

**Ontario Land Tribunal**  
Tribunal ontarien de l'aménagement  
du territoire



**ISSUE DATE:** November 14, 2022

**CASE NO(S):**

OLT-21-001045

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

Applicant and Appellant: Velmar Centre Property Limited  
Subject: Request to amend the Official Plan - Failure of the City of Vaughan to adopt the requested amendment

Existing Designation: Low-Rise Mixed-Use  
Proposed Designation: To maintain the Low-Rise Mixed-Use designation but to increase the maximum permitted building height and floor space index from 4-storeys and 1.5 times the area of the lot to 7-storeys and 3.15 times the area of the lot respectively

Purpose: To permit the development of a 7-storey mixed-use residential building consisting of 139 residential units with 12,420 square metres of residential gross floor area, 615 square metres of commercial gross floor area and a floor space index of 3.15

Property Address/Description: 4101 Rutherford Road  
Municipality: City of Vaughan  
Approval Authority File No.: OP.19.003  
OLT Case No.: OLT-21-001045  
OLT Lead Case No.: OLT-21-001045  
OLT Case Name: Velmar Centre Property Limited 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: Velmar Centre Property Limited  
Subject: Application to amend Zoning By-law No. 1-88, as amended - Neglect of the City of Vaughan to make a decision

Existing Zoning: C3 Local Commercial Zone, subject to site specific Exception 9(814)

Proposed Zoning: RA2 Apartment Residential Zone, together with the necessary site-specific zoning to implement the proposed development

Purpose: To permit the development of a 7-storey mixed-use residential building consisting of 139 residential units with 12,420 square metres of residential gross floor area, 615 square metres of commercial gross floor area and a floor space index of 3.15

Property/Address/Description: 4101 Rutherford Road  
Municipality: City of Vaughan  
Municipality File No.: Z.19.008  
OLT Lead Case No.: OLT-21-001045  
OLT Case No.: OLT-21-001048

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

Referred by: Velmar Centre Property Limited  
Subject: Site Plan  
Property Address/Description: 4101 Rutherford Road  
Municipality: City of Vaughan  
OLT Lead Case No.: OLT-21-001045  
OLT Case No.: OLT-21-001049  
OLT Case Name: Velmar Centre Properties Limited v. Vaughan (City)

**Heard:** September 19 – 23, 2022 by video hearing

**APPEARANCES:**

**Parties**

**Counsel**

Velmar Centre Property Limited

John Alati and Alex Lusty

City of Vaughan

Marc Kemerer and Candace Tashos

**DECISION DELIVERED BY S. BRAUN AND INTERIM ORDER OF THE TRIBUNAL**

[1] Velmar Centre Property Limited (“Appellant/Velmar”) applied to the City of Vaughan (“City”) for a site-specific Official Plan Amendment (“OPA”) and Zoning By-law Amendment (“ZBA”) as well as Site Plan Approval to permit the development of a

seven-storey mixed use building at 4101 Rutherford Road (“subject property/site”). The City failed to render decisions on the applications and Velmar appealed pursuant to sections 22(7), 34(11) and 41(12) of the *Planning Act*<sup>1</sup> (“Act”).

## PRELIMINARY MATTERS

### *Updates on Parties and Participants*

[2] These appeals were governed by a detailed Procedural Order (“PO”) and Issues List (“IL”) established at a Case Management Conference (“CMC”) held before a panel differently constituted on November 9 and December 1, 2021. The following is a list of all those who were granted status at the CMC and updates on same for the purposes of this hearing:

- *Weston Downs Ratepayers’ Association (“Ratepayers’ Association”)*

While the Ratepayers’ Association was initially granted Party status, in an email from their then-representative dated May 20, 2022, the Association indicated a wish to withdraw as a Party, seeking instead to continue involvement in the proceedings as a Participant. To that end, a written Participant statement was filed with the Tribunal in anticipation of being granted such status. On the consent of the other Parties, the Tribunal granted the request, accepted the Participant statement and considered same in the course of making its decision.

- *Anthony Turrin*

Mr. Turrin was granted Participant status but did not file a written Participant statement in accordance with the PO governing these proceedings. On the consent of the other Parties, the Tribunal accepted the request form which outlines his concerns as Mr. Turrin’s written Participant statement and considered same in the course of making its decision.

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<sup>1</sup> R.S.O. 1990, c. P. 13, as amended.

- *Hiten Patel*

Although Mr. Patel was granted Participant status, he did not file a written participant statement in accordance with the PO. Mr. Patel did not appear at the hearing and the Tribunal did not have before it an outline of his concerns. As such, the Tribunal accepted the submissions of the Appellant that Mr. Patel should no longer have any status in the proceedings.

- *Nick Ciappa*

Mr. Ciappa was granted Party status, but indicated by email to the Tribunal on September 2, 2022 that he wished to withdraw as a Party and was not seeking Participant status. Neither the City nor the Appellant were copied on Mr. Ciappa's email and as such, they only became aware of Mr. Ciappa's withdrawal at the commencement of the hearing.

- *Kevin Doan*

Mr. Doan was also granted Party status, but on the morning of the hearing, advised the Tribunal and the other Parties by email that he wished to withdraw as a Party, citing an inability to participate in the proceedings due to unforeseen circumstances. He did not seek to continue involvement in the proceedings as a Participant and simply observed the hearing intermittently on the first day.

[3] Given the late withdrawals of Messrs. Ciappa and Doan, three witnesses retained by the Appellant to provide Witness Statements and attend at the hearing to address issues specifically raised by Mr. Doan and/or Ciappa were no longer required and significant changes were made to the IL. Accordingly, counsel for Velmar indicated both at the beginning and the end of the hearing that his client intended to seek costs against these two individuals. In response, the Tribunal directed counsel to Rule 23 of the Tribunal's *Rules of Practice and Procedure*.

*Site Plan Adjourned*

[4] At the outset of the hearing, the Tribunal adjourned the Site Plan Approval appeal and three related issues on the IL at the request of the Appellant and the City. It was agreed that, should the OPA and ZBA appeals be allowed, the Parties would provide the Case Co-ordinator with an update on the status of the Site Plan appeal and any related issues within 60 days of the issuance of this Decision and Order and, if necessary, request a date for the hearing of same.

[5] Although the IL initially required the Tribunal to determine whether the form and content of the proposed OPA and ZBA were appropriate, in light of the adjournment of the Site Plan, the Parties agreed that a determination in this regard was not necessary. Instead, it was agreed that, should the proposed development be found to be representative of good planning in the public interest, the Parties would submit copies of draft instruments, in a form acceptable to both, for the Tribunal's approval within 60 days of the issuance of this Decision and Order.

*Recognition of previous Order respecting consolidation*

[6] The Tribunal was advised that, in addition to the present site-specific appeals, Velmar filed appeals in relation to the City's Comprehensive Zoning By-law No. 001-2021 ("CZBL") and Transitional By-law No. 039-2022 ("TBL"). Those matters bear Tribunal File Numbers OLT-22-002104 (with Velmar's appeal referenced as number 002759) and OLT-22-003554 (with Velmar's appeal referenced as number 004771), respectively.

[7] At the June 9, 2022 CMC dealing with the CZBL and TBL appeals, on the consent of the City and with no opposition from any of the other Parties involved in those matters, a Panel differently constituted, ordered that Velmar's appeals of the CZBL and TBL be consolidated with the site specific matters which are the subject of the present hearing. The Appellant requested that this fact be appropriately recognized in the within Decision and Order to ensure the relevant files are moved and joined accordingly.

## **SITE CONTEXT**

[8] The subject site is located on the southwest corner of Velmar Drive and Rutherford Road. It is abutted on the west and south by Velmar Downs Park, which contains recreational amenities such as tennis and basketball courts. There are single detached dwellings ("SDDs") immediately east of the site across Velmar Drive as well as to the north across Rutherford Road. At present, the site contains a one-storey multi-unit commercial building with a gross floor area ("GFA") of 912 square metres, out of which a number of businesses operate, including a restaurant; music school; drycleaner; dentist's office; convenience store; and nail salon.

[9] The City of Vaughan Official Plan, 2010 ("VOP") Schedule 1 (Urban Structure) designates the subject site as being within a Community Area. The site is designated on Schedule 13 (Land Use) as Low-Rise Mixed Use, which permits a building height of four-storeys and a floor space index ("FSI") of 1.5. VOP Schedule 9 (Future Transportation Network) classifies Rutherford Road as a Major Arterial Road and Velmar Drive as a Minor Collector Road. Schedule 10 (Major Transit Network) classifies Rutherford Road as a Regional Transit Priority Network ("RTPN"). The subject site is serviced by the '85' YRT/Viva bus route with bus stops located along the northerly property line, as well as at the northeast intersection of Rutherford Road and Velmar Drive.

[10] City Zoning By-law 1-88 zones the subject site as "C3 9(814) – Local Commercial Exception Zone". The Parties agree that the current zoning is not reflective

of the low-rise mixed-use designation set out in the VOP which was adopted in 2010, as it does not permit residential uses.

## **DEVELOPMENT PROPOSAL**

[11] The original proposal filed in May 2019 contemplated the redevelopment of the subject site with a seven-storey mixed use building in the shape of a “C”, opening east toward Velmar Drive. Proposed were 139 residential units, 615 square metres of commercial GFA and a total a FSI of 3.14. Several revisions were made to the proposal in response to comments received from the public and the City following a September 2019 statutory public meeting, as well as a number of community meetings held thereafter.

[12] The concept plan provided within Exhibit 6 at Tab E (save and except for a minor FSI revision discussed in more detail below at paragraph 14) represents the development proposal for which the Tribunal’s approval is now sought. Some of the more notable revisions are as follows:

- Rotation of the building’s orientation with the opening of the “C” now facing south toward Velmar Downs Park;
- Height reduction from seven-storeys to three-storey “townhouse-style” units with direct pedestrian access from the street along Velmar Drive;
- Height reduction from seven-storeys to six-stories along Rutherford Road and Velmar Downs Park;
- Number of dwelling units reduced from 139 to 135;
- FSI reduced from 3.14 to 2.72; and
- Use of building materials and colour palette similar to that found in the surrounding neighbourhood

[13] In a report dated May 12, 2021 (“Staff Report”, Exhibit 1, TAB 31), City Planning Staff recommended, *inter alia*, that:

- the OPA be approved to amend the site-specific “Low-Rise Mixed-Use” designation in the VOP to increase the maximum building height from four-storeys to six-storeys and the maximum FSI from 1.5 times the area of the lot to 2.72 times the area of the lot for the subject site; and

- the ZBA be approved to amend Zoning By-law No. 1-88, to rezone the site from “C3- Local Commercial Zone” subject to site-specific Exception 9(814) to “RA2 Apartment Residential Zone”, together with a number of site-specific zoning exceptions enumerated in a table appended to the Staff Report.

[14] As a result of specific concerns/recommendations identified within the Staff Report, the proposal was further revised to include fully inset balconies, resulting in a slight increase in FSI from 2.72 to 2.75.

## **LEGISLATIVE FRAMEWORK**

[15] In making its decision, the Tribunal must be satisfied that the proposed OPA and ZBLA: have regard for matters of Provincial interest in s. 2 of the Act; are consistent with the Provincial Policy Statement (“PPS”) and conform/do not conflict with A Place to Grow: Growth Plan for the Greater Golden Horseshoe (“GP”). The OPA and ZBLA must conform with the upper tier Official Plan which, in this case, is the York Region Official Plan (“YROP”) and the ZBLA must conform with the VOP.

[16] The Tribunal must also give regard to the decision of the municipal council and the information considered by it. Although these appeals relate to a non-decision, it is noted that City Council do not support the applications and, at their October 2021 meeting, instructed counsel to appear at the hearing to oppose same. With respect to other information and material, the Tribunal had before it a detailed planning report (“Staff Report”) authored by City planning staff (Exhibit 1, Tab 31), as well as memos/letters from commenting agencies/departments (Exhibit 1, Tabs 20-30 inclusive) and Participant Statements, which largely echoed concerns raised in the public forum and which were discussed within the Staff Report.

## **THE HEARING**

[17] The Parties agree the subject property is currently underutilized and is a suitable candidate for some degree of intensification. However, they disagree with respect to *how much* intensification is appropriate and whether the increased height and density proposed respects and reinforces the character of the surrounding established



residential neighbourhood. Inextricably intertwined with the foregoing is the issue of whether the building should be characterized as low-rise or mid-rise.

[18] The Tribunal heard from six witnesses, qualified without objection to provide opinion evidence on the matters before it.

[19] The City called:

- Michael Barton – Land Use Planning

[20] The Appellant called:

- William C. Maria - Traffic and Transportation Engineering;
- Kregg Fordyce – Architecture;
- Joshua Beitz - Landscape Architecture;
- Harold Madi – Urban Design; and
- Rosemarie Humphries – Land Use Planning

### *The City's Case*

[21] The City takes the position that Provincial, Regional and City intensification targets and planning objectives can be adequately accomplished by redeveloping the site in accordance with current permissions (in particular, a height of 4-storeys and 1.5 FSI). It was submitted that the proposed development will result in overdevelopment of the site and does not respect the existing land use and built form character of the surrounding low-rise residential neighbourhood. On that basis, the Tribunal was urged to deny the appeals and, in the alternative, the Tribunal was asked to approve the proposed development, but to limit the height to 5-storeys where 6-storeys is currently proposed.

[22] Mr. Barton views the proposal as seeking to “push through” a completely different building type, height, and density than what was previously determined to be appropriate for the subject site when the City developed the VOP. He opined that the development is incompatible with the surrounding residential neighbourhood and does not mitigate impacts to, or balance conflict with, adjacent land uses. As such, it is not

representative of good planning in the public interest; does not have appropriate regard for matters of provincial interest; is inconsistent with the PPS; does not conform to the GP; and does not conform to the specific policies or the general intent of the YROP and the VOP.

[23] Although the subject site is in a Settlement Area and within the delineated built-up boundary – areas to which the PPS and GP direct growth and development - Mr. Barton noted it is not in an Urban Growth Centre and, despite being on the RTPN, it is not a Transit Station Area, nor is it identified as a Priority Transit Corridor. He pointed out that Rutherford Road ceases to be a Regional Intensification Corridor just west of Weston Road. Therefore, in his view, the proposed development is more appropriately sited in an area specifically targeted for intensification rather than on the subject property.

[24] He explained that the PPS and GP set out intensification targets but devolve responsibility to individual municipalities to meet such targets by employing “home grown approaches”. In this case, the YROP includes policies that speak to focusing intensification within specifically identified areas as well as policies requiring a high standard of urban design that, *inter alia*, complements the character of existing areas; fosters each community’s unique sense of place; and ensures compatibility with, and transition to, surrounding land uses.

[25] Similarly, the VOP identifies Intensification Areas as the primary locations for the accommodation of growth and the greatest mix of uses, heights and densities. It also identifies Community Areas (such as the one in which the subject site is located) and notes these are not intended to experience significant physical change that would alter the general character of established neighbourhoods. The VOP notes that, although Community Areas will remain mostly stable, incremental change is expected and, as such, limited intensification and new development is permitted so long as the character of an established neighbourhood is respected and reinforced through compatible and sensitive development. Specific elements of neighbourhood character to be respected

and reinforced include but are not limited to: scale; height; massing; building types; and planned function of the surrounding area. In this case, the surrounding area includes Velmar Downs Park and SDDs averaging two-storeys in height.

[26] As previously mentioned, the subject site is designated within the VOP as Low-Rise Mixed Use on Schedule 13 (Land Use). Development criteria for low-rise buildings are found in s. 9.2.3.4, which states:

“Low-Rise Buildings are generally buildings up to a maximum of five storeys in height, and subject to the maximum building height permitted through policy 9.2.1.4 and Schedule 13”.

Section 9.2.1.4 provides that no building or structure shall exceed the height in storeys indicated on Schedule 13 (which, in this instance, is 4). Mid-Rise Buildings, addressed in s. 9.2.3.5, are generally buildings over five-storeys in height up to a maximum of twelve-storeys. In Mr. Barton’s view, the use of the word “generally” in the foregoing section should not be interpreted as a blanket entitlement to build to stated maximums, but rather a requirement to demonstrate that building to the maximum is appropriate. He also reviewed City-Wide Urban Design Guidelines, which provide performance-based direction for building and site design to establish a consistent level of design excellence for new infill development, drawing attention to s. 5.3.4, which states that low rise buildings are up to five-storeys in height.

[27] On the basis of the foregoing, and because the proposed development is 6-storeys at its highest point, Mr. Barton testified that it should be characterized as mid-rise, irrespective of the fact that it steps down to 3-storeys facing Velmar Drive. He pointed out that s. 9.2.3.4 refers the reader back to 9.2.1.4 and Schedule 13 to determine what should happen on this specific property, which is development not exceeding 4-storeys.

[28] Despite his assertion that the development proposed does not mitigate impacts to adjacent land uses, Mr. Barton provided no analysis with respect to the design of the proposed building and offered no comments in relation to specific impacts the development might have upon the surrounding neighbourhood. Instead, he opined that

design cannot be used to justify permitting a mid-rise building in a low-rise designation, as so doing would erode the meaning of low-rise and set a negative precedent for future development in the area. He consistently stated, “design can’t save it [the proposal]”, citing the low-rise context of the existing neighbourhood and the low-rise planned context for the subject property. In light of same, he opined that a mid-rise building cannot be said to achieve appropriate transition to and respect for/reinforcement of, the surrounding low-rise community in terms of building height, massing, density, form, streetwall height, bulk, scale, siting, setbacks and spacing.

[29] He noted that, even if the Tribunal were to disagree with his characterization of the building as mid-rise, in the absence of a clearly demonstrated need to allow more height and density on this site, there should be no deviation from the current permissions of 4-storeys and 1.5 FSI which, he added, constitutes a considerable amount of intensification relative to the status quo.

[30] In his view, when developing the VOP, the City carefully considered the subject property and its surroundings, as well as the role it was meant to play in achieving intensification targets and deliberately set the height and density that achieves an appropriate balance between intensification and protection of community character. He opined that these carefully considered current permissions ought to be maintained unless it is determined through a Municipal Comprehensive Review (MCR) that intensification targets are not being met.

[31] With reference to census data, he noted that the City’s intensification targets are currently being met or exceeded, negating any need to permit greater height and density than what was previously determined to be appropriate for this site. He similarly opined that there is no need to deviate from current permissions to achieve other planning objectives (ie: creation of complete communities; provision of a mix of housing; development that is pedestrian friendly, encourages active transportation and is transit supportive) as these objectives can be achieved with a development not exceeding 4-storeys and 1.5 FSI.

[32] Absent a demonstrated need to deviate from current permissions to achieve intensification targets and/or broader planning objectives, Mr. Barton characterized the proposal as “intensification for the sake of intensification”. In response to questioning with respect to the myriad of planning policies encouraging optimization of land and infrastructure, he offered the opinion that these apply to municipalities, rather than to individual pieces of property. He pointed out that optimization is not a defined term. In his view, it does not mean building to the maximum level of density that can be borne by available infrastructure but rather, building within a planned policy context that balances several factors, including the character of the community and residents’ expectations for growth in the area. Overall, Mr. Barton opined that the proposal would drastically alter the character of the existing neighbourhood and result in destabilization, which he defines as “disrupting residents’ expectations of where their neighbourhood is headed in terms of planned growth and change”.

[33] For all the foregoing reasons, he concluded the proposal does not conform to the specific policies or intent of the YROP, the VOP and does not have regard for matters of provincial interest, such as the orderly development of safe and healthy communities; the appropriate location of growth and development; and the promotion of built form that is well-designed and encourages a sense of place. For similar reasons, he opined the proposal lacks consistency and conformity with the PPS and GP. He pointed out that these documents are to be read in their entirety and opined the proposal cannot be justified by focusing on how it achieves certain provincial objectives such as providing a mix of housing and creating transit-supportive development, to the exclusion of other equally important objectives, such as directing intensification to appropriate areas and managing growth in a way that demonstrates consideration for the context and character of surrounding land uses.

#### *The Appellant’s case*

[34] The Appellant submits that striving for better or best, rather than adequate or good enough, is what good planning and fostering meaningful change is all about. It

was argued that the development proposed, albeit different than what has existed in the neighbourhood for many years, represents a modest and appropriate level of intensification in a compact built form which not only respects and reinforces, but improves upon the established character of that neighbourhood. The Tribunal was urged to approve the proposal based on the foregoing and because it aligns with an overarching provincial framework that encourages development to make better and more efficient use of available land and infrastructure where possible.

[35] In the opinion of Ms. Humphries, the proposal meets all requisite legislative tests and is representative of good planning in the public interest. She concurred with the entirety of the analysis provided in the Staff Report, drawing attention to City Planning Staff's characterization of the proposal as "local infill" and "modest intensification" as well as the conclusion that it meets the intent of the VOP, including Community Area policies, Low-Rise Building Criteria and the Low-Rise Mixed-Use Designation.

[36] She acknowledged the subject site is not within an area specifically targeted for intensification, but noted there are no policies which prohibit intensification projects outside of such areas. She referenced the explicit acknowledgement within the VOP that, as the City and its neighbourhoods mature, Community Areas are expected to experience incremental change and, as such, new development/limited intensification which respects and reinforces neighbourhood character is permitted in such areas. Focusing on the subject property specifically, she noted the Low-Rise Mixed-Use designation, in and of itself, contemplates intensification and a built form which differs from what currently exists both on the site and in the surrounding neighbourhood.

[37] She explained that both the PPS and GP include policies which seek to accommodate growth and address the Province's need for housing, while curbing what is commonly referred to as "urban sprawl". To that end, policies therein encourage development which makes *better* use of land, resources, and infrastructure such as public transit. This was echoed in the evidence of Mr. Madi and in the Staff Report, both of which referenced the following statement in the GP:

“This Plan’s emphasis on optimizing the use of the existing urban land supply represents an *intensification* first approach to development and city-building, one which focuses on making better use of our existing *infrastructure* and *public service facilities*, and less on continuously expanding the urban area”.

[38] Throughout her evidence, Ms. Humphries consistently pointed out that intensification targets are *minimums*. She drew specific attention to policy 5.2.5 of the GP, which states:

“The minimum intensification and density targets in this Plan, including any alternative targets that have been permitted by the Minister, are minimum standards and municipalities are encouraged to go beyond these minimum targets, where appropriate, except where so doing would conflict with any policy of this Plan, the PPS or any other provincial plan”

In her view, wherever and whenever possible, development should strive to achieve better planning outcomes including, but not limited to, providing: more housing units; different housing typologies/tenures; and more opportunities to use transit and decrease automobile dependency. She recommended the Tribunal allow the requested increases in height and density and approve the proposed development as, in the specific circumstances of this case, it is possible to achieve a better planning outcome than would otherwise be possible under the current limitation of 4-storeys and 1.5 FSI.

[39] The Appellant’s witnesses, all of whom commented on the design of the proposed development and the characteristics of the site/surrounding area from differing professional perspectives, were aligned in the view that the proposal achieves appropriate transition to surrounding low rise residential dwellings, respects and reinforces neighbourhood character and will result in a marked improvement upon existing conditions.

[40] They described the neighbourhood as offering only one housing type (SDDs) and being automobile-oriented, lacking sidewalks on many streets. In addition, they explained that the existing one-storey commercial plaza “turns its back on the park”, with unmonitored space between the service end of the building and a park fence that surrounds the site on three sides resulting in limited porosity and pedestrian connections. It was explained that the proposed development will create a mix of

housing choices and create a vibrant, active public realm which encourages a sense of place through a careful design that includes: ground floor commercial units; at-grade entrances to businesses and residential units; patio areas with outdoor seating and bicycle parking; and a variety of pedestrian connections to the park and streets.

[41] The Appellant's witnesses were further aligned in the view that the subject site, which possesses a unique combination of locational characteristics, is an ideal candidate for the type of development and the level of intensification proposed, as it is:

- situated at the corner of a Major Arterial Road (Rutherford Road) and a Minor Collector Road;
- located along the RTPN;
- bounded on two sides by parkland; and
- does not directly abut any low-rise residential dwellings.

With reference to a compendium of visual evidence, (Exhibit 2) comparing the subject site and its current condition against similarly developed properties in the area with the same land use designation, it was noted that the subject property is the only one in the area possessing the aforementioned characteristics – especially the absence of abutting low-rise residential dwellings. Based on the foregoing, and the proposal's sensitive design, Ms. Humphries disagreed that it would set a negative precedent, noting that each development application is assessed on its own merits, which includes analysis of each site's unique characteristics and surrounding context.

[42] Contrary to Mr. Barton's assertion that the City carefully considered the subject site and set maximum of 4-storeys and 1.5 FSI to achieve its set intensification targets, both Ms. Humphries and Mr. Madi opined the City "did not give much thought" to this and other similarly designated and similarly developed sites, assigning them a "blanket density and height as a placeholder", with the expectation that proposals would come forward to redevelop these sites slightly differently in accordance with their surroundings.

[43] With respect to developing this site in accordance with its unique surroundings, the Tribunal heard that the 6 and 3-storey heights proposed are proportional to the



constraints and opportunities of the park, Velmar Drive and Rutherford Road. It was noted that locating greater massing and height along the Arterial Road and facing the parkland makes good sense from several perspectives, including optimizing public transit and enhancing safety by increasing the number of “eyes on the park”. Mr. Madi added that 6-storeys along Rutherford Road is the minimum number of storeys which should be considered given the width of the right-of-way, as this helps to provide a sense of enclosure appropriate to the street and the park.

[44] In relation to the two-storey SDDs located across Velmar Drive, the Appellant’s witnesses opined that the 3-storey townhouse-style units represent a more sensitive and complementary built form than the 4-storeys which could otherwise be built as-of-right. The Tribunal heard uncontested evidence that the rights-of-way along Rutherford Road and Velmar Drive provide adequate physical separation between the proposed building and surrounding SDDs, resulting in little to no impacts in terms of privacy/shadowing. In addition, the use of building materials and colours found within the neighbourhood also aids in the achievement of transition to and respect for/reinforcement of the surrounding low-rise residential dwellings.

[45] As a result of all the foregoing, the Appellant’s witnesses opined that the proposed development achieves appropriate transition to the unique surroundings on all four sides of the subject site and aligns with VOP Community Area policies by introducing incremental change to an area that has remained relatively static over the years, while respecting and reinforcing the established characteristics of the neighbourhood.

[46] Contrary to Mr. Barton, who focused solely upon the 6-storey element of the proposal to categorize the building as mid-rise, Ms. Humphries and Messrs. Fordyce and Madi urged the Tribunal to view the proposal holistically, noting that it is not simply a 6-storey building, but one which combines heights of 6 and 3-storeys; sensitively deploys different massing to appropriately address the site's differing frontages; and integrates both commercial and residential uses, sensitively integrating incremental change into this Community Area.

[47] Ms. Humphries drew the Tribunal's attention to the use of the term "generally" in VOP s. 9.2.3.4, opining that this was deliberately included to allow flexibility. She acknowledged s. 9.2.3.4 states "up to a maximum of five-storeys" and s. 9.1.2.4 provides no building is to exceed the height specified in Schedule 13 but explained "this is because the City wants make sure that if you are seeking more height, you apply for an OPA", noting this is exactly what was done in this case. In her view, the proposed OPA is a complete answer to what counsel for the Appellant characterized as the second part of a "two-part" test to determine whether the increased building height proposed should be permitted.

[48] Ms. Humphries further opined the proposal meets the intent of the Low-Rise building criteria in the VOP, drawing attention to the following excerpt from the Staff Report:

The Development provides for a mixed-use building ranging in height from 3 to 6-storeys and meets the intent of the following criteria for a Low-Rise Building in Section 9.2.3.4 of VOP 2010, as follows:

- The Development provides for appropriate privacy and sunlight conditions, and does not abut any lots with a residential dwelling (Section 9.2.3.4 (b))
- Surface parking and driveways are located interior to the Subject Lands or in an underground parking garage (Section 9.2.3.4 (c))
- The rooftop of the Development will consist of green roofs, as shown on Attachment 4 (Section 9.2.3.4 (d))

The "Mid-Rise Building" criteria in VOP 2010 is identical to the requirements of the "Low-Rise Building" criteria, with the exception of a pedestrian-scaled podium being required for any building over 6-storeys in height (Section 9.2.3.5 (b)). The Development is not over 6-storeys in height and a podium is not required. The 6-storey portion of the Development is located on the north and west side of the Subject Lands. On this basis, the Development meets the intent of a "Low-Rise Building" in accordance with VOP.

[49] The Participant Statement filed by the Ratepayers' Association indicates the neighbourhood was "built with very specific urban design guidelines which are not being respected by this application". However, the Tribunal heard that in the 30 years since this community was built, urban design guidelines have evolved, and now the only applicable guidelines are City-wide Urban Design Guidelines. The Tribunal also heard that the proposal meets the intent of same. Mr. Madi explained that the Guidelines promote flexible, context-driven design solutions intended to prioritize high-quality design over adherence to metrics and drew attention to s. 3.1, which encourages designers to employ creative solutions that meet the intent of the Guidelines. With reference to paragraph 76 of his Witness Statement (Exhibit 6), Mr. Fordyce opined that:

While the City-wide urban design guidelines state that a low-rise building measures 5-storeys in height, the proposal reacts to the site and surrounding context in a manner that fulfills the objectives of a low-rise building. Firstly, the building incorporates two massing components – the first is a 3-storey component, which is located closer to the nearby 3-storey detached context. The second is the 6-storey component, which although measures one-storey above the acceptable limit for a low-rise typology, is located away from the nearby low-rise detached dwellings and takes marginal advantage of its location along Rutherford Road through a slight increase in height and density.

[50] Contrary to the opinions offered by Mr. Barton and the repeated assertions of counsel for the City, Ms. Humphries and Mr. Madi espoused the view that it is not, in fact, possible to achieve the same benefits by redeveloping the site with a 4-storey building or townhouses.

[51] During cross examination, Ms. Humphries was asked to explain the "magic" of 6 versus 3 or 4-storeys. In response, she explained 3 to 4-storey building typologies tend to offer a decreased range of unit sizes and tend to have stairs rather than elevators. Circling back to achieving better planning outcomes where possible, she opined that the requested increase height and density make it feasible to incorporate elevators and offer a wider choice of unit sizes, aligning more closely with PPS and GP policies that encourage a range of housing options to serve the needs of current and future residents, including but not limited to, persons with disabilities and elderly residents who wish to "age in place".

[52] In response to a similar line of questioning, Mr. Madi testified that, from an urban design perspective, the site's unique combination of frontages calls for a built form such as the one proposed with different heights and massing. In his view, developing the site with a 4-storey "box" or townhouses would fail to achieve the appropriate relationship to and integration with, the park; the arterial road; and the nearby SDDs.

[53] Ms. Humphries opined that the proposed development will not result in overdevelopment and/or destabilization, disagreeing with the notion that destabilization relates to disruption of expectations for development in the neighbourhood. Instead, she opined that destabilization results from actual negative impacts on the surrounding area. In this regard, she testified that existing servicing/infrastructure can support the level of intensity proposed and drew attention to commenting memos from reviewing agencies/departments, which raised no concerns with the proposal (Exhibit 1, TABS 21-30). In addition, she referenced studies submitted with the applications which conclude that nearby residential properties and Velmar Downs Park will be minimally impacted by the proposed development in terms of shadow/privacy and traffic. With respect to traffic specifically, she relied upon the uncontested evidence of Mr. Maria, who testified that the requested increase in density can be accommodated by the existing transportation network and will result in nominal traffic impacts. He also noted that the proposal will support existing/future transit investments and help to meet transit modal split targets set by the Region.

[54] Finally, Ms. Humphries disagreed with Mr. Barton's assertion that, in order to permit any deviation from the currently permitted 4-storeys and 1.5 FSI, there must be a demonstrated need to do so in the context of an MCR. In her view, an MCR is unnecessary as no boundary expansion is proposed, no land use conversion is requested and no community area or secondary planning area requiring special study is proposed. Moreover, she pointed out that neither the City's nor the Region's planning staff indicated that the applications should be held in abeyance pending completion of a MCR.

## **ANALYSIS AND FINDINGS**

[55] Following careful consideration of the evidence and opinions of the witnesses, the submissions of counsel and the materials before it, including the two Participant Statements, the Tribunal finds the redevelopment of the subject site in the manner proposed warrants approval for the following reasons:

[56] Mr. Barton and the Participants are of the view that development on the site should remain within boundaries set by the City more than a decade ago. However, the Tribunal would note that the Province is in the midst of an identified “crisis” with respect to housing and the current PPS and GP (both of which post-date the VOP), include policies aimed at accommodating growth while limiting “urban sprawl” by encouraging development that makes better use of available land, resources and infrastructure where possible.

[57] The Tribunal agrees with the submissions of counsel for the Appellant who argued that, in properly analyzing the proposal, design and policy cannot be divorced from one another. Whereas Mr. Barton’s opinion hinged upon a rather strict interpretation of policy with little to no analysis of the proposal’s design, the Appellant’s witnesses gave due consideration to both and persuaded the Tribunal that, in this instance, the unique locational characteristics of the subject site and the proposal’s design make it possible to achieve better planning outcomes (than would otherwise be possible under the current permissions of 4-storeys and 1.5 FSI) while simultaneously achieving respect for, and reinforcement of, the character of the existing neighbourhood.

[58] In so finding, it was considered significant that the subject property does not directly abut any low-rise residential properties. The separation afforded by rights-of-way along Rutherford Road and Velmar Drive combined with the design of the proposal results in appropriate transition to nearby SDDs. This is especially so in light of the 3-storeys proposed along Velmar Drive rather than the four-storeys which could be built as-of-right. The Tribunal accepts that, when compared to a development of 4-storeys

and 1.5 FSI, the proposal's increased height and density results in a more efficient use of land; optimization of infrastructure; and allows a greater range of housing sizes and accessibility features to accommodate residents of differing family sizes, incomes and stages of life.

[59] The design of the proposal again comes into play when considering the question of whether the building ought to be characterized as low or mid-rise. The combination of 6 and 3-storey heights precludes pigeon-holing the building into one category and as such, rather than an analyzing the building from a purely numeric perspective, consideration of the intent of the VOP's low-rise building criteria and the intent of City-wide urban design guidelines is appropriate. The Tribunal accepts the opinion of Ms. Humphries that the VOP low-rise building criteria deliberately includes language and a mechanism (the application for an OPA) to allow for some measure of flexibility in terms of height and further accepts that, as there is no evidence of unacceptable negative impacts on the public realm or the surrounding low-rise residential properties, the proposal meets the intent of applicable policies and guidelines.

[60] With respect to the assertion that the proposal should not be permitted because the subject site is not in an area specifically intended for intensification and the City is achieving its targets, the Tribunal agrees with Ms. Humphries that such targets are minimums and intensification is not precluded outside of areas specifically identified for same, nor is there a requirement for an MCR to permit deviation from current height/density permissions.

[61] The City offered no evidence on matters of traffic, urban design, architecture or landscape architecture and Mr. Barton did not provide a detailed analysis of the proposal in terms of considerations of safety; accessibility; porosity and public realm enhancements; encouragement of active transportation and use of transit and mitigation of impacts upon surrounding properties. The detailed and comprehensive testimony of Messrs. Maria, Madi, Fordyce and Beitz persuaded the Tribunal that the proposed development will result in a vibrant streetscape which is safe, accessible, pedestrian-

friendly and supportive of active transportation and transit. The Tribunal also gave weight to the Staff Report (Exhibit 1, Tab 31) which meticulously evaluated the proposed development against relevant legislation, policies and guidelines, considered the concerns raised by residents and ultimately recommended the City approve the applications.

[62] Overall, the Tribunal finds the proposed development is representative of good planning in the public interest and will not set a negative precedent or result in destabilization of the area. The subject site is suitable for the level of intensification and built form proposed and an appropriate relationship to the public realm and nearby SDDs is established through a design that combines differing heights, massing, facades, etc. Finally, the Tribunal is satisfied that the proposed OPA and ZBA have appropriate regard for matters of provincial interest; are consistent with the PPS; conform with the GP; and conform/do not conflict with the YROP and the VOP.

### **INTERIM ORDER**

[63] The Tribunal orders that the appeals pursuant to s. 22(7) and s. 34(11) of the *Planning Act* are allowed, in part. The proposed amendments to the Official Plan of the City of Vaughan and the City of Vaughan Zoning By-Law No. 1-88 are approved in principle for the purpose of implementing the development concept set out in Tab E of Exhibit 6.

[64] The Parties shall, within 60 days of the issuance of this Order, provide copies of draft instruments in a form and content satisfactory to both for the Tribunal's review and approval.

[65] The appeal pursuant to ss. 41(12) of the *Planning Act* is adjourned. The Parties shall, within 60 days of the issuance of this Order, provide the Case Co-ordinator with an update on the status of the remaining Site Plan Approval appeal and, if necessary, request a date be scheduled for a hearing of same.

[66] The Final Order is withheld subject to the foregoing conditions. The Member will remain seized for the purposes of the issuance of the Final Order and may be spoken to, if necessary, with respect to the implementation of this Interim Order.

[67] In accordance with the July 28, 2022 Order of Vice-Chairs Burton and Colbourne consolidating Velmar's site specific appeals with appeal 002759 of OLT-22-002104 and appeal 004771 of OLT-22-003554, this and all future Orders in relation to the site specific matters bearing Tribunal File OLT-21-001045 shall apply to the above noted matters.

*"S. Braun"*

S. BRAUN  
MEMBER

**Ontario Land Tribunal**

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The Conservation Review Board, the Environmental Review Tribunal, the Local Planning Appeal Tribunal and the Mining and Lands Tribunal are amalgamated and continued as the Ontario Land Tribunal ("Tribunal"). Any reference to the preceding tribunals or the former Ontario Municipal Board is deemed to be a reference to the Tribunal.