




Hamilton

# INFORMATION REPORT

<b>TO:</b>	Chair and Members Planning Committee
<b>COMMITTEE DATE:</b>	November 5, 2024
<b>SUBJECT/REPORT NO:</b>	Appeal by Dentons Canada LLP c/o Isaiah Banach, on behalf of Zest (Town Square) Developments Inc. and Zest Communities Inc. for Zoning By-law Amendment Application ZAC-20-029 to the Ontario Land Tribunal for Lack of Decision for Lands Located at 393 Rymal Road West, Hamilton (PED24191) (Ward 8)
<b>WARD(S) AFFECTED:</b>	Ward 8
<b>PREPARED BY:</b>	Jennifer Catarino (905) 546-2424 Ext. 4748
<b>SUBMITTED BY:</b>	Anita Fabac Acting Director, Planning and Chief Planner Planning and Economic Development Department
<b>SIGNATURE:</b>	

## COUNCIL DIRECTION

In accordance with Subsection 34(11) of the *Planning Act*, a Zoning By-law Amendment application may be appealed to the Ontario Land Tribunal after 90 days by the applicant if Council has not made a decision on the application.

A motion to direct staff to advise the Planning Committee on matters relating to appeals of Council's non-decision, pursuant to the *Planning Act*, was passed by City Council on May 18, 2010. This Information Report has been prepared in accordance with Council's policy for staff to advise the Planning Committee and Council of appeals for non-decision to the Ontario Land Tribunal.

The following information is provided for Planning Committee's information with regards to Zoning By-law Amendment application ZAC-20-029 submitted by GSP Group Inc. c/o Sarah Knoll, on behalf of Zest (Town Square) Developments Inc. and Zest Communities Inc., which has been appealed for non-decision.

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**INFORMATION**

The subject lands are municipally known as 393 Rymal Road West, which is within St. Elizabeth's Village Retirement Residence (refer to Appendix "A" attached to Report PED24191). The subject lands are approximately 4.164 hectares in area and are located at the southwest corner of the intersection of Rymal Road West and Hazelton Avenue. The subject lands currently have frontage on Rymal Road West and are accessed through the controlled entrance of St. Elizabeth's Village at Hazelton Avenue. There is a change in grade on the site and the property slopes downward from Rymal Road West towards Bishop Tonnos Way.

The applicant, GSP Group Inc. c/o Sarah Knoll, on behalf of Zest (Town Square) Developments Inc. and Zest Communities Inc. originally applied for an Urban Hamilton Official Plan Amendment (UHOPA-20-017), Zoning By-law Amendment (ZAC-20-029) and Draft Plan of Subdivision (25T-202003) to permit a mix of commercial and residential uses containing approximately 1,251 new residential dwelling units, including an addition of a maximum of 200 beds to the existing retirement home, associated parking, access and open space. The effect of the requested Urban Hamilton Official Plan Amendment would be to adjust the Core Area limits identified as a tributary of Twenty Mile Creek and a series of ponds to implement a comprehensive stormwater management facility that would revise the pond design and incorporates Vegetative Protection Zones.

The Draft Plan of Subdivision proposed four blocks and two municipal streets to accommodate maisonette townhouse units as well as medium and high rise multiple dwellings between four and 12 storeys in height. Appendix "B" attached to Report PED24191 illustrates the original master development plan and Draft Plan of Subdivision submitted by the applicant.

The applications were deemed complete on August 19, 2020.

The applicant applied to the Committee of Adjustment for a Consent to Sever Block 4, as shown on Appendix "B" attached to Report PED24191. Consent to Sever Application HM/B-18:47 was denied by the Committee of Adjustment at the hearing on January 20, 2022, and on February 7, 2022, the applicant appealed the decision to the Ontario Land Tribunal. The City of Hamilton and Zest Communities Inc. settled the appeal in November 2023, which allowed the appeal in part and approved the Consent to Sever application.

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In May of 2023, the applicant withdrew the Urban Hamilton Official Plan Amendment application (UHOPA-20-017) and Draft Plan of Subdivision application (25T-202003). In addition, Zoning By-law Amendment application ZAC-20-029 was resubmitted and revised to apply to Block 4 only.

The effect of the application is to develop 2,024 square metres of commercial space in a two storey building with access to Rymal Road West and, an internal street. In addition, five multiple dwellings are proposed to be constructed ranging in height from four to six storeys containing a total of 374 residential units and 56 townhouse units ranging in height from one and a half to three storeys. A total of 547 vehicle parking spaces are proposed including 296 underground and 139 surface parking spaces. There have been two submissions of the revised Zoning By-law Amendment application.

In June of 2024, the applicant applied for a Consent to Sever application (HM/B:24-04) to permit the creation of an easement over a portion of the land for access and maintenance purposes. The application was approved on June 28, 2024.

The appeal of Zoning By-law Amendment application ZAC-20-029, filed by Isaiah Banach from Dentons Canada LLP, counsel for Zest (Town Square) Developments Inc. and Zest Communities Inc., identified as the owner within the appeal letter, was received by the City Clerk's Office on June 14, 2024. The appeal was received 1,395 days after the date the zoning application was deemed complete and is included as Appendix "C" attached to Report PED24191.

### **Urban Hamilton Official Plan**

The subject property is identified as "Neighbourhoods" on Schedule E – Urban Structure and is designated "Neighbourhoods" and "Open Space" on Schedule E-1 – Urban Land Use Designations in Volume 1 of the Urban Hamilton Official Plan. The property is identified as a "Core Area" and "Key Hydrologic Feature Streams" on Schedule B – Natural Heritage System in Volume 1 of the Urban Hamilton Official Plan. The Zoning By-law Amendment application was received and deemed complete prior to Ministerial approval of Official Plan Amendment No. 167, however, as per Bill 150, any decision must conform to the Official Plan in effect on November 4, 2022.

### **Zoning By-law Amendment Application**

The subject lands are currently zoned "DE/S-1023" (Low Density Multiple Dwellings) Districts, Modified in Zoning By-law No. 6593, as shown on Appendix "A" attached to Report PED24191. Zoning By-law Amendment application ZAC-20-029 is proposing to

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change the zoning to a site specific Transit Oriented Corridor Mixed Use Medium Density (TOC1) Zone in Zoning By-law No. 05-200.

A number of site specific zoning modifications are required to implement the proposed development, as shown on the Concept Plan in Appendix “D” attached to Report PED24191, including:

- To increase the building setback from a street line to a maximum of 4.5 metres, except where a visibility triangle is required for a driveway access, and does not apply to single use residential buildings, where 7.5 metres is required;
- To reduce the minimum rear yard setback to 4.0 metres, where 7.5 metres is required;
- To reduce the minimum interior side yard setbacks to 4.0 metres along the western lot lines, where 7.5 metres is required;
- To reduce the minimum building height to 7.5 metres, whereas 11 metres is required;
- To add a minimum width of the ground floor façade facing the front lot line to be greater than 40% of the measurement of the front lot line, where the measurement of 75% or greater is required;
- To add a maximum driveway width of 14 metres, where 6 metres is permitted;
- To permit parking, stacking lanes, and aisle locations between stand alone residential buildings that front a lot line;
- To require a visual barrier along the eastern lot line in accordance with Section 4.19 of this By-law;
- To add a minimum 1.5 metre wide landscape strip which shall contain a visual barrier only along the eastern lot line;
- To permit required parking abutting a street line and tandem parking spaces within the garage and driveway without requiring the minimum access aisle width; and,
- To provide a minimum of 75 short term bicycle parking spaces.

Issues identified through the circulation include:

- The proposed development has not demonstrated that it complies with Policies B.2.4.1.4 b), d), g), h), i) l), B.2.4.2, and B.3.3.1 of the Urban Hamilton Official Plan. The applicant is proposing a mixed use development containing a one storey commercial building that fronts onto Rymal Road West and the Zoning By-law Amendment application includes a modification to reduce the minimum building height to 7.5 metres from a minimum of 11 metres. In addition, there is a fence along the Rymal Road West property line that appears as a noise barrier

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that is required to be removed from the concept plan to ensure that the development is integrated into the surrounding neighbourhood. The applicant is also required to clarify which sustainable elements will be incorporated into the design;

- The City Wide Corridor Planning Principles and Design Guidelines encourage new development to have a minimum building height of two storeys, for a minimum of 75% of the building frontage along arterial streets. The applicant is proposing a building that only extends a minimum of 40% of the frontage along an arterial street with a minimum height of 7.5 metres (i.e. 1 storey in height);
- The proposed development has not demonstrated that it complies with Policy B.3.3.1 which promotes the creation of quality spaces that are pedestrian oriented, respect natural features and contribute to environmental sustainability. Updates to the concept plan are required to illustrate where additional trees and safe paths of travel can be incorporated into the design;
- The proposed development is premature and has not demonstrated that it complies with Policies C.5.3.6, C.5.3.13, C.5.3.14, C.5.3.15, C.5.3.17, C.5.4.3 and C.5.4.5 respecting connections to the existing municipal system and the provision of adequate municipal services and additional details are required. Development Engineering recommends that a Holding 'H' Provision be included with the Zoning By-law Amendment to ensure that a revised Functional Servicing Report, External Works Agreement, reciprocal easements, and written confirmation that adequate allocation of services has been secured to the satisfaction of the City. In addition, approvals from the Ministry of Environment, Conservation and Parks shall be obtained prior to the lifting of the Holding 'H' Provision;
- The proposed development has not demonstrated that it complies with Policy 2.4.1.1 which requires that developments proposing residential infill retain or enhance the natural attributes of the site and surrounding community by including elements such as native vegetation and trees. Further revisions to the Arborist Report, dated May 9, 2023, are required. A Tree Protection Plan and Tree Management Plan are required to be submitted. Also, a detailed Landscape Planting Plan, prepared by a Registered Landscape Architect, showing the placement of trees on internal/external City property be provided to ensure that the proposal can accommodate an adequate number of trees;
- The Urban Hamilton Official Plan and Zoning By-law No. 05-200 definitions note that multiple dwellings contain five or more dwelling units. Some townhouse blocks proposed do not meet the definition of a multiple dwelling as some contain fewer than five dwelling units. The applicant is required to modify the proposed design to increase the number of units in the appropriate blocks to satisfy the

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- definition of a multiple dwelling or propose to change the definition of multiple dwelling in the Zoning By-law;
- Revisions are required to the Transportation Assessment in the form of a minor sensitivity analysis for the existing signalized intersection of Rymal Road West and Bishop Ryan Way and Hazelton Avenue; and,
  - The proposed development does not include the required number of short-term and long-term bicycle parking spaces as per Zoning By-law No. 05-200.

### **Public Consultation**

In accordance with the provisions of the *Planning Act* and the Council Approved Public Participation Policy, Notice of Complete Application and Preliminary Circulation for the applications were sent to 130 property owners within 120 metres of the subject lands on September 4, 2020. A public notice sign was posted on the subject lands on September 3, 2020.

In the Planning Justification Report prepared by GSP Group Inc. and dated July 2020, the applicant has indicated that consultation efforts were made before the application was submitted and included discussions with the Ward Councillor, five Resident Information Meetings as well as four Resident Development Updates.

A virtual Community Open House occurred on November 24, 2020. Concerns included, but were not limited to, the following items:

- Consideration for more entrances into the site to deal with the increased density;
- Increased traffic congestion within and around the site;
- The length of time the development will take to complete;
- Whether or not the development will continue to include a quaint design for Market Square;
- A reduction in property values as a result of the inclusion of increased density;
- An increase in the facility maintenance to support the project;
- Whether the City's infrastructure is capable to service the new residential and commercial uses;
- An increase in noise, dust, and vibration, specifically impacting the neighbouring properties along Westlawn Drive;
- The potential loss of mature trees along the property line between St. Elizabeth Mills and Westlawn residents;

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- Most houses on Westlawn Drive have yards that slope to the west and south and there are concerns regarding drainage along the rear yards of the properties along Westlawn Drive;
- As the commercial uses will be accessible by the public, there are concerns regarding security; and,
- Overcrowding of existing amenities, such as the pool.

To date, staff have received four written submissions from the public. Concerns identified include increased traffic and safety concerns with only having two existing exits onto municipal streets, negative impacts to the environmental area and loss of trees, insufficient infrastructure to support the proposal, and loss of privacy in the rear yards of home fronting onto Westlawn Drive.

**APPENDICES AND SCHEDULES ATTACHED**

Appendix "A" to Report PED24191 – Location Map

Appendix "B" to Report PED24191 – Original Master Development Plan and Draft Plan of Subdivision

Appendix "C" to Report PED24191 – Letter of Appeal

Appendix "D" to Report PED24191 – Concept Plan

JC/mb