



Burlington, Ontario
April 11th, 2022

Ms. Samantha Romlewski
Special Business Area Coordinator
City of Burlington
426 Brant Street
Burlington, Ontario L7R 3Z6

Re: PLAN B's Supplementary Feedback on PL-28-22 - via Email only

Dear Samantha,

We have noticed that the same Correspondence from David Falletta, representing Bousfields Inc., regarding Waterfront Hotel Planning Study (PL-28-22) dated April 4th, 2022 has been included in the Addendums of both April 5th & April 12th CPRM Committee meetings. This would appear to constitute a duplicate delegation, which is a concern to us in due process.

PLAN B received an email from Get Involved Burlington on March 30th, regarding details for delegating at the April 5th meeting, along with links to all of the relevant Waterfront Hotel Planning Study documents. We organized our schedules & resources to be able to delegate virtually on the 5th, and assume that Bousfields' David Falletta was afforded the same opportunity.

Accordingly, please receive this follow-up to PLAN B's April 5th delegation.

First of all, we would be remiss if we didn't acknowledge the extraordinary effort of Mark Simeoni and his Community Planning staff, as well as The Planning Partnership for completing the Waterfront Hotel Planning Study report within the timeframe prescribed by the CPRM Committee on January 11, 2022 re: PL-15-22.

Back to WHPS Basics

The Study according to the 2017 original terms of reference was “to provide a land use & urban planning framework to INFORM site specific policies to guide future development of the site”. Citizens’ PLAN B believes that all stakeholders, including the Applicant, provided extensive input throughout the engagement process and that PL-28-22 along with its’ preferred design concept TPC 2022, embody a progressive, reasoned and reasonable compromise that meets all stakeholder needs. We are confused by David Falletta’s protestations regarding lack of information being considered because the study was never required to utilize supporting documents and information from the Application so as to be guided by it, but to guide the Application.

The Reality of ROPA 48

The “real world” impact of the Minister of Municipal Affairs & Housing Steve Clark’s order on November 10th, 2021 was to correct the mischaracterization of the John Street bus terminal as an MTSA, and to relocate the Urban Growth Centre from the Downtown core northward toward the Burlington GO Station. The grandfathering of the Application which was submitted on October 26th but only completed on December 17th, only has bearing on the Applicant’s ability to argue for greater intensification than allowed in the 1997 OP (as amended) and by-laws before the Ontario Land Tribunal, based on these designations. Should the Application be refused and that refusal be upheld, this WHPS should still be able to inform the New Application necessitated. We believe therefore that the Waterfront Hotel Planning Study, which documents the exhaustive engagement process and consolidates the views of all of the stakeholders, should serve to inform this development independently of the ROPA 48 grandfathering of the Application.

PL-28-22 and the Applicant

The Application makes it clear what the Applicant thinks of the WHPS, because it proposes to remove the Study as a prerequisite for the Application (Policy 5.5.9.2(I) because it, along with its’ delays, have “indefinitely sterilized the subject site from redevelopment and from achieving its’ highest and best use potential”. It is no surprise then that David Falletta’s April 4th letter only serves to delay, diffuse & discredit/ deny the Waterfront Hotel Planning Study.

Delay

The WHPS commenced in 2017, and not until now does Bousfields feel that we should explore the concept of a “landmark” site.

Diffuse

While David Falletta’s April 4th letter acknowledges that “there is a clear desire to improve access to the park and the subject site represents an opportunity to address the issue”, he suggests that this should be accomplished by a policy change to allow a “public easement for a public waterfront access”. Conceivably, that would allow for below-grade parking to be built under this land.

PL-28-22 makes it clear that the City plans to take as a minimum, 0.18ha of land (0.13ha W and 0.05ha S) as Park Dedication in lieu of cash, to improve mobility for people and improve access for emergency, service and large event vehicles. It is the City's absolute, non-negotiable right to make this choice (see attached Allan Ramsay letter regarding Parkland Dedication policies, by-laws & rights) and the Applicant needs to respect this.

Discredit/ Deny

In Bousfields' opinion {see April 4th letter}, "there is lack of rationale for ... a policy that requires the view corridors of Brant Street to Lake Ontario and John Street to Lake Ontario ... to be maintained and enhanced". The Application itself acknowledges that WHPS Phase 3's June 2018 Key Policy Directions (PB-23-18) explicitly requires this. It appears disingenuous to us that such an objection on principle would be raised at this late date and woefully out of touch with overwhelming community feedback.

The recommendation of David Falletta's April 4th letter is for the Committee to not endorse Staff's recommendation to accept PL-28-22.

For the reasons above, and many others, PLAN B strongly recommends that WHPS PL-28-22 (as amended) be approved without delay.

For your information we note that the Bousfield / Falletta supporting principles for the City's New Official Plan 2020, UGC, MTSA, Planning height rationale etc are completely contradictory in the Vrancor Waterfront Hotel Development application versus the Infinity Developments 1029 – 1033 Waterdown Rd application.

Thank you for the opportunity to provide our comments on the Waterfront Hotel Planning Study, again.

Best regards,

Ron Porter

Ron Porter
on behalf of Citizens' Plan B

CC. Kirstin Sprukulis, City Clerk's Office,
Steve Henderson, Don Fletcher



Ramsay Planning Inc.

To: Plan B Group

From: Allan Ramsay, Allan Ramsay Planning Associates Inc.

Date: April 4, 2022

Re: City of Burlington Parkland Dedication
Our File: 2143

Parkland Dedication

Section 42 of the *Planning Act* authorizes municipalities to require, as a condition of development or redevelopment, the dedication of land for parkland purposes. The key provisions of the legislation are the following:

Conveyance

42(1) As a condition of development or redevelopment of land, the council of a local municipality may, by by-law applicable to the whole municipality or to any defined area or areas thereof, require that land in an amount not exceeding, in the case of land proposed for development or redevelopment for commercial or industrial purposes, 2 per cent and in all other cases 5 per cent of the land be conveyed to the municipality for park or other public recreational purposes. R.S.O. 1990, c. P.13, s. 42 (1). (Emphasis Added)

Alternative requirement

42(3) Subject to subsection (4), as an alternative to requiring the conveyance provided for in subsection (1), in the case of land proposed for development or redevelopment for residential purposes, the by-law may require that land be conveyed to the municipality for park or other public recreational purposes at a rate of one hectare for each 300 dwelling units proposed or at such lesser rate as may be specified in the by-law. R.S.O. 1990, c. P.13, s. 42 (3). (Emphasis Added)

Official plan requirement

42(4) The alternative requirement authorized by subsection (3) may not be provided for in a by-law passed under this section unless there is an official plan in effect in the local municipality that contains specific policies dealing with the provision of lands for park or other public recreational purposes and the use of the alternative requirement. R.S.O. 1990, c. P.13, s. 42 (4).

Parks plan

42(4.1) Before adopting the official plan policies described in subsection (4), the local municipality shall prepare and make available to the public a parks plan that examines the need for parkland in the municipality. 2015, c. 26, s. 28 (3).

In accordance with the above the City of Burlington has adopted both an Official Plan amendment and a Parkland By-law that address parkland dedication.

Under the Official Plan (the existing Official Plan) there are policies in Part VI, Implementation that indicate:

2.7 Parkland Dedication

2.7.1 Objective

Acquire parkland

a) To acquire lands for park purposes that are beneficial to the entire community.

2.7.2 Policies

Condition of development

a) Parkland dedication from residential *development shall be* required as a condition of *development*. The amount of land or the amount of money paid in lieu of land, *shall be determined on the following basis:*

Residential-Low Density

(i) for *low density residential development*, with a proposed density of less than 15 units per net hectare, parkland *shall be dedicated at the rate of 5 per cent of the land area;*

Residential-Low and Medium Density

(ii) for *low or medium density residential development*, with a proposed density of 15 to 50 units per net hectare, parkland *shall be dedicated at the rate of 1 hectare per 300 units; and*

Residential-High Density

(iii) for *high density residential development*, with a proposed density greater than 50 units per net hectare, parkland *shall be dedicated at the rate of 1 hectare per 300 units.* (Emphasis Added)

Commercial, industrial and institutional

b) Parkland dedication from new commercial, *industrial* and office *development* and certain institutional *development* defined by by-law, *shall be based on a rate of 2 per cent of the land area.*

Mixed use

c) Parkland dedication from mixed use *development shall be determined as follows: for the residential component of the development, park dedication shall be on the basis of Part VI, Subsection 2.7.2 a); for the commercial, industrial and institutional component of the development, parkland dedication*

	<i>shall be 2 per cent of the land area for the percentage of the total floor area used for non-residential uses.</i>
<i>Cash-in-lieu</i>	d) <u>The payment of money equal to the value of the land otherwise required to be conveyed for parks <i>may</i> be required</u> (Emphasis Added).
<i>Flood, valley lands</i>	e) Lands required for drainage and shoreline protection purposes, lands susceptible to flooding, steep valley slopes, hazard lands and other lands unsuitable for development, shall not be accepted as parkland conveyance.
<i>Waterfront Trail</i>	f) Dedication of waterfront lands for park purposes shall also be subject to the policies of Part II, Subsection 9.4.2.

The current Parks By-law, By-law 57-2005 (see attached), sets out the requirements for both the dedication of land and the payment of cash-in-lieu as follows:

“4. Park Dedication – Land

When the Director elects to accept the dedication of land for park or other public recreational uses, in the case of residential or the residential component of mixed-use development, the land shall be conveyed to the City at the greater of:

- a) 5% of the total area of the lands to be developed; or
- b) one hectare for each 300 dwelling units in the proposed development.

5(1) Park Dedication - Cash-in-Lieu of Land

When the Director elects to accept cash-in-lieu of land for park or other public recreational uses, the cash in lieu payment shall be calculated in accordance with the formulas set out in subsection 5(2) to 5(4) below: ...

5(4) High Density

For high density development, the lesser of:

- i) the number of units in the proposed development divided by 300 x the per hectare land value of the land to be developed as of the day before the day the building permit authorizing development is issued; or
- ii) the number of units in the proposed development x \$5500.”

For high density developments it is the norm for the City to require a cash-in-lieu payment based on the fixed rate per dwelling unit rather a land dedication since high density sites are often small sites with no lands available for dedication purposes or are situated in areas where parkland already exists.

It is important to note that in 2019 the Provincial Government revised the parkland dedication provisions of the *Planning Act*. Under Bill 108, the Province removed municipalities' ability to require the conveyance of parkland at the alternative rate of 1 ha per 300 residential units and the payment of cash-in-lieu of parkland at the alternative rate of 1 ha per 300 residential units.

However, in 2020 following considerable concern from municipalities, including Burlington, the 2019 revisions to the *Planning Act* were reversed. Bill 197 had the practical effect of restoring the municipalities' right to require development proponents to dedicate parkland at the base rates of 2% of the area of land developed for commercial/industrial lands and 5% of the area of land developed for all other uses, or, for residential development, the alternative rate of 1 hectare per 300 dwelling units for land conveyances and 1 hectare per 500 units for cash-in-lieu.

The City has until September, 2022 to update its policies and by-law to reflect the new cash-in-lieu cap of 1 hectare per 500 units.

Summary

The City of Burlington has the authority under the *Planning Act* to require the dedication of land or the payment of cash-in-lieu for parks purposes as a condition of development or redevelopment.

Under the current Parks By-law parkland dedication occurs as follows:

1. As the dedication of lands based on:

- a) 5% of the total area of the lands to be developed; or
- b) one hectare for each 300 dwelling units in the proposed development.

or

2. As a cash-in-lieu payment for high density development based on the lesser of:

- a) the number of units in the proposed development divided by 300 x the per hectare land value of the land to be developed as of the day before the day the building permit authorizing development is issued; or
- b) the number of units in the proposed development x \$5500.

In each of the above cases the decision on whether land or cash is taken is at the discretion of the City.

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BY-LAW NUMBER 57-2005

A By-law to revise Residential Parkland Dedication Policies.
File: 510-03 (CD-120-04)

WHEREAS section 42(3) of the *Planning Act*, R.S.O. 1990, Chapter P.13, as amended (the "Act") provides that as a condition of development or redevelopment of land for residential purposes, the Council of a municipality may, by by-law applicable to the whole municipality or to any defined area or areas thereof, require that land be conveyed to the municipality for park or other public recreational purposes at a rate of one hectare for each 300 dwelling units proposed or at such lesser rate as may be specified in the by-law;

AND WHEREAS section 42(6) of the Act provides that the Council of a municipality may require the payment of money to the value of the land otherwise required to be conveyed in lieu of such conveyance;

AND WHEREAS Section 51.1 of the Act as amended provides that the approval authority may require the conveyance of land for park or other recreational purposes to a local municipality;

AND WHEREAS parkland conveyance provisions are set out in the City of Burlington Official Plan.

NOW THEREFORE THE COUNCIL OF THE CORPORATION OF THE CITY OF BURLINGTON HEREBY ENACTS AS FOLLOWS:

Interpretation

1. **In this By-law,**
 - (a) "Act" means the *Planning Act*, R.S.O. 1990 Chapter P.13 as amended;
 - (b) "City" means The Corporation of the City of Burlington;
 - (c) "Council" means the Council of the City;
 - (d) "development" means the construction, erection or placing of one or more buildings or structures on land or the making of an addition or alteration to a building or structure that has the effect of increasing the size or usability thereof and includes redevelopment;
 - (e) "Director" means the Director of Parks and Recreation Department or the Director's designate;
 - (f) "domestic establishment" means a single room or series of rooms of complementary use, operated under a single tenancy and operated as a housekeeping unit, used or intended to be used as a domicile by one or more persons and usually containing cooking, eating, living, sleeping and sanitary facilities;

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- (g) **“dwelling unit”** means any property that is used or designed for use as a domestic establishment in which one or more persons may sleep and prepare and serve meals;
- (h) **“elect”** means when used in the context of the Director, the authority to determine whether the City will accept land or cash in lieu and the right to determine whether the conveyance or cash in lieu payment is to be made as a condition of subdivision approval or upon the issuance of a building permit;
- (i) **“high density”** means more than 50 dwelling units per net hectare and permitting predominately such uses as apartment structures three storeys and above;
- (j) **“low density”** means less than 15 dwelling units per net hectare and permitting predominantly detached dwelling unit development;
- (k) **“medium density”** means between 15 to 50 dwelling units per net hectare and permitting predominately uses such as, but not limited to semi-detached dwellings and three storey apartment buildings;
- (l) **“mixed-use”** means land, buildings or structures used or designed or intended for use for a combination of non-residential uses and residential uses;
- (m) **“residential use”** means that the predominant use of land shall be for dwelling units of varying densities;
- (n) **“number of units proposed”** means the total number of dwelling units proposed less any dwelling units that have been or will be demolished;
- (o) **“Valuation Date”** shall be the day before the building permit is issued in respect of the development or redevelopment or where more than one building permit is required for the development or redevelopment, as the day before the day the first building permit is issued except in the case of development or redevelopment by way of plan of subdivision in which the City of Burlington is to receive a conveyance of land for park or other public recreational purposes by way of a dedication pursuant to Section 51.1 of the *Planning Act*. In this latter case, the valuation date shall be the day before the day of approval of the draft plan of subdivision.

2. In this By-law where reference is made to a statute or a section of statute such reference is deemed to be a reference to any successor statute or section.

3. **Lands Affected**

This By-law applies to all lands within the boundaries of the City of Burlington.

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4. Park Dedication – Land

When the Director elects to accept the dedication of land for park or other public recreational uses, in the case of residential or the residential component of mixed-use development, the land shall be conveyed to the City at the greater of:

- a) 5% of the total area of the lands to be developed; or
- b) one hectare for each 300 dwelling units in the proposed development.

5(1) Park Dedication - Cash-in-Lieu of Land

When the Director elects to accept cash-in-lieu of land for park or other public recreational uses, the cash in lieu payment shall be calculated in accordance with the formulas set out in subsection 5(2) to 5 (4) below:

5(2) Low Density

For low density development::

Cash-in-lieu = land value of the land to be developed as of the day before the day the building permit authorizing development is issued x 5 %

5(3) Medium Density

For medium density development, the lesser of:

- i) the number of units in the proposed development divided by 300 x the per hectare land value of the land to be developed as of the day before the day the building permit authorizing development is issued; or
- ii) the number of units in the proposed development x \$6500.

5(4) High Density

For high density development, the lesser of:

- i) the number of units in the proposed development divided by 300 x the per hectare land value of the land to be developed as of the day before the day the building permit authorizing development is issued; or
- ii) the number of units in the proposed development x \$5500.

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6. Approvals for Development and Applicable Valuation Dates

Payment of cash in lieu of park dedication and/or conveyance of land for park purposes pursuant to sections 4 and 5 of this By-law are require, at the election of the Director, as a condition of the following approvals for development:

(a) the approval of a plan of subdivision under section 51 of the Act; or;

(b) the issuing of a permit under the *Building Code Act* in relation to a building or structure.

7. Effective Date

This By-law comes into force on the day it is enacted by Council.

8. Severability

In the event any provision, or part thereof, of this By-law is found, by a court of competent jurisdiction, to be *ultra vires*, such provision, or part thereof, shall be deemed to be severed, and the remaining portion of such provision and all other provisions of the By-law shall remain in full force and effect.

9. Retention of Discretion:


Nothing in this by-law shall be construed so as to fetter the discretion of the Director in determining whether to obtain parkland dedication by way of conveyance of land or cash-in-lieu.

10. Short Title

This By-law may be cited as the Residential Park Dedication By-law.

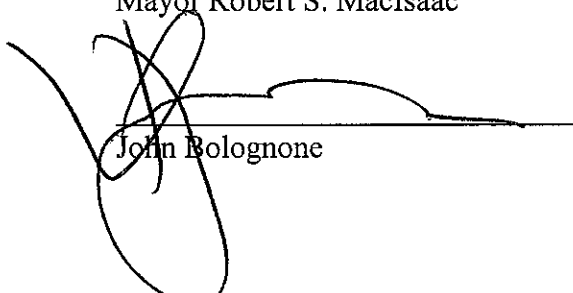
11. That By-law 6-1996, and any amendments thereto, be and is hereby repealed upon the enactment of By-law 57-2005 by Council.

ENACTED AND PASSED THIS 13TH day of June, 2005.



Mayor Robert S. MacIsaac

MAYOR



John Bolognone

DEPUTY CLERK

