

## **Comment to Hamilton City Council and Planning Committee concerning:**

### **Applications to Amend the Urban Hamilton Official Plan and Town of Dundas Zoning By-law No. 3581-86 for Lands Located at 264 Governor's Road.**

**Submitted by "Friends of 264 Governor's", an informal citizens' group of approximately 45 persons, with signed support from a further 160 citizens.**

With respect to 19 February, 2019 meeting of the Planning Committee and February 27, 2019 (or subsequent) Meeting of City Council

#### **Summary of Application**

The proposal in question is to rezone this property from UR (Urban Reserve) to MR-1 (Low to Medium Density Multiple Unit Residential), and to allow seven major variances from the Dundas Zoning By-law ([Zoning By-law No. 3581-86](#)), to build a 29 unit townhouse complex. The applicable Dundas definition of RM-1 without variances would permit about 22 units and include several protections for the residents, neighbours, and the environment, from which the applicant has requested exemptions.

#### **Objections to Zoning Change**

The current Urban Reserve designation holds the land for future development. It is therefore presumably inevitable that this parcel will be developed in some way as Dundas and the City of Hamilton grow. **With respect to this proposal, we urge Council to consider the costs in terms of opportunity for better planning, the distinct risks of present and future harm that will result if this zoning request is granted without considering all elements of the site, its neighbourhood and its regional context, and the restrictions that would be required to mitigate such harm.** While zoning for significant residential intensification may ultimately be deemed appropriate for this property, the current application would ignore significant protective provisions of the Provincial Policy Statement for planning ("Places to Grow"), would disregard key elements of several by-laws that remain in force at this time (Town of Zoning By-law, Dundas Tree Preservation Bylaw), and would set a precedent for accepting strictly profit-driven redevelopment over rational, community-based and pre-planned urban intensification. It is worth noting that the advertisements when this property went on the market were very explicit that the purchaser must "do due diligence with regard to zoning", and that the application before us is thus purely speculative. If there is a better way, or a better time, to develop this property, that is a political decision by council and not a forced economic one.

- **Opportunity Costs**

- We are concerned that rezoning at this time will preclude other important potential uses of this land. Dundas has very little green-field land left on which to implement important planning objectives. With a very large senior population, there is a demonstrable need for single story units that would allow independent seniors to downsize, thus freeing up other detached homes for new families. There is also a clear need for smaller, affordable homes to permit young families to enter the housing market. Either of these strategies would provide for significant intensification by

offering new homes, and the former would also *de facto* intensify the surrounding neighbourhood by increasing the number of occupants per single-family home.

- The City of Hamilton has a major planning objective to provide and connect infrastructure for non-car transportation. Major bicycle lanes and sidewalks are already funded for Governor's Road, and a pedestrian bridge is planned (but not yet funded) to link Sanctuary Park, Pleasant Valley and the Hamilton-Brantford Rail Trail to Highland Drive and the local schools. Integration of these two components would ultimately require a connection between Highland Drive and Governor's Road at Huntingwood Drive, which would provide southwest Dundas with a truly connected and functional network of rights-of-way. Building a dense, closed townhouse development on this property would eliminate the possibility of any such future easement without expropriation.
- **Possible Harms – Flood Risk to Ann St. Creek and Downstream**
  - Dundas is a town built on a converging network of creeks, and much of the older development lies in or adjacent to floodplains. Past management of storm water has often been faulty – before the 1950's through ignorance, and in the 1960's to 1980's through a reliance on engineered solutions that often externalized downstream systems. Since the widespread introduction of systems-based thinking, we have recognized that we must design keeping in mind impacts on the entire system, though some aspects of civil engineering have been slow to adapt. Almost every creek downstream from this property (Ann St. Creek, Spring Creek, lower Spencer Creek, Sydenham Creek, Borer's Creek) has experienced flooding in the past decade, causing private and public property damage, road closures, erosion, extensive sedimentation and resulting significant clean-up costs.
  - This property contributes important environmental functions for the area, including significant absorption of storm water that would otherwise flow into very flood prone parts of Highland Park, and the downstream neighbourhoods of Central Park and Ann Street. Ann St. Creek has experienced serious flooding into private properties at least twice in the past decade (2011, 2017). Upstream absorption of rain water is important both for reducing flood risk and for recharging local groundwater so that these creeks maintain a healthy flow during dry periods. [The Hamilton Conservation Authority 2018 Report Card](#) recognized urban land use and storm water runoff as a key environmental issue. Provincial Policy is also clear on the need to protect watersheds and to mitigate environmental hazards from a predicted increase in major rainfall events due to climate change. The policy is "net zero runoff", or no increase in total volume nor decrease in the time at which water from heavy rainfall leaves the property. On a very heavy clay soil, as is found on this property, infiltration requires interception by vegetation, slowing of overland flow, and short-term retention, **none of which is provided by the plan being presented**. Since the central steep slopes on this property are designated for full development and will become impermeable, normal infiltration of storm water into ground water could only be achieved with green infrastructure such as bio-swales or rain gardens, optimally along the south edge of the property where through-flow would

carry it down beneath the impermeable areas. [Feltmate, B and A. Fluder, Intact Centre on Climate Adaptation. [Too Small to Fail](#). 2018 and numerous other publications]

- The north side of this property has a ditch that channels storm runoff from much of this property and from parts of upstream school properties to a small catchment in the northeast corner. A weir grate in this catchment then carries this water into storm sewers. If storm water from the proposed massively increased area of impermeable surfaces on this property is channeled through sewers or swales to this low spot, it will overwhelm the capacity of the grate during particularly heavy rainfalls, and cause flooding onto Governor's Road. The local storm sewers (replaced in 2018) also drain immediately downstream and into Ann St. Creek at Creighton Dr., where severe flooding is already a regular problem in the Ann St. and Central Park neighbourhoods. If, as it appears, the plan is to drain runoff from the constructed area to this low area and then directly to storm sewers, some form of increased retention facility would be required to slow this input to the sewers and to achieve "net zero runoff".
  - On April 20, 2017, 85 mm of rain fell in a few hours at a rain gauge just 10 m from this property. Based on an area of 0.6 hectares, or 60000 m<sup>2</sup> this property received about 500 m<sup>3</sup> of rainwater. Approximately half of the rainwater infiltrated the soil (based on measurements on an adjacent property), and the rest became storm runoff, entering storm sewers. If this property is made 70% impermeable after development, the estimated 250 m<sup>3</sup> of current runoff from a storm of this magnitude would rise to approximately 375 m<sup>3</sup> and even higher if the landscaped area is channeled or tiled for rapid drainage, or if the ditch and catchment on the north side is channeled or reduced in volume. Thus, to handle even this recent storm event with net-zero runoff would likely require on-site retention of at least 150 m<sup>3</sup>, yet the concept plan presented provides no space suitable for this purpose. It is notable that the construction of new playing fields at Dundas Valley Secondary School was delayed by requirements to provide just such on-site retention facilities, and this precedent should apply to the planned development of the subject property as well.
  - The "Concept Plan" of subdivision in the consultant's report shows some townhouses extending into the edge of the above-mentioned catchment, with the catchment making up their front yards. This would further reduce the available volume of the catchment, put basements at risk of flooding, and create a future risk if new residents should fill parts of the catchment for gardening, landscaping or other reasons.
- **Possible Harms - Downtown Dundas and Regionally Significant Natural Areas**
    - Upstream development without state-of-the-art remediation of watershed impacts is the single biggest threat to existing development in the downtown area of Dundas, and to regionally and provincially significant natural areas in Hamilton. Given the expected increase in number and severity of extreme weather events, avoidance of repeated flooding in downtown neighbourhoods will require more than simply engineering the water away. Just channeling storm water into storm sewers is not a sustainable option. If the best possible mitigation of runoff is not prioritized, the costs of buying out and rehabilitating properties on flood plains that are no longer livable will far outweigh any short-term economic gains from new development; these costs will, incidentally, be

borne entirely by the taxpayers. The lessons from costly examples like [Grand Falls, British Columbia](#), [South Bend, Indiana](#) and [Ellicott City, Maryland](#), all of which have either had to or are entertaining the need to buy out flood prone neighbourhoods, are ignored at the peril of all Hamilton residents. All storm water from Dundas ultimately ends up in the environmentally sensitive areas of Lower Spencer Creek Conservation Area, Cootes Paradise, and ultimately, Burlington Bay, where repeated flooding has interfered with recreational infrastructure and with aspects of the Hamilton Harbour Remedial Action Plan. Council needs to set a precedent for the future. If we do not hold developers to high standards, how can the city hope to encourage thousands of small properties to take action to make our entire city more resilient to extreme storms?

- **Possible Harms – Loss of Tree Canopy**

- The property is also specifically protected under the Dundas Tree Preservation By-law ([By-law No. 4513-99, Schedule H](#)). At ~35% canopy cover, the trees on this property are an important aspect of the aesthetics of the neighbourhood, and serve as an important mechanism for intercepting precipitation and penetrating the heavy clay soils to permit infiltration. Sitting on the highest ridge in the neighbourhood, these trees act as a migration corridor for birds and insects during the spring and fall, visually connecting ravine forests of Spring Creek Valley with lowland forests of the Huntingwood Open Space and on to contiguous escarpment forests to the north. Since the plan is to remove ~75% of the trees with no significant replacement, these utilities will disappear (although some utility could be preserved by denial of key variances on the Official Planning application). At the very least, the developers and planners should be required to work with Urban Forestry consultants to save as many trees as is practical, and to replace trees along all property boundaries.

- **Possible Harms – Traffic, Cyclist and Pedestrian Safety**

- The current plan is to resurface the adjacent section of Governor's Road in the summer of 2019, after extensive road and sewer work in 2018. Two main thrusts of this redevelopment included alleviating the traffic congestion created by the recent concentration of schools just west of this property, and improving cyclist and pedestrian safety along a narrow, busy arterial road. Improvements include left turn lanes at St. Bernadette's Elementary and Dundas Valley Secondary, a lengthened left turn lane at Bridlewood Dr., and curb-separated sidewalk and two way bicycle path on the south side of Governor's Road. No plan is evident for a left turn lane at the new lights at Huntingwood Dr. into this property, nor does the road appear to be wide enough to allow such a lane. This means that all turns into this property will have to occur from the travel lanes of Governor's Road. Not only will this potentially recreate some of the congestion that the construction was designed to alleviate, but it will also mean that all traffic entering or leaving this property will be crossing both the bike lanes and the pedestrian lane. Exiting traffic could be controlled by set-back stop lines and "no right turn on red" signing, but entering traffic will cross while green lights afford right-of-way to cyclists and pedestrians. Since most of the pedestrian traffic involves students, since eastbound cyclists will typically be traveling through the green light at about 30 kph on

this steep slope, and since motorists will be under pressure to turn quickly when blocking through traffic, this seems like a recipe for serious accidents. Any additional congestion caused would also divert traffic into the West Highland neighbourhood, where a lack of sidewalks, twisting roads with blind curves, and excessive speed create hazards for pedestrians, most of whom are either students or seniors. Local experience during the construction period of 2018 shows that through-flow on these residential streets can become a serious safety issue.

### **Recommendations and Possible Remediations**

The “Friends of 264 Governors” group, formed by 40 neighbourhood residents and representing a further 160 supporters, includes more than 80% of the households deemed to be directly impacted (within 120 m of the property), over 50% of households within 250 m, and a large number of other citizens who are concerned about having rational, sustainable, neighbourhood-oriented, community-based development in Dundas and in the City of Hamilton generally.

#### **We ask:**

- **that council please consider carefully, before any rezoning is permitted, the optimal form of development on this property to meet community needs while providing reasonable intensification.**
- **that if rezoning to RM-1 is permitted, it be done on the explicit condition that environmental concerns be addressed with state-of-the-art green infrastructure to mitigate foreseeable future problems and costs. These conditions would include the possibility of a reduction in number of units if site-specific conditions dictate. Specifically, conditions would require:**
  - **On-site management to ensure that, even with the predicted increase in frequency and magnitude of extreme storm events, storm runoff is retained on site and allowed to infiltrate to reduce downstream risks and maintain groundwater levels, including but not restricted to:**
    - **One or more rain gardens on higher ground to reduce overland flow, promote water infiltration, improve groundwater recharge, and minimize erosion into watercourses.**
    - **Bioswales rather than drainage pipes for slower movement of overland flow.**
    - **An improved and enlarged catchment area in the northeast corner that could impound storm water and permit more of it to infiltrate the soil.**
    - **A physical retention tank that would hold excess runoff during storms and allow its release during later low water times, as was required for new DVSS fields.**
    - **Permeable surfacing for parking areas, driveways and sidewalks wherever practical.**
  - **Additional efforts to preserve mature trees and a mandate requiring replanting of native trees and shrubs on the perimeter of the property.**
- **that any residential development be delayed long enough to complete pending improvements on Governor’s Road and to properly assess and mitigate the traffic/cyclist/pedestrian safety issues that will inevitably arise.**

## Objections to the Official Plan Amendment

If the zoning of RM-1 is approved by Council, the Concept Plan by the applicant would require seven site-specific variances from the current Dundas by-law ([Zoning By-law No. 3581-86](#)) which remains in effect for residential zones. Since there are a number of significant site-specific hazards and environmental issues with the proposal, the resolution of which might seriously affect the need for such variances, we feel that it is premature to permit blanket exemptions from the bylaw that would constrain the City in any attempts at such resolution. We object to these variances as follows:

- Existing bylaws would allow a maximum of 22 townhouses (**37 units/ha, Regulation 12.3.4.2**) on this 0.6 hA. (1.6 acre) parcel, rather than the 29 requested. Even if specific site planning concerns required reduction to fewer than 20 units, at a projected occupancy rate of 2.8 persons per unit, this would significantly exceed the requirement of 80 residents per hectare without any variances, would eliminate the need for several of the other variances, and would go some way to reducing the concerns of immediate neighbours. We argue that conformity to the existing bylaw is a very reasonable request.
- Existing bylaws require that 50% of the area be landscaped (**Regulation 12.3.6.1**) for environmental, privacy and aesthetic reasons. The applicant has requested that this be reduced to 30%. On the very dense Highland clay of this property, canopy interception of rainwater and root penetration of the soil are vital to permitting water to absorb into the soil and not run off the surface during heavy storms. The Dundas Tree Preservation Bylaw (**By-law No. 4513-99**) specifically recognizes this property as meriting special protection (**Schedule H – Note that: “the Town of Dundas recognizes the importance of trees in contributing to the attractive character and wellbeing of the community”**)
- Existing bylaws require that RM-1 developments provide a 3 m buffer adjacent existing R1 (single family residential) properties (**Regulation 12.3.6.2**). The purpose of this provision is to ensure privacy of current residents. Since several of the adjacent lots are irregularly shaped and shallow, without these buffers several neighbours would have multiple 10.5 m townhouse units rising facing both indoor and outdoor facilities at close range, and would suffer serious loss of privacy and amenity value in their yards. The 3 m buffers along the south and east side of the property would also go a long way toward increasing the landscaped area to 50% and providing for greater tree preservation and some tree replacement (see above). Such buffers would also offer future potential for rights-of-way to interconnect pedestrian routes and make our neighbourhood much friendlier to non-car movement. The proponent’s revised application provides a 2.5 m buffer on part of the eastside of the property, but describes a 2.5 m buffer on the north side as overlapping with the 7.5 m back yards of the proposed townhouses. It is unclear how such a “phantom” buffer could be revegetated for privacy screening or used for water management unless it is subject to a restrictive easement on this strip, reducing the effective back yard depth to 5 m.
- Existing bylaws would permit maximum heights of 10.5 m from grade (**Regulations 12.3.3, 12.4.3**). In fact, the vast majority of residences in the existing community fall in the 6.5 m to 8.5 m range. The applicant has asked for a variance to allow the front tier of townhouses along Governor’s Road to be 13 m high. Since this is neither a designated transportation corridor nor a

development node as defined in the Hamilton Official Plan and the GRIDS 2 proposal, and since no residential building within a kilometer of the site is taller than 10.5 m this is both out of character and out of scale with the existing neighbourhood and a dangerous precedent to set. It is also notable that allowing this variance would have little or no impact on the degree of intensification or the service efficiencies that the proponent otherwise uses as justification for variances.

- Existing bylaws require front yards 6.0 m (**Regulation 12.3.2.1**) and back yards 7.5 m deep (**Regulation 12.3.2.3**). The applicant has requested a significant reduction of setbacks for the front yards of the units along Governor's Road. At least on the easternmost block that would put the fronts of the buildings within an important storm water catchment that is essential to reducing and evening out peak flow to storm sewers during heavy rain. Enhancement of this system, rather than degradation, is one way to mitigate a significant increase in peak runoff from the steepest slopes, and thus to reduce the flooding risk to downstream neighbourhoods.
- The proponent's revised Concept Plan also shows a reduction in rear yards for the units of the front blocks from 7.5 m to 6.0 m, **although the original proposal does not ask for this variance**. It is also of note that the Planning Office has repeatedly pointed out that units in the front blocks lack the required minimum amount of rear outdoor private amenity space for children, and that the proposal provides for no public outdoor amenity space for children. The proponent and its agent seem not to have attached any significance to this concern. As well, the proponent's agent uses proximity to public parks as an argument in favour of this proposal, but in fact the children's play areas in both Couldrey Park and Veterans' Park fall at the extreme limit of the 1 km "walkability range" from the entrance to this proposed subdivision, and exceed that distance if measured from the front doors of most units. They also require crossing of major arterial roads. This proposal is **not a family friendly plan** of subdivision.
- Existing bylaws permit a reduction of side yards from the mandated 7.5 m to 3 m **only if** the sides of buildings have no windows (**Regulation 12.3.2.2**). Because of irregularities in angles of fence lines, offsetting of and possible need to reorient buildings slightly at the site planning stage, we request that a minimum 7.5 m **angular distance** from any window to the adjacent property lines be maintained, in the spirit of the intent of the bylaw. As well, the Concept Plan would require a variance of side yards on the west side to 2.5 m., not mentioned in the original application. If privacy fencing is erected on this side, the ability to service proposed 13 m buildings with an access space of only about 2 m would be severely restricted.
- Existing bylaws would require at least 9 visitor parking spots for a development of this size (**Regulation 7.12.1.3**), while the applicant is asking for a reduction to 8. Given the complete absence of nearby legal on-street parking within easy walking range of this development, and the high likelihood that visitors, including service companies and contractors, will congest the very narrow cul-de-sacs when visitor parking is full, blocking residents and emergency vehicles alike, no exemption should be approved. Of course, this problem would disappear if the proposed subdivision were reduced to the mandated density for RM-1 zoning.

## Recommendations and Possible Remediations

If rezoning to RM-1 is deemed desirable, we ask that the Committee and Council:

- require an extensive and thorough site-specific hydrological study before site-planning, to consider how to mitigate potential flooding of local and downstream environments, incorporating projected increases in extreme weather events.
- reject the Official Planning Amendment, and approve the zoning without variances, thus allowing 22 units, OR
- permit only a variance to allow a larger number of units (up to 25) on condition that they be built on a smaller footprint than that proposed, providing adequate land for green infrastructure, sufficient outdoor amenity space for children, and replanting of trees, while eliminating the need for most other requested variances.
- Reserve the right to approve minor variances at such time that they might be required for efficient site planning without reopening the question of major variances.

While recognizing the role of intensification in sensible urban planning for the future, we ask that the Planning Committee and the City Council recognize that the 21<sup>st</sup> Century is going to require ingenuity and compromise if we are to fulfil a key goal of planning: to permit more citizens to reside in and enjoy the values and benefits of existing neighbourhoods without destroying those very features that make them desirable, and without downloading problems onto other citizens or compromising the environment on which we all depend.

Thank you.

Friends of 264 Governor's

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