THE CITY OF VAUGHAN

BY-LAW

BY-LAW NUMBER 172-2019

A By-law to approve Amendment Number 51 to the Vaughan Official Plan 2010 for the Vaughan Planning Area, as effected by the Local Planning Appeal Tribunal.

The Council of the Corporation of the City of Vaughan **ENACTS AS FOLLOWS:**

1. THAT the attached Amendment Number 51 to the Vaughan Official Plan 2010 of the Vaughan Planning Area, as effected by the Local Planning Appeal Tribunal ("LPAT") Decision dated June 11, 2019, and subsequent Delegation Order dated October 31, 2019 (LPAT File No. PL160819), is hereby approved.

Enacted by City of Vaughan Council this 19th day of November, 2019.

_____
Hon. Maurizio Bevilacqua, Mayor

_____
Todd Coles, City Clerk

Authorized by the Decision of the Local Planning
Appeal Tribunal issued June 11, 2019, and the
Delegation Order issued October 31, 2019 (Case No. PL160819)

AMENDMENT NUMBER 51

TO THE VAUGHAN OFFICIAL PLAN 2010

OF THE VAUGHAN PLANNING AREA

The following text and Schedule “1” constitute Amendment Number 51 to the Official Plan of the Vaughan Planning Area.

Also attached hereto, but not constituting part of the Amendment is Appendix "I", the Decision of the Local Planning Appeal Tribunal, dated June 11, 2019.

Authorized by the Decision of Local Planning Appeal Tribunal
dated June 11, 2019, and the Delegation Order issued October 31, 2019
(Case No. PL160819)

I PURPOSE

The purpose of this Amendment to the Vaughan Official Plan 2010 ("VOP 2010") is to amend Volume 1 - Schedule 14-C, and Volume 2 Section 13 - "Site Specific Policies" to permit 6 residential lots, with one single detached dwelling on each lot, on the Subject Lands.

This Amendment will facilitate the following with respect to the Subject Lands identified as, "Area Subject to Amendment No. 51 on Schedule "1" attached hereto:

1. Permit a maximum of six residential lots; and,
2. Permit one single detached dwelling on each lot.

II LOCATION

The lands subject to this Amendment (herein referred to as "Subject Lands"), are located on the west side of Baldwin Avenue, approximately 250m south of Hwy. 7 and are municipally known as 10 Southview Drive and 23 Rockview Gardens.

III BASIS

The decision to amend VOP 2010 to provide for the 6 residential lots on the Subject Lands is based on the following considerations:

1. The Provincial Policy Statement 2014 (PPS) provides policy directions on matters of Provincial interest to land use planning and establishes the framework for regulating the development of land. The PPS is applied province-wide and provides direction to support complete communities, a strong economy and a clean and healthy environment. The policies of the PPS focus growth and development to "Settlement Areas". This Amendment is consistent with the policy objectives of the PPS, as the Subject Lands are located within a settlement area and the Development would add to the range and mix of housing types in the community, and efficiently utilizes the Subject Lands. The Development is proposed in an area where appropriate levels of infrastructure and public service facilities exist, are under construction or planned. The proposed density more efficiently uses the Subject Lands, resources, infrastructure and public service facilities in a compact development form. On this basis, the Development is consistent with the PPS.
2. A Place to Grow - Growth Plan for the Greater Golden Horseshoe 2019 ("Growth

Plan"), builds on the PPS to establish a unique land use planning framework that supports the achievement of complete communities, a thriving economy, a clean and healthy environment, and social equity. The Growth Plan enables the development of regional growth plans that guide government investments and land use planning policies. The Growth Plan promotes the achievement of complete communities that are designed to support healthy and active living, prioritizes intensification and higher densities that make efficient use of land and infrastructure, protects the natural environment, supports transit viability, and encourages a range and mix of housing options. This Amendment is consistent with the objectives of the Growth Plan. It optimizes the use of the existing land supply, incorporates a compact built-form making efficient use of existing and planned infrastructure. It is located in close proximity to a Regional Transit Priority Network and a Regional Transit Corridor and provides for a range and mix of housing at a density that is transit-supportive and supportive of complete communities.

3. The York Region Official Plan (YROP) designates the Subject Lands "Urban Area", which permits a range of residential, commercial, employment and institutional uses. The Subject Lands are accessed by Keele Street and is in close proximity to Regional Road 7, both of which are Regional Roads and identified as Regional Transit corridors. In support of transit-infrastructure, the YROP establishes a policy framework that encourages a broad range of housing types within efficient and compact communities at an overall transit-supportive density. The range of housing includes different forms and types and ensures to satisfy the needs of the Region's residents. The YROP also encourages pedestrian scale, safety, comfort and mobility, the enrichment of the existing area with attractive buildings, landscaping and public streetscapes. This Amendment is consistent with the YROP as the proposed development is located within proximity to multiple existing and planned transportation networks and offers residential development making efficient use of the Subject Lands.

4. The Subject Lands are designated "Low-Rise Residential" by VOP 2010, Volume 1, Schedule 13. This designation permits detached, semi-detached and townhouse dwellings. The proposed six residential lots, with one single detached dwelling on each lot, can be supported as it is compatible with and consistent with

the surrounding land uses.

5. The statutory Public Hearing was held on September 9, 2015. The Recommendation of the Committee of the Whole to receive the Public Hearing Report of September 9, 2015, and to forward a comprehensive report to a future Committee of the Whole meeting, was ratified by Vaughan Council on September 16, 2015. Subsequently, on June 28, 2016, Vaughan Council ratified the June 21, 2016 Committee of the Whole recommendation, to refuse Official Plan and Zoning By-law Amendment Files OP.15.004 and Z.15.012 (Rex-con Construxion Corp. and 1257665 Ontario Inc.).

6. The Local Planning Appeal tribunal (LPAT) on June 11, 2019 (PL160819) approved Official Plan Amendment File OP.15.004 and Zoning By-law Amendment File Z.15.012 to permit six lots on the subject lands with one single detached dwelling on each lot.

IV DETAILS OF THE AMENDMENT AND POLICIES RELATIVE THERETO

The Vaughan Official Plan 2010 (VOP 2010) is hereby amended by:

1. Amending Volume 1, Schedule 14-C - “Areas Subject to Site Specific Policies” of VOP 2010, by adding the Subject Lands identified on Schedule “1” to this Amendment attached hereto municipally known as 23 Rockview Gardens and 10 Southview Drive, identified on Schedule 14-C as Item #49.

2. Amending Volume 2, Section 13.1 - “Site Specific Policies” by adding the following policy, to be renumbered in sequential order, including a location map of the Subject Lands shown on Schedule 1:

   “(OPA #51)” 13.1.1.49 The lands known as 23 Rockview Gardens and 10 Southview Drive are identified on Schedule 14-C as Item #49 are subject to the policies set out in Section 13.1.1.49 of this Plan.”

3. Adding the following policies to Section 13 Volume 2, “Site Specific Policies”, and renumbering in sequential order, including allocation map of the Subject Lands shown on Schedule 1:

   “(OPA #51) 13.50 23 Rockview Gardens and 10 Southview Drive

13.50.1 General

13.50.1.1 The following policies shall apply to the lands identified on Map 13.50.A

13.50.1.2 Notwithstanding the Policies 9.1.2.2 and 9.1.2.3 six residential lots shall be permitted with one single detached unit on each lot.

V IMPLEMENTATION

It is intended that the policies of the Official Plan of the Vaughan Planning Area pertaining to the Subject Lands will be implemented by way of an amendment to the City of Vaughan Comprehensive Zoning By-law 1-88, pursuant to the *Planning Act*.

VI INTERPRETATION

The provisions of the Official Plan of the Vaughan Planning Area as amended from time to time regarding the interpretation of that Plan shall apply with respect to this Amendment.

APPENDIX I

The Subject Lands are located at 23 Rockview Gardens and 10 Southview Drive, being Part of Lot 51 on Registered Plan 2468, City of Vaughan.

The purpose of this Amendment is to amend the provisions of the Official Plan of the Vaughan Planning Area, specifically to amend Volume 1 – Schedule 14-C, and Volume 2 Section 13 – "Site Specific Policies" to permit 6 residential lots, with one single detached dwelling on each lot, on the Subject Lands.

The Owner submitted Official Plan Amendment Application File OP.15.004 on June 5, 2015, and Zoning By-law Amendment Application File Z.15.012 on May 27, 2015 to the City of Vaughan. On July 25, 2016, the Owner appealed the Applications citing that the City refused the request to amend the Official Plan and Zoning By-law pursuant to Sections 22(7) and 34(11), respectively, of the *Planning Act.*

A Local Planning Appeal Tribunal Hearing was held from January 28, 2019 to February 1, 2019.

The Decision of the Local Planning Appeal Tribunal dated June 11, 2019 regarding the subject lands located at 10 Southview Drive and 23 Rockview Gardens being located in Part 1 Plan of Part of Lot 51 Registered Plan 2468, City of Vaughan, to approve the Official Plan Amendment and Zoning By-law Amendment Applications, is attached.

ISSUE DATE: June 11, 2019 **CASE NO(S).:** PL160819

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

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

Applicant and Appellant:	1257665 Ontario Inc. & Rex-Construxion Corp.
Subject:	Request to amend the Official Plan - Refusal of request by the City of Vaughan
Existing Designation:	"Community Areas" in Schedule 1, "Urban Structure and Low-Rise Residential" on Schedule 13, Land Use Designations
Proposed Designated:	"Community Areas" in Schedule 1, "Urban Structure and Low-Rise Residential" on Schedule 13, Land Use Designations with exceptions
Purpose:	To permit 6 residential lots
Property Address/Description:	23 Rockview Gardens & 10 Southview Drive
Municipality:	City of Vaughan
Approval Authority File No.:	OP 15.004
OMB Case No.:	PL160819
OMB File No.:	PL160819
OMB Case Name:	1257665 Ontario Inc. v. Vaughan (City)

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

Applicant and Appellant:	1257665 Ontario Inc. & Rex-Construxion Corp.
Subject:	Application to amend Zoning By-law No.1-88, as amended - Refusal of the City of Vaughan to make a decision
Existing Zoning:	"R1V Old Village Residential Zone"
Proposed Zoning:	"R2 Residential Zone"
Purpose:	To permit 6 residential lots
Property Address/Description:	23 Rockview Gardens & 10 Southview Drive
Municipality:	City of Vaughan
Municipality File No.:	Z.15.012
OMB Case No.:	PL160819
OMB File No.:	PL160820

Heard: January 28 to February 1, 2019 in Vaughan, Ontario

APPEARANCES:

Parties	**Counsel**
1257665 Ontario Inc. and Rex-Construxion Corp. ("Applicants")	Barry Horosko Amber Stewart
City of Vaughan ("City")	Pitman Patterson

DECISION OF THE TRIBUNAL DELIVERED BY PAULA BOUTIS INTRODUCTION

[1] This matter is an appeal from a decision of the City to refuse the Applicants' official plan amendment ("OPA") and zoning by-law amendment applications ("ZBLA"), amending the Vaughan Official Plan 2010 ("City OP") and Zoning By-law No. 1-88 ("ZBL").

[2] The requested amendments are to facilitate a redevelopment of lands located at 23 Rockview Gardens and 10 Southview Drive, from two lots to six lots ("Subject Property"). Ultimately, if approved, a consent application would follow, with the goal of allowing for the construction of six detached dwellings where there are currently two, consisting of one dwelling on each existing lot of record.

[3] At the outset of the hearing, counsel Gerard Borean appeared on behalf of Concord West Ratepayers Association ("Ratepayers Association"), Peter and Josephine Zeppieri, and Alfredo and Josephine Mastrodicasa. He requested their statuses be converted to participant status from party status, without costs, on consent of the parties. On this basis, the Tribunal permitted the change in status and also confirmed that the witness statements related to those former parties would be struck from the record (Exhibit 3, Tabs 3 and 5 formed no part of the evidence).

[4] The Zeppieris and Mastrodicasas did not, in the end, attend to provide statements as participants. One participant, Humberto Mourinho, advised by e-mail that he was withdrawing his objection and he did not appear at the hearing. A large number of individuals otherwise noted as participants on the issued Procedural Order – specifically thirteen persons excluding Mr. Mourinho - did not appear.

[5] Cathy Ferlisi did give a statement on behalf of the Residents Association. In addition, two others who had been granted participant status at the first Pre-hearing Conference gave statements, specifically Robert Antonini and Teresa Panezutti. All participants who appeared at the Tribunal filed copies of their statements with the Tribunal (Exhibits 9, 14, and 24).

[6] On behalf of the Applicants, the Tribunal heard evidence from Michael Manett, whom the Tribunal qualified to provide opinion evidence in the area of land use planning.

[7] On behalf of the City, the Tribunal heard from two witnesses: Carol Birch, whom the Tribunal qualified to provide opinion evidence in the area of land use planning; and Shahrzad Davoudi-Strike, whom the Tribunal qualified to provide opinion evidence in the area of urban design.

[8] After careful consideration of all the evidence, the Tribunal concludes it will allow the appeals.

EVIDENCE AND ANALYSIS

Site and Area Context

[9] The Subject Property is located within an area known as Concord. The neighbourhood consists of an isolated residential pocket, surrounded by employment uses. Thornhill is nearby to the west, but the two communities are separated by Highway 407. To the north of the neighbourhood is Regional Road 7 (or Highway 7), to the east is the Canadian National Railway track, to the south, past certain employment lands, is Highway 407, and to the west is Keele Street.

[10] The neighbourhood within which the Subject Property is contained has no schools, community centres or libraries. It does not function as a "complete community". Residents can go to nearby Thornhill to access such services. There is a park at the south-east corner of the neighbourhood and some commercial uses along the Keele Street boundary.

[11] Ms. Ferlisi testified that this was not a typical subdivision. Every single home was different and the majority were built individually. Now we see people building larger, newer and prestigious homes.

[12] Ms. Ferlisi testified that in the late 1980s, bollards were installed along Baldwin Avenue because of traffic streaming into the neighbourhood off of Highway 7. Now car traffic going south cannot exit out of the neighbourhood through that route. Similarly, traffic going north cannot use the neighbourhood to access Highway 7. People living north of Rockview Gardens must enter the neighbourhood from Highway 7, while people living south of it, must enter from the south.

[13] The stretch of Highway 7 that abuts the neighbourhood is part of lands identified as "Primary Intensification Corridors within Employment Areas".

[14] From a transit perspective, the neighbourhood has access to York Region's Bus Rapid Transit system along Highway 7 which connects to the new subway at Vaughan Metropolitan Centre. There was discussion at the hearing that a GO station was anticipated to be developed near the north-west corner of the neighbourhood, however, it appears that this is quite uncertain.

[15] Mr. Manett described the area as having a lot of ranch style homes with longer bungalows. He indicated there were also larger homes with smaller, older bungalows intermixed. Mr. Manett indicated he had not seen a lot of activity with respect to minor variance applications. There had been no applications in the last 10 years for severances. He suggested this may be because the area is less desirable, being surrounded by industrial uses. He contrasted the Concord large lots to those in Thornhill and Woodbridge: by contrast to Concord, those communities have a significant main street atmosphere and have heritage components within them.

[16] The Subject Property, as noted, is composed of two residential lots, 23 Rockview Gardens and 10 Southview Drive, with the back yards of the lots abutting one another. They are corner lots at Baldwin Avenue, so that side yards are currently along Baldwin Avenue.

[17] 23 Rockview Gardens has a frontage of 32.92 metres ("m"), a depth of 48.77 m and an area of 1,605.51 square metres ("sq m"). 10 Southview Drive has a frontage of 32.92 m, a depth of 49.64 m and an area of 1,634.65 sq m. Combined, with frontage reoriented to Baldwin Avenue, there is a frontage of 98.41 m and a depth of 32.92 m, for a total area of 3,240.15 sq m.

[18] The conceptual drawing for the proposal provided for a "dark square" on each lot, based on the permitted setbacks to show a potential area footprint of a two-storey detached home. With setbacks proposed to be increased from the R2 standards for front and rear yards, homes will not likely be able to achieve the 40 percent lot area coverage. Mr. Manett indicated the lots would have 35 to 39 percent lot area coverage.

Historical and Current Planning Context

Zoning and Subdivision

[19] Mr. Manett testified that from its original subdivision to today, over almost 100 years, the number of lots had gone from 54 to over 253. It was his opinion that the neighbourhood had not remained static over time, including that there are now a large number of smaller lots that are part of the community. It was his opinion

that, “[T]his is not a neighbourhood that is supposed to remain static. The key is that it must be sensitive to and compatible with the character.”

[20] The original subdivision lots within which the Subject Property sits were created in 1925 on Plan of Subdivision 2468 (“Plan 2468”). The lots were very large, with the original lot of record within which the Subject Property now sits being 316 feet (“ft”) by 390 ft (east property line) to 394 ft (west property line) for the depth. Frontages were approximately 100 m, more or less, for the various lots within the original subdivision. The original subdivision did not include the smaller lots that are now on the south side of Southview Drive, at the south border of the neighbourhood.

[21] But for particular developments within Plan 2468 lands, which are more fully described below, generally there are now six lots within the original 1925 lots. The Tribunal understood from Ms. Birch that these divisions occurred around 1954, though they did not occur through a process of draft plan of subdivision. As a result, the Plan’s numbering did not change.

[22] Under s. 3.20 of the ZBL passed in 1988, no one is permitted to erect more than one detached dwelling on any lot for certain registered plans, including Plan 2468. The City interprets this to mean not the original 1925 plan, but the subdivision as it existed at the time the ZBL was passed in 1988, which lots the Tribunal understood had approximately 30 m (100 ft) of frontage. It was for this reason the City sought an exemption clause to s. 3.20 in the Draft ZBLA, described more below.

[23] Today, the Subject Property lots lie within an R1V zone, which zone is “Old Village Residential Zone”. The lots across the street on the east side of Baldwin Avenue front Baldwin Avenue and are within an R3 - Residential zone. These were created following a 1980 Order-in-Council (“OIC”) (Exhibit 3, Tab 4M) authorizing the development, overturning the Ontario Municipal Board (“Board”) decision to refused 1) an application to amend the City’s then in-force Official Plan, 2) a proposed plan of subdivision, and 3) a restricted area by-law amendment, to permit seven single-family detached residential lots with frontages of 53 ft and 45 ft on Plan 2468. In that decision, the lands were redesignated from industrial to residential.

[24] All properties along both sides of Southview Drive front Southview Drive. The properties on the south side of Southview Drive are, however, within an R3 zone, whereas on the north side, they are all within the R1V zone.

[25] As noted, the Southview Drive lots on the south side were not part of the original Plan 2468. They were redesignated from Rural to Residential on May 18, 1976 and the lands south of those lots were redesignated as Industrial. These official plan amendments were then approved by the Board on July 28, 1977. The zoning by-law amendments were approved by the Board on December 5, 1977.

[26] The Proposal seeks to rezone the Subject Property lands from R1V to R2, a zone which does not exist within the neighbourhood today. R1V zoning extends along the length of the north side of Southview Drive north to the remainder of the neighbourhood, which portion of the neighbourhood is considered to be the “interior” or “core” of the neighbourhood by the City and the participants who appeared; the R3 and R5 zones exist on the periphery at the south and southeast edges of the community.

[27] Regarding the R3 zones that run along the south of Southview Drive (west-east on the southern edge of the neighbourhood) and a portion of Baldwin Drive (at the southeast edge), the Tribunal was told that these lots were developed to act as “buffers” from industrial areas.

[28] Ms. Birch testified that the smaller residential lots developed in the R3 zones along Baldwin Avenue and the south side of Southview Drive were, at the time, considered appropriate to act as buffers between the existing industrial lands and the remainder of the larger lot residential lots, specifically to address visual and auditory impacts (see Exhibit 3, Tab 4, pages 162 and 163). Ms. Ferlisi similarly commented that these properties were intended to act as buffers.

[29] Mr. Manett testified that these are deeper lots to assist with that buffering function. Ms. Birch indicated that the thinking at the time was that lots were closer together, so buildings are closer together – a tighter and more compact form would mean that the built form itself would stop noise from travelling north into the existing or remainder of the subdivision.

[30] There was some discussion at the hearing about the Applicants' characterization of the proposed rezoning to an R2 zone constituting a "transition" zone, with zoning from east to west being R5, R3, R2 and R1V. The City characterized this evidence as the Applicants suggesting that the proposed lots act as "buffers", like earlier developments had.

[31] However, Mr. Manett indicated clearly in his evidence that he was not referring to these lots acting as any kind of buffer, but only a transition from smaller to larger zoning. While the zoning standards themselves may reflect this, the frontages for the proposed lots look very similar to the existing lots facing Baldwin Avenue. They would be about 2 m smaller than the lots facing north on Southview Drive. The R5 lots are the smallest by area measurement, but the next smallest by lot area are the proposed lots themselves. From that perspective, it is not transitionary based on the existing lot sizes compared to what is proposed.

[32] Ms. Birch testified that the zones are separated by a street. It was her opinion that the interior or core – where R1V zone lands are and where the Subject Property sits – remained stable relative to the edges of the neighbourhood over time.

[33] In addition to the smaller lot developments already described that exist in different zones, is Keeleview Court, which sits within the R1V Zone. It is at the northwest corner of the neighbourhood. Keeleview Court Plan 2468 is a 1981 plan (Exhibit 12, Page 4). Keeleview Court lands were a consolidation of three larger lots, including Lot 27 and part of Lot 42. The original Lot 27 was a very large lot of an irregular shape, which shape resulted from Hillside Avenue crossing through it and Lots 24 and 28. The rear-yard lot line of the original Lot 27 was 290 ft (88.4 m) and the west boundary lot line (unaffected by Hillside Avenue) was 541 ft (164 m).

[34] While Keeleview Court is referenced as being within an R1V Zone, Ms. Birch testified that by an OIC in 1980, a reduction in lot frontage to 60 ft from 100 ft (18 m from 30 m) was permitted. She advised this change occurred prior to the current ZBL being in place. Ms. Birch indicated only the frontage change was granted.

[35] At the time of the OIC, the Tribunal understood from Ms. Birch that the R2 zone in the in-force zoning by-law of the day (Zoning By-Law No. 2523, dated November 1960 ("Old ZBL")), represented what is now the R1V in the ZBL.

[36] On review of the zoning standards within that Old ZBL, it is not clear to the Tribunal that there was a direct comparator between then and now for the zoning standards. Under the Old ZBL, there were RR, R1, R2, and R3 zones, and three different R4 zones. RR had a minimum frontage of 150 ft (45.72 m), R1, 70 ft (21 m), and R2, 60 ft (18 m). No zone had a minimum frontage standard of 100 ft (30 m). Lot coverage for all residential zones was 20 percent.

[37] Ms. Birch testified, with reference to the Keeleview Court Plan 2468, that the frontages were in the range of 43 ft (13 m) to 70 ft (21 m) (Exhibit 18), or thereabouts. Obviously, 43 ft is less than 60 ft, which is what the Tribunal understood the OIC to permit.

[38] A copy of the OIC itself was not in evidence, but what the Tribunal draws from the totality of this evidence is that the lots in Keeleview Court were ultimately permitted to have smaller frontages than the lots of record at the time.

[39] Current ZBL standards are the following:

- **R1V zone** standards under the ZBL require a minimum 30 m (100 ft) frontage with 845 sq m area, minimum front-yard and rear-yard setbacks of 7.5 m, a minimum 1.5 m for an interior side yard, and a minimum 4.5 m for an exterior side yard. Maximum lot coverage is 20 percent.

- **R2 zone** standards require minimum 15 m frontages and 360 sq m lot areas, minimum front-yard setbacks of 4.5 m, minimum rear-yard setbacks of 7.5 m, minimum interior side yards of 1.2 m, and minimum exterior side yards of 4.5 m. Maximum lot coverage is 40 percent.

[40] The proposed future lots would face an R3 zone (lots on the east side of Baldwin Avenue). The proposed corner lot on the south side would also front an R3 Zone, while the other corner lot on the north side would face an R1V Zone.

[41] Given this interface with the R3 Zone, for comparison, the Tribunal reviews the standards under the ZBL for R3 zones:

- Minimum 12 m frontage and 360 sq m lot area; a minimum 4.5 m front-yard setback; a minimum 7.5 m rear-yard setback; minimum 1.2 m interior side yards; minimum 4.5 m exterior side yards; and 40 percent maximum lot coverage.

[42] The lots in the R3 Zone as built out on the east side of Baldwin Avenue are larger than the minimum 12 m frontage standard. They were developed as part of a plan of subdivision in 1981 and have frontages of 16.5 m (3 lots), 15.25 m (3 lots), and 11.58 m (1 lot, as a result of a daylight triangle, which Mr. Manett testified was no longer required as there is no through road there anymore) (Exhibit 12, Page 3). The R3 Zone lots facing north on Southview Drive appear to be 60 ft or 18.3 m lots (Exhibit 12, Page 2), though Mr. Manett testified they were generally 50 ft lots. These lots were developed in 1978.

[43] The lots proposed to face the Baldwin Avenue lots would have frontages of 18.29 m (two lots, corner), 15.24 m (two lots), 15.68 m (one lot), and 16.12 m (one lot) (Exhibit 2, Tab 8, Page 2). They are therefore not perceptively different from the lots they will face. The lots will front Baldwin, creating a rear-yard to side-yard condition with the immediately abutting R1V lot to the west, a new condition.

[44] To the east of the R3 lots fronting Baldwin Avenue are R5 zone lots which standards require frontages of 7.5 m/unit. The lots are all semi-detached, with twelve lots facing on Hartley Court and eight facing Rockview Gardens. These were developed in 1995. Another R5 subdivision to the north of Hartley Court, known as Gemma Court, was developed in 1999. Gemma Court is east of and directly abutting larger lots within R1V which front Baldwin Avenue. Gemma Court consists solely of detached housing.

[45] Regarding the creation of these smaller lot developments, Ms. Birch testified that these lots historically would not have been compatible with the R1V Zone lots, which are also separated by Baldwin Avenue and

Southview Drive. Ms. Birch noted that the R3 Zone lots on the east side of Baldwin were there because of a Cabinet decision and the others were approved by the Board, as described. However, Ms. Birch ultimately agreed on cross-examination that these exist today and there is no suggestion that they are incompatible with the R1V core lots and she noted "they exist and function compatibly". Participants similarly agreed these smaller lot properties were compatible and a part of the community.

Official Plan History and Evolution

[46] Prior to reviewing policies as they are now, the Tribunal speaks to the official plan policies as they have evolved. First described is OPA 589, then the in-force policies, followed by OPA 15, which OPA was recently adopted by the City but is not yet in force. It was urged upon the Tribunal by the City that this history was germane to understanding the intent behind policies seeking to protect large lots in Concord.

[47] OPA 589 (Exhibit 3, Tab J) came into force in July 2006 following a Board decision, which decision resulted from a motion of the Board to dismiss the appeal. The amendment was first adopted by the City in February 2003. The Tribunal understood that OPA 589 was the precursor to in-force Policy 9.1.2.3 in the City's OP.

[48] The Tribunal heard that OPA 589 was specifically enacted to amend the Thornhill-Vaughan Community Plan ("OPA 210"). OPA 589 indicated that the amendment had two purposes:

a. A new section was added to Policy 2.2.2.4, "General Residential Policies" which had the effect of recognizing and protecting the historical pattern of large residential lot sizes in Thornhill and in the newly included area of Concord; and

b. To include the Concord residential neighbourhood within OPA 210, under a

"Low Density Residential" designation.

[49] Prior to this, Concord, under OPA 4, had no framework of residential policies for the Concord community. Concord was therefore removed from OPA 4 and included in OPA 210 through OPA 589.

[50] OPA 589 indicated, in part, the following under the heading "Basis", as an explanation for the policy language in OPA 589:

> Established pockets of low density residential neighbourhoods in the Concord and Thornhill communities … have successfully maintained a historical pattern of large-lot residential development (30m/100ft frontages), notwithstanding there is no specific protection in OPA 4 and OPA 210.
>
> There are no specific policies that address the potential for redevelopment of these large lots in the R1V Zone neighbourhoods, putting the existing character of these areas at risk.
>
> There is merit in adding policies that would protect and recognize these areas as an important historical component and as unique enclaves within their broader communities.
>
> The minor modification to the existing policy framework will more adequately serve to maintain the integrity of the streetscapes and character of these areas, and provide guidance for the review of any future applications to ensure sensitivity to the existing development.

[51] The actual policy language and amendment to Policy 2.2.2.4 through a new subsection, (q), was the following:

> All development in older established residential areas characterized by large lots or by historical, architectural or landscape value, shall be consistent with the overall character of the area.

[52] The successor to OPA 589 was embodied in Policy 9.1.2.3, which is more fully described later in these reasons.

[53] Following the adoption of the City's current OP, the City has recently made further amendments to Policies 9.1.2.2 and 9.1.2.3, among others, through OPA 15, which was adopted by the City on September 27, 2018 through Zoning By-law No. 1782018 (Exhibit 16). While OPA 15 had not been approved by the Region as of the hearing (and perhaps is still not adopted), the Tribunal reviewed the changes. A tracked version showing the resulting changes to Policy 9.1.2.3 was also tendered into evidence (Exhibit 17R).

[54] Similarly, counsel for the Applicants provided an excerpt of the study leading to

OPA 15 (Exhibit 21) for the Tribunal's consideration, which study was prepared by Urban Strategies Inc. ("Study"). The Study was concerned with the question of whether development applications were consistent with the vision and intent for stable communities. One of the concerns raised was specifically in the context of severances for more intensive housing forms. The Study noted the following:

> When this occurs in the middle of large-lot neighbourhoods where the lot dimensions are consistent, the resulting lots and the new dwellings on them can significantly disrupt or change the character of the neighbourhood, as side yards are reduced and garages and driveways become more dominant features. However, the circumstances may be different where a large-lot neighbourhood interfaces with a medium-lot or small-lot neighbourhood, resulting in more variability among lot dimensions, for example, large lots on one side of a street and narrower lots on the opposite side. Where this conditions exists, a proposal to subdivide a larger lot may result in a development that fits the general character of the surrounding neighbourhood and would generally meet the compatibility criteria in policies 9.1.2.1 and 9.1.2.3 of the [City's OP].

[55] OPA 15 resulted in changes to several policies: Community Area policies in Chapter 2; Urban Design and Built form policy, Land Use Designations policy, Building Types and Development Criterial, all in Chapter 9.

[56] OPA 15 also adds new policies. For example, a new Policy 9.1.2.4 seeks to allow limited intensification in the form of semi-detached houses and townhouses along arterial roads, subject to several criteria, such as fronting a public street, locating parking at the rear of units or underground, and respecting and maintaining the general pattern of front, side- and rear-yard setbacks in the adjacent established neighbourhood.

[57] Policy 9.1.2.2, as it is currently, emphasizes numerous criteria that relate to respecting and reinforcing the physical character and uses. These are the following:

a) The local pattern of lots, streets and blocks;
b) The size and configuration of lots;
c) The building type of nearby residential properties;
d) The heights and scale of nearby residential properties;
e) The setback of buildings from the street;

f) The pattern of rear- and side-yard setbacks;

g) Conservation and enhancement of heritage buildings and related heritage matters; and

h) Reference to the above elements not being intended to discourage the incorporation of features that can increase energy efficiency (e.g. solar configuration, solar panels) or environmental sustainability (e.g. natural lands, rain barrels)

[58] In the Tribunal's view, neither of (g) and (h) above applies to the facts in this case, though in respect of (h), Mr. Manett commented that new housing is generally more efficient in terms of energy consumption.

[59] In respect of Policy 9.1.2.2, OPA 15 does not appear to have a significant bearing on the proposal, were it to be evaluated against those amended policies. The amendments include the following:

- Adding "the orientation of buildings" to the list of criteria, which issue was part of the discussion at the hearing in any event, and which would seem to be included within the concept of "local pattern of lots".

- 9.1.2.2 (d) (not (e) as noted in OPA 15) would be amended to require the

  height and scale of "adjacent and immediately surrounding" residential properties be considered, rather than "nearby" residential properties. Nearby may be considered further afield from "immediately surrounding" or "adjacent".

- Adding "the presence of mature trees and general landscape character of the streetscape" to the list of criteria. This particular issue was also addressed at the hearing through the urban design evidence, and a similar concept is captured within the language of Policy 9.1.2.3 (g).

[60] Policy 9.1.2.3, the most directly applicable policy, is more significantly amended by OPA 15. A new schedule is to be added to specifically identify which lands are subject to the policy, though there was no dispute at the hearing that the Subject Property lands are subject to Policy 9.1.2.3, given the specific reference to "founding communities" of Thornhill and Concord, among others. The policy speaks to maintaining the character of large lot neighbourhoods. In its amended form, the policy would have the following implications:

- Lot frontage - currently, the policy requires that new lots should be "equal to or exceed the frontages of the adjacent nearby and facing lots." The policy would be amended to indicate that new lots should be "equal to or exceed the frontages of adjoining lots, or the average of the frontage of the adjoining lots where they differ." This is a more restrictive test than the existing policy language. It would also overcome the commentary in the Study that severances would be appropriate where large lots interface with a medium-lot or small-lot neighbourhood. The policy does retain some discretion through the use of "should".

- Lot area - currently, the policy requires lot area should be "consistent with the size of adjacent and nearby lots"; this would be amended to read "should be consistent with adjoining lots", also a more restrictive test, but retains some discretion through the use of "should".

- Lot configuration - currently, new lots "should respect the existing lotting fabric"; the policy would be amended to add "in the immediately surrounding area." This is a more restrictive test.

- Front yards and exterior side yards – this policy has not been changed. It requires that buildings should maintain the established pattern of setbacks for the neighbourhood to retain a consistent streetscape.

- Rear yards - this policy also remains unchanged. It requires that buildings should maintain the established pattern of setbacks for the neighbourhood to minimize visual intrusion on the adjacent residential lots;

- Dwelling types: this is an entirely new provision. It indicates that replacement housing should be of the same type. Semi-detached or townhouses would be permitted when fronting arterial roads. This change would have no impact on the proposal, were it to be considered under this provision.

- Building heights and massing - this is currently sub-policy (f). There are no material changes to this policy, which requires that proposals should respect the scale of adjacent residential buildings and any city urban guidelines prepared.

- Lot coverage – this is currently sub-policy (g). There are no changes to this policy. It indicates that to maintain the low density character of these areas and ensure generous amenity and landscaping areas, lot coverage consistent with development in the area and as provided for in the zoning by-law is required to regulate the area of the building footprint within the building envelope, as defined by the minimum yard requirement of the zoning by-law.

[61] The Tribunal of course applies in-force policy, not that as adopted by the City through OPA 15, but not yet in-force. At this point the final form of OPA 15 is unknown as the Region of York may seek to amend it, and/or it may be appealed and dealt with by the Tribunal at some future date.

The Draft Instruments

[62] Mr. Manett testified that in many cases, he would have initially filed a consent application, subject to the approval for the zoning. But in Vaughan, he was told not to submit this application until the zoning was resolved. As a result, no severance application has been prepared or submitted to date. If the ZBLA and OPA applications are successful, then the consent application would be filed.

[63] Mr. Manett also indicated that the original application was only for a ZBLA. He did not think an OPA was necessary as in his opinion the proposal conformed to the City OP. This issue is described more fully below.

Zoning By-law Amendment

[64] The original proposal with the application contemplated a rezoning to the R2 zone, with no site specific standards deviating from those standards.

[65] Following the original submission, the ZBLA was amended to satisfy one concern raised by staff during the comment period regarding s. 3.20 of the ZBL; specifically that the Draft ZBLA be modified to reference an exemption from s. 3.20.[1] It is the Draft ZBLA at Exhibit 2, Tab 6, Page 172 that was before Council.

[66] An amended Draft ZBLA was presented at the appeal hearing to introduce some site specific standards (Exhibit 13). That Draft ZBLA contemplates two changes from the R2 zoning standards that were not

[1] Section 3.20 requires that only one dwelling can be constructed on each lot within Plan 2468. The predecessor Zoning By-Law No. 2523 had a similar provision to s.3.20, specifically that no dwelling could be erected on a lot in Plan 2468 unless the frontage of the lot was 100 feet or more.

contemplated at the initial application stage: a minimum 7.0 m front-yard setback instead of a minimum 4.5 m setback, and a minimum 10.3 m rear-yard setback instead of a minimum 7.5 m setback; therefore greater front- and rear-yard setbacks than the zoning requirements contemplate. The rear yards of the anticipated future houses would have rear-yard to side-yard conditions with their abutting lots, rather than the current side-yard to side-yard conditions; therefore a greater rear-yard setback would provide for a greater separation between the rear yards and side yards of the abutting two lots to the west.

[67] In closing submissions, following the evidence of the City's urban design witness, the Applicants also indicated that they were "content to not build 1980s garages" and as a result, had one further refinement to the ZBLA:

> Any garage located in any dwelling shall not project beyond the main wall of that dwelling in which the garage entrance is located.

Official Plan Amendment

[68] Regarding the proposed OPA, the Applicants sought to amend the City's OP by exempting the proposal from two policies in the City's OP: Policies 9.1.2.2 and 9.1.2.3. The Application provided a Draft OPA and noted the following as part of the preamble:

> This amendment is at the direction of City Staff who have advised that since the City is currently reviewing the Low rise Residential Designation and land use compatibility policies of the new Official Plan in the interim it is appropriate to request an exemption from the aforementioned policies of the new Official Plan to ensure that there is no issue for the proposed development related to the interpretation of these policies.

[69] Mr. Manett testified he did not think an exemption from those policies was necessary, as the proposal met those policies. However, since the municipality requested it, they applied for the OPA.

[70] The Committee of the Whole staff report (Exhibit 2, Tab 15, Page 262), however, characterizes this differently. It indicates the following:

> As the proposed infill development is located on and within a predominantly existing established large lot residential subdivision, the proposal does not address the compatibility criteria for new development within existing "Community Areas", and therefore, an amendment to [the City's OP] is required.
>
> Attachment #2 to this report shows smaller lot sizes in the vicinity, including directly to the east and south on lots zoned R3 Residential Zone (single detached on minimum 12 m frontages) and R5 Zone (single and semi-detached on minimum 7.5 m/unit frontages), where the applicant will need to demonstrate through the Official Plan Amendment application the compatibility of the proposal with the existing neighbourhood fabric.

[71] In closing submissions, in light of learning at the hearing that OPA 15 had been adopted and because the City seeks a notwithstanding clause, the Applicants asked that the following text replace the operative details of the proposed OPA in 2.2.1 and 2.2.2, as reflected in Exhibit 2, Tab 7, page 198, to read:

Notwithstanding Policies 9.1.2.2 and 9.1.2.3 of the Official Plan, six residential lots shall be permitted on the lands known municipally as 23 Rockview Gardens and 10 Southview Drive, more particularly identified on Schedule "1".

[72] In closing submissions, the City indicated that it had no comments with respect to the implementing instruments.

Issues

[73] The *Planning Act* ("Act") places several obligations on the Tribunal when it makes a decision, whose obligations are reflected in these issues in the Procedural Order:

[74] **Issue 1** – This issue reflects obligations under s. 2 of the Act, and asks if the Draft OPA and ZBLA have regard to s. 2. Under s. 2, the Tribunal must have regard to matters of provincial interest enumerated under that section. The City referenced the orderly development of safe and healthy communities(2(h)); the adequate provision of a full range of housing, including affordable housing (2(j)); the co-ordination of planning activities of public bodies (2(m); the appropriate location of growth and development (2(p)); and the promotion of built form that is well designed, encourages a sense of place, and provides for public spaces that are of high quality, safe, accessible, attractive and vibrant (2(r)).

[75] **Issue 2** – This issue reflects obligations in respect of the Provincial Policy Statement, 2014 ("PPS") and the Growth Plan for the Greater Golden Horseshoe, 2019 ("2019 Growth Plan"), which require planning decisions to be consistent with the PPS and to conform to the 2019 Growth Plan.

[76] In this instance, the Tribunal heard evidence in respect of PPS Policies 1.1.1(a), (b), (e) and (h); 1.1.3.1, 1.1.3.2(a) and (b); 1.1.3.3, 1.1.3.4, 1.4.3, 4.7 and 4.8.

[77] At the time of the hearing the Growth Plan for the Greater Golden Horseshoe, 2017 ("2017 Growth Plan") was in effect. After the hearing concluded, the province passed updates to the 2017 Growth Plan, which came into force on May 16, 2019. Where a decision has not yet been rendered, the most current plan applies immediately to a proposal.

[78] At the hearing, the Tribunal heard evidence in respect of Policies 2.2.1.2(b) and (c), 2.2.1.4(c), 2.2.2.4, and 2.2.6.1(a)(i) of the 2017 Growth Plan. The corresponding sections in the 2019 Growth Plan, which are either unchanged or substantially similar to the 2017 Growth Plan, are Policies 2.2.1.2(b) and (c), 2.2.1.4(c), 2.2.2.3 [formerly 2.2.2.4], and 2.2.6.1(a)(i). Given this, the Tribunal concludes it may rely on the evidence heard at the appeal hearing and does not require further evidence or submissions in respect of conformity with the 2019 Growth Plan.

[79] **Issue 3** – This issue reflects the requirement that the Draft OPA and ZBLA must conform to the Regional Municipality of York's Official Plan ("York OP"). The parties specifically referred to Policies 3.5 and 5.3.

[80] **Issue 4** – This issue reflects the requirement that the Draft OPA and ZBLA must conform to the City's OP, including the following policies:

- 1.5;
- 2.1.3, 2.1.3.1, 2.1.3.2, 2.2.1, 2.2.1.1, 2.2.1.2, 2.2.3, 2.2.3.2, 2.2.3.3, 2.2.5;
- 7.1, 7.3.1.1;
- 9.1.2, 9.1.2.1, 9.1.2.2., 9.2.3, 9.2.3.1;

- 10.1.2.41, 10.1.2.42(a), 10.1.2.45.

[81] Though referenced in the issues list, 7.3.1.1 regarding parkland was not referred to at the hearing. Rather Policy 7.1.1.3 was referred to, and the Tribunal takes it that 7.1.1.3 was the policy to which reference was intended to be made. This is a housing policy in the City's OP, which requires the City to have a "balanced supply of housing that includes a diversity in housing type, tenure and affordability." City OP Policies 7.5.1 and 7.5.1.1 were also referred to, which policies similarly reflect providing for a range of housing options.

[82] Issue 4 also referred to conformity with OPA 589. However, OPA 589 is no longer in effect and is now superseded by the City's more recent OP. Instead, it was presented to the Tribunal to provide history and context to the successor policy, being Policy 9.1.2.3.

[83] **Issue 5** – This issue asks whether the proposed development of the site should be exempted from s. 3.20 of the ZBL. Ultimately, this was not an issue between the parties and the Applicants appear to have accepted it should be part of the Draft ZBLA.

[84] **Issue 6** – This issue asks if the City ZBL should be amended as proposed by the Applicants.

[85] **Issue 7** – This issue addresses the question of potential precedent. Specifically, it asks, "Does the proposal have the potential to trigger further change to the large lot fabric along neighbourhood streets including Hillside, Rockview, Southview and Baldwin? If so, what implications does it create with respect to Parks, communities, facilities, etc.?

[86] **Issue 8** – This issue asks if it is appropriate to recreate a lotting pattern on the site that reflects those across the street and in the immediate area, or should we continue to promote large lots reflective of the historical/original rural settlement pattern of Vaughan?

Municipal Council's Decision

[87] The Tribunal notes that under s. 2.1 of the Act, it is to have regard to the decision of municipal council in respect of the proposed amendments, including any information and material the municipal council considered in making its decision.

[88] Council adopted the earlier recommendations of the Committee of the Whole, without amendment, on June 28, 2016. The Committee of the Whole recommended refusal by approving the staff report, which recommended refusal.

[89] The synopsis of the staff report's recommendation, and therefore a reflection of Council's reasoning, is the following (Exhibit 2, Tab 23):

> The Owners are proposing to rezone two large residential lots to facilitate the future severance of the subject lands into 6 lots with a minimum 15.24 m lot frontage on Baldwin Avenue and a minimum lot area of 507.1 m^2 … The Vaughan Development Planning Department does not support the Official Plan and Zoning By-law Amendment applications as they would facilitate lot areas and new development that does not conform with the compatibility policies in [the City's OP] and would set a precedent for the future severances of large lots within the interior of the Concord Community.

[90] In addition to the question of compatibility and precedent, the staff report focused on the fact that as a Community Area, it is intended to remain stable and it is not an area where intensification is expected. It is not within a Regional Intensification Corridor, nor is it identified as an Intensification Area under the City's OP.

[91] The Tribunal now turns to a detailed analysis of the issues.

Issue 4 - City Official Plan Policies

[92] The Subject Property is under the City OP's Urban Structure Policies, within a Community Area. Under the Land Use policies, the Subject Property is designated as Low-Rise Residential.

[93] As became apparent at the hearing, the Tribunal indicated the main issue in this case is about compatibility of the future proposed lots within the neighbourhood, and particularly in respect of Policy 9.1.2.3 of the City's OP.

[94] On cross-examination, Ms. Birch agreed that modest intensification is permissible in Vaughan even when outside of intensification areas. The Tribunal quickly disposes of this question and finds that the ultimate intended intensification from two lots to six, for the purposes of detached dwellings, constitutes limited intensification. Limited intensification does not offend the City OP policies on intensification in Community Areas, so long as it is sensitive to and compatible with the character, form and planned function of the surrounding context (Policy 2.2.3.3).

[95] In his evidence, Mr. Manett referred to consent policies of the City's OP in some detail (Policies 10.1.2.34 to 10.1.2.41, 10.1.2.46 and 10.1.2.47). He opined that the proposal conforms to the consent policies, as well as all other applicable official plan policies.

[96] The Tribunal notes that Policy 10.1.2.46 indicates that where a ZBLA is also being proposed, that application will be filed concurrently or prior to the consent application. As noted, the City indicated the ZBLA should proceed first and Ms. Birch indicated that normally the consent would be adjourned until the ZBLA is resolved even if it is filed concurrently.

[97] In addition, Policy 10.1.2.46 notes that Council shall have regard to the consent policies of the City's OP when it is considering a zoning by-law amendment application. The Tribunal notes the consent policies were not directly addressed in the hearing by the City, though they were addressed in the staff report recommending refusal of the report.

[98] Policy 10.1.2.46 indicates that no consent will be granted in the case of nonconformity with the City's OP. The consent policies also address compatibility criteria. Ms. Birch directly addressed those issues and relevant policies at the hearing. Given the Tribunal's conclusions later in these reasons that the proposal conforms to the City's OP, including the compatibility criteria, the Tribunal concludes that the proposal conforms to the consent policies in the City's OP.

Interpretive Approach to Policy 9.1.2.3

[99] As a general proposition, the Tribunal has taken a more or less strict approach to the interpretation depending on what the policy goal is.

[100] For example, when applying severance policies on agricultural lands, a strict approach is more likely to be taken: severances should be disallowed but for very specific situations, such as heritage considerations or for agriculturally related uses. Protection of natural features is another area where the Tribunal would likely take a more restrictive approach in an interpretation exercise.

[101] It is generally the converse in the context of development where compatibility or character are the main concerns, as it is here, in the absence of any other goal that is of importance; for example, in relation to a property that is designated as a heritage property.

[102] As is often said, and as Ms. Birch agreed in her cross-examination, compatibility does not require being the same as or even similar to surrounding development. It needs to be able to co-exist in harmony.

[103] In addition to the foregoing, several interpretative principles, as further discussed in these reasons, guide the Tribunal. An over-arching principle is the need to read the planning framework as a whole, while recognizing the hierarchy established, with provincial Acts and instruments at the top of that hierarchy:

- In accordance with s. 3(5) of the Act, decisions must be consistent with or conform to current provincial objectives, as applicable. From this, the Tribunal concludes that the interpretation of municipal official plans should be done so as to allow for the best implement those goals. At this juncture, provincial directives indicate an "intensification first" approach, with intensification throughout settlement areas / built-up areas, with the goal of improving efficient use of lands, in the context of units/hectare, and available infrastructure and servicing. These are to be implemented through official plans, among other instruments, and municipalities are to determine appropriate locations for intensification.

[104] The 2019 Growth Plan, at Policy 2.2.2.3, indicates municipalities will develop a strategy to achieve the minimum intensification target and intensification throughout delineated built-up areas, which will:

a) Identify strategic growth areas for the key focus of growth;

b) identify the appropriate type and scale of development in those areas and transitions to adjacent areas;

c) encourage intensification generally in the built-up area;

d) ensure that lands are zoned and developed in a way that allows for complete communities;

e) prioritizes planning and investment in infrastructure and public service facilities that support intensification; and

f) be implemented through official plan policies and designations, updated zoning and other supporting documents.

[105] The PPS, through 1.1.3.3, recognizes that municipalities are to identify appropriate locations for intensification and redevelopment where this can be accommodated, taking into account existing building stock or areas and the availability of suitable existing or planned infrastructure required to accommodate projected needs. The Tribunal draws two concepts from this policy regarding what can be accommodated:

- character as reflected by the existing building stock is relevant; and
- the existing or planned infrastructure is also relevant, which infrastructure includes waste and water systems, and transit and transportation facilities and corridors.

[106] In the context of this proposal, infrastructure such as water and transit is not in issue. The lands are well serviced allowing them to function. The matter rests primarily on the question of character.

[107] Policy 4.7 of the PPS, similar to 2.2.2.3 of the 2019 Growth Plan (specifically, sub-clause (f)) indicates that official plans are the most important vehicle for implementation of the PPS. That provision also indicates that the PPS continues to apply, even after the adoption of an official plan, and that official plans are to be kept current to reflect provincial directives.

[108] The Tribunal notes that the in-force ZBL was passed in 1988. Mr. Manett testified that there has been no update or conformity exercise for the ZBL with respect to the current City OP or any of the provincial instruments. Ms. Birch testified that the ZBL was "quite outdated" and was currently undergoing a comprehensive review with a draft expected to go to the Committee of the Whole in the month after the hearing.

[109] OPA 15 is the most recent expression of official plan policy affecting the Community Area policies, which was, as noted, adopted by the City last fall and was before the Region for its consideration.

[110] Regarding the appropriate interpretive approach, the City relies on *Yonge Lawrence Dev LP v. Toronto (City)*, 2017 Carswell Ont 20303 ("*Yonge Lawrence*"), *Owl Properties Incorporated v. Kitchener (City)*, 2018 Carswell Ont 11429 ("*Owl Properties*"), and *Recchia Developments Inc.*, Re 2015 Carswell Ont 18 ("*Recchia*") to address the appropriate interplay between official plans and provincial directives.

[111] The *Yonge Lawrence* proposal involved the introduction of a double-row townhouse development on three consolidated lots within 250 m of a subway. These would be atop a garage and a central courtyard would also be developed. The Tribunal noted the neighbourhood, as described by the City, is "a unique planned neighbourhood established in the early 1900s, possess[ing] an obvious prevailing building type of one to two and a half storey, single detached family dwellings, in a parklike setting, on generously sized lots with mature trees and landscaping". The City was of the view that the development would destroy the "experience of place" which is protected by the operation of the Neighbourhood policies in its official plan.

[112] In *Yonge Lawrence* the Board concluded the following at paragraphs [68] and [75]:

> The Board finds that such recognition that there is a very limited form of intensification permitted in Neighbourhoods under the OP policies is the correct approach because it is consistent with the provincial policy framework. Applying broad policies of intensification and density as contained in the Growth Plan and PPS to neighbourhoods to the exclusion of minimization of the role the OP plays in directing where and how such intensification and density is to occur, is not a reasonable approach. This is the approached urged by the Appellant. It [has] not been generally applied by the Board. …
>
> > … [T]o the extent that the Appellant, and the Development, fail to recognize the significance of the designated authority granted to the City under the PPS and the Growth Plan to direct intensification to designated areas through its OP and fail to accept the policy framework created by the PPS and Growth Plan that expressly identifies the OP as "the most important vehicle for the implementation of the PPS", and the Growth Plan, the Development ***is***, in the Board's view, inconsistent with the PPS and ***does not*** conform to the Growth Plan. [emphasis in original]

[113] The *Owl Properties* decision involved a proposal for 47-unit cluster stacked townhouses with six stacked townhouse blocks of three-and-a-half to four-and-a-half storeys in an area that was predominantly one, one-and-a-half and two storey residential buildings. In that case, the Tribunal concluded the proposal at those

heights would be “remarkably out of character with surrounding homes” and an excessive increase in height which “does not represent good planning. A hallmark of good planning is ensuring compatibility.”

[114] In *Recchia*, the Board concluded that the “only found form of development” in the immediate neighbourhood consisted of “single detached homes on generous lots, surrounded by mature vegetation”. The proposal in *Recchia* was for 12 semi-detached units. The Board concluded in that case that imposing 12 semi-detached units in this area “would not be, in my view, ‘maintaining or where possible enhancing or building upon desirable established patterns and built form’, as stipulated in the [Urban Hamilton Official Plan].”

[115] First, the Tribunal finds that the type of intensification proposed here reflects a “very limited form of intensification”, as distinct from the type of development proposed in the *Yonge Lawrence* and the *Owl Properties* decisions, in particular. Here, the housing proposed is detached dwellings on lots that by modern standards, as Mr. Manett testified, still constitute generously sized lots. They are not even semi-detached homes, which already exist in the neighbourhood.

[116] OPA 589 did signal an intention to protect large lots, even though the policy language actually adopted simply referred to “development [being] consistent with the overall character of the area”, which would arguably include the smaller lots found in the neighbourhood there today. In addition, Ms. Birch, Ms. Ferlisi and Ms. Panezutti all indicated these smaller lots did not negatively impact the community in terms of compatibility, character and/or functioning, notwithstanding how they came to be in the neighbourhood.

[117] OPA 589’s successor, Policy 9.1.2.3, provides for a more detailed set of tests relating to character concerns, though permits some latitude by using language such as “should”, which both planners agreed is not mandatory.

[118] The future of OPA 15, described in detail above, remains uncertain.

[119] Though urged by the City to take the more restrictive approach to the interpretation of Policy 9.1.2.3, in light of the stated basis for OPA 589, and the more restrictive language adopted in OPA 15, the Tribunal is ultimately bound by the in-force language itself and its existence within the current provincial framework.

[120] The Tribunal, constituted by the same Member, addressed Policy 9.1.2.3 at length in the decision of *Rodaro v. Vaughan (City)*, 2018 Carswell Ont 22019 (“Rodaro”). The Tribunal agrees with the City that the factual matrix and ultimate conclusion in the *Rodaro* decision rested on a very different scenario than the one here; and the application of Policy 9.1.2.3 in this context is not as challenging as the Tribunal concluded it was in the context of that case, where the Tribunal authorized a more intensive development than had been approved, on the basis of an opportunity for the creation of a transit supportive development in an appropriate location for that type of development and in a location that the City anticipated redevelopment. However, like in the *Rodaro* decision, the Tribunal would seek to interpret the policy language in the context of the provincial framework within which it exists, as already noted.

[121] In that respect, regarding Policy 9.1.2.3 specifically, if the Tribunal were considering a proposal here that was similar to that proposed in *Yonge Lawrence*, for example, the Tribunal would not hesitate to disallow it. But, as the Tribunal has already concluded, we are not dealing with a significant intensification proposal and limited intensification is permitted in Community Areas, provided it meets (among others, but primarily in this case) Policy 9.1.2.3.

[122] In terms of how to interpret Policy 9.1.2.3 for the purposes of this appeal, one of the main concerns the Tribunal raised at the hearing was that the interpretation urged upon the Tribunal by the City would, as far as this Member could tell, mean that no development application could succeed on R1V lots where that would impact the frontage, at least. This is unlike in Thornhill, where Ms. Birch indicated that she was aware of severances as the proposed new lots had frontages that could still meet the minimums required for the R1V Zone, because, for example, they were on corners with very large lots.

[123] The Study conducted by Urban Strategies would seem to have had a different interpretation of these policies than the City takes, in that the Study recognized that large-lots interfacing with smaller or medium-sized lots could be potentially reasonable candidates for severances, as being compatible under the applicable policies. However, this raises the spectre of the north side Southview Drive lots facing the R3 Zone also successfully being severed, which might explain the stricter language chosen in OPA 15.

[124] Counsel for the City, Pitman Patterson, cross-examined Mr. Manett about the possibility of severances for the north side Southview Drive lots. Mr. Pittman took Mr. Manett through the Policy 9.1.2.3 criteria, as Mr. Manett would interpret them.

[125] Mr. Manett concluded that a proposal to sever the R1V lots on the north side of Southview Drive would meet the tests under Policy 9.1.2.3, though variances may be needed for lot coverage, for example. However, he also noted this conclusion would be the case irrespective of this proposal.

[126] Amber Stewart, counsel for the Applicant, asked the following of Ms. Birch in cross-examination: “I cannot find a single example of where we can have a severance that can meet [the 100 ft criterion]– have you taken a look to see if there’s an existing lot that can meet that criterion?” Ms. Birch indicated she had not looked at Concord, but she further agreed that there are only two lots in the exterior (on Highway 7 and Keele Avenue), nothing in the interior, that could be severed and still meet the R1V frontage requirement. She indicated that she was not sure if it could be achieved through an assembly, however.

[127] On re-direct, Mr. Patterson put to Ms. Birch an example of an assembly which would facilitate severances in the interior while still meeting the R1V standards (Exhibit it involved a land assembly of six properties within the R1V zone (at Rockview Gardens and Baldwin Avenue, specifically lots 11, 15, 19, 38, 34 and 30) and the creation of new private roads to service the divided lots created by the development. This would maintain the R1V standards for both frontage and lot area but would double the number of lots there now. However, it would also require the creation of a road network, including between two other lots (Lots 32 and 26); somehow, those two lots would also have to be part of the land assembly for such a proposal to functionally work.

[128] The Tribunal accepts that a land assembly may one day present itself that would then meet the policies not only as they are written today, but as they are proposed to be amended by OPA 15. The question is whether such a restrictive interpretation of the inforce policies, which came into force in 2006 following the Board’s own motion to dismiss, is appropriate in light of the more recent provincial directives which steadily direct us towards an “intensification first” approach with the more efficient use of land and infrastructure, so long as the proposed intensification can be accommodated, as described earlier.

[129] Ultimately, the Tribunal is not persuaded that such a strict interpretation of Policy 9.1.2.3 is warranted. With that in mind, the Tribunal considers Policy 9.1.2.3 in detail.

Policy 9.1.2.3

[130] The goal of the policy, by its own drafting, is to "maintain the character of these areas", which character is described in Policy 9.1.2.3 as "large lot" and/or "historical, architectural or landscape value". In this particular case, there was no indication that the lots in question have any architectural value and Mr. Manett seemed to dispute any historical value. At least in so far as historical value might relate to heritage, there was no suggestion at the hearing that heritage played a role. The Concord community is reflected as a founding community in the policy language, however.

[131] Policy 9.1.2.3 also indicated that these large lots are also "characterized by their substantial rear, front and side yards, and by lot coverages that contribute to expansive amenity areas, which provide opportunities for attractive landscape development and streetscapes."

[132] It is worth emphasizing that the older buildings on these lots are much smaller than the zoning would permit, with older homes being about 1,500 to 3,000 sq ft. Homes built out to the allowable zoning, even at 20 percent coverage, take up a significant portion of the land and can be approximately 7,000 sq ft in size, with potential side yards of only 1.5 m, rear yards of only 7.5 m and front-yard setbacks of 9 m. The Tribunal understood the immediately neighbouring western property on Rockview Gardens is an example of such a redeveloped home,[2] where from the aerial photo it appears a large part of the lot, beyond the house itself, is now taken up by hard surfaces, in the front yard, the east side yard, in behind the house, and part of the west side yard. The homes south of Rockview Gardens seem particularly susceptible, having less deep lots than those on the block to the north (lots become smaller again, north of that, towards and abutting Highway 7).

[133] The Subject Property lots could be redeveloped in a similar manner to that next door to 23 Rockview Gardens. While this type of redevelopment maintains a 100 ft frontage, it could impact area available for soft landscaping, and it would be difficult to say that front, side and rear yards would remain "substantial", compared to existing conditions with older homes.

[134] In that regard, it would seem that meeting the goals of substantial rear, front and side yards with significant amenity space is "at risk" for at least some of the R1V lots just by the zoning standards: the only goal, in terms of "character", that would be without risk by refusing a severance is the maintenance of the area of the lot itself, which as a matter of character along the streetscape, is primarily experienced by frontage, rather than area, as noted later in these reasons.

[135] Ms. Davoudi-Strike testified that in her opinion, the community had three distinct characters: (1) In the interior blocks, there are the large lots with approximately 30 m frontages, the majority of which are occupied by older one-storey homes. There are some newer, larger single family homes, which she called "mansion homes". These lots have their distinct character, both in terms of their architectural variability and in landscape features; (2) south of Southview Drive and east of Baldwin Avenue, there is a different character; and (3) Gemma Court, which is different architecturally.

[136] As the Tribunal noted at the hearing, the drafting of Policy 9.1.2.3 (a), in particular, was perhaps not an example of the best drafting. Regarding lot frontages, it indicates they "should be equal to or exceed the frontages of the adjacent nearby and facing lots". The Tribunal accepts this is to be read as three distinct categories: lots that are 1) adjacent; 2) nearby; and 3) facing lots, with "nearby" being the most nebulous of the three as something further afield than facing or adjacent lots. It is less clear how the "equal to or exceed" should be calculated in the context of three distinct comparators. In that regard OPA 15 is much clearer,

[2] The Tribunal does not know if any variances were also sought or authorized.

narrowing the test to adjoining lots, and providing for an averaging test where the adjoining lots have different frontages.

[137] Under the in-force language, the City's planner de-emphasized the "facing" lots across the street on Baldwin Avenue and Southview Drive, which are R3 Zone lots, and de-emphasized the nearby lots in the R5 zone, as being outside the large lots the policy seeks to protect. As the adjacent lots are the most restrictive comparator and maintain the R1V lot frontage standard, the City takes the view that it is the most appropriate standard to apply in light of Ms. Birch's opinion that the intent is to protect large lots and because the test is conjunctive, using "and" rather than "or" in terms of the comparators. The City urged this approach, referring back to the purpose behind OPA 589, which indicated a desire to protect the R1V large lots, with OPA 589 "recognizing them as an important historical component and as unique enclaves within their broader communities." This means that the proposal would fail Policy 9.1.2.3(a), since the only comparator are the adjacent lots to the west.

[138] The Applicants' planner took a wider view and considered the area within a 150 m radial zone of the Subject Property. Mr. Manett noted that while the areas to the east are cut off from vehicular traffic as a result of the bollard configuration, they are not cut off from pedestrian traffic. Mr. Manett's interpretation would de-emphasize "adjacent", while considering the nearby and facing lots, though nearby lots included R1V lots to the west of the Subject Property as well as the R3 and R5 lots to the east. And, notwithstanding the use of "and", he also did not indicate that all three had to be met, and of course, the policy reflects "should", not "must".

[139] Ms. Davoudi-Strike directed the Tribunal to photo montages she had created of a section of seven lots going west from Baldwin Avenue on Rockview Gardens (south side). She indicated these were fairly representative of the other streets. She indicated we could see bungalows, but also new big two-storey homes. Only one of the new homes was one storey. She also noted that the interior lots featured extensive landscaping, consisting of very large mature trees and grass.

[140] Ms. Davoudi-Strike created a second montage in which she inserted, for comparison purposes, existing homes facing east along Baldwin Avenue, noting "this is what would happen if [we] introduced 15 m lots into this architectural character."

[141] Prior to considering that montage further, the Tribunal notes that Ms. DavoudiStrike's only comment during the circulation period was to "relocate the driveways of the proposed lot #5 to the north side to reduce the number of curb cuts and allow for better pedestrian flow and to reduce the number of tree removals due to the location of the driveways from 7 to 5 trees." One might have hoped, given her analysis and concerns raised at the hearing, that she would have had a more significant analysis of the proposal during the time it was circulated for comment.

[142] In any event, regarding the montage, the Tribunal did not find this interposition that helpful, in that the proposed homes would not be inserted somewhere in the middle of the R1V lots, but facing away from them and towards the smaller Baldwin Avenue lots used in the montage. As a result, the comparison seemed inapt to the Tribunal. To the extent it might reflect a severance of an interior R1V lot into two, that would be a different proposal and likely would not involve a rezoning, though may involve minor variance applications. Nonetheless, the Applicants responded insofar as they agreed that the proposed homes should not have prominent garages, commonly done at the time the Baldwin Avenue homes were built, and offered language to be included in the Draft ZBLA to address that design concern.

[143] In light of the overarching framework within which this policy exists, the variable lots frontages in the vicinity of the Subject Property and the garage design feature as proposed by the Applicants, ultimately the Tribunal prefers the opinion evidence of Mr. Manett. The Tribunal concludes that the proposal conforms to Policy 9.1.2.3(a).

[144] Regarding Policy 9.1.2.3(b), the test requires that the area of new lots should be consistent with the size of adjacent and nearby lots. Mr. Manett indicated the proposed lots are clearly smaller than the adjacent lots, but about the same as the nearby lots in the R3 or R5 zones. It was his opinion that the proposal was consistent since there are a "wide variety of lots" in the vicinity. He also indicated that lot area, unlike lot frontage, is not visible from the street.

[145] By contrast, Ms. Birch was of the opinion that because the proposed lot areas would be smaller than the R1V lots and lots on the east side of Baldwin Avenue (proposed: 507 to 602 sq m versus east side Baldwin Avenue lots at 665.75 to 813.7 sq m), this test was not met. In cross-examination, however, Ms. Birch agreed that the policy did allow for discretion and that consistency could in fact include smaller lots. She acknowledged that lot area cannot be seen from the street. She also acknowledged that rear yards for all zones were set at 7.5 m and that the ZBL is a general statement setting adequate standards that are compatible for a neighbourhood. She indicated that existing lots are designed with greater setbacks, but also acknowledged that the properties on the existing lots could be rebuilt to standard.

[146] In light of the overall evidence on this point, the Tribunal concludes that the proposed lots sizes meet the consistency test in Policy 9.1.3.2 (b).

[147] Policy 9.1.2.3 (c) relates to lot configuration. Mr. Manett was of the view that this policy was met as the proposal is consistent with the lot pattern across the road on Baldwin Avenue. Ms. Birch was of the view that the proposal did not meet this criterion because of the altered orientation. She agreed that for shape, it met the lotting pattern, as they are rectangular.

[148] Regarding the question of lot orientation, within the community there are now properties at 7 Hillside Avenue and 36 Baldwin Avenue (which are approximately half the size of most other R1V lots), with another lot, 32 Baldwin Avenue, in behind them and oriented facing Baldwin Avenue. 26 Baldwin Avenue is also oriented facing Baldwin Avenue. This orientation is also proposed for the Subject Property future lots, one block south. The Tribunal concludes that the proposed lots conform to Policy 9.1.2.3 (c) in that they respect the existing lotting fabric, as rectangular lots and other lots already exist in that orientation one block north as well as across the street on the east side.

[149] Next the Tribunal turns to Policy 9.1.2.3 (d), regarding front yards and exterior side yards. It indicates that buildings should maintain the established pattern of setbacks for the neighbourhood to retain a consistent streetscape.

[150] Mr. Manett indicated that the zoning establishes the standards. He indicated that the proposal would be consistent with the existing fabric and streetscape, and the setbacks are proposed to be greater than the zoning standards for R2 zones, specifically 7 m for front yard and 10.3 m for rear yard. The rear-yard setback is additional protection for privacy in light of the rear-yard to side-yard condition the proposal will create, that does not exist now.

[151] Ms. Birch noted that the R1V lots have 9 m setback requirements; the lots on the east side of Baldwin Avenue and the south side Southview Drive lots have setbacks of 9.1 m and 9.15 m respectively, with sidewalks that cut through them.

[152] Ms. Birch also testified that because of the new orientation, the streetscape on that block along Baldwin Avenue will change from side yards with fences and trees to facing the front yards of new homes. Of course it is accurate to say that the streetscape will be altered on that block as a result of the re-orientation of the homes, a point which particularly concerned Mr. Antonini, whose family home is at the northeast corner of Rockview Gardens and Baldwin Avenue. He noted these would be "tall homes, fully occupying the zoning requirements", though as Mr. Manett noted they would likely be a under the maximum lot coverage. In addition, new build homes would similarly create significantly greater built form as well, though they would still be a side yard to front yard condition, facing the east side Baldwin Avenue lots. Nonetheless, the proposed orientation is an existing condition one block north, where R1V lots face other R1V lots along Baldwin Avenue.

[153] Ms. Davoudi-Strike indicated that for this issue, there are two very distinct characters between the R1V lots and the proposed lots, with smaller lots in the area having roughly half the area of the front yard used to support landscaping in the front, whereas the larger lots support approximately two-thirds or more of the front yard as landscaping; though in reference to a particular block, Ms. Davoudi-Strike acknowledged seven out of forty-four interior lots (with reference to Appendix D of her witness statement) have a circular driveway, constituting approximately 15 percent of homes with less landscaping. In Ms. Davoudi-Strike's opinion however, these are an "odd minority" of homes.

[154] The Tribunal notes that the 7 m front-yard setbacks fronting Baldwin Avenue would create a consistent streetscape along the entire block's western edge, which are still quite generous, with only an approximately 2 m difference from the R1V standard and the lots across the street. The corners will change, in that the side yards will, for two of the lots, now be 4.5 m facing Rockview Gardens and Southview Drive. However, differences to streetscape at corners are not unusual conditions. In light of the overall evidence, the Tribunal concludes the proposed setbacks conform to Policy 9.1.2.3(d).

[155] Regarding Policy 9.1.2.3(e), for rear yards, the policy requires that buildings should maintain the established pattern of setbacks for the neighbourhood to minimize visual intrusion. Currently, the abutting lots have a side yard to side yard condition, which means buildings may be very close together, given the side-yard setbacks under the R1V Zone are only 1.5 m, though this is acceptable when dealing with side yards. With the reorientation of the lots, this will now be a rear-yard to side-yard condition.

[156] Mr. Manett testified the rear-yard setbacks are quite varied. Under the R1V Zone, rear-yard setback minimums must be 7.5 m. This is the same as the R2 Zone. The proposal is calling for a 10.3 m setback minimum, and the proposal provides for 10.3 m to 10.8 m rear yard setbacks.

[157] Ms. Birch indicated that the R1V lots to the west of the Subject Property allow for significant rear yards of approximately 18 m. She noted that the side to rear yard condition would "significantly change visual intrusion into the rear yards of these lots…, due to the overlook of the proposed new homes." She also noted that the rear yards of the existing dwellings in the R3 Zone to the east and south are greater than the zone standard at 12 m and 15 m, respectively.

[158] As noted before, the allowed standards are significantly smaller than what exists on the ground on the older existing lots. These setbacks are likely to decrease over time with redevelopment because the standards allow it, and this is already occurring. Further, it can occur without any public input so long as no variances are sought to these standards as part of a redevelopment.

[159] In light of the current zoning standards and the Applicants' further refinement providing for greater rear-yard setbacks, the Tribunal concludes the proposal conforms to Policy 9.1.2.3(e).

[160] Regarding Policy 9.1.2.3(f), this policy indicates that building heights and massing should respect the scale of adjacent residential buildings and any city urban design guidelines prepared for the Community Areas. Ms. Davoudi-Strike indicated in her evidence that such guidelines do not typically apply to detached houses, as are proposed here. Instead, proposals would be measured only against the policies themselves.

[161] Mr. Manett indicated that building heights are controlled by zoning and no change is sought here. The heights will comply with the maximum permissible in all zones, including the R1V Zone, is 9.5 m.

[162] On this point, Ms. Birch indicated that while the height is the same across all zones, the lot coverage is 40% in the R2 zone, whereas it is 20% in the R1V zone. This would result in a building mass that is bigger on a smaller lot. She therefore concluded this was not consistent with the mass of the existing adjacent community, presumably that of the R1V lots, as the facing lots are not adjacent. In that regard, one only need look to the immediate west on Rockford Gardens where a redeveloped property now sits that appears to have a very large area covered both by the new house and the hardscaping around it. This would likely fall into the category of mansion homes, as termed by Ms. Davoudi-Strike. Regarding the proposed lots, because of the increased setbacks, the homes that may someday be built, could maximally achieve 35 to 39 percent coverage on each lot, rather than the maximum permissible 40 percent under the R2 Zone.

[163] Regarding Policy 9.1.2.3(g), lot coverage, as noted, future resulting homes would have coverage of 35 to 39 percent. Mr. Manett testified that in his opinion these would be appropriately-sized houses in the general range of existing houses.

[164] On the question of landscaping and tree concerns, Ms. Davoudi-Strike acknowledged on cross-examination that if the driveways are moved on the corner lots to the exterior, this will also preserve some additional trees, which was one of her concerns at the hearing. Also, she agreed there is another opportunity to secure landscaping requirements as part of the consent application and tree by-law provisions will be required to be met as part of any redevelopment.

[165] Given the facing homes on Baldwin Avenue, the proposed Draft ZBL to require increased front- and rear-yard setbacks, the opportunity to preserve trees through further site reorganization, and the requirement to adhere to the tree by-law, the Tribunal concludes the proposal conforms to Policies 9.1.2.3(f) and (g).

[166] In sum, the Tribunal concludes the proposal conforms to the City's OP policies, including 9.1.2.2 and 9.1.2.3.

Issue 7 - Precedent Concerns

[167] This particular issue touches on precedent affecting change to the large lot fabric along Hillside Avenue, Rockview Gardens, Southview Drive and Baldwin Avenue.

[168] Ms. Ferlisi indicated that allowing this development would "change everything" about their community. She was strongly of the view that her neighbourhood was very desirable, allowing for gardens, plantings, and swimming pools. She was concerned that speculative buyers would come in and "rip our neighbourhood apart". She suggested that there would be nothing to stop a person from buying two or three homes and dividing. She was concerned about the 23 percent that want to subdivide their lots. Ms. Ferlisi indicated that even if it did not constitute a precedent, she would still oppose it.

[169] Ms. Panezutti lamented the potential loss of large lots. She commented along the lines of the following:

> Suddenly, we are seeing all these changes and it is very emotional and nerve wracking for the older generation. We have people that live from the land. They use that lot. Fruit trees. Apples. My land gives me that. Radiccio. My neighbours even more. … If this

> subdivision starts, the precedent is there. … Our community should be preserved… Even our children say, dad sell it. It's the lifestyle we want.

[170] In response to Ms. Panezutti, the Tribunal notes that no one can subdivide the lands she lives on as long as she owns the property and chooses to use the land in the manner she, and likeminded neighbours, choose to use it. Her particular way of life is not threatened.

[171] From the Tribunal's perspective, the main concern in terms of precedent should be whether the proposal is permitting something destabilizing and not in conformity with the policies. Mr. Manett testified that to him, destabilization includes things like disruption in the street, which creates traffic or pedestrian hazards, or built form which causes shadows or impacts on privacy, or a streetscape that is not cohesive. Similarly, Ms. Birch indicated on cross-examination that something cannot be compatible if it has a negative impact.

[172] Based on the character analysis, the Tribunal concludes there is no indication that there will be destabilization as a result of this rezoning proposal. Other potential proposals will have to be measured against the policies that are in force at the time of the application to determine whether they do or do not cause destabilizing impacts as those policies would define them or otherwise.

[173] The Tribunal acknowledges that if this proposal succeeds, then smaller lots will be introduced immediately next to R1V lots along the south side of Rockview Gardens and on the north side of Southview Drive, without a road break. But this condition already exists in the community, at Gemma Court where R1V lots abut R5 lots in a rearyard to rear-yard condition. The difference is that this condition would be introduced "into the core", which seems to be the basis for the refusal at this juncture on the part of the City. However, the language of the policy as drafted does not exclude the smaller lots as part of the community character and they cannot be ignored for the purposes of the character analysis.

[174] It seems unlikely that this particular proposal, given its proximity to smaller lots across the street from two corners, would be used as a precedent for severances along Hillside Avenue or for most of Rockview Gardens: many successful severances would have to occur along Rockview Gardens for that to occur. A successful severance along Hillside Avenue seems particularly difficult, even under the current policies.

[175] The north side of Southview Drive is potentially more likely to succeed on a severance application, as discussed earlier, and parts of Baldwin Avenue, specifically those abutting Gemma Court, may also be candidates for severances, given the interface with smaller lots at the rear yards. But it is not a foregone conclusion that those would succeed under the current policies, either.

[176] To the extent that additional lots are created by this proposal, the Tribunal does not particularly see that there are negative implications for parks or facilities with the addition of four new lots. Future proposals will be considered on their own terms.

Issue 8 – Whether it is appropriate to recreate a lotting pattern that reflects those across the street or in the immediate area, or whether we should continue to promote large lots reflective of the historical/original settlement pattern of Vaughan

[177] The Tribunal concludes that this policy question. What type of lot to promote is not for the Tribunal to determine. The policy framework establishes what is to be promoted. The Tribunal simply concludes that the proposal meets the required statutory tests, including conformity with the City's OP.

Issues 1, 2, and 3 - Provincial Matters and Regional Municipality of York Official Plan

[178] Provincially or within the York OP, there is no direction that would suggest that old large lots should be maintained or provided for. The closest we might come to this is direction to provide a range and mix of housing types, as reflected in both the PPS and the 2019 Growth Plan (and predecessors), the City's OP and

the York OP; though this Member has generally considered those directions to refer to the actual types of housing, such as detached versus semi-detached, versus townhouses, for example, rather than large-lot detached housing versus smaller-lot detached housing.

[179] The Applicants did rely on the housing provisions of the City's OP, the York OP, the PPS and 2019 Growth Plan in support of their case, in an effort to indicate that smaller detached housing choices are part of the direction provided for provincially and presumably would support more "complete communities" and more affordable housing opportunities. The Tribunal is inclined to conclude that in so far as this proposal goes, it does not do very much to contribute materially to affordability or complete communities, given the proposed lots would still provide for fairly large lots with large homes, once developed, in a neighbourhood almost exclusively made up of single detached homes.

[180] Perhaps of more significance is the more efficient use of land it offers, which goals are reflected both in the provincial instruments and the York OP; while respecting the City's right to determine the level of intensification that ought to exist in a settlement area or built-up area, which in this case is limited intensification.

[181] The proposal does not contribute to goals regarding transit supportive densities, which are otherwise addressed under the City's OP. But it does afford a genuine opportunity for the community, including those that may eventually take ownership to the new homes, to take advantage of the higher order transit infrastructure that is there already.

[182] In sum, in light of the Tribunal's conclusions that the proposal conforms to the City's OP, the Tribunal does not hesitate to find that it similarly conforms to the 2019 Growth Plan, the PPS, the York OP, and has regard to the broad based, high-level goals referred to in s. 2 of the Act, including the appropriate location of growth and development and the orderly development of safe and healthy communities.

Issue 6 - should the City's ZBL be amended as proposed?

[183] In light of the Tribunal's foregoing reasons, the Tribunal concludes it should be amended as proposed at the hearing.

DECISION

[184] The Tribunal allows the appeals.

[185] The Tribunal withholds its final order on both the Draft OPA and the Draft ZBLA, pending revisions to both instruments in accordance with paragraphs [66], [67] and [71] and to ensure the proper form of the instruments in accordance with the City's requirements.

[186] Should the parties require assistance with the implementation of this decision, the Tribunal may be spoken to.

"Paula Boutis"

PAULA BOUTIS
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.