

421 Brant

Delegation to Planning & Development Committee – April 10th, 2018

Good evening Mr. Chairman and members of the committee.

My name is Mark Bales and I am here this evening with Nick Carnicelli. Nick Carnicelli is here to assist me in answering any questions you may have.

Thank you for providing me the opportunity to speak to this matter. We are very excited to be here tonight as we have reached a milestone – approval of Section 37.

Six months ago, in November of last year, City Council approved the redevelopment of 421 Brant. This approval includes 169 new high quality residential suites, new contemporary retail and office space and significant streetscape improvements.

The City's Official Plan contains policies to guide the implementation of Section 37 benefits and to ensure that this planning control mechanism is implemented where and when the City deems it to be appropriate. Burlington is one of the few municipalities that has policies to implement Section 37.

The City has the ability to impose or not to impose Section 37 benefits. This is not a choice that is made by the developer. In this case, the City has determined that it would impose Section 37 benefits. This is not a public process. It is an administrative process that is negotiated between the applicant and City staff with

input from the Ward Councillor. To implement the Section 37 Benefit negotiations, the City of Burlington follows a long-standing protocol that involves City staff from various departments, a Committee and the applicant. There are no statutory public notification requirements related to Section 37 benefits – **again, this is strictly an administrative process as confirmed by the Planning Act.**

Since the Fall of last year and City Council's approval of this project, we have been working with City staff in accordance with the City's established Section 37 Benefits Protocol to establish the framework for the Section 37 Agreement for this development. Typically the Section 37 Agreement and the corresponding planning instruments are received and considered by City Council at the meeting immediately following Council's approval. Based on this typical protocol, we originally anticipated that the Section 37 Agreement and the planning instruments would be considered by City Council before the end of 2017. Unfortunately, City staff, the Ward Councillor and the City's Section 37 Committee were unable to make this happen.

This has been a long and complicated six month process that has required a great deal of hard work by all involved. We would like to thank City staff for their hard and continuous work to bring these negotiations to a successful conclusion. The negotiation of the terms of the agreement has been finalized.

We have been working with City Planning staff to find an appropriate balance between the benefits outlined in the Recommendation Report and additional requests received by City Planning from the Ward Councillor while at the same time developing a Section 37 framework that is consistent with those

applied to other developments in the City. The final results of this process are included in the staff report you are considering this evening.

As you may recall, the Recommendation Report includes detailed discussion about the importance of superior urban design and enhancing the public realm in particular. This includes:

- Creating a “civic node” at the intersection of Brant and James Streets;
- Reinforcing and enhancing the existing streetscapes of Brant, John and James Streets;
- Providing a superior pedestrian experience;
- Promoting the provision of public art;
- Expanding “Civic Square”;
- Publicly accessible open space at the corner of Brant and James Streets to expand and extend the civic function in the area;
- Increasing building setbacks to effectively double the width of existing sidewalks to better accommodate pedestrians and promote the use of outdoor patios and pedestrian activity;
- Providing new view corridors to City Hall, the Cenotaph and publicly owned facilities;
- Establishing a superior design of the podium of the building to foster an exciting urban environment while maintaining the existing rhythm;
- Promoting suitable relationships between the proposed redevelopment and its surroundings;
- Minimizing the visual impacts of the top of the building; **and**,
- Making a positive contribution to the City’s distinct skyline.

This is a lot of urban design!

It was not until we were in the midst of Section 37 benefit negotiations with City staff that we were advised that the provision of affordable housing was to be included. As a matter of fact, at the very beginning of the Section 37 negotiation process and in light of the significant and generous Section 37 benefits that were identified in the Recommendation Report, we advised City Planning that adding an affordable housing component to the redevelopment through Section 37 would be extremely challenging.

Despite this, we have worked with City staff to arrive at a solution that intends to maintain the general intent of the approved redevelopment and the many benefits noted in the Recommendation Report. **This has not been easy as many compromises have been made at the expense of public realm and city-building initiatives. While the quantum of the Section 37 benefits (\$1.775 million) had been agreed to, the redirection of funds to affordable housing has impacted the other benefits.**

Direct benefits include:

- Cash contributions towards affordable housing, public art and the expansion of the Civic Plaza
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Indirect benefits include:

- Increased building setbacks in the absence of City policies or zoning provisions requiring these;
- An easement in favour of the City at the corner of Brant and James to create a new publicly accessible open space area;

- Expansion of Civic Square;
- Implementation of a superior streetscape in the absence of city-approved guidelines;
- Implementation of green technology and sustainable architecture as identified in the City's Sustainable Development Guidelines that are considered eligible for Section 37 consideration;
- One publicly accessible car share space or the equivalent; and,
- Eight additional visitor parking spaces.

Affordable Housing Solution:

Accommodating affordable housing within the City's primary intensification area is challenging. This has been noted by the City's own consultants reporting on housing affordability within Downtown Mobility Hub. However, notwithstanding this and our original comments to staff, we have endeavored to accommodate the City's affordable housing request. As I have noted, this is beyond the scope of the original approval.

To complicate matters, the Region of Halton currently does not appear to have an official and implementable affordable housing strategy/program and has also indicated to us that it is uncertain that it has the financial capability to purchase units at 421 Brant. Consequently, we find ourselves in a unique circumstance and we have gone well-beyond standard protocol to accommodate the City's request for affordable housing by agreeing to provide the City with a **\$300,000** cash payment (a direct benefit) prior to condominium registration in the event that the Region of Halton is unable to participate. In addition, we understand that the Ward Councillor has requested that in the event the Region is unable to

purchase units at 421 Brant, the monetary contribution made to the City be directed towards affordable housing within the city's "Urban Growth Centre". This amendment to the original agreement is acceptable to 421 Brant St. Inc.

However, it is very important to recognize that this is the first time in Burlington that a developer has agreed to make a cash contribution to the City for affordable housing AND we have agreed to this even though the City of Burlington does not have an affordable housing policy framework or program.

Public Art Solution:

Public art is specifically identified in Section 2.3.2 a)(xi) of the Official Plan (as noted by Tami Kitay) as one of the City's primary benefits to be obtained in return for increased height and density.

City Planning staff have reported that "subject to a high level of design", this development complies "with the general intent of the Special Policy Area expectations set out by the on-going Mobility Hubs study. The increased height would highlight this prominent node and announce arrival into this civic node, through the provision of a landmark building, urban plaza, **public art**, enhanced landscaping, façade design, and a higher order of streetscaping". You can see how all of this fits together.

Significant and dramatic changes were made to the building to accommodate public art, wider streetscapes, view corridors and streetscape improvements.

All of these modifications combined dramatically reduced the amount of the retail and office uses and residential uses in the

remainder of the building podium. Yet we recognize that by addressing these matters, as proposed by the City, we are assisting the City in its efforts accommodate its design vision and achieving its priorities for the Downtown, including public art.

Public art is considered as a significant community benefit as it will assist the City in its efforts create a unique and distinct “civic node”.

In our opinion, one of the first things a city should do when it is looking to revitalize the downtown is make it more aesthetically pleasing as beautiful places attract investment.

Public art enhances the experience of a place and the quality of life for all of the residents in the City. Public art engenders a sense of pride and community identity. Public art reaches audiences outside museums, galleries, and theaters, and adds to the beauty of everyday life. Public art declares the worth of a place and represents a shared culture.

The inclusion of public art in this development is a fundamental place-making and city-building initiative that we fully support and it must not be altered or eliminated.

To quote from the Recommendation Report, City Planning have indicated:

- this development and public art will “contribute to the vibrancy of the Downtown”;
- public art will “establish the concept of design excellence in the Downtown to encourage long-term investment”;
- public art will contribute towards and enhance the “view corridor” requested by the City;

- public art will assist in the City's "efforts to recognize the important role that this intersection plays within the City".

If there was ever a location in the City that warranted public art, this is it – this is the City's "Civic Node".

City Planning has been clear in its evaluation of this proposed development that this development is expected to significantly contribute to the enhancement of the public realm. Public art is a critical component in this initiative. For the reasons noted, public art **is not** a benefit for only the residents of the proposed development. Public art is a benefit to the entire Downtown community and will assist the City in its future efforts intended to promote design excellence and city-building.

Originally we had proposed \$300,000 be directed to public art. This amount represented a reasonable amount based on past experience. Through the negotiation process, this amount was reduced to \$150,000 and the affordable housing contribution increased by \$150,000. However, we are satisfied that the City has demonstrated a further commitment to public art by stipulating that this amount is to be spent on public art within the new publicly accessible open space area and/or the expanded Civic Square area abutting the site.

Visitor Parking Solution:

We have agreed to include 8 visitor parking spaces. These parking spaces are intended to provide relief to the existing parking lots and help to address a perceived lack of parking supply in the Downtown. As these additional spaces (which are not required under current zoning provisions) are an extra and are intended to improve the parking supply in the Downtown as a whole, it is

appropriate to consider these parking spaces as a community benefit. The additional visitor parking provides an indirect community benefit assessed at \$400,000.

In addition, there are a number of other community benefits that are included in the recommended framework. City Planning staff have already identified these benefits, however, just to summarize, in addition to affordable housing, public art and visitor parking, there are several additional and significant Section 37 Benefits.

These include:

Car share:

We have agreed to provide one (1) publicly accessible car share parking space or the equivalent that is to be available to the public and the residents and tenants of the project. This provides an indirect community benefit assessed at \$50,000.

Expansion of Civic Square:

The Recommendation Report states that the proposed development “would incorporate an expansion to the civic function in this area by providing an expansion to Civic Square on the east side of Brant Street”. Originally we proposed to contribute \$125,000 to this initiative. **Through the negotiation process this amount was reduced to \$50,000 and the affordable housing contribution increased by \$75,000.**

Publicly Accessible Open Space:

As City staff have clearly indicated to Council that the City should not accept encumbered land as open space, we have agreed to provide a public access easement to be registered on title for lands located at the northeast corner of Brant Street and James Streets. Not only does this provide the City and its residents with access to the space but it also allows the City to exercise its standard cash-in-lieu of parkland contribution. The City is getting the best of both worlds. This space is intended to be available to the City of Burlington, as necessary, to accommodate use by the public during identified civic events and community festivals. The City has indicated a desire to expand the Civic Square easterly across Brant Street to include the intersection of Brant and James Streets and the area included in the publicly accessible open space area. This is an indirect community benefit as the land remains in private ownership with maintenance responsibilities being placed on the owners. This has been assessed to have a value of \$75,000.

Enhancement of Significant Views:

As I have noted, we have agreed to increased building setbacks, including widened sidewalks on Brant Street, James Street, and John Street, and view corridors on Brant Street and James Street to City Hall and the Cenotaph (indirect community benefit accessed at \$250,000). The proposed building setbacks have been increased beyond those that can be achieved through the City's existing policy framework and zoning by-law. Therefore, this is a legitimate Section 37 benefit to the City.

Green Technology and Sustainable Architecture:

We have agreed to implement green technology and sustainable architecture elements into the subject property in accordance with either LEED certification standards and/or compliance with the City's Sustainable Building and Development guidelines (indirect community benefit accessed at \$300,000). By satisfying this request, the environmental impacts and the carbon footprint of the building is reduced which benefits the entire community.

Please note that the City's Sustainable Building Design Guidelines include a number of elements as being eligible Section 37 benefits (please refer to the chart included on page 4 of these Guidelines).

Under OPA/ZBLA Approval you will note that this table states:

"Sustainability measures that impact site layout and design will be identified through the Official Plan Amendment (OPA) and Zoning By-Law Amendment (ZBLA) process. The voluntary guidelines may also be used in Section 37 negotiations, under the Planning Act."

Provision of Streetscape Improvements in Accordance with Council Approved Design Guidelines:

The City of Burlington does not pay for streetscape improvements. This responsibility is placed on the developer. This is standard protocol. However, the City has requested that superior streetscaping be provided that existing City guidelines standards do not accommodate. We have agreed to implement City of Burlington Streetscape Guidelines Standards within the Brant

Street, James Street, and John Street public realm areas, including the expanded building setback areas at-grade that are not owned by the City and the publicly accessible open space easement area I mentioned earlier. The cost of implementing these Standards has been assessed as an indirect community benefit of \$150,000.

Conclusion:

The negotiation of the terms of the Section 37 Agreement is complete in accordance with the City's Section 37 Protocol. While we agree to the minor wording change regarding affordable housing and the inclusion of the words "Urban Growth Centre" in clause (i) on page 4 of Report PB-33-18, we vehemently oppose any efforts to change the terms of the Section 37 Agreement pertaining to public art and visitor parking or any other terms for that matter. An effort to renegotiate the provisions of the Section 37 Agreement, particularly in a public forum, is completely inappropriate and unacceptable, contrary to the Planning Act, contrary to the City of Burlington Section 37 Protocol and would not be in keeping with best practices. Any efforts to revise the terms and/or redistribute the contributions would be unacceptable.

We have worked very hard to negotiate an agreement with the City, these negotiations have included the various departments, committees, the Ward Councillor and have been conducted in accordance with the City's Section 37 Protocol. Further revisions and deferrals would be unacceptable at this late stage in the process and in consideration of the six months of effort that has been invested in this administrative process by all parties. Section 37 is complete.

We therefore request that Report PB-33-18 be endorsed by Planning and Development Committee subject to the noted amendment regarding affordable housing.

Thank you very much for your time and consideration of these matters.