

PB-04-18
505-08
Delegation correspondence

April 23, 2018

City of Burlington
426 Brant Street
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Burlington, ON L7R 3Z6

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File No. 18948.00001

Attention: Angela Morgan, City Clerk
Mayor Goldring and Members of Council

Dear Mayor Goldring and Members of Council:

RE: City of Burlington Proposed New Official Plan

We are solicitors for Spruce Partners Inc. and Amico Properties Inc. regarding their property located at 1161-1167 North Shore Boulevard, in the City of Burlington (the "Site").

We have reviewed the proposed new Official Plan recommended for adoption by staff to City Council and have a number of significant concerns.

We do not believe that the proposed Official Plan is consistent with the 2014 Provincial Policy Statement ("PPS") and does not conform with the 2017 Growth Plan as it relates to the Site. The proposed Official Plan does not give consideration to the overarching Provincial documents, to which it must be consistent with or conform to, as the case may be. Further, we disagree with the proposed Official Plan's approach of down-designating the Site from its existing Downtown Residential – Medium and/or High Density Precincts, which has no height limit, to a mid-rise land use designation with an 11-storey height maximum, all entirely without the benefit of any detailed planning and urban design analysis which would justify such a fundamental change.

As you are aware, such down-designations in the City of Burlington have previously been the subject of disputes before the then Ontario Municipal Board in *Bayview Cemetery & Crematory Inc., Re*, 2012 CarswellOnt 310 where the Board specifically stated:

...in this case, there was very little, if any, evidence which would persuade me to otherwise limit the obvious emphasis placed on intensification in the PPS and Growth Plan. In my opinion, the down-designation and down-zoning proposed neglect to optimize the use of the sites in question and significantly constrain the existing development potential for these sites.

I fail to see how OPA 55 and ZBL 205 accord with the concept of intensification clearly embedded in and contemplated by the PPS and Growth Plan.

While it is acknowledged that the aforementioned decision is with respect to the 2006 Growth Plan, the 2017 Growth Plan, to which the City's proposed Official Plan must conform, continues and enhances the emphasis on intensification and optimization of existing infrastructure.

In addition, the Ontario Municipal Board stated in that same decision that:

I am also not satisfied that a sufficiently persuasive case has been made out to establish that the effects of down-designation and down-zoning will result in greater public benefit than the acknowledged harm to the Appellants. In fact, it is arguable that the attempt to effectively reduce the existing land supply for intensification may be actually prejudicial to the public interest

It is our position that that finding is also true in this instance. The limiting of height on the Site, where none was previously imposed will inhibit the ability for this Site to optimize the use of existing infrastructure, and achieve the targets established in the Growth Plan for Burlington's Urban Growth Centre and will limit the ability of the Site to be developed for an appropriate mix of housing options for seniors with easier access to health care and other amenities, walkable built environments, and an age-friendly approach to community design, as required under the Growth Plan. Furthermore, there has been no study prepared by the City of Burlington to establish that restricting the heights on this Site within the Urban Growth Centre should prevail over this provincial and public interest.

As such, we respectfully require that the Site be designated Downtown Tall Residential Precinct in the new Official Plan. Such a designation will prevent the site from being down-designated as is currently proposed and will allow for the proposed Special Needs Housing project to proceed.

Alternatively, we request that any decision on the designation for the Site be deferred pending additional discussion with staff on the proposed development, which has been the subject of a recent pre-consultation meeting.

Enclosed with this submission is a planning opinion prepared by my client's planning consultants, Bousfields Inc., addressed to the Planning and Development Committee today.

Yours truly,

WeirFoulds LLP

A handwritten signature in black ink, appearing to read "DBaker", with a long horizontal flourish extending to the right.

Denise Baker

DB/mw

Encls. 1

cc: Client

11670924.1

April 23, 2018

Planning and Development Committee
City of Burlington
426 Brant Street, PO Box 5013
Burlington, ON L7R 3Z6

Attention: Jo-Anne Rudy
Committee Clerk

Dear Members of the Committee:

**Re: *Proposed New Official Plan – Letter of Objection*
Spruce Partners & Amico Properties Inc.
*1161 - 1167 North Shore Boulevard***

We are the planning consultants to Spruce Partners and Amico Properties Inc. with respect to the above-noted matter. Our client's site is municipally known as 1161-1167 North Shore Boulevard, and is located at the northwestern corner of the QEW Niagara and North Shore Boulevard in Burlington (the "subject site").

We have reviewed the proposed new Official Plan recommended for adoption by staff to City Council at a meeting of the Planning and Development Committee scheduled for April 24, 2018, and have a number of significant concerns.

Generally speaking, it is our opinion that the proposed Official Plan as it relates to the subject site is not consistent with the 2014 Provincial Policy Statement ("PPS"), and does not conform with the 2017 Growth Plan. In this regard, the proposed Official Plan does not give proper consideration to the overarching Provincial documents, and more specifically the Growth Plan, which contain a number of policies that promote intensification and compact built form within built-up urban areas, with a particular focus on prioritizing intensification within strategic growth areas including Urban Growth Centres, within which the subject site is located.

We fundamentally disagree with the proposed Official Plan's approach of "de-intensifying" or "down designating" the subject site from Downtown Residential – Medium and/or High Density Precincts, which has no height limit, to a mid-rise land use designation with an 11-storey height maximum, all entirely without the

benefit of any detailed planning and urban design analysis that would justify such a fundamental change, particularly within an Urban Growth Centre.

In particular, we disagree with the Downtown Mid-Rise Residential Precinct land use designation proposed for the subject site in that it does not properly recognize the site's location at a significant gateway entry into the City of Burlington Urban Growth Centre, nor its size and configuration which can comfortably accommodate a tall building built form without unacceptable adverse impacts on neighboring properties.

By imposing a height maximum on the subject site where no height maximum currently exists within the current Official Plan, the proposed Official Plan does not conform with the Growth Plan's objective of prioritizing intensification on lands in Urban Growth Centres.

Proposed Development

Spruce Partners and Amico Properties Inc. have been involved in purchasing the subject site since early 2017 for the purposes of constructing a seniors living campus that would provide memory care services, assisted living, and rental independent living housing for seniors. The subject site was selected based upon current Official Plan permissions as well as the draft Official Plan that planning staff were recommending, which did not contemplate a height maximum for the subject site. During the Official Plan review process, a significant policy shift without any justification has resulted in the restriction of providing this significant special needs housing proposal.

A pre-application meeting was held with City Staff on March 21, 2018, which proposed the redevelopment of the site with a seniors living campus in the form of a 17-storey point tower, mid-rise building and podium levels. An Official Plan and Zoning By-law Amendment application is forthcoming.

Provincial Policy

As previously noted, it is our opinion that the proposed Official Plan as it relates to the subject site is not consistent with the 2014 Provincial Policy Statement ("PPS"), and does not conform with the 2017 Growth Plan.

Limiting both the building typology and maximum height within the Official Plan runs counter to the objectives of the PPS and 2017 Growth Plan of promoting intensification and compact built form, and optimizing the use of land and public investment in infrastructure and public service facilities.

In particular, the subject site, with its location within Downtown Burlington, which is identified as an Urban Growth Centre, is considered to be part of a “strategic growth area” pursuant to the Growth Plan (i.e. a focus for accommodating intensification and higher-density mixed uses in a more compact built form). Section 2.1 of the Growth Plan provides that Urban Growth Centres continued to be recognized as regional focal points for accommodating population and employment growth.

In this regard, the proposed Official Plan land use designation would be contrary Section 2.2.1 and in particular, Policies 2.2.1.2 a) iii) which provides that the vast majority of growth will be directed to settlement areas that can support the achievement of complete communities and 2.2.1.2 c) ii) which provides that growth will be focused in strategic growth areas, Policy 2.2.3.1 d) which provides that Urban growth Centres will be planned to accommodate significant population and employment growth, and Policy 2.2.3.2 which provides that Urban Growth Centres will be planned to achieve by 2031 a minimum density target of 200 resident and jobs combined per hectare in Downtown Burlington. The proposed redevelopment, as it was presented to Staff in March 2018, will provide more than 200 FTE (Full-time equivalent) jobs and approximately 400-450 residents, contributing the achievement of complete communities and aging in place.

With respect to housing choices, Policy 1.4.3 of the PPS and Policy 2.2.6 of the Growth Plan supports a diverse range and mix of housing options and densities to meet projected needs of future residents.

Furthermore PPS Policy 1.4.3 b) permits all forms of housing required to meet the social, health and well-being requirements of current and future residents, including *special needs* requirements, Policy 1.4.3 c) directs the development of new housing towards locations where appropriate levels of infrastructure and public service facilities are or will be to support current and projected needs, Policy 1.4.3 d) promotes densities for new housing which efficiently use land, resources, infrastructure and public service facilities, and support the use of active transportation in transit areas where it exists or is to be developed, and Policy 1.4.3 e) establishing development standards for residential intensification, redevelopment and new residential development which minimize the cost of housing and facilitate compact form.

In this regard, the proposed Official Plan would impose built form and height restrictions that are not currently in force under the current Official Plan, which would significantly constrain the development potential of the subject site in

providing a crucial housing choice which requires greater flexibility in design to meet the standards of providing optimum healthcare.

Conclusion

For all of the reasons provided above, it is our opinion that the Downtown Mid-Rise Residential Precinct land use designation proposed for the subject site represents a “Down Designation” of current Official Plan permissions and would not be consistent with the PPS nor conform with the 2017 Growth Plan and should not be adopted in its current form.

We are recommending that the Committee reconsider the proposed land-use designation for the subject site for the purposes of a seniors housing development, which is appropriately situated within the City’s Urban Growth Centre to ensure that residents have adequate and convenient access to amenities, including medical facilities.

The significance of this request is engrained within Policy 12.2.2(3) of the proposed Official Plan, which states that the City shall not accept requests for Official Plan Amendments for a period of 2 years from the date of approval of any part of the Official Plan. In this regard, it is imperative that the City correctly designate the subject site in accordance with overarching Provincial Policy.

Thank-you for your consideration of these comments. If you require any clarification or wish to discuss these matters further, please do not hesitate to contact me.

Yours very truly,

Bousfields Inc.


Tyler Grinyer, MCIP, RPP

cc: *Paul Sustronk, Spruce Partners*
Paul Demczak, Amico Properties
Denise Baker, WeirFoulds LLP