



Andrew Jeanrie
Partner
Direct Line: 416.777.4814
e-mail: jeanrie@bennettjones.com
Our File No.: 089442.00002

January 27, 2020

VIA EMAIL

City of Burlington
Burlington City Council
426 Brant Street, P.O. Box 5013
Burlington, ON
L7R 3Z6

Attention: Mayor Meed Ward and Members of Council
c/o Angela Morgan, City Clerk

Dear Sirs / Mesdames:

**Re: Interim Control By-law Land Use Study and Proposed Official Plan and Zoning By-law Amendments (Report PL-01-20)
2030 Caroline Street and 510 Elizabeth Street ("Property")**

We act on behalf of Medica One Healthcare Properties ("**Medica**") with respect to the above noted matter and are writing further to Council's consideration of the of the Interim Control By-law ("**ICBL**") Land Use Study and the proposed Official Plan ("**OPA**") and zoning by-law amendments detailed in Report PL-01-20 (the "Report").

Background

The Property benefits from existing planning permissions that permit, among other things, the construction of a medical office building and a public parking garage. However, as has been discussed by our client with municipal staff since the imposition of the interim control by-law, our client is pursuing some minor modifications to its existing land use approvals (not impacting the shape and magnitude of the approved built form) to allow the development to, in addition to the medical office building, address critical retirement housing needs to support seniors in the community. As a result of the ICBL this application has been delayed.

Proposed Official Plan Amendment Fails to Implement Higher Level Policy

Many of the policies in the proposed OPA are of concern. The proposed policy 7.2 is of particular concern for a number of reasons.

First, many of the individual policies that are proposed are unclear as to their meaning and their means of implementation. Perhaps the clearest example of this is policy 7.2.1 k), which is a policy to develop

criteria that won't actually be a policy and then to, somehow, justify applying such untested criteria against proposals as if the criteria were policy.

Second, we are concerned the proposed policies are lacking: for example, a clear policy should be inserted to address the evolving demographics of the community, including the increase in seniors, such as policies that encourage development to assist with their housing and medical needs, including the benefits of location. With the seniors population expected to double over the next 20 years these are critical land use policies that you would expect to be dealt with directly and in a considered fashion in an amendment to an Official Plan that is intended to guide intensification.

Third, there are policies that appear to be contrary to the overall intent of the policy, such as 7.2.2 q)(ii) which requires "built form compatibility" in an area that is intended and designated to undergo change and intensification.

A fourth concern involves policies that appear to reach beyond the matters to which planning instruments should be concerned, such as requirements to partner with municipal housing providers. It is not the place of the Official Plan to dictate requirements that owners partner with given organizations in order to meet land use objectives. Other concerns include policies that appear to be inconsistent with recently adopted changes to the land use planning legislation (such as the policies around parkland or those attempting to require community space be located in development) that should either be amended or at least postponed until certainty around the implementation of the changes to the legislation is fully defined.

These policies do not conform or comply with the Regional OP, PPS and policies of the Growth Plan, 2019 and even fail to meet the stated objectives set by staff in the Report.

If Council should still chose to adopt the OPA, at a minimum a policy should be added to make it clear that none of these proposed policies would apply to properties that already benefit from a site or area specific OPA. As is clear from the Report, the intent of these policies is to set guidelines for future development proposals on a general basis. These general policies should not, however, be applied to areas such as my client's property that have undergone significant study over the years resulting in their own, targeted, OPA.

Interim Control By-law Should be Repealed With Respect to Those Lands to Which the Proposed ZBL Amendments Do Not Apply

Our client would also like to make a submission with respect to the ICBL.

As you are likely aware, should Council choose to adopt the proposed zoning by-law amendments then such amendments will be subject to appeal to the Local Planning Appeal Tribunal ("LPAT"). Should any landowner choose to make such an appeal, the result would be the continuation of the ICBL until resolution of such appeal.

In this regard, it is important to note that the proposed zoning by-law amendments apply to only a part of the area that was subject to the ICBL. As such, if a landowner who is affected by the proposed zoning by-law were to appeal, then even landowners who were not affected by such zoning by-law would be impacted by the automatic extension of the ICBL, even though the result of the ICBL Land Use Study are zoning changes that do not even apply to these other lands. This would, in turn, force those landowners who did not appeal nor have the zoning changes apply to their lands, to have to engage in the LPAT appeals.

Obviously, this result is not in anyone's interest and would clearly defeat the intention of the ICBL itself, which was to provide for the opportunity to complete the study and implement the results of same (with such results being no change to the zoning of most properties).

So as to avoid such an absurd result, and to implement the intent of the ICBL, our client requests that the City reduce the area covered by the ICBL so that such area aligns with the area of the proposed zoning amendment. This action is clearly consistent with the result of the City's own ICBL Land Use Study and will avoid unnecessary adjudication by landowners who are within the ICBL area but do not fall within those lands to which the proposed zoning will apply. In the alternative, the City could amend the ICBL to include an additional exemption, either to apply to properties on a site specific basis (in which case our client's property should be included), or to apply more generally to any property that already benefits from a site specific zoning by-law.

Either of these actions would also be consistent with the frequent requests that have been made many times by Marcia Villafranca of Medical One Healthcare Properties since the adoption of the ICBL in early 2019. As has been stressed by Ms. Villafranca, the implementation of the ICBL and the positions taken by the City since its adoption have had a significant prejudicial impact on Medical One Healthcare Properties' ability to proceed with the development of much needed medical space in Burlington. As the proposed zoning amendment (or, more exactly, the limited area to which it applies) demonstrates, this prejudicial impact (and the harm my client has incurred as a result of it) was unnecessary. To continue to delay much needed medical and seniors services in light of a proposed zoning amendment that doesn't even apply to the property would be unconscionable.

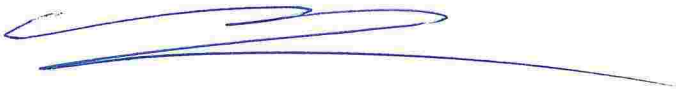
We ask that we be included on the mailing list to receive copies of all notices, meetings and decisions respecting the ICBL and the proposed zoning by-law and Official Plan amendments.

Please feel free to contact the undersigned if there are any questions or you would like to discuss this matter further.

Regards,

BENNETT JONES LLP

Per:



Andrew Jeanrie

AJ/cmt

