

Official Plan and Zoning By-law Amendments for 141, 147 and 153 Plains Road West (PL-90-24)

To: Burlington Council Meeting December 10 2024

From: Tom Muir

Subject: Written Correspondence on 140 - 153 Plains Rd W. Application and Subcommittee approval of December 3 2024.

Councillors.

I want to provide this written correspondence on this application in order to complement my delegation at the Subcommittee meeting of December 3, 2024. Five minutes is not enough to explain, and from what I realistically expect will be a Council level decision approval is beyond useful.

My point in my delegation was that the planning material that was available to me at the time, suggested to me that what is in force and effect, and what is at appeal, and what is not approved, the PPS 2024, and the applicant justification PPS 2020 added, stated as being complied with, is not fully regarded. The PPS says that the in force municipal Official Plan is the best vehicle for implementing the City development planning.

Now, after Committee approval of the staff positive recommendation of the application and forward to Committee, more narrative on what is now before them for their decision, which I expect to be further approved, I want to show further actions that I described as the roots of my motives in my delegation.

I said then, that all of the planning narrative that I could see then was a mixing up of all in play OP versions, and amended in force 2020 Zoning bylaws, so as to use the in force OP 1997 as the needed legal framework to conform to the Planning Act, and the PA reference to the consistency need to regard the PPS.

I also said then that by circumstances it had to be used in some mixture of direction and timing in order to achieve some mixed up process as an instrument of crafting OP Amendments from other draft revised OP related texts that are not in force, to the legal OP 1997 to achieve the new intent of the not in force OP 2020, the Protected MTSA OP 2020 with MTSA OP Amendment 2 - all of which are also not in force, and possibly then possibly amendments to the Zoning required by the amendments asked for to the OP 1997, to be legal.

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What is used and also approved is the Planning Justification language and the policy directions narrative submitted by Goldberg Group on behalf of 2412947 Ontario Ltd, Dr. Laith Al-Dabbagh and 2381798 Ontario Ltd. proposing a 12-storey mixed use building, done by for everything wanted in OP 2020, MTSA 2020 Amendment 2. Also being used are the ASP narratives, and the Community Planning Procedure analysis, and language and policy intentions, again either not in force, or only partly approved as informative, not determinant legal, by Council.

The Proposal is justified using the Amendments drawn from the not in force planning justification policies. The OP1997 needs to be amended completely whenever a policy or variance or other inadequacy arises that 1997 cannot be directly used.

However, what I see is this Amendment referred to as:

OFFICIAL PLAN AMENDMENT

AMENDMENT NO. 154 TO THE OFFICIAL PLAN

OF THE BURLINGTON PLANNING AREA

The details of the Amendment, as contained in Part B of this text, constitute Amendment No.154 to the Official Plan of the Burlington Planning Area, as amended.

PART A – PREAMBLE

My concern to begin is that this OP is not referred to as OP 1997. Only in Part B does it say,

DETAILS OF THE AMENDMENT

Text Change:

The text of the 1997 Official Plan for the Burlington Urban Planning Area, as amended, is hereby amended as follows.

I ask what does this mean. Do we have another OP emerging besides 1997. This is confusing and legal mix-up to laymen. Another confusion arises in the reference to another OP:

3. IMPLEMENTATION

This Official Plan Amendment will be implemented in accordance with the appropriate “Implementation” policies of Part VI of the Official Plan of the Burlington

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Planning Area

Going further, the Zoning amendments, (Amendments 2020.492) do not even refer to any specific OP version, and particularly OP 1997. Notably, it provides for 55 variances, (Exception 545) including permissions needed for the subject proposal. In my perception, this is concerning, as this indicates that the OP amendment 154 , and the Zoning 2020-492 Amendment, are needed together in time to get the everything the application needs and wants.

It is also noteworthy that the Council can amend Zoning without the need for an OP amendment.

The overall sequence of how the Council Agenda is written to handle how the decision process proceeds is a mix of amendment decisions, and at certain times.

Moved by Councillor Galbraith

Approve the applications for Official Plan Amendment and Zoning By-law Amendment submitted by Goldberg Group on behalf of 2412947 Ontario Ltd, Dr. Laith Al-Dabbagh and 2381798 Ontario Ltd. proposing a 12-storey mixed use building; and

Approve Official Plan Amendment No. 154 to the City of Burlington Official Plan, as provided in Appendix D of community planning department report PL-90-24, to modify the "Mixed Use General" Designation at the lands located at 141, 147 and 153 Plains Road West; and

Deem that the Official Plan Amendment No. 154 is consistent with The Planning Act; and

Instruct the City Clerk to prepare the necessary by-law adopting Official Plan Amendment No. 154 as contained in Appendix D to community planning department report PL-90-24 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 Zoning By-law 2020.492, attached as Appendix E to community planning department report PL-90-24, to rezone the lands at 141, 147 and 153 Plains Road West from "MXG" to "H-MXG-545"; and

Deem that Zoning By-law 2020.492 will conform to the Official Plan of the City of Burlington once Official Plan Amendment No. 154 is adopted; and

State that the amending zoning by-law will not come into effect until Official Plan Amendment No. 154 is adopted;

Overall, my concern, as I stated it, at delegation, is because I fear what this kind of planning and decision mix because the OP 1997 doesn't seem be able to meet the demands on it, but it is the only in force and effect OP that Burlington has. Anything else in process is mire in appeals or lack of approval. The OP1997 needs to be amended completely whenever a policy or variance or other inadequacy arises that OP 1997 cannot be directly used, as it is deemed inadequate.

There is no expresses explanation for this behaviour, that is using several not legal planning documents, and writing a decision based on a mix of rationale. But the motive and emphasis is to justify more density, intensification, compatibility, and similar reasons, however, they are, as I said, using almost exclusively not in force OP planning and Zoning, that must be given OP and Zoning Amendments pretty much throughout because they are not legal and Amendments are needed.

I'm also concerned because I see these tactics being used elsewhere, because of the of persistent use of not in force OP bits and pieces in planning justifications, that are not fully approved, or are under appeals. So if the in force documents won't give you what you want, then write a justification using all the parts in the planning works to get what you want.

I sensed something like this coming for 100 Plains E. I heard this same line of thinking at the Pre-App meeting. I fear a similar 12 story entire city block in Aldershot, Plains Rd E South side, building in that location.

At least to me, it sort of does away with the need for "good planning" that is based on facts of an in force OP and sets of policies and directions based on facts and not just a fluidity of picking opinions about what is needed, or supports what is wanted in the application, from any selected set of policy proposals. I think when you think broadly about what we have as a set of circumstances, something is wrong.

Regards,

Tom Muir