



**SUBJECT: 2421-2431 New Street - Section 37 community benefits**  
**TO: Planning and Development Committee**  
**FROM: Department of Community Planning - Planning Building and Culture**

Report Number: PB-87-19

Wards Affected: 2

File Numbers: 505-02/18 & 520-02-18

Date to Committee: December 3, 2019

Date to Council: December 16, 2019

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**Recommendation:**

Approve community benefits in relation to the development proposal at 2421-2431 New Street submitted by Weston Consulting, consisting of direct and indirect benefits as outlined in department of city building report PB-87-19; and

Direct the Executive Director of Legal Services to prepare and execute an agreement pursuant to Section 37 of the *Planning Act* securing the benefits agreed to and to the satisfaction of the Director of Community Planning and the City Solicitor and that such Agreement be registered on title to the lands in a manner satisfactory to the City Solicitor to secure said community benefits; and

Direct the Clerk and the Mayor to execute the amending by-law once the owner enters into the Section 37 Agreement.

**Purpose:**

The purpose of this report is to outline to the Planning and Development Committee the direct and indirect community benefits that staff propose to be secured related to the development of the subject property.

The recommendations contained within Report PB-32-19 and PB-87-19 align with the following objectives in Burlington's Strategic Plan 2015-2040:

- A City that Grows
  - Promoting Economic Growth
  - Intensification

- Focused Population Growth

#### A City that Moves

- Increased Transportation Flows and Connectivity

#### A Healthy and Greener City

- Healthy Lifestyles
- Environmental and Energy Leadership

#### An Engaging City

- Good Governance
  - Community Building through Arts and Culture via Community Activities
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### **Background and Discussion:**

On April 10, 2012, Council approved a Protocol for the Provision of Community Benefits in association with approvals for developments that seek to increase height and/or density as permitted by section 37 of the *Planning Act*. The Protocol contains the following policies, among others:

- The City will consider the provision of community benefits associated with increases in height and/or density pursuant to Section 37 in the urban area with special regard for areas that are deemed to be suitable candidates for intensification (1.1).
- The normal tests of good planning practice must be met in all applications approved by Council for Official Plan and Zoning By-law amendments, including those involving the provision of community benefits (2.1).
- The community benefits are to be secured in an agreement registered on title pursuant to Section 37 of the *Planning Act* (2.2).
- There is a location or functional connection between the development proposed and the facilities, services, or other benefit being required under the Section 37 Agreement (2.3).
- Under no circumstances will a community benefits provision be considered where an application or any particular elements of an application has not been determined to be acceptable in terms of good planning practice (2.4).
- In accordance with Section 37, eligible community benefits will be identified in the Official Plan (2.5).
- The increased value of the land resulting from the height and/or density increase will be determined through the appraisal of increased value, prepared by the City or on the City's behalf and to its satisfaction (4.3).
- Prior to the approval of the Official Plan and/or Zoning By-law amendment, the owner shall execute the Section 37 Agreement securing the community

benefits in consultation with City staff. The Agreement shall be registered against the title of the subject lands (5.1).

- The Ward Councillor be consulted by staff prior to any negotiations with the applicant (5.9).

Staff can confirm that the aforementioned Protocol has been followed with respect to the contents of this report.

On February 2, 2018, the Department of City Building received complete Official Plan amendment and Zoning By-law amendment applications for 2421-2431 New Street. The applications proposed two joined 11-storey buildings comprised of 223 units geared to seniors living in the west building, and 139 residential units in the east building. Following a neighbourhood meeting, statutory public meeting and Planning and Development Committee meeting, Council approved the following recommendations on November 18, 2019:

Modified approval of the applications for official plan and zoning by-law amendments made by TRG (New-Guelph) Inc. (c/o Weston Consulting), 2100 Old Lakeshore Road, Burlington ON L7R 1A3, to permit the development of two (2) joined 11-storey buildings on the site consisting of a retirement home building and a residential apartment building; and

Approve Official Plan Amendment No. 117 to the City of Burlington Official Plan, as contained in Appendix B to department of city building report PB-32-19, to re-designate the lands located at 2421-2431 New Street from “Neighbourhood Commercial” to “Residential High Density” and to modify the “Residential High Density” policies to include site specific policy for the subject lands; and

Deem that Section 17(21) of The Planning Act has been met; and

Instruct the City Clerk to prepare the necessary by-law adopting Official Plan Amendment No. 117 as contained in Appendix B to department of city building report PB-32-19 to be presented for approval at the same time as the associated by-law to amend Zoning By-law 2020, as amended, for the development proposal; and

Approve, in principle, the zoning regulations provided in Appendix C to department of city building report PB-32-19, to rezone the lands at 2421-2431 New Street from Neighbourhood Commercial “NC” to a site specific Residential High Density “RH4-503” with a Holding “H” prefix, subject to Residential Development Agreement conditions as provided in Appendix D to department of city building report PB-32-19 and the provision of Community Benefits; and

Direct the Executive Director of Community Planning, Regulation and Mobility to hold discussions with the applicant to secure community benefits in accordance

with Section 37 of the Planning Act and Part VI, Section 2.3 of the City's Official Plan, as they relate to the requested increase in height and density on the subject property, and to return to Council with a report outlining the recommended community benefits and the implementing Zoning By-law Amendment.

Further to Council's directions above, staff have undertaken the Section 37 Community Benefit protocol and have held discussions with the Ward Councillor, internal Section 37 Committee, and the applicant to secure community benefits in accordance with Section 37 of the *Planning Act* and the City's Official Plan, as discussed below. The Official Plan Amendment and Zoning By-law Amendment, and Residential development Agreement are attached as Appendices.

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## Policy Framework

### City of Burlington Official Plan

Section 2.3.2 of the in-effect Official Plan sets out that "community benefit provisions pursuant to Section 37 of the *Planning Act* may be used by the City in the Zoning By-law to allow increases in height and density of development beyond those permitted by the Zoning By-law in exchange for facilities, services, or matter of public benefit as are set out in the Community Benefits section of the implementing Zoning By-law. The City may encourage the use of community benefit provisions with regard to the following matters:

- (i) Provision of a wide range of housing types including special needs, assisted or other low-income housing;
- (ii) Provision of parkland dedication beyond the requirements of the Plan;
- (iii) Protection of natural features such as woodlots, beyond the parkland dedication requirements of the Plan;
- (iv) Improved access to public transit or implementation of a Travel Demand Management Plan;
- (v) Provision of public areas, crosswalks and walkways and connections to external public walkways/trail systems;
- (vi) Provision of public parking;
- (vii) Provision of community and open space facilities such as small parks, day care centres, schools, community centres and recreational facilities, cultural facilities, and other municipal facilities such as fire halls and libraries;
- (viii) Conservation of cultural heritage features;
- (ix) Protection or enhancement of significant views;
- (x) Provisions of affordable housing, beyond the basic Provincial requirements;

- (xi) Provision of public art;
- (xii) Provision of green technology and sustainable architecture, such as green roofs;
- (xiii) Provision of streetscape improvements in accordance with Council approved design guidelines; and
- (xiv) Other local improvements identified in community design plans; community improvement plans, capital budgets or other implementing plans or studies.

The proposed community benefits discussed in the section below support many of these objectives. Staff can confirm that the proposed community benefits comply with the Official Plan.

### Strategy/process

Section 37 of the *Planning Act* is a planning tool which allow municipalities to accept tangible community benefits when granting increased density and/or height through a change in zoning or Official Plan policy. A fundamental requirement of the use of Section 37 is that the application being considered must first and foremost be considered “good planning” irrespective of the potential for the community benefit. Community Planning staff must be able to recommend approval of the application with or without a community benefit being received. Generally speaking, there should also be a locational or functional connection between the proposed development and the facilities, services, or other benefits being required under the Section 37 Agreement.

The benefits obtained through Section 37 Agreements may be in the form of a financial contribution (direct benefit) or indirect benefits (facilities, services, or installations built or provided by the developer, at their expense, which are accessible by and/or beneficial to the general community). Community benefits are typically secured for items over and above those funded through development charges or other legislation.

### Proposed Community Benefits

In accordance with the Section 37 Protocol, the following community benefits are proposed to be secured for the modified development proposal at the subject properties:

Proposed Community Benefit	Value	Form	Official Plan Section
The Developer agrees to provide an indirect community benefit of \$300,000 though the contribution of 540 square metres of Community Institutional space, to the	\$300,000	Indirect	Part VI, Section 2.3.2. (vii)

<p>satisfaction of the Director of Community Planning.</p>			
<p>To assist in the pursuit of long-term affordable housing, the Developer will provide the City of Burlington with a \$400,000 contribution prior to application for above-grade building permit. The amount represents a direct community benefit under this Agreement with the following provisions:</p> <ul style="list-style-type: none"> <li>• The Developer agrees to negotiate potential sale of up to 6 dwelling units to Halton Region at Fair Market Value, with the understanding that Halton Region will make these units available for geared-to-income rental housing purposes.</li> <li>• If the negotiation results in an intended Agreement of Purchase and Sale, the community benefit will be used to reduce the cost of the transaction by \$400,000.</li> </ul> <p>If the negotiations are unsuccessful OR the Region elects to not pursue unit acquisition within this Development, the City will transfer the funds to Halton Region to contribute to an alternative Assisted Housing initiative within the City's Urban Growth Centre OR if no such initiative is readily available, the City will deposit the funds into a reserve account for use toward affordable or assisted housing initiatives within the City's Urban Growth Centre at a later time, consistent with the City's Official Plan.</p>	<p>\$400,000</p>	<p>Direct</p>	<p>Part VI, Section 2.3.2 (i)</p> <p>Part VI, Section 2.3.2 (x)</p>
<p>The Developer agrees to provide an indirect community benefit of \$200,000 towards enhanced streetscaping, generally in accordance with the 2019 Downtown Streetscaping Guidelines, in front of the subject property, and within 200 metres of the subject property along the north side of New Street.</p>	<p>\$200,000</p>	<p>Indirect</p>	<p>Part VI, Section 2.3.2. (xiii)</p>

The combined total of the proposed community benefits as outlined above is \$900,000.

Before enacting the amending zoning by-law, the applicant will be required to execute an Agreement pursuant to Section 37 of the Planning Act to the satisfaction of the Director of Community Planning and the City Solicitor, and that such agreement be registered on title to the lands in a manner satisfactory to the City Solicitor, to secure said benefits. The provisions for community benefits are also captured in the amending zoning by-law, attached as Appendix B to this report.

### **Planning Instruments**

Further to Council's direction from November 18, 2019, the Official Plan Amendment and Zoning By-law Amendment, and Residential development Agreement are enclosed for Council's approval.

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### **Financial Matters:**

Not applicable.

### **Total Financial Impact**

The City will receive a total of up to \$400,000 in financial contributions to be placed into specific reserve funds for their defined purposes, as outlined above.

### **Source of Funding**

Not applicable.

### **Other Resource Impacts**

Not applicable.

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### **Connections:**

Community Planning staff met with the Ward 2 Councillor to discuss this matter.

Members of the Section 37 Protocol Committee have discussed this matter and concur with the appropriateness of the types of community benefits sought and recommended in this report.

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## **Public Engagement Matters:**

The development applications were subject to the standard notification requirements to residents within 120 metres of the subject properties following the submission of a complete application in February 2018. A neighbourhood meeting was held on May 16, 2018 and the statutory public meeting was held on January 15, 2019. The staff recommendation report was considered at the Planning and Development Committee meeting of November 12, 2019 and Council made a decision on the matter on November 18, 2019.

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## **Conclusion:**

On November 18, 2019, Council approved the development applications to permit the development of two (2) joined 11-storey buildings on the site consisting of a retirement home building and a residential apartment building on the subject lands known municipally as 2421-2431 New Street. Provided that staff bring forward a finalized Zoning By-law Amendment, and a Section 37 Community Benefit proposal. Staff are of the opinion that the proposed community benefits outlined above are appropriate based on the increased density recommended for the site and are to be used on public realm improvements located on, adjacent, or in proximity to the subject lands, in addition to supporting affordable housing opportunities in the Urban Growth Centre.

Staff recommend that the proposed community benefits as outlined in the report be approved by Council and that staff be circulated and the applicant be required to execute an Agreement pursuant to Section 37 of the *Planning Act* to the satisfaction of the Director of Community Planning and the City Solicitor, and that such agreement be registered on title to the lands in a manner satisfactory to the City Solicitor, to secure these community benefits.

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Respectfully submitted,

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## **Appendices:**

- A. Official Plan Amendment



B. Zoning By-law Amendment

C. Residential Development Agreement

**Report Approval:**

All reports are reviewed and/or approved by Department Director, Director of Finance and Director of Legal. Final approval is by the City Manager.