

**Planning and Building Department
Development and Infrastructure Division**

To: Chair and Members of the Community Development Committee

From: Mariana Iglesias

Date: October 9, 2012

**Re: Update Concerning 2089 and 2095 Fairview Street Development –
Molinaro Group**

This memorandum has been prepared to provide background information in anticipation of a site plan application being submitted for the lands at 2089 and 2095 Fairview Street later this fall by the Molinaro Group.

Site Location and Context

The subject 1.8 hectare site is located on the north side of Fairview Street, between the Wal-Mart and Burlington GO Station properties, south of the CN Rail tracks. The Molinaro Group has recently acquired these lands from the former owner, Buzza Realty Inc. and Chaparral Developments Ltd., for development purposes.

Provincial Policy

In 2005, the Province developed a policy framework to address key issues such as: the efficient use and management of land and infrastructure; protection of the environment and resources; and ensuring appropriate opportunities for employment and residential development, including support for a mix of uses. The Provincial Policy Statement (PPS) 2005 encourages intensification of lands served by major transit and full urban infrastructure.

In 2005, the Province released the "Places to Grow" draft Growth Plan for the Greater Golden Horseshoe to help implement the policies of the PPS. It outlined strategies for growth in the region over the subsequent 25 years. The Plan included several policies to "optimize the use of existing and new infrastructure to support growth in a compact, efficient form". The Plan designates areas for accommodating future growth called "Urban Growth Centres" (UGCs). Downtown Burlington is a designated UGC. Burlington GO Station was deemed part of the Downtown Burlington UGC.

The Growth Plan also designates areas around transit stations, including areas around GO Stations, as ideal locations for intensification. The Plan defines "major transit station areas" and "intensification corridors" and identifies places of connectivity between regional and rapid transit services, where different modes of transportation

come together seamlessly. The Metrolinx Regional Transportation Plan identifies such areas as "mobility hubs". Burlington GO Station is identified as a mobility hub, and is further classified as a "Gateway Hub", a major transit station area located at the interchange of two or more current or planned regional rapid transit lines.

Interim Control By-law

In response to the Province's policy directions, in June 2005 Burlington Council enacted an interim control by-law (By-law 21-2005) that effectively halted any development or re-development in the vicinity of GO Station lands (within 500 metres) in order to study these lands for alignment with Provincial intensification policies.

In June 2006, Council enacted a one year extension to the by-law to allow additional time for the study and the implementation of any associated policies and regulations.

GO Station Lands Intensification Opportunities Study

At the same time the above interim control by-law was enacted, Council also adopted the Terms of Reference for a GO Transit Station Land Use Study. This was commissioned by the City to examine opportunities for intensification surrounding the three GO transit commuter rail stations in the City. As a result of the recommendations made in the study, the City approved OPA 59 and Zoning By-law 2020.213 in October 2006, shortly after the Province released its final Growth Plan.

OPA 59 introduced land use policies designed to implement the intensification provisions of both the Growth Plan and the PPS in the vicinity of the three GO stations within the City of Burlington. In particular, the Burlington GO Station area was planned to be a more intense mixed use area. The associated Zoning By-law 2020.213 set minimum performance standards for the MXT zone (Mixed Use Transit Station Area). The zone permits a mix of uses, including retail and service commercial, office, and residential, among other uses. It establishes a minimum Floor Area Ratio of 0.5:1 and a minimum density in a residential building of 55 units/ha. It also establishes a minimum height of 2 storeys, with no maximum height, and other provisions such as required parking, landscape areas, etc. However, the site specific zoning for the subject lands established, by way of Exception number 386, additional permitted uses (including long term care facilities and community institutions), and maximum building height of 17 storeys, provided that no more than 4 storeys consist of above-grade parking. There is no maximum floor area. Other regulations pertain to non-residential uses on the property.

Appeals to Ontario Municipal Board (OMB)

The owner of the subject lands at the time of the appeal, Buzza Realty Inc. and Chaparral Developments Ltd. ("Buzza"), appealed the above OPA 59 and Zoning By-law 2020.213 for matters of density and height.

The City and the former owner, Buzza, entered into Minutes of Settlement, which outlined several specific amendments to OPA 59 and Zoning By-law 2020.213 to effectively allow additional intensification of the subject lands, with certain requirements, that included the following provisions:

- The lands are to be developed for a mix of retail/commercial and multi-storey residential uses and may include an office component.
- Parcel "A", which fronts onto Fairview Street and abuts the GO Transit station to the east (southeast corner of site), will be developed for a multi-storey (minimum of 5) residential building. This can take the form of a seniors' residence, long-term care facility or apartment building. This parcel will occupy a minimum of 0.72 acres (including a 7m x 7m daylight triangle). Ground floor retail, commercial and office uses are also permitted.
- Parcel "B", which represents the remainder of the lands, may consist of retail/commercial development, in minimum one-storey buildings, but may be developed with more intense uses permitted in Zoning By-law 2020.213. Any one storey building constructed within 25m of Fairview Street shall incorporate two storey architectural design elements.
- The lands shall include a pedestrian walkway which links the GO Station with the Wal-Mart development.
- Right-in/right-out access to Fairview Street, east of the signalized shared access with Wal-Mart, is required. The owner shall pay for the costs of extension of the planned concrete traffic island along the centreline of Fairview Street to prevent left-hand turns into the subject property.
- The owner shall convey to the City a 3m road widening along the full frontage of Fairview Street, a 7m x 7m daylight triangle at the southeast corner of the site and easements, as outlined in the Minutes of Settlement.
- No traffic studies will be required at the site plan approval stage in respect of the development, except in respect of site circulation and configuration.
- The maximum building height limit of 17 storeys can be increased to 20 storeys if the proposed building is LEED certified, on consent of the OMB.
- A minimum height of one storey for retail/commercial buildings on Parcel "B" is permitted as well as a total site minimum Floor Space Index of approximately 0.5:1.
- Relief from the minimum two storey height requirement (for Parcel "B") and minimum 0.5:1 FAR requirement.
- Relief from the 500m² maximum individual retail unit size by permitting individual retail units on the subject lands to be up to 3,000m².
- Grade-level off-street parking on Parcel "B" is limited to 255 spaces
- Relief from the off-street parking standards, amenity area requirements and privacy area requirements of the Zoning By-law.
- Any above-grade structured parking is limited to four floors and the first floor of the principal building cannot be used for parking.
- Site plan approval is required and must be obtained prior to issuance of building permits.

In order to effect the settlement, the appeal was allowed in part and the OMB approved Zoning By-law 2020.213 and OPA 59. However, the OMB withheld its order on both matters as it applies to the subject lands.

The OMB remains seized of the matter (OPA and Zoning By-law 2020.213) and must release its order to give full effect to the aforementioned. The OMB must amend Zoning By-law 2020.213 in order to allow a height of 20 storeys, instead of the maximum permitted 17 storeys, provided the buildings are LEED certified, as agreed to by the City and the former owner in the Minutes of Settlement.

Site Plan Process

The City expects to receive a site plan application from the owner later this fall. The Official Plan and Zoning By-law requirements have been agreed to by the parties and approved by the OMB, subject to issuance of its order. The site plan remains the final planning approval process prior to development of the lands. Under the *Planning Act*, the site plan process is not a legislated public process, as in the case of Official Plan Amendments or rezoning applications.

Processing of the site plan application will proceed in the usual manner. Staff will circulate the site plan application to the appropriate staff and agencies, including Metrolinx/GO, the Region, MTO, Burlington Hydro and CN Rail, and will review comments received.

Currently, the approval of site plans is delegated to staff by Council. Council may choose to “undelegate” the site plan at any time, in which case Council would be the approval authority. Finally, Council and staff can also introduce a process for public engagement on the site plan. However, the process would not address issues of height and density, as those are determined by the Zoning By-law.

It should be noted that staff (or Council, if the site plan is undelegated) can only issue site plan approval in principle, as the final approval must wait until the OMB releases its order and effectively enacts OPA 59 and the amendments to Zoning By-law 2020.213. If the owner pursues a development height of 20 storeys (with LEED certified design), they must make the request of the OMB to amend the Zoning By-law to reflect the requested height limit as agreed to by the parties.

The owner retains the right to appeal the conditions of site plan approval imposed by the City. The public does not have a similar right to appeal. In addition, should any adjustments to the Zoning By-law be required, the parties are to convene and engage the OMB for a review.

Public Engagement

Although a public review process is not legislated under the site plan provisions in the *Planning Act*, efforts are being made to solicit public feedback and engage the public in the aspects of the application that are up for review and input. A Community Design

Workshop is planned for October 25th. The workshop will be hosted by Ward 2 Councillor Marianne Meed Ward. Staff and the Molinaro Group will be presenting background information and answering technical questions. Mayor Rick Goldring and other members of Council will be present at that workshop.

The purpose of the workshop is to inform the public of the upcoming site plan application and background matters. In addition, the Molinaro Group is seeking public input into the detailed design elements of the proposed development. Items such as: landscaping and open space, amenities, streetscape, lighting, pedestrian connectivity, transportation, access, architectural design, among others matters, will be discussed. The workshop will not address matters of height and density, which have already been determined.

The development of the subject lands can be seen as an opportunity to implement the Province's, Region's and City's vision for intensification within the identified Urban Growth Centre and particularly within an identified mobility hub.

Respectfully submitted,

Mariana Iglesias, MCIP, RPP
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Reviewed by _____ on October 9, 2012

Bianca MV Bielski, Manager of Development Services

Date

Approvals:

*required

*Department

City Treasurer

General Manager

City Manager