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January 13, 2020

City of Burlington
Community Planning, Regulation and Mobility Committee
426 Brant Street, P.O. Box 5013
Burlington, ON. L7R 3Z6

Attn: Committee Chair and Members
c/o Jo-Anne Rudy, Committee Clerk

Dear Chair Stolte & Members:

Re: Interim Control By-law Land Use Study and Proposed Official Plan and Zoning Bylaw Amendments (Report No. PL-01-20)
Brookfield Properties, InterRent REIT and CLV Group Inc. (Fairview Limited Partnership)
2243, 2269 Fairview Street and 864 Drury Lane
Our File No. 13611

We are counsel to Brookfield Properties, InterRent REIT and CLV Group Developments Inc., together Fairview Limited Partnership (hereinafter "Fairview LP"), in relation to their lands located at 2243, 2269 Fairview Street and 864 Drury Lane (the "Subject Lands"), in the City of Burlington. The Subject Lands are 3.31 hectares in area and represent a significant intensification opportunity within a Major Transit Station Area ("MTSA"); namely, the Burlington GO Station Mobility Hub.

Fairview LP's Development Intentions

Fairview LP purchased the Subject Lands only after undertaking careful due diligence. This purchase decision was made relying on the in-force zoning permissions. Since that time,

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Fairview LP has completed extensive technical review and analyses of the Subject Lands in order to prepare a site plan application for a transit - supportive development. As set out in the attached correspondence from Fairview LP's planners (MHBC – Dana Anderson), this work included consultation with neighbouring landowners, area residents, the City's design review panel and various City committees, agencies and staff. Fairview LP has also met with members of council and senior planning staff.

A site plan application for the proposed development of the subject lands was submitted to the City on January 10, 2020. This site plan application complies with the in-force zoning for the subject lands, although some minor variances may be required for amenity space and parking only.

Burlington Go Mobility Hub and Interim Control By-law Process

Our client has significant concerns with the work that was completed by the City through the current interim control bylaw process. In the limited time available to our client, it was able to receive input from its planners on the process. We are attaching Ms. Anderson's letter of January 10th which sets out numerous process, policy and technical concerns with the work and the output that has been presented in Report PL-01-20. Fundamentally, Ms. Anderson's conclusion is that the work does not support proposed modifications to the in-force planning instruments that apply to the Subject Lands.

Recommended OPA and ZBA

Again, Ms. Anderson has a number of comments with respect to the proposed OPA and ZBA included with Staff Report PL-01-20.

Simply put: what staff is proposing represents a profound downzoning of the subject lands. Fairview LP purchased a site within a MTSA and Mobility Hub that specifically included no maximum building heights in the in-force zoning. Without any direct consultation with our client, staff are proposing overly restrictive height limits that dramatically affect the development capacity of the site. Our client would not have purchased the Subject Lands on the terms it did if these height restrictions were in place.

In addition to the proposed height limitations, there are other proposed measures that will also dramatically limit the capacity of the site, including:

- Excessive minimum distance separation requirements between buildings;

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- Maximum floor plates that will discourage units for families; and
- New right of way requirements.

Our client has assessed the implications of these various proposed changes in comparison to the Paradigm project that was approved for lands nearby (2089-2095 Fairview Street) in 2014. Fairview LP's conclusion is that the proposed new restrictions will reduce the potential floor space index (FSI) by approximately 40%. This is simply untenable.

If these restrictions are imposed, the Subject Lands will not develop in the foreseeable future. Our client fully expects that this conclusion would apply to other lands within the same quadrant. In short, the proposed OPA and ZBA would represent a development freeze within the Burlington GO Station Mobility Hub. The residential units that would reasonably be expected to develop within this Hub would need to be accommodated elsewhere in the City – presumably within that City's downtown.

The proposed OPA and ZBA are absolutely unacceptable to our client. If they are passed – they will certainly be appealed.

Next Steps

The proposed OPA and ZBA were developed without direct consultation with the landowners who will be affected by those instruments. As set out by Ms. Anderson, there is a lack of technical and policy support for the proposed instruments. At a minimum, staff should have consulted with the landowners whose properties will be substantially downzoned.

If the City does in fact approve these instruments, we would respectfully request that Committee direct staff to meet with the landowners to see if any progress can be made to resolve our clients' concerns. These discussions can proceed without prejudice and staff can report to Committee in-camera given the expected appeals. However, setting deadlines for staff to report back Committee will at least ensure some engagement that may narrow the gap in a timely fashion without the need for a lengthy hearing.

We respectfully request to be placed on a mailing list to receive copies of all notices, meetings, minutes, reports and any Notices of Decision respecting the above matter. All future notices should be directed to this office and CLV Group Developments Inc. as follows:

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To:

CLV Group Developments Inc.
Attn: Jenn Morrison, RPP, MCIP
Development Manager
2386 New Street, Burlington, ON
L7R 1J7
jennifer.morrison@clvgroup.com

And To:

Fairview Limited Partnership
c/o Brookfield Properties
Brookfield Place, 181 Bay Street
Bay Wellington Tower, Suite 300
Toronto, Ontario M5J 2T3
Attention: Senior Vice President, Legal Counsel
Facsimile: (416) 369-2730
E-mail: Deborah.Rogers@BrookfieldProperties.com

Yours truly,



Scott Snider

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13611/1

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MHBC
PLANNING
URBAN DESIGN
& LANDSCAPE
ARCHITECTURE

KITCHENER
WOODBRIDGE
LONDON
KINGSTON
BARRIE
BURLINGTON

January 10, 2020

Attn: Committee Chair and Members
c/o Jo-Anne Rudy, Committee Clerk City of Burlington
Community Planning, Regulation and Mobility Committee
426 Brant Street, P.O. Box 5013
Burlington, ON
L7R 3Z6

Dear Chair Stolte & Members:

RE: Interim Control By-law Land Use Study Report and
Proposed Official Plan and Zoning By-law Amendments (Staff Report PL-01-20)
Our File No. 18274A

MHBC is retained by Brookfield Properties, InterRent REIT and CLV Group Developments Inc. together known as the Fairview Limited Partnership (the "Owners") in relation to the properties located at 2243, 2269 Fairview Street and 864 Drury Lane (the "Subject Lands"), in the City of Burlington. The Subject Lands are 3.31 ha in area and represent a significant intensification site within the City located within a Major Transit Station Area ("MTSA"), namely the Burlington GO Station Mobility Hub, as defined by the Region of Halton Official Plan and the provincial Growth Plan.

The Owners have undertaken extensive technical review and analysis of the Subject Lands in both the physical and policy context for the site over the last year in order to prepare a site plan application for redevelopment. In preparation of the site plan, although not formally required under the *Planning Act*, the Owners have also undertaken consultation with neighbouring landowners, area residents, the City's design review panel, as well as various City committees, agencies and staff. The Owners have also met with members of Council and senior planning staff to discuss the redevelopment of the Subject Lands.

A site plan application for the redevelopment of the Subject Lands was submitted to the City on January 10, 2020.

While not receiving written notice from the City, the Owners became aware of a public meeting for a proposed Official Plan Amendment ("OPA") and Zoning By-law Amendment ("ZBLA") which we understand have been prepared to implement the findings of the Interim Control By-law Land Use Study Report (the "Land Use Study Report") prepared by Dillon Consulting. The Land Use Study Report was to address two primary concerns as defined in the earlier staff report PB-36-19 and as approved by Council:

- Growth pressures that continue to emerge for lands in the study area; and,
- The role and function of the John Street Bus Terminal as a Major Transit Station Area.

We understand the statutory public meeting and recommendation meeting for both the proposed OPA and ZBLA is scheduled for January 14, 2020.

We have reviewed the Land Use Study Report dated December 2019 prepared by Dillon Consulting as well as the draft amendments and schedules prepared by staff (schedules dated November 2019) and are providing comments on behalf of the Owners.

We should note that while our review and assessment has been limited to this past week, due to the timing of the release of the report and appendices the day before the holiday break, and the City being closed during the statuary notice period, our preliminary assessment has identified significant issues and concerns with the process, the Land Use Study Report and the proposed amendments.

Burlington GO Mobility Hub Process and Interim Control By-law Process

The review of the Burlington GO Mobility Hub, in which the Subject Lands are located, has been the subject of study by the City since 2014. For the last seven years the City has undertaken a number of studies and assessments as part of the development of an Area Specific Plan for the Burlington GO Mobility Hub which is both required by the Region of Halton and was part of the overall work program for the City's new Official Plan. Through the work undertaken by previous consultants and staff, high level opportunities and constraints were defined for the area, alternative draft concept plans were prepared, a preferred plan was prepared and a final precinct plan was presented and received by Council in July 2018. This was at least an open and public process through which the concepts and plans were open to review, comment and discussion prior to the development of any finalized Area Specific Plans, implementing Official Plan policies or detailed zoning provisions.

Through the Interim Control By-law process there has been no opportunity for public engagement or review. Good planning includes stakeholder and public engagement. It is not clear how the process meets the fundamental objectives from the City's community engagement charter in relation to accountability, transparency, early and widespread notice and access to information for review and input.

Lack of Technical Studies and Justification

One of the most important elements of any comprehensive land use planning study is a capacity/constraints analysis which should include an inventory of existing uses. This study, along with several other technical studies (environmental impact study, pre-feasibility noise and vibration, archeological assessment, air quality impact and risk assessment, market analysis, financial impact analysis, transportation analysis, functional servicing) should be completed to establish a land use planning framework. Sound technical work is required to ground the feasibility of and justification for a land use planning framework. This is consistent with the City's approach to development applications which requires a significant level of technical information to support proposed development prior to any change to policy, zoning or site development.

We are not aware that these studies have been fully completed as they are not available publicly for review. The Land Use Study Report completed does not include these technical assessments as part of the evidence upon which to base its recommendations. Staff does not include any additional technical or planning evidence upon which to base the draft OPA or ZBLA and the staff report references very general and in many cases questionable references to the area context and intent of provincial policies.

While staff has noted that the proposed policies and zoning are to provide "guidance" prior to the completion of the Area Specific Plan, the specific nature and application of the new policies and provisions on the Subject Lands has not been justified with any sufficient planning or technical evidence given the nature and scope of the proposed OPA and ZBLA.

Lack of Contextual Growth Analysis

Neither the Land Use Study Report nor the staff report contains any analysis of how the proposed recommendations, OPA and ZBLA, conform to Provincial and Regional policy in relation to growth requirements and minimum density targets. The Land Use Study Report makes reference to the Midtown Oakville Urban Growth Centre as part of its best practice review in relation to the Burlington GO MTSA. The Midtown Oakville Urban Growth Centre and MTSA was founded on significant planning and technical analysis and justification and the resulting land use policies were justified and tested through a market analysis - all of which was used to support and justify how the minimum targets for the Urban Growth Area would be "achieved" as required by Provincial policy. Midtown was also the subject of an extensive Environmental Assessment process through which the required infrastructure improvements including local roads were identified and justified. It is not clear if this level of study is still to be completed with an Area Specific Plan, and if it is, why such detailed and prescriptive policies would be passed now, ahead of Regional and Provincial review, and which limits transit-supportive development.

Comments on the Land Use Study Report

Overall, the Land Use Study Report appears to focus on transportation and transit, the MTSA and how it is defined, as well as related policies and the distinction of the Downtown Bus terminal. The Land Use Study Report does not adequately study growth pressures as required under the direction from Council for the study.

While the City's current planning structure is referenced in the Land Use Study Report, the potential land use mix and intensity for the lands in the Interim Control By-law Law area has not been studied in any detail. There is a reference to the existing Official Plan policies and the current zoning regulations and a very brief description of existing uses. There is no examination of the current physical context in relation to capacity and no examination of current or recent development activity or any detailed growth analysis (with the exception of one chart with unclear assumptions and reference to a June Growth Analysis report which we cannot find on the City's website).

In absence of the required analysis, it is not clear how the recommendations related to the proposed changes to land uses and heights specific to the rectangular area along Fairview Street between Brant Street and Drury Lane are justified. There are several outstanding questions in relation to how the recommendations and policies were formulated:

- Was there any additional land use analysis or modelling to evaluate the feasibility of the site specific prescribed heights and building locations?
- How did staff conclude that the proposed prescriptive orientation of buildings with maximum heights "encourages transit-supportive development while ensuring that the development is appropriate and compatible in the context of the area"? Was there any additional land use analysis to justify the feasibility of multiple uses being required within mixed use buildings including office uses which past work has noted should be directed and provided on the north side of the rail line?

- While the Land Use Study Report states that the "interim" policies and zoning are needed for city building objectives, how do the recommendations provide for the feasible provision of development in the "interim" given the additional and mandatory requirements for parks, public facilities and public roadways in addition to the existing site constraints and rail setbacks?
- How do the recommended policies provide "interim guidance" when they specifically speak to required elements of a "complete community", including a new road network, which would usually be part of an Area Specific Plan.

The Land Use Study Report does make a very strong case for the importance in current Provincial and Regional policy for intensification of the Burlington GO MTSA. It refers repeatedly to the "regional significance" of the Burlington GO station area and concludes that there are "gaps" in policy and zoning. Several of these "gaps" or areas on "non-conformity" were addressed through of the City's Grow Bold Official Plan process. The majority of the recommended policy changes from the Land Use Study Report appear to have already been proposed through the adopted Grow Bold Official Plan. While there is a chart to show what the policy changes are in relation to the in-effect Official Plan, there is no chart providing a comparison to Grow Bold. .

The Land Use Study Report has a series of recommendations related to zoning which state that there are several regulatory changes that are recommended based on the findings of the Land Use Study Report. It is not clear what evidence or findings in the Land Use Study Report provide evidence or justification for these recommendations. Again there is no analysis of land uses in relation to those recommended to be removed or those to be added. There is also no evidence provided in relation to the recommended floor areas and heights. It is also not clear why only one small area within the Burlington GO Mobility Hub Area, which includes the Subject Lands, is the only area in the entire Interim Control By-law Study area recommended to be the subject of the zoning changes.

The Land Use Study Report recommends that development criteria be established in the interim to guide development applications and that further study through a land use compatibility and design analysis be undertaken to establish the maximum heights in the Mixed Use Corridor. The staff report however provides for a new set of height limits in only one block of the Burlington GO Mobility Hub. It is not clear what evidence the study relied upon to justify a prescribed policy and regulation in only one block of land in the Interim Control By-law Study area.

Comments on the Staff Report and Recommended OPA and ZBLA

The City staff draft recommended OPA and ZBLA directly affects the Subject Lands. The draft prescribed zoning regulations only apply to a block of land in and around the Burlington GO MTSA. Given the intent of the Interim Control By-law Study to address emerging growth pressure, it is not clear why only this block of land is now the only area to which site specific zoning to control height and land use is prescribed.

The proposed OPA and ZBLA also add a number of additional policies and requirements which were not assessed or founded in any evidence in the Land Use Study Report. The Land Use Study Report refers to the need for additional development criteria with which to assess development applications in the interim. While many of these requirements are already set out in the City's development application requirements, additional criteria related to design and development elements, affordable housing, and design guidelines /separation distances beyond the mid-rise and tall building guidelines, are not discussed in the Land Use Study Report. There are also several recommendations in the Land Use Study

Report that are noted in the staff report to be better addressed through a future Official Plan Review process or a future Comprehensive Zoning By-law process. It is not clear why these matters are not included in the staff recommendation as they are stated in the Land Use Study Report as required to support transit oriented development in the Burlington GO Mobility Hub.

The staff report reinforces the issue that there are a multitude of processes and policy amendments all taking place in separate reviews by the City and the Region. The majority of recommendations in the Land Use Study Report are for additional policies already being recommended through the adopted Grow Bold Official Plan. There is no assessment by staff of how Grow Bold already addresses these recommendations. There are also OPA policies that apply to areas outside of the Interim Control By-law Study area in relation to the MTSA's. It is not clear why these policies, which include the new MTSA typology, are not part of the re-examination of the Official Plan as they apply to much broader areas (Appleby and Aldershot MTSA's).

The staff report notes that it is important to have a public right-of-way parallel to Fairview Street to create a grid network for the area. However, there is no analysis or justification in the Land Use Study Report or the staff report for now requiring a public road through the entire area, especially one that crosses the easterly creek and cuts through the properties including the Metrolinx lands.

The imposition of the newly prescribed policies and zoning regulations on the subject lands downzones the property to substantially decrease the transit-supportive intensification potential from what is permitted today. In relation to the existing context and the recent developments west of the Burlington GO station on the Paradigm site, future development will be reduced by over 40% in comparison.

The report speaks to the importance of co-ordination for planning yet the proposed new "interim" policies introduce a new public road with no co-ordination or consultation, new height restrictions, new restrictions on land uses , new parks with no analysis of need or how they are to be acquired, new design guidelines and mandatory requirements for design (with no evidence base to the requirements) and the removal of existing provisions and policies with no public engagement or evidence base.

Summary

The proposed site specific elements of the OPA and ZBLA before Council that are proposed for the Subject Lands are not justified or founded in planning evidence and should not be adopted. We would recommend any changes to the Official Plan be part of the re-examination of the Official Plan and the eventual consideration of the entire new Burlington Official Plan for approval by the Region, with the additional analysis and justification required.

We trust that these comments will be considered by Council in its discussions at the upcoming meeting.

Sincerely,
MHBC



Dana Anderson, MA, MCIP, RPP
Partner

Cc: Oz Drewniak c/o Fairview Partnership Limited
Scott Snider, Turkstra Mazza