



**SUBJECT: 2087-2103 Prospect Street - Section 37 Community Benefits**

**TO: Environment, Infrastructure & Community Services Cttee.**

**FROM: Community Planning Department**

Report Number: PL-07-20

Wards Affected: 2

File Numbers: 505-09/17 and 520-19/17

Date to Committee: April 6, 2020

Date to Council: April 20, 2020

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**Recommendation:**

Approve community benefits in relation to the development proposal at 2087-2103 Prospect Street submitted by Children's Financial Group, c/o Ruth Victor & Associates, consisting of direct benefits as outlined in report PL-07-20; and

Direct Legal staff 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 City 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 Community Planning, Regulation and Mobility Committee the direct community benefits that staff propose to be secured related to the development of the subject property.

**Vision to Focus Alignment:**

The recommendations contained within Report PB-29-19 and PL-07-20 align with the following objectives in Burlington's Vision to Focus Plan:

- Increase economic prosperity and community responsive city growth
  - Support sustainable infrastructure and a resilient environment
  - Building more citizen engagement, community health and culture
  - Deliver customer centric services with a focus on efficiency and technology transformation
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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 element 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 this Protocol has been followed with respect to the contents of this report.

On December 21, 2017, the Department of City Building received complete Official Plan amendment and Zoning By-law amendment applications for 2087-2103 Prospect Street. The applications proposed the redevelopment of the northern portion of the subject lands with two blocks of stacked townhouse units. The applicant proposed 40 stacked townhouse units to replace the 8 existing fourplex units. All units on the site will be rental in tenure. Following a neighbourhood meeting, statutory public meeting and Planning and Development Committee meeting, Council approved the following recommendations on October 28, 2019:

Modified approval of the applications for Official Plan Amendment and Zoning Bylaw Amendment made by Children's Financial Group, c/o Ruth Victor & Associates, 3221 North Service Road, Burlington ON L7N 3G2, to permit 36 new stacked townhouse units in two blocks in addition to the existing residential apartment building; and

Approve Official Plan Amendment No. 115 to the City of Burlington Official Plan, as provided in Appendix B of department of city building report PB-29-19, to redesignate the rear portion of the subject lands from "Residential Medium Density" to "Residential High Density" and to modify the "Residential High Density" policies to include site specific policy for whole of 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 for adoption of Official Plan Amendment No. 115, as contained in Appendix B of department of city building report PB-29-19 to be presented for approval at the same time as the associated bylaw 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-29-19, to rezone the lands at 2087-2103 Prospect Street from "RM2" and "RH4" to "RH4-500" subject to Residential Development Agreement conditions as provided in Appendix D to department of city building report PB-29-19 and the provision of community benefits; and

Direct the Director of City Building 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 increased density on the subject property, and to return to Council with a report outlining the recommended community benefits and the implementing Zoning By-law.

Since that time, the applicant has engaged staff to request modifications to the Residential Development Agreement. These modifications are described in the Memo attached to this report as Appendix C. Staff are of the opinion that the proposed changes are reasonable and consistent with the intent of the original conditions approved by Council. The final Residential Development Agreement is attached to this report as Appendix D.

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 matters 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:

<b>Proposed Community Benefit</b>	<b>Value</b>	<b>Form</b>	<b>Official Plan Section</b>
The Developer agrees to provide a direct community benefit of a \$60,000 contribution towards improvements to park facilities at Optimist Park, to the satisfaction of the	\$60,000	Direct	Part VI, Section 2.3.2. (vii)

Executive Director of Capital Works, prior to application for above-grade building permits.			Part VI, Section 2.3.2. (xiv)
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The total of the proposed community benefits as outlined above is \$60,000. This benefit contribution will be directed to potential improvement to the park including, but not limited to Community Garden facilities.

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 October 28, 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 \$60,000 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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### **Climate Implications**

This community benefit reduces impacts to climate change by providing appropriate facilities in close proximity to areas where population growth is occurring. In doing so,

the need for the population to use private vehicles, producing greenhouse gas emissions, to access similar facilities elsewhere is reduced.

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### **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 December 2017. A neighbourhood meeting was held on April 12, 2018 and the statutory public meeting was held on July 10, 2018. The staff recommendation report was considered at the Planning and Development Committee meeting of October 8, 2019 and Council decided on the matter on October 28, 2019.

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### **Conclusion:**

On October 28, 2019, Council approved the development applications to permit the redevelopment of the northern portion of the subject lands, known municipally as 2087-2103 Prospect Street, with two blocks of stacked townhouse units. The applicant has proposed 40 stacked townhouse units to replace the 8 existing fourplex units on the subject lands, 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.

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,

Brynn Nheiley

Manager of Development Planning

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**Appendices:**

- A. Official Plan Amendment
- B. Zoning By-law Amendment
- C. Memo regarding changes to the Residential Development Agreement
- D. Residential Development Agreement

**Notifications:**

Ruth Victor, Ruth Victor and Associates

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**Report Approval:**

All reports are reviewed and/or approved by Department Director, the Chief Financial Officer and the Executive Director of Legal Services & Corporation Council. Final approval is by the City Manager.