m.

[155] The Phase 1 and Phase 2 buildings are approximately 100 m and 54 m, respectively, in length. The gap between the Phase 1 and Phase 2 buildings is approximately 11 m above the third floor (due to the three-storey building connector).

[156] In comparison to average building lengths in the immediate context (30 m), a total building length of 165 m is more than five times the average building length; the length of the Phase 1 building alone is over three times the average for buildings facing Laird Drive and does not reflect the length of approved residential midrise development along Laird Drive. Neither the overall building length nor the Phase 1 building length reflects the emerging context.

[157] Ms. Terry submits that long building façades have a negative impact on the pedestrian realm due to less interest and variation on the pedestrian level. The lack of significant side yard setback in the streetwall between the subject site and the property to the south, in combination with the 100 m massing of the Phase 1 building, creates a canyon-like affect and impacts sunlight access and skyview from the Laird Drive sidewalk. It is her position that the Phase 1 building setback and building grading are not acceptable as they do not fit harmoniously into the existing and emerging planned landscaped character of Laird Drive.

[158] As well, access to sunlight and skyview on the Laird Drive sidewalk is impacted by the lack of break in length of the Phase 1 building, the lack of any breaks on the upper storeys to break up the building, and the lack of a significant side (south) yard setback in the streetwall between this building and the future development to the south.

[159] The Angular Plan Analysis for the Phase 1 building illustrates the built form is in compliance with a 7.5 m rear yard (west) setback, and the majority of the habitable space generally in compliance with a shallow lot angular plane. Projections above the shallow lot angular plane include a corner of the rear seven-storey suites, the elevator overrun and the stairwell access.

[160] However, at 27.86 m, the proposed Phase 1 building is greater in height than the width of the right-of-way. As the height of this building exceeds the 1:1 ratio, the projections into the angular plane cause more shadow impact into the rear yards of the residential properties to the west than what is expected based on the Guidelines.

[161] The Shadow Study indicates that the Phase 1 building is generally in compliance with the front angular plane and meets the five hour sunlight access on the opposite Laird Drive sideway. Ms. Terry contends that while the proposal may meet the intent for sunlight, it does not meet the appropriate amount of stepback above the sixth floor to achieve a dominant six-storey streetwall from the Laird Street sidewalk. Projections on the seventh and eighth floor through the angular plane puts more visual bulk closer to

the street, making the building read as a seven and eight storey building. A larger setback at the 7th floor and removal of the greenhouse would better mitigate bulk and the pedestrian perception of height.

[162] A 5 m section of the south end of the Phase 2 is setback 5.5 m from the abutting Neighbourhoods designation. This setback is not acceptable as it impacts the rear *Neighbourhood* properties in the form of shadowing, overlook and visual bulk.

[163] It is Ms. Terry's view that a 9 m shadow impact on *Neighbourhood* properties at 9:18 a.m. is not minimal and does not conform to a maximum one hour of minimal impact at 9:18 a.m. The Shadow Study illustrates full shadow impact on the rear yards of the Neighbourhood properties to the west at 9:18 a.m., and half coverage at 10:18 a.m. This means there is two hours of shadow impact on these properties from 9:18 a.m. to 11:18 a.m.

[164] The finished floor elevation of the three-storey building connector, at a length of approximately 11 m, maintains a 131.2 m finished floor elevation across the site. This results in a difference of 0.85 m to 1.2 m between the Phase 1 building amenity on the ground floor facing Laird Drive and the elevation of the fronting sidewalk. This blank wall fronts the basement amenity and mechanical on the P1 level, which is exposed to the street.

[165] This blank wall condition limits the ability to provide a well articulated façade with visual interest and overlook at ground level. In addition, this grade differential makes it difficult to achieve accessibility to outdoor amenity space fronting the building from the sidewalk. It is her view that stepping the first floor building elevation of the Phase 1 building down for a better relationship of indoor amenity to the sidewalk would allow for proper façade articulation and provide a comfortable and safe pedestrian environment with eyes on the street.

[166] It is Mr. Matthews' professional opinion that the proposed development represents an overdevelopment of the property, does not provide appropriate transition

to the neighbourhood to the west, it has an overall massing which is too large and a building length that is inappropriate. The proposal does not represent good planning and is not in the public interest. The proposal does not adequately respect and/or comply with the policies of the OP, and as such, is not consistent with the PA (s. 1.1) or the PPS. He recommended that the proposal be refused.

[167] Mr. Matthews submits that in making its decision, the Board should have regard to City Council's decision of September 30, 2015; City Council does not support the proposed development and directed staff to oppose the application on September 30, 2015.

[168] Mr. Matthews agrees that while some intensification is expected on the subject site, the overall massing and heights of the proposed development are inappropriate. In this regard, the need for intensification is not justification enough to allow the height and density being proposed. The City has a plan to accommodate growth in line with provincial targets and the amount of intensification added to this site needs to be balanced with the existing and planned context as identified in the OP policies.

[169] Mr. Matthews said that even though the proposal has been amended, it still represents an overdevelopment of the property. While the site is designated Mixed Use Areas, that does not mean that any massing and density is appropriate. He said, while these areas are intended to absorb a large amount of the City's growth, new development needs to fit harmoniously with the existing and planned context, including appropriate transitioning to areas designated *Neighbourhoods*. In this case, the combination of proposed building height and building length creates a building mass which is not in keeping with the existing or planned context for Laird Drive.

[170] In his opinion, the overall massing is inappropriate for the site and the area. The west side of Laird Drive is predominantly designated Mixed Use Areas and as such, a certain amount of intensification is expected, however not to the extent being proposed. His concern is that approval of a development of this scale and massing may cause

other Mixed Use Areas lands along the west side of Laird Drive to redevelop in a similar manner. He said that while some form of additional height and density is appropriate given the site's designation, the overall massing is inappropriate and does not have regard for the context of Laird Drive.

[171] Mr. Matthews takes the position that the proposal needs to be reduced in height and length to create a development which better fits the context as directed by the OP. The front yard setback (Phase 1 building) should be increased to provide an appropriate transition to the Durant building.

[172] As well, the site specific zoning and/or an agreement registered on title should include wording to ensure that the owners/tenants of the Phase 2 building are able to access and use the facilities of the Phase 1 building. Access and use of these spaces/facilities should be at a nominal cost, as if it were within their own building, and not be subject to charges so as to provide additional income for the Phase 1 building. As well, the 7.5 m rear yard setback and angular plane should be accomplished in all locations.

ANALYSIS AND FINDINGS

[173] The Board has reviewed the documentary materials provided, and considered the concerns of the LPOA and local residents, the evidence of the witnesses for VIVA and the City, and the submissions of counsel.

[174] In determining this matter, the Board is persuaded by the collective evidence and opinions of Messrs. Bissett, Goldsmith, Cherepacha and Colthoff.

[175] The Board finds that the proposed development conforms to the directives of the GP, is consistent with the policies of the PPS, and maintains the policy intent of the OP. The proposal aligns with the principles of good land use planning, has appropriate regard to matters of provincial interest, and is in the public interest. The Board is satisfied that the current development proposal does not result in the creation of

unacceptable adverse impacts to the neighbouring properties or the Leaside community as a whole. The proposed ZBA will facilitate the development proposal, and is therefore, appropriate.

[176] VIVA and the City agree that all aspects of the proposal in regard to heritage, traffic, access, parking and servicing have been resolved. In this regard, the Board accepts and adopts the uncontroverted expert evidence and opinions of Messrs. Goldsmith and Cherepacha.

[177] The Board acknowledges that while several of the Participants cited traffic and parking as a concern, they were not privy to the findings of the TIS prior to the hearing. Ultimately, these concerns are thoroughly addressed and satisfied by the TIS traffic analysis and the provision of on-site parking space.

[178] The same applies with respect to the concerns about damage to back yard lawns and gardens, the loss of vegetation, and the destruction of mature trees as a result of the reduced rear yard setback of the Phase 1 building. The setback has been restored to the standard required by the ZBLs, and no healthy, mature trees will be removed.

[179] Over the course of the last four years VIVA has made several other modifications to the proposal in an attempt to address the concerns of local residents, the LPOA and City planning, transportation and heritage services staff. These attempts have resulted in some successes.

[180] Notable among the more recent revisions to the proposal is the removal of one floor from the Phase 1 building; the increasing of the rear yard setback of the Phase 1 building to the 7.5 m standard required; and, the conservation of the Durant Building, *in situ*. The latter is a particularly significant element of the proposal in that it represents an exemplary example of the preservation of a heritage building through adaptive reuse.

[181] Ms. Terry indicated that her primary concerns with the proposal relate to building height, length, setback and transitioning, and grading. Parenthetically, the parties agree

the Guidelines are an appropriate guide for assessing matters of scale, built form, overlook, etc. There is no dispute that the proposal does not precisely meet the Guidelines in all aspects, but as Mr. Colthoff so succinctly put it, “no building perfectly meets the Guidelines”.

[182] In this regard, the evidence of Messrs. Colthoff and Bissett included detailed analyses of the design elements that have been incorporated into the proposal, and how these effectively and appropriately respond to the spirit, if not the letter, of the Guidelines. Overall, the Board found the evidence and opinions of Messrs. Colthoff and Bissett to be more credible and reliable.

[183] In contrast, Ms. Terry’s assessment of the proposal is premised almost entirely on the proposal’s compliance, or lack thereof, with the recommended performance standards set out in the Guidelines. In effect, she is applying the Guidelines in a manner and for a purpose that is not intended: to regulate, rather than to guide.

[184] While the Board can agree the Guidelines provide useful guidance in the form of recommended performance standards, it also has to be recognized that there are situations in which exceptions are warranted. In fact, the Guidelines both encourage and recommend consideration of compliance alternatives for constrained sites.

[185] In this case, development of the site is constrained by its narrow width, the siting of the Durant Building, the required road widening easement, and the close proximity to the residential neighbourhood to the west.

[186] In terms of building height, Ms. Terry expressed the view that anything over 27 m is not appropriate. Given her approach, a building height of 27.1 m would not be appropriate, even though such a variation would be imperceptible from the street and/or would not result in impact. During cross-examination, she twice confirmed that in regard to the height of the Phase 1 building (27.86 m), her only concern was the 0.86 height differential. In my view, such a scenario runs counter to the stated objectives and intent of the Guidelines.

[187] Ms. Terry also countered that although the Angular Plane Analysis illustrates the build form of the Phase 1 building in compliance with the 7.5 m setback, and the majority of the habitable living space in compliance with a shallow lot rear angular plane, the increased height of the Phase 1 building causes more shadow impact in the rear yards of the residential neighbourhood properties to the west. However, she did not provide evidence of the shadowing impact differential of a building constructed to a height 0.86 m lower than what is being proposed.

[188] Ms. Terry also indicated that removal of the enclosed green house would result in a seven-storey (Phase 1) building, which she said would be acceptable to the City. Again, no explanation or evidence was offered to explain how the removal of the 140 sq m greenhouse, a signature amenity feature of VIVA retirement residences, would either result in a lesser degree of impact, or otherwise, improve the development proposal.

[189] In having viewed the most current renderings of the proposal, the Board cannot countenance Ms. Terry's view respecting the aesthetics and architectural value of the front façade of the Phase 1 building. Rather, the Board finds the architectural design and elements of the building to be sensitive to the streetscape, respectful of the Durant Building and an improvement in the site and the area as a whole. The outdoor amenity and landscaped areas will animate and improve the public realm and are pedestrian friendly. Overall, the proposed building is a visual improvement over the existing building and surface parking lot, and will serve to enhance the streetscape.

[190] That is not to say the proposed development will not have an impact; the site is currently, underdeveloped and occupied with two low rise buildings, and will be replaced with a prominent midrise mixed use building. The Board finds, based on the preferred planning and urban design evidence, any impact will neither overwhelm adjacent properties nor erode neighbourhood stability. In essence, the proposed development will be compatible with surrounding land uses.

[191] As a side note, the Board found that in some instances, the evidence and opinion provided by Ms. Terry was less than precise, and/or may not reflect the most current version of development proposal (dated February 25, 2016). For instance, in expressing an opinion respecting the length and massing of the Phase 1 building, she refers to the December 15, 2015 version of the proposal. In another instance, she cites the southerly most side yard setback as being 0.397 m – the actual setback is 1.6 m at grade. As yet another example, Ms. Terry has represented the length of the 2 Laird Street building to be 36.5 m – the computerized site data information (Exhibit 23) denotes the width of this building to be 76.98 m. By way of explanation, Ms. Terry referred to the building at 2 Laird Drive several times as an example of an appropriate development.

[192] Essentially, Mr. Matthews has taken the position the proposal represents an overdevelopment of the site and would create an undesirable precedent. However, while his evidence was rich in policy recital, opinion and recommendations, it fell short in terms of offering justification for these conclusions. The Board finds the apparent disconnect between his planning analysis and his conclusions to be problematic. It is not enough for an expert witness to simply say that a proposal fails because it does not meet the prescribed performance standards; the Board needs to understand the basis upon which these conclusions have been drawn.

[193] There was much reference to the planned and emerging context of this area. There is agreement that this area is planned for growth and has been experiencing new development in the form of commercial retail. The Board can, however, agree that the planned context is lagging and a study could help in bringing it up-to-date with pressures for development.

[194] Lastly, from a social planning perspective and in the interest of the greater public good, the Board finds that the proposal represents a meritorious development. Most, if not all municipalities in the Province, are experiencing significant shortages in the availability of housing options for seniors. It is not at all unusual for individuals needing

assistive care or looking for residences geared to senior living lifestyles to have to relocate to other areas of the City or even the Province to secure accommodation.

[195] When the Board asked Mr. Matthews if he typically gives consideration to social planning issues, such as the accommodation needs of seniors, in his planning analysis, he said he did, but only when the proposal meets all of the zoning performance standards.

[196] The current planning regime places an emphasis on building strong, healthy communities and the provision of an appropriate mix and range of housing types, and in particular, accommodating people at all stages of life.

[197] The proposed development offers an inclusive, dignified community arrangement geared to senior living at varying levels of accommodation, and provides the opportunity for its residents to move from independent living to assistive care and/or to institutional care, as the need may arise. The proposed development will add a much needed specialized housing resource to the City's supply, and may be the difference between local residents being able to remain in their chosen community, or having to relocate elsewhere.

DECISION

[198] The appeal is allowed.

[199] The Final Order will be withheld pending receipt and confirmation of the final form of the Zoning By-law.

"M. A. Sills"

M. A. SILLS
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.

Ontario Municipal Board

A constituent tribunal of Environment and Land Tribunals Ontario
Website: www.elto.gov.on.ca Telephone: 416-212-6349 Toll Free: 1-866-448-2248