

Ontario Land Tribunal
Tribunal ontarien de l'aménagement
du territoire



ISSUE DATE: July 07, 2021

CASE NO(S): PL171232

The Ontario Municipal Board (the “OMB”) and the Local Planning Appeal Tribunal (the “LPAT”) is continued under the name Ontario Land Tribunal (the “Tribunal”), and any reference to the Ontario Municipal Board or Local Planning Appeal Tribunal 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: Garden Homes (Markham) Inc.
Subject: Request to amend the Official Plan - Failure of City of Markham to adopt the requested amendment
Existing Designation: Residential Low Rise
Proposed Designated: Site Specific Residential Low Rise
Purpose: To permit a proposed townhouse development
Property Address/Description: 73 Main Street South
Municipality: City of Markham
Approval Authority File No.: OP17 157341
LPAT Case No.: PL171232
LPAT File No.: PL171232
LPAT Case Name: Garden Homes (Markham) Inc. v. Markham (City)

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

Applicant and Appellant: Garden Homes (Markham) Inc.
Subject: Application to amend Zoning By-law No. 1229/99-90 - Refusal or neglect of City of Markham to make a decision
Existing Zoning: R1
Proposed Zoning: Site Specific R1
Purpose: To permit a proposed townhouse development
Property Address/Description: 73 Main Street South
Municipality: Town of Markham
Municipality File No.: ZA 17 157341
LPAT Case No.: PL171232

LPAT File No.: PL171233

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

Referred by: Garden Homes (Markham) Inc.
 Subject: Site Plan
 Property Address/Description: 73 Main Street South
 Municipality: Town of Markham
 LPAT Case No.: PL171232
 LPAT File No.: PL171253

Heard: May 21, 2021 in writing

APPEARANCES:

Parties

Counsel

Garden Homes (Markham) Inc.

Patrick Harrington

City of Markham

Victoria Chai
 Francesco Santaguida

DECISION DELIVERED BY R.G.M. MAKUCH AND ORDER OF THE TRIBUNAL

[1] The Garden Homes (Markham) Inc. (“Applicant/Appellant”) makes a request for an order of the Tribunal approving a settlement of these appeals with the consent of the City.

[2] The only evidence before the Tribunal is the Affidavit of Mark Yarranton, Professional Land Use Planner, sworn May 11, 2021.

[3] Mr. Yarranton provided the Tribunal with a comprehensive overview of the applications, surrounding context and the applicable planning policies as set out in the Provincial Policy Statement, 2020 (“PPS”), the “A Place to Grow: Growth Plan for the Greater Golden Horseshoe, 2020” (“Growth Plan”), the Region of York Official Plan (“ROP”), the City of Markham Official Plan 1987 (“Markham OP 1987”), the City of

Markham Official Plan 2014 (“Markham OP 2014”), City of Markham Zoning By-law No. 1229 (“Zoning By-law No. 1229”), City of Markham Zoning By-law No. 177-96 (“Zoning By-law 177-96”) and the Markham Village Heritage Conservation District Plan (“Heritage Plan”).

SUBJECT LANDS AND SURROUNDING CONTEXT

[4] The Subject Lands form an irregular shaped, 0.41 hectare (1.01 acre) property, generally located at the south east corner of Main Street South and Mill Street, North of Highway 407 and south of Highway 7, municipally known as 73 Main Street South in the City of Markham (“City”), Region of York. The Subject Lands have dual lot frontage; with 33.53 metres (“m”) of frontage along the north side of the property adjacent to Mill Street and 23.27 m of frontage along the east side of the property adjacent to Mill Street. As a corner lot, the western flankage of the lot extends along Main Street South with an irregular boundary due to an extraordinary road widening to accommodate the grading cut for Main Street South as it descends towards the Rouge River valley.

[5] The Subject Lands are currently vacant and were previously used for residential purposes. These also contain some vegetation and slope northeast towards the valley associated with the Rouge River.

PLANNING CONTEXT

[6] The Subject Lands are designated “Urban Area” within the ROP. At the time of the Original OPA and ZBA, the Subject Lands were designated “Urban Residential”, are located within Planning District No. 1 and are located within the Urban Service Area in the Markham OP 1987.

[7] The Subject Lands are designated “Residential Low Rise” and are also located within the ‘Markham Village Site Specific Policy Area’ in the Markham OP 2014.

[8] The Subject Lands are zoned ‘Residential’ (R1) within Zoning By-law No. 1229

and are located within the Heritage Plan.

[9] The proposed residential uses are not permitted under the existing zoning permissions of Zoning By-law 1229. Accordingly, an amendment to Zoning By-law No. 1229 is required to permit and regulate the proposed uses.

[10] The Original OPA and ZBA were submitted by the previous owner to support a development for 11 street townhouses, accessed by a common element road together with two (2) semi-detached freehold dwelling units with frontage on the west side of Mill Street.

[11] Under the Markham OP 1987, the Urban Residential designation was to accommodate predominantly housing. The Medium Density Housing categories, which allow Street Townhouses, were to be identified on the schedules of the Official Plan and were only to be permitted in accordance with locational and design criteria. Notwithstanding that the Subject Lands satisfy the locational criteria and the design criteria for the proposed use, an Official Plan Amendment was required to designate the lands Medium Density I and to increase the maximum density permitted in the Medium Density I Housing category from 35 units per hectare ("ha") to 42 units per ha.

[12] Under the Markham OP 2014, the proposed three (3)-storey residential townhouses are not permitted within the Markham Village Site Specific Policy Area. Accordingly, a site-specific amendment to the Markham OP 2014 is required to allow the proposed three storey townhouse built form.

[13] Transition policy 10.14.1 of the Markham OP 2014 provides that a development proponent, with an application filed after the adoption of the Plan by Council and prior to the approval of the Plan by the Region, will be encouraged to work with the City to consider the implications of the policies of the Plan as they relate to the proposed application.

APPLICATIONS

[14] The applications were supported by a number of studies/reports as follows:

- a) Planning Justification Report prepared by MPlan Inc.;
- b) Urban Design Brief Prepared by Architecture Unfolded;
- c) Functional Servicing Report prepared by Valdor Engineering;
- d) Environmental Impact Study and EIS Addendum #1 ("EIS") prepared by Azimuth Environmental;
- e) Environmental Site Assessment prepared by Azimuth Environmental;
- f) Geotechnical Report prepared by V.A. Wood Associates Limited; and,
- g) Transit and Site Feasibility Study prepared by nexTrans.

[15] A number of additional documents, studies and reports were submitted in support of the applications for draft plan of subdivision and site plan approvals as required by the City as follows:

- a) Site Plan prepared by Hunt Design Associates Inc.;
- b) Building elevation drawings prepared by Hunt Design Associates Inc.;
- c) Draft Plan of Subdivision prepared by KLM Planning Partners Inc.;
- d) Legal Survey prepared by Donald E. Roberts Ltd.;
- e) Stage 1 and 2 Archaeological Assessment prepared by Archaeological Services Inc.; and,

- f) Functional Servicing Report prepared by Condeland Engineering Ltd.

[16] It is noted that the application for draft plan of subdivision is not before the Tribunal. It is also noted that the applications for OPA and ZBLA were revised subsequent to the original filing.

[17] Mr. Yarranton explained that the Markham Heritage Committee considered a report from City Heritage Staff dated April 10, 2019 (“Heritage Report”) and passed a resolution (“Heritage Resolution”) based on the revised OPA and ZBA and the revised draft plan of subdivision and site plan application. The Heritage Resolution provided comments to the City Staff and Markham Council and indicated that the preferred building type for new residential units is detached or semi-detached dwellings, two-(2) storey units, which is more reflective of the building stock in the area, but the internal road townhouses could be supported at this specific/unique location subject to modifications to the massing, that new buildings be designed in accordance with policies contained in the Markham Village Heritage Conservation District Plan and policies of the Markham Official Plan Heritage Policies for new construction specifically related to height, form, massing, scale and architectural features and materials, and that the proposed dwelling units be revised accordingly.

[18] Further revisions were made to the draft plan of subdivision and site plan application and submitted to the City in order to address staff comments and concerns. The revised applications were supported by the following:

- a) Site plan prepared by Hunt Designs Associates Inc.;
- b) Building elevations prepared by Hunt Design Associates Inc.;
- c) Draft Plan of Subdivision prepared by KLM Planning Partners Inc.;
- d) Revised draft Official Plan Amendment.;

- e) Revised draft Zoning By-law Amendment.;
- f) Functional Servicing Report prepared by Condeland Engineering Ltd.;
- g) Engineering Drawings prepared by Condeland Engineering Ltd.;
- h) Landscape Plan prepared by Cosburn Nabouris;
- i) Tree Inventory & Preservation and Compensation Plans prepared by Cosburn Nabouris;
- j) Streetscape elevation prepared by Cosburn Nabouris;
- k) Environmental Noise Report prepared by Jade Acoustics;
- l) Hydrogeological Investigation prepared by EXP;
- m) Phase 1 and 2 Environmental Site Assessments prepared by EXP;
- n) Site Access and Feasibility Study and Response to Comments Addendum Memo prepared by Nextrans Engineering; and,
- o) Site Lighting and Photometric Plans prepared by RTG Systems Inc.

[19] According to Mr. Yarranton, the further revised draft plan of subdivision and site plan application maintained the same built form and residential unit count with the re-submission focusing primarily on addressing the comments of the Markham Heritage Committee and staff with respect to the massing/scale of the buildings and landscaping as perceived from the public street and ensuring the architecture details were in accordance with the heritage guidelines and policies. The re-submission also included materials that addressed a number of technical comments from the circulation dealing with access and traffic impact, tree preservation and compensation, and site servicing and water balance.

[20] The revised OPA and ZBA and further revised draft plan of subdivision and site plan application were considered by the City's Development Services Committee on June 29, 2020, wherein a staff information report was received. The revised applications were subsequently considered by Council on July 14, 2020 with the major concern expressed by Members of Council being related to the height and visual impact of the retaining wall along the south property limit and the density. Council made a decision not to support the applications.

[21] On January 6, 2021, following ongoing settlement discussions with the City, the Applicant/Appellant submitted revised applications, which led to the basis for a settlement resulting in the City and the Owner entering into Minutes of Settlement on February 16, 2021

Proposed OPA

[22] The purpose of the Proposed OPA is to amend the Markham OP 2014, to add a new site-specific policy to s. 9.13 and s. 9.13.4.13 to allow additional building types in the form of townhouses, to a maximum height of three (3) storeys, without direct frontage on a public street. The Proposed OPA also re-designates 0.072 ha (0.18 acres) of the Subject Lands for a buffer at the north end of the subject property from 'Residential Low Rise' to 'Greenway'. Site specific policies are also proposed for the lands designated 'Greenway' to ensure that the long-term stable slope of the Rouge River is protected by restricting development and use, to private transportation and utility infrastructure and landscaping related to the adjacent residential use, which shall only be permitted through site plan approval to the satisfaction of the City and the Toronto Regional Conservation Authority ("TRCA").

[23] In addition, within the Proposed OPA, the Subject Lands are removed from Figure 9.13.4.8 of the Markham OP 2014, such that the policies contained in s. 9.13.4.8 that restrict the building type and height to only detached and semi-detached with a maximum building height of two (2) storeys no longer applies.

[24] Furthermore, to effect the amendments described above, the following are also included as part of the Proposed OPA:

Map 1 – Markham Structure and Map 2 – Centres and Corridors and Transit Network, Appendix B – Headwater Drainage Features and Appendix C- Community Facilities of the Official Plan 2014, as amended, *are amended by modifying the boundary of the ‘Greenway System’ to include the lands within the Subject Lands that are within the long term stable slope and 6.0 m buffer,*

Map 3 – Land Use of the Official Plan 2014, as amended, are amended by redesignating a portion of the Subject Lands within the long term stable slope and 6.0 m buffer from ‘Residential Low Rise’ to ‘Greenway’;

Map 4 – Greenway System, Map 5 – Natural Heritage Features and Landform and Map 6 – Hydrologic Features of the Official Plan 2014, as amended, *are amended by modifying the boundary of the ‘Greenway System Boundary’ and ‘Other Greenway System Lands Including Certain Naturalized Stormwater Management Facilities’ to include a portion of the Subject Lands within the long term stable slope and 6.0 m buffer.*

Proposed Zoning By-law Amendment

[25] To implement the Proposed OPA and to regulate the use of land and structures as proposed through the proposed site plan application, the purpose and effect of the Proposed ZBLA is to delete the lands from the designated area of By-law No. 1229, as amended, incorporate the lands into the designated area of By-law No. 177-96, as amended, and rezone the lands from R1 and R2 in By-law No. 1229 to Residential Two*677 (R2*677) Zone (for the townhouse dwellings), R1 in By-law No. 1229 to Residential Two*678 (R2*678) Zone in By-law No. 177-96 (for the single detached dwelling) and from R1 in By-law 1229 to Greenway*679 (G*679) in By-law No. 177-96. Several site specific exceptions are proposed in order to facilitate the development of thirteen (13) townhouse dwellings with common element tenure and one (1) freehold

single detached dwelling within the proposed Residential zone and exceptions to the Greenway zone provisions to allow uses and structures accessory to the adjacent residential use.

[26] To implement the proposed site plan with respect to the proposed townhouses, the following site specific exceptions are proposed through the Residential Two*677 (R2*677) zone:

- a) The only permitted uses are Townhouse Dwellings, Home Occupations, Home Child Care and one (1) accessory dwelling unit within a Townhouse Dwelling;
- b) Deems all lands within the R2*677 zone to be one lot for the purposes of the By-law;
- c) all street lines abutting Main Street South shall be deemed to be the front lotline;
- d) Minimum lot frontage – 40 metres;
- e) Minimum required front yard – 2.0 metres;
- f) Minimum required Interior Side Yard – 6.0 metres, except the southerly interior side yard shall be a minimum of 1.8 metres;
- g) Minimum exterior side yard – 0.0 metres;
- h) Maximum garage width 3.1 metres, except 7 units are permitted a maximum garage width of 5.5 metres;
- i) Maximum height – 12 metres, except within 30 metre of the front lot line a maximum of 13 metres is permitted;

- j) Maximum number of dwelling units – 13;
- k) Retaining Walls may encroach into any required yard; and,
- l) Minimum outdoor amenity space for townhouse unit – 11 square metres.

[27] To implement the proposed site plan with respect to the single detached dwelling and to permit the proposed lot within the proposed draft plan of subdivision, the following site-specific exceptions are proposed through the Residential Two*678 (R2*678) Zone:

- a) The only permitted uses are Single Detached Dwellings, Home Occupations, Home Child Care and one (1) accessory dwelling unit;
- b) Minimum lot frontage – 9.15 metres;
- c) Maximum garage width on a lot that is not accessed by a lane – 5.6 metres;
- d) Special Provision #4 of Table B2 shall not apply;
- e) Retaining Walls may encroach into any required yard;
- f) Notwithstanding Section 6.2.2.a) to the contrary, for porches that are located in the front yard the floor of any porch that is located between the main wall of a building and a streetline shall extend at least 1.0 metres towards the streetline from the main wall that abuts the porch. Windows, stairs, columns, pier and/or railings associated with the porch are permitted to encroach within this area.
- g) Section 6.2.4.2.b) of By-law 28-97 shall not apply.
- h) The maximum driveway width shall be 5.6 metres.

[28] In addition, in order to implement the proposed site plan and allow the proposed condominium or private road and structures and landscaping associated with the adjacent residential use, the following site specific exceptions are also proposed for the Greenway*679 (G*679) Zone:

- a) Notwithstanding any other provision within this by-law, private roads or driveways, guide rails, signage, fences, walkways, stairs, retaining walls, hard and soft landscaping, mail boxes, hydrants, light standards, benches and other services and utilities required for the adjacent residential uses are permitted within the G-Greenway Zone.

Policy and Regulatory Framework

[29] Section 2 of the *Planning Act* (“Act”) requires that an approval authority, in carrying out its responsibilities under the Act, “shall have regard to” matter of Provincial Interest.

[30] The Tribunal is satisfied based on Mr. Yarranton’s opinion evidence that the proposed OPA, ZBA and site plan have regard to all matters of Provincial interest found in s. 2 of the Act, and in particular:

- a) the adequate protection of ecological systems, including natural areas, features and functions, the orderly development of safe and healthy communities, appropriate location of growth and development and the protection of public health and safety;
- h) the orderly development of safe and healthy communities;
- i) the adequate provision and distribution of educational, health, social, cultural and recreational facilities;
- j) the adequate provision of a full range of housing, including affordable

housing;

- l) the protection of the financial and economic well-being of the Province and its municipalities;
- n) the resolution of planning conflicts involving public and private interests;
- o) the protection of public health and safety;
- p) the appropriate location for growth and development; and
- r) the promotion of development that is designed to be sustainable, to support public transit and to be oriented to pedestrians.

[31] The Tribunal is also satisfied based on Mr. Yarranton's opinion evidence that the proposed site plan conditions are reasonable and relate to the nature of the proposed development and include matters that a municipality may require the owner to address with respect to the provision of associated facilities and works or agreements to secure and/or maintain facilities and works, as authorized under s. 41(7) of the Act.

PPS, 2020

[32] The PPS came into effect on May 1, 2020, and as of that date, any decision of an approval authority, including the Tribunal, must be consistent with it. It sets the policy foundation to regulate land use and development and includes policies that direct growth to existing urban areas which contributes to the creation of strong communities, healthy environments, and long-term economic growth.

[33] The Tribunal is satisfied that approval of the proposed OPA, ZBA and site plan are consistent with the PPS, particularly policies 1.1.1, 1.1.3.1, 1.1.3.2, 1.1.3.6, 1.4.1, 1.6.6.1, 1.6.6.2, 1.6.6.7, 1.6.7.1, 2.1.7, 2.1.8, 2.6.3 and 3.1.1 and 3.1.2 as follows:

- a) growth management policies related to healthy, liveable and safe communities that support efficient development in a compact form and an appropriate range of residential uses;
- b) settlement area policies which state that settlement areas shall be the focus of growth and development;
- c) housing policies which seek to provide an appropriate range and mix of housing forms, including affordable housing;
- d) infrastructure policies that promote the use of municipal services (water & wastewater) as the preferred form of servicing growth;
- e) storm water management policies that promote the efficient use and optimization of existing municipal services and appropriate on site retention and water balance.
- f) natural heritage policies requiring both the protection of significant natural heritage features through avoidance and the evaluation of the features and ecological functions of the adjacent lands;
- g) cultural heritage policies ensuring that development and site alteration on adjacent lands to a protected heritage properties are evaluated and it has been demonstrated that the heritage attributes of the protected heritage property will be conserved; and,
- h) natural hazard policies that direct development to areas outside of hazardous lands adjacent to rivers impacted by erosion hazards and to ensure development is only permitted where the site has safe access for people and vehicles during times of hazard.

[34] The Tribunal is satisfied that the proposed OPA, ZBA and site plan will facilitate

development that addresses the PPS with respect to the efficient use of land and infrastructure and the provision of an appropriate mix of densities and housing typology that is compatible with surrounding land uses.

[35] The PPS promotes growth in settlement areas and full municipal sewage service and municipal water services are the preferred method of servicing within settlement areas. The Subject Lands are located within the existing urban boundary for the City.

[36] The Tribunal is satisfied that the Transportation Impact and On-Site Circulation Study, prepared by Nextrans Consulting Engineers (“TIS”) submitted to the City confirms that there are adequate site lines and stopping distances for vehicles to safely access the site and that the existing intersections and roads have capacity to accommodate the proposed demand. The report does recommend that the section of Mill Street from the proposed site access to the Main Street intersection be widened by approximately 1.8 m to provide a proper two-lane travel road, along with pavement markings which are addressed in the proposed site plan and proposed site plan conditions. The proposed widening and improvements will ensure that transportation systems are safe and can accommodate the projected demand consistent with the policies of the PPS.

[37] The Tribunal is satisfied that the proposed OPA, ZBA and site plan ensure that the natural features and functions will be protected as directed by PPS policies 2.1.7 and 2.1.8. This was addressed in the EIS submitted with the Original OPA and ZBA. Furthermore, the TRCA has no outstanding concerns with the Proposed OPA and Proposed ZBA and have provided their conditions related to both the Proposed DPS and Proposed SPA which are addressed in the proposed site plan conditions.

[38] The subject lands and adjacent lands are protected heritage properties by virtue that they are located within the Heritage Plan. The Tribunal finds that the impacts of the proposed development on the objectives and guidelines of the heritage conservation district have been adequately assessed in the reports prepared by City of Markham Heritage Staff and the recommendations of the Heritage Committee that have

been incorporated into the Proposed SPA. As noted in the Staff Report:

The proposed townhouses are located on a portion of Main Street South that does not have a well-defined, established or consistent architectural character and is somewhat isolated from the surrounding community of single detached dwellings. The subject property is instead surrounded by a handful of non-heritage, single and semi-detached dwellings to the south, west and east, and the Rouge River Valley lands to the north.

...Although the preference of Heritage Markham was to see the site developed with detached or semi-detached dwellings, the architectural design of the proposed townhouses and semi-detached dwellings have been revised to comply with the policies and guidelines for new buildings contained in the Markham Village Heritage Conservation District Plan, and are generally compatible with the heritage character of the immediate neighbourhood in terms of scale, massing, height, form and architectural style.

[39] The Tribunal finds that the proposed OPA, ZBA and site plan are consistent with the 2020 PPS.

A Place to Grow: Growth Plan for the Greater Golden Horseshoe, 2020

[40] Paragraph 3(5)(b) of the Act requires that, in exercising any authority that affects planning matters, decisions of planning authorities “shall conform with” or “shall not conflict with” (as the case may be) Provincial plans that are in effect.

[41] The Growth Plan seeks to guide decisions on a number of matters, including growth management, transportation, infrastructure planning, land use planning, urban form, housing, and natural heritage and resource protection.

[42] The Tribunal is satisfied based on Mr. Yarranton’s opinion evidence that the proposed OPA, ZBA and site plan conform with the policies and objectives of the Growth Plan, and in particular Policies 1.2.1, 2.2.1, 2.2.5, 2.2.6 and 2.2.7 as follows:

- a) The Guiding Principles for the *Growth Plan* are found in Policy 1.2.1, and support the achievement of complete communities that are designed to support healthy and active living and meet people’s needs for daily living throughout an entire lifetime as well as to protect and enhance natural

- heritage, hydrologic, and landform systems, features, and functions.
- b) The Proposed OPA and ZBA and the Proposed SPA, will support the achievement of a complete community, where development is to be focused as directed by Section 2.2.1. The Subject Lands are identified as within the delineated built-up area. Should the development be permitted to proceed, the Subject Lands are serviced by existing water and wastewater systems.
 - c) The proposed ZBA provides for appropriate performance standards to implement the Proposed OPA and Proposed SPA, contributing to creating a complete community through the provision of residential uses that contribute to a greater range and mix of housing options within an existing settlement area at a density and form that support all forms of safe transportation including walking and cycling.

[43] The Tribunal finds that the proposed OPA, ZBA and site plan application conform with the Growth Plan.

Region of York Official Plan, 2010

[44] The Subject Lands are designated “Urban Area” on Map 1 Regional Structure to the ROP. The “Urban Area” designation generally aims to enhance the Region’s urban structure through city building, intensification and compact and complete communities to create high-quality, sustainable communities, with intensified and compact forms of development. A mix of land uses, form and density is encouraged. Urban development and redevelopment is generally directed to the Urban Area.

[45] The ROP promotes intensification in strategic locations in the built-up area to maximize efficiencies in infrastructure delivery, human services provision and transit ridership. It also promotes heritage awareness and supports local municipal efforts to establish heritage conservation districts.

[46] The Tribunal finds that the proposed OPA, ZBLA and site plan conform to the ROP.

City of Markham Official Plan, 2014

[47] The Subject Lands are located within the *Neighbourhood Area* on Map 1 – Markham Structure and designated *Residential Low Rise* on Map 3 – Land Use in the Markham OP 2014. Map 1 and Map 3 have been appealed to the Tribunal on a site-specific basis; however, these appeals do not affect the Subject Lands.

[48] As noted in the Heritage Report, Section 4.5.3.7 iv. of the Markham OP 2014 is particularly relevant. It states: “[n]ew construction and/or infill development shall be generally consistent with area’s heritage architecture to reflect complementary:

- heights, widths, massing and orientation;
- setbacks;
- materials and colours; and,
- proportioned windows, doors and roof lines of adjacent heritage buildings”

[49] Section 8.2.1.3 of the Markham OP 2014 states that in considering an application for development approval on lands designated *Residential*, Council shall ensure that development has adequate transportation and water and waste infrastructure, adequate community infrastructure such as public schools and parks and open spaces, and has regard for the Urban Design and Sustainable Development policies outlined in Chapter 6 of the Plan.

[50] The proposed development is serviced by existing transportation infrastructure and will be connected to existing municipal services. Park and open space amenity space are readily accessible through Rougehaven Parkette located at the intersection of

James Scott Road and Schouten Crescent (which is less than a five minute walk to the Subject Lands). The Subject Lands are also in proximity to access the extensive Rouge Valley Trail system that surrounds the neighbourhood. The proposed site plan provides private amenity space in the form of individual balconies, rear yard amenity and a shared outdoor landscaped amenity space. The Subject Lands are adequately serviced by other community infrastructure such as schools. The design of the development has had regard for the Urban Design and Sustainable Development policies.

[51] Section 8.2.3.3 of the Markham OP 2014 states that the following building types are permitted on lands designated 'Residential Low Rise':

- a) detached dwelling, semi-detached dwelling, townhouse excluding back to back townhouse, small multiplex building containing 3 to 6 units, all with direct frontage on a public street. A zoning by-law amendment to permit the above building types without direct frontage on a public street may also be considered, at appropriate locations, where a development block has frontage on an arterial road or a major collector road;
- b) coach house located above a garage on a laneway; and
- c) buildings associated with day care centres, places of worship and public schools.

[52] Section 8.2.3.4 of the Markham OP 2014 provides that the *Residential Low Rise* designation permits a maximum building height of three (3) storeys, unless otherwise specified in a secondary plan or site-specific policy.

[53] Section 8.2.3.5 of the Markham OP 2014 provides a series of development criteria applicable to Infill Development and states as follows:

In considering an application for development approval on lands designated 'Residential Low Rise', Council shall ensure infill development respects and reflects the existing pattern and character of adjacent

development, by adhering to the development criteria outlined below, in addition to the criteria in Section 8.2.1.3 and the area and site specific policies of Sections 9.3.3, 9.13.2, 9.14.2, 9.18.5, 9.19.2, unless otherwise specified in a heritage conservation district plan.

[54] In this case, the Heritage Plan contains policies and guidelines that require new buildings that are compatible with the heritage character of the district in terms of form, massing, scale, proportions, and materials which is also in keeping with the Markham OP 2014 policy 4.5.3.7 iv.

[55] According to Mr. Yarranton, although the Markham Village Heritage Conservation District is primarily composed of single detached dwellings, it also contains both new and historic examples of townhouse dwellings. In addition, the massing of the townhouses fronting on Main Street has been broken up by the horizontal stepping back of the building, and with this feature, the overall massing is broken up and is therefore compatible with the large single detached dwellings on both sides of Main Street and those in the area. The front yard setbacks of the proposed townhouse fronting on Main Street is also generally aligned with the dwelling to the south with frontage and access to Main Street creating a consistent relationship. The proposed two (2) storey single detached dwelling on the west side of Mill Street is compatible with the massing and height of the adjacent semi-detached dwellings to the north and are generally aligned with respect to front and rear yards. In addition, the height as viewed from Main Street, which is most critical to maintaining the character, is that of two stories, with three (3)-storey massing internal to the site with minimal exposure to public view.

[56] With the combination of the existing and proposed grading, the site is lower than the elevations of the existing residential neighbourhood to the south, which minimizes impacts and maintains public views and vistas to the Rouge River. The proposed ZBLA appropriately regulates the height and massing by virtue of other provisions including minimum yards. In addition, the proposed elevations illustrate heritage architectural design that complies with the policies of 4.5.3.7 iv. with respect to materials including traditional stone at the foundation and the proposed brick and associated detailing, and proportioned windows, doors and roof lines that are consistent with heritage area and

satisfy the Heritage Plan.

[57] The Subject Lands are also subject to Area and Site Specific Policy 9.13.4 – Heritage Centre – Markham Village Heritage Conservation District as shown in Figure 9.13.4 within Markham OP 2014.

[58] Section 9.13.4.1, Land Use Objectives, states that the land use objectives for the Markham Village Heritage Centre are to:

a) build upon the diverse characteristics of the Markham Village Heritage Centre including:

- i. a variety of residential housing forms, tenures and densities;*
- ii. significant concentrations of commercial and service employment;*
- iii. an extensive natural heritage system, including valleylands and the public parks and open space system; and*
- iv. the significant cultural heritage attributes of the Markham Village Heritage Conservation District which are embodied in buildings and landscapes worthy of preservation;*

b) recognize the distinct character of heritage buildings, historic sites and landscapes of the Markham Village Heritage Conservation District and ensure that compatible infill development and redevelopment shall have regard for the protection and preservation of heritage buildings, building design, building materials and treatments, signage and lighting, landscaping and tree preservation, to enhance the District's heritage character and complement the area's village-like, human scale of development;

c) encourage the continued viability of the Markham Village Heritage Centre by:

- i. preserving and enhancing its distinctive and historic character;*
- iv. protecting established residential areas east and south of the 'Mixed Use Heritage Main Street' lands; and*

- d) encourage the overall quality of experience for visitors and residents of the Markham Village Heritage District, Markham shall:

i) support a comprehensive streetscape treatment and implementation program to include special landscape improvements such as tree planting, floral displays and other types of landscaping along Main Street North and South, street and traffic signs and utility poles, street lights and sidewalks, paving materials and curbs, transit stops and shelters and other types of street furniture and ornamental features, having regard for the Design Guidelines (Volume 3) of the Markham Village Heritage Conservation District Plan”

[59] The Subject Lands are further subject to Area and Site Specific Policy 9.13.4.8 which provides the following:

- a) The following building type and height provisions shall apply to the ‘Residential Low Rise’ lands shown in Figure 9.13.4.8:
- (i) Only detached and semi-detached dwellings shall be permitted;
 - (ii) The maximum building height shall be 2 storeys.

[60] The proposed OPA has been prepared as an amendment to Policy 9.13.4.8 to permit townhouse dwelling units and building heights of three (3) storeys..

Heritage Centre lands and shown in Figure 9.13.4, Council shall ensure in addition to the development criteria contained in Sections 8.2.3.5, 8.2.3.6, 8.2.4.5, 8.3.1.3, 8.3.2.5 and 8.3.7.5, development adheres to the following development criteria:

- a) *The protection and preservation of any heritage buildings existing on site;*
- b) *The impacts of development on the historic character of the area shall be minimized by addressing the:*
 - i. Compatibility of the proposed use;*
 - ii. Capacity of the site for additional uses, parking and supporting infrastructure;*
 - iii. Location of parking areas, loading and access;*
 - iv. Opportunities for landscaping and screening;*
- c) *The improvement of parking areas and traffic circulation patterns, including pedestrian and vehicular linkages with Main Street North*

and South with emphasis on pedestrian convenience and safety;..."
(note that the balance of the policy d) to f) is not applicable to residential development)

[61] Furthermore, the parking provided for the proposed site plan exceeds the City's Parking By-law requirements for the proposed residential use and the development can be serviced using existing municipal services and community facilities. The location of the access is from an existing local road and the visitor parking area is also located internally where both are screened from view to ensure impacts on the area are minimized. The landscaping and screening is thorough and will also minimize impact and compliment the historic character.

[62] The Tribunal finds that proposed ZBLA and site plan conform to the Markham OP 2014, subject of course to the approval of the proposed OPA.

City of Markham Zoning By-law 1229

[63] City of Markham Zoning By-law No. 1229 is in effect for the Subject Lands. The Subject Lands are zoned 'Residential' (R1) within Zoning By-law No. 1229, which only permits a one-family detached dwelling. An amendment to Markham Zoning By-law No. 1229 is required to implement and regulate the proposed development on the Subject Lands.

[64] The Tribunal finds that the proposed OPA and ZBLA conform to the Markham OP 2014, is appropriate to regulate the use and development of the Subject lands and implements the proposed site plan.

Public Consultation

[65] Mr. Yarranton explained that comments were sought and received from the public as well as from public agencies throughout the process at various opportunities and have been satisfactorily addressed.

Summary Findings

[66] The Tribunal finds as follows:

- a) The proposed OPA, ZBLA and site plan will comply with the applicable provisions of the Act, be consistent with the PPS, conform with the Growth Plan, the ROP and the Markham OP 2014, as proposed to be amended by the Proposed OPA.
- b) The development by Garden Homes (Markham) Inc. as set out in the proposed OPA, ZBLA and site plan conditions constitutes good planning in the public interest.

ORDER

[67] The Tribunal orders as follows:

1. The appeals filed by Garden Homes (Markham) Inc. in LPAT File Nos. PL171232, PL171233 and PL171253 (consolidated as LPAT Case No. PL171232) are hereby granted in part.
2. With the consent of the parties:
 - a. Exhibits "C" (Official Plan Amendment) and "D" (Zoning By-law Amendment) to the Affidavit of Mark Yarranton, B.E.S., M.C.I.P., R.P.P. are hereby approved and shall be effective as of the date of this Order; and
 - b. Exhibits "E" (Site Plan) and "F" (Site Plan Conditions) to the Affidavit of Mark Yarranton, B.E.S., M.C.I.P., R.P.P. are hereby approved in principle, with the Order bringing these instruments into effect withheld until the Tribunal is advised in writing by the parties that these

instruments are in their final form and ready to be issued.

3. No costs shall be awarded in respect of this Order.
4. The Tribunal may be spoken to concerning issues arising from the implementation of this Order, including any disputes concerning paragraph 2(b) above.

"R.G.M. Makuch"

R.G.M. MAKUCH
VICE-CHAIR

Ontario Land Tribunal

Website: olt.gov.on.ca Telephone: 416-212-6349 Toll Free: 1-866-448-2248

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.