

ISSUE DATE:

March 25, 2011



PL100549

Ontario Municipal Board
Commission des affaires municipales de l'Ontario

1635058 Ontario Limited has appealed to the Ontario Municipal Board under subsection 22(7) of the *Planning Act*, R.S.O. 1990, c. P.13, as amended, from Council's refusal or neglect to enact a proposed amendment to the Official Plan for the Town of Oakville to redesignate land at 278 Dundas Street East and 2466 Trafalgar Road from Office and Other Commercial to High Density Residential to permit the construction of a high density residential development
Approval Authority File No. Z.1413.21
OMB File No. PL100549

1635058 Ontario Limited has appealed to the Ontario Municipal Board under subsection 34(11) of the *Planning Act*, R.S.O. 1990, c. P.13, as amended, from Council's refusal or neglect to enact a proposed amendment to Zoning By-law 1984-63 of the Town of Oakville to rezone lands respecting 278 Dundas Street East and 2466 Trafalgar Road from A to UCC3R Special Provision to permit the construction of a high density residential development
OMB File No. PL100550

APPEARANCES:

Parties

Counsel

1635058 Ontario Limited

L. Townsend

Town of Oakville

J. Huctwith

Region of Halton

D. Beck

Silgold Developments Limited and Silwell
Developments Limited

D. Wood, J. Shapira

**MEMORANDUM OF ORAL DECISION DELIVERED BY S. J. SUTHERLAND
ON MARCH 10, 2011 AND ORDER OF THE BOARD**

This was a settlement hearing in relation to the above referenced file regarding a property at 278 Dundas Street East and 2466 Trafalgar Road (Subject Property) in the Town of Oakville (Town). 1635058 Ontario Limited (Fitzsimmons) proposes to the following on the Subject Site:

- residential component – maximum of 750 units,

- office component –minimum of 2,500 square metres,
- retail component –maximum of 2,600 square metres,
- building heights – four tower elements above a four storey podium adjacent to the street, with one building at a maximum of 20 storeys, with remaining buildings than 20 storeys,
- development on the basis of full urban services,
- extension of Taunton Road to Dundas Street,
- extension of Oak Walk Drive to Trafalgar Road.

Fitzsimmons submitted an application for an Official Plan Amendment (OPA) and Zoning By-law Amendment (ZBLA). The OPA would amend the Town's Official Plan (OP) and redesignate the Subject Property from Office and Other Commercial to High Density Residential. The ZBLA would amend Zoning By-law 1984-63, as amended, and rezone the Subject Property A to UCC3R Special Provision.

Fitzsimmons appealed, pursuant to s. 22(7) and s. 34(11) of the *Planning Act*, Council's failure to make a decision within 180 days and 120 days of the date the applications were submitted.

At the commencement of the hearing the Board was informed that a settlement had been reached among the Parties: Fitzsimmons, the Town of Oakville, the Region of Halton (Region) and, Silgold Developments Limited and Silwell Development Limited. Conservation Halton, which had been a Party, indicated in a letter dated February 3, 2011 that their concerns have been resolved. The Region indicated that their concerns regarding servicing can be dealt with by the inclusion of a Holding provision in the ZBL.

John Ghent gave uncontradicted expert land use planning evidence and opinion on behalf of Fitzsimmons. Mr. Ghent informed the Board that the Subject Property comprises a 2.74 ha site at the southwest corner of the intersection of Dundas Street and Trafalgar Road. The east branch of the Morrison Creek flows for approximately 175 m in a south-easterly direction across the site from north of Dundas to Trafalgar

Road. Mr. Ghent said the heavily vegetated creek, which divided the site into two parts, is proposed to be left in a natural condition.

He told the Board that the lands front onto both Dundas Street to the north and Trafalgar Road to the east – both Regional Primary Arterial roads. They also front onto two local roads, Taunton Road and Oak Walk Drive that are proposed as part of the development.

Mr. Ghent testified that the Subject Property is at a prominent location within the Uptown Core Community in Oakville, and, as such, warrant recognition as a “gateway” location. He said such locations should generally be developed to create a sense of entrance and arrival, contributing to the community’s image and identity.

He said that lands to the south and west, which are also within the Uptown Core, are developed with commercial uses. Currently, the suburban-style development is relatively space-extensive, with low rise buildings and surface parking lots. He told the Board that the long-term plan is to significantly intensify the area and promote mixed-use commercial and residential development. Immediately abutting the Subject Property is a Town of Oakville transit terminal. To the east are lands developed with relatively space-extensive commercial uses, and to the north the lands are largely undeveloped, with the exception of service stations. The long-term plan for this area north of Dundas Street is intensive urban development.

In Mr. Ghent’s opinion, the application is consistent with the Provincial Policy Statement (PPS), which states in s.1.1.3.1 that settlement areas shall be the focus of growth. The PPS goes on, in s. 1.1.1, to urge healthy communities sustained by promoting efficient development and land use patterns, accommodation and appropriate range and mix of residential employment, recreational and open space uses to meet long-term need, cost-effective development standards to minimize land consumption and servicing costs, and ensuring that necessary infrastructure and service facilities are or will be available to meet current and projected needs. He pointed out that intensification is supported strongly in the PPS and that the PPS contains specific policies directed at supporting downtowns and mainstreets.

He testified that the Subject Property is located in an urban area, and that the proposed development is an urban use that provides housing to an urban population. He said full municipal services are available to the lands, as is public transit. He stated that the proposed development will support the downtown.

Mr. Ghent also testified that the proposed development conforms to the overall goals and principles of the Ontario Growth Plan for the Greater Golden Horseshoe (GP) by contributing to the compactness, vibrancy and completeness of the existing community and by optimizing the use of existing infrastructure. The proposal represents appropriate intensification, and is proposed at a scale that contributes to the building of a complete community.

He opined that the proposed development conforms to the provisions of the Regional Official Plan, which designates the Subject Property "Urban Area". While the proposed development of the site for high density residential uses requires an amendment to the current Oakville OP, the office and retail commercial components of the application are consistent with the current OP.

Mr. Ghent stated that OPA 275 (Interim Growth Management Policies) is not relevant to the proposed development, nor is the not-in-force new OP, Liveable Oakville. While Liveable Oakville is not relevant or applicable to the proposed development, in Mr. Ghent's opinion if the plan were applicable, the development would be in conformity with it.

Mr. Ghent said an amendment to ZBL 1984-63 is necessary to permit the proposed development, and he recommends approval of the proposed ZBLA (Exhibit 1, Tab 13).

At the request of Counsel, the Board notes that a cost-sharing agreement has been entered into between the applicant, 1635058 Ontario Limited (Fitzsimmons), and Silgold Developments Limited and Silwell Developments Limited.

Based on the uncontradicted planning evidence and opinion of Mr. Ghent, the Board finds the proposed development to be in accordance with the relevant planning instruments, and to represent good planning, and to be in the public interest.

The Board Orders that the appeal is allowed and the Official Plan for the Town of Oakville is amended as set out in Attachment "1" to this Order, and as amended is approved.

The Board further Orders that the Town of Oakville's Comprehensive Zoning By-law 1984-63 is hereby amended in the manner set out in Attachment "2" to this Order.

So Orders the Board.

"S. J. Sutherland"

S. J. SUTHERLAND
MEMBER

ATTACHMENT 1

Official Plan Amendment

Number 313

**to the
Official Plan
of**

**The Corporation
of the
Town of Oakville**

THE CORPORATION OF THE TOWN OF OAKVILLE

BY-LAW NUMBER 2011-021

A by-law to adopt an amendment to the Official Plan of the
Oakville Planning Area, Official Plan Amendment No. 313
(File No: 1635058 Ontario Ltd.(Fitzsimmons) – Z.1413.21)

AS ORDERED BY THE ONTARIO MUNICIPAL BOARD:

1. **The attached Amendment Number 313 to the Official Plan for the Oakville Planning Area is hereby adopted and approved.**

Ordered by the Ontario Municipal Board on day of , 2011

Town of Oakville
Official Plan Amendment No. 313

Part 1, Constitutional Statement

Part 1 and Part 2 do not constitute operable parts of this amendment.

Part 3, "The Amendment", is part of this amendment.

Part 2, The Preamble

1. Purpose

The land that is the subject of this Official Plan amendment is located in the Uptown Core Community at the southwest corner of the Trafalgar Road and Dundas Street intersection. The property is approximately 2.47 ha in size and is currently vacant of any buildings.

The Morrison Creek East Branch traverses the property in a diagonal direction from Dundas to Trafalgar. The creek lands are designated "Natural Area" (approximately 0.54 ha). The table land lands (approximately 1.93 ha) are designated "Office and Other Commercial" and 12 storey building heights are currently permitted.

The Purpose of this Amendment is to amend the Official Plan as it applies to the table land area west of the creek lands. The Official Plan is proposed to be amended to permit high density residential uses in addition to office uses and commercial uses. The commercial and retail uses would be limited to the lower floors of the development. A maximum of 750 residential apartment units are permitted, in a development proposal consisting of 4 tower elements ranging in height up to 20 storeys. Most of the parking would be underground.

A development application to amend the Official Plan, the Zoning By-law was filed with the Town in November 2006. A Public Hearing was held 26 January, 2009.

2. Location

The land that is the subject of this amendment is legally described as Part of Lot 13, Concession 1, S.D.S. The municipal address is 278 Dundas Street.

3. Basis

The Official Plan amendment is based on the following factors:

- The proposed development is consistent with the Provincial Policy Statement.
- The proposed development is consistent with the Growth Plan for the Greater Golden Horseshoe.
- The proposal is in conformity with the Region of Halton Official Plan. The subject lands are in the urban area and full municipal services are available.
- The proposed use conforms to the criteria outlined in the Oakville Official Plan for medium and high density residential uses (Part D, 1.3.). The site is adjacent to open space natural amenities; local commercial facilities; public transit and pedestrian pathways; and an arterial and collector road system.
- Public transit facilities are located adjacent to the subject property.
- The property is located at a prominent intersection in Oakville adjacent to two arterial roads. The massing and height of the proposed development is intended to reflect the gateway location of the site.

Part 3, The Amendment

The Official Plan is amended as follows:

Item 1:

Part E, Section 1.9.3 A c) i) is amended by adding a new bullet to the end of the list, as follows:

- In the area bounded by Taunton Road, Oak Walk Drive, and the East Morrison Creek.

Item 2:

Part E, Section 1.9.3 A c) ii) is amended by adding a new bullet to the end of the list, as follows:

- Office uses

Item 3:

Part E, Section 1.9.3 A c) iii) is amended by adding a new bullet to the end of the list, as follows:

- “A mixed development of commercial, office and residential uses is permitted on the lands located at the southwest corner of Trafalgar Road and Dundas Street, adjacent to the existing transit station at Oak Walk Drive and Taunton Road, known as 278 Dundas Street East and 2466 Trafalgar Road. Notwithstanding the above limit of 4 FSI, a minor increase above 4 FSI is permitted with a maximum of 750 residential units. Service commercial and retail uses are permitted within the bottom 2 storeys of any building. A maximum of four building towers are permitted, and heights may exceed the maximum of 12 storeys subject to bonusing. Only one building tower may be 20 storeys tall. The remaining building towers shall be less than 20 storeys with an average height of 16 storeys, subject to bonusing.”

Item 4:

Figure P, Land Use Uptown Core is amended as shown on Schedule “A” as follows:

- (a) “Area A” is amended from “Office and Other Commercial” to “Mixed Commercial Residential”.
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Schedule A O.P.A. No. 313

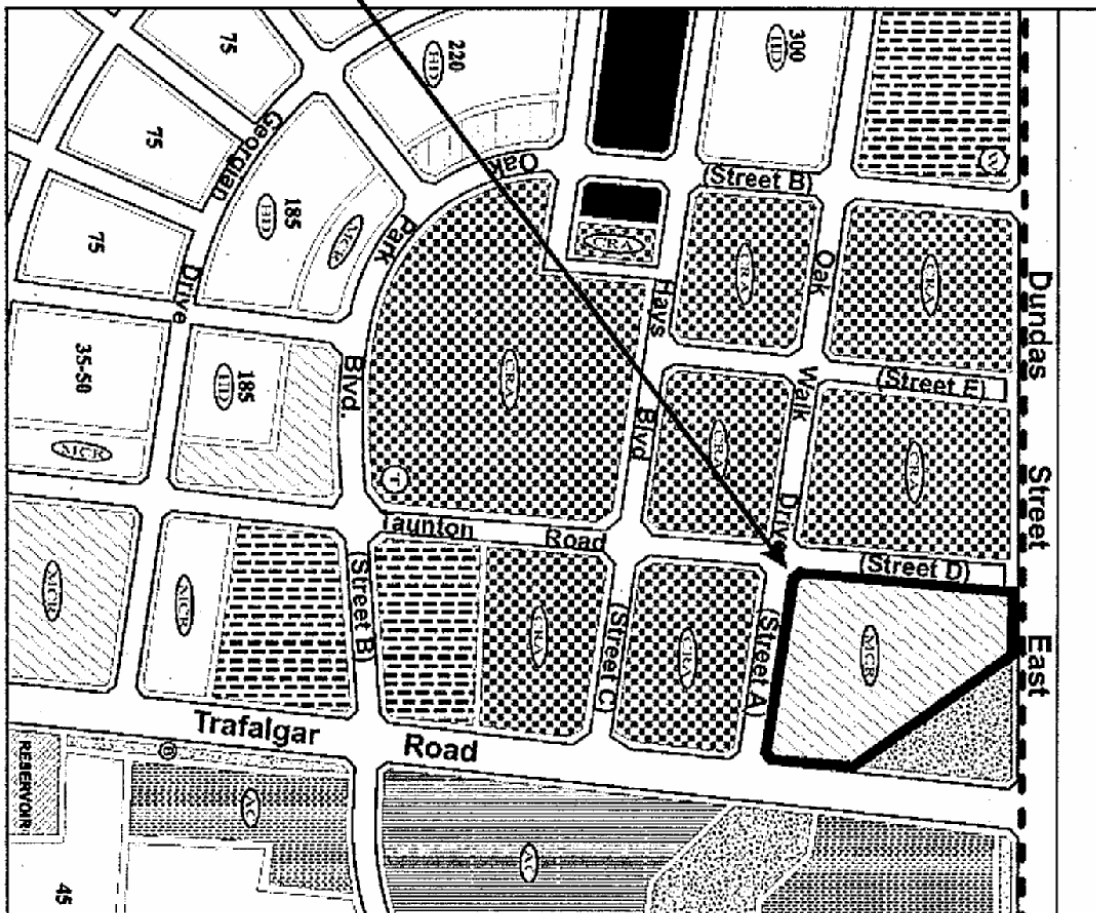
Legend:

- Residential Medium Density (units per site ha. as shown)
- Residential High Density (units per site ha. as shown)
- Mixed Commercial Residential
- Office and Other Commercial
- Arterial Commercial
- Central Retail Area
- Institutional
- Parkland
- Natural Area
- Berm / Buffer
- Utilities
- Transit Terminal
- Fire Hall / Ambulance / Emergency Services
- Place of Worship
- Community Boundary

FIGURE P LANDUSE UPTOWN CORE

SUBJECT LANDS

Town of Oakville
Official Plan
Planning Services Department
Technical Services Business Unit
January 2011



ATTACHMENT 2

THE CORPORATION OF THE TOWN OF OAKVILLE

BY-LAW NUMBER 2011-022

A by-law to amend the Town of Oakville's Comprehensive Zoning By-law 1984-63, as amended, and to rezone lands located at 278 Dundas Street East and 2466 Trafalgar Road, south-west of the intersection of Dundas Street and Trafalgar Road, Concession 1, Part of Lot 13, S.D.S.
(File: 1635058 Ontario Ltd. (Fitzsimmons) – Z.1413.21)

ORDERED BY THE ONTARIO MUNICIPAL BOARD:

1. Map 91(22) of By-law 1984-63, as amended, is further amended as shown on Schedule 'A' by rezoning the "Affected Lands" as follows:

A	to	H36 – MU4 – SP854
A	to	O1
A	to	O4

2. By-law 1984-63, as amended, is further amended by adding to Section 89 a new Subsection (854) as follows:

"Special Provision	Applies to/Location	By-law Number
(854)	1635058 Ontario Ltd. 278 Dundas Street East Concession 1, Part of Lot 13, S.D.S	2011-022

The lands subject to Special Provision 854 may be used for the uses permitted in the general provisions of By-law 1984-63, as amended, subject to the applicable regulations, except where in conflict with the following uses and regulations, in which case the following shall prevail:

a) Permitted Uses:

i. The following uses are permitted:

1. All uses permitted in the C3 zone except: automobile-related uses, service stations, service stations with car washes, and drive-through facilities either stand alone or accessory to a permitted use,
 2. Apartment house(s) and/or apartment building(s),
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3. Multiple-attached dwelling units that share a common wall with an apartment building, and/or mixed use buildings, and/or another permitted multiple-attached dwelling,
 4. Outdoor patios,
 5. Parks, playgrounds, urban squares, recreational areas and publicly-operated community centres,
 6. A public parking lot in a structure located either below or above grade.
- ii. Notwithstanding a) i. above, a maximum leaseable floor area of 2,510 m² of retail uses is permitted.

b) General Regulations:

1. Retail and service commercial uses:
 - i) are not permitted in stand-alone buildings which do not include residential and/or office uses;
 - ii) are only permitted within the first two storeys above grade of a building; and
 - iii) are only permitted along façades identified as “locations where commercial required/permitted at grade” on ‘Map UC-2’.
 2. Retail and service commercial uses shall be the only permitted use at grade along façades identified as “commercial required at grade” in ‘Map UC-2’.
 3. Except as otherwise provided, office and residential uses are permitted in any storey of a building.
 4. Residential dwelling units are not permitted at-grade where they will face Taunton Road, Oak Walk Drive, or abutting a public amenity such as an urban square or a transit facility.
 5. Office uses are not permitted in stand-alone buildings unless the building has at least 2,500 m² of leaseable floor area.
 6. Entrances to residential lobbies, driveways and pedestrian pathways are permitted anywhere along a lot line.
 7. Building setback to Taunton Road, Minimum 1 metre.
Oak Walk Drive and a transit facility: Maximum 3 metres
 8. Below grade setbacks: Minimum 0 metres
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9. Required amount of office uses: Minimum 2,640 m²
10. Unit size of office use if located at grade facing a public street and/or public amenity: Maximum 200 m²
11. Neighbourhood Store floor area, per unit: Maximum 200 m²
12. Grocery or Food Store, Restaurant, Department store floor area, per unit: Maximum 500 m², unless the use extends to two floors, then the maximum unit size is 1,000 m²
13. Ground storey height, measured from top-of-slab to top-of-slab, other than for a multiple-attached unit: Minimum 4.5 metres
14. Required step back to building's main wall above 31 metres: Minimum 3 metres
15. Parking ratio for residential uses: A minimum of 1 parking space per dwelling unit, inclusive of visitor parking.
A maximum of 1.5 parking spaces per dwelling unit, inclusive of visitor parking.
16. Parking ratio for commercial and office uses: A minimum of 1 parking space per 32.6 m² of leaseable floor area.
A maximum of 1 parking space per 20 m² of leaseable floor area.
17. Surface Parking Area: Shall not be permitted in any yard between a building and a public street and shall occupy no more than 20% of the site area.
18. Projection of stairs, porches, balconies, at-grade terraces, cornices, pilasters and/or bay windows, with or without foundation, beyond the main wall of a building: To a maximum of 0.3 metres from any public street.
19. Building height in 41 metre zone shown on 'Map UC-2': Minimum: 23 metres
Maximum: 41 metres / 12 storeys
20. Building height in the 41 metre zone shown on 'Map UC-2' (where subject building tower. Maximum 70 metres / 20 storeys for one building tower.

to bonusing):

All other buildings towers shall have a maximum height of 54 metres / 16 storeys.

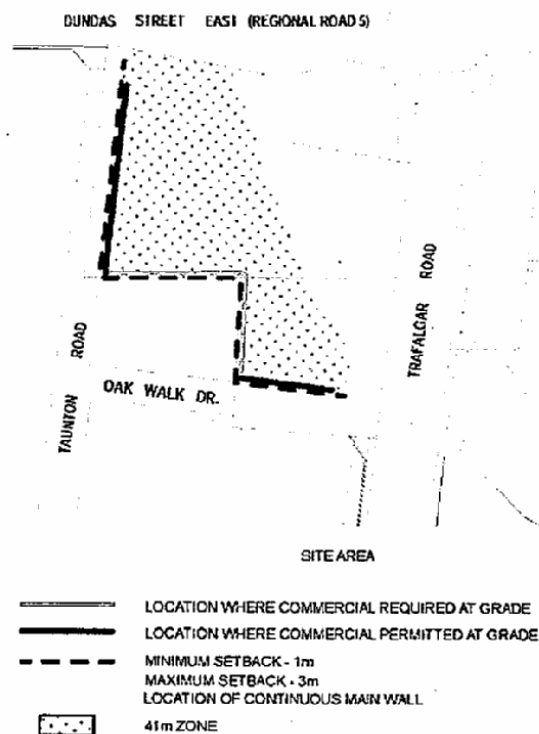
21. Height of building podium connecting two or more building towers Minimum 12 metres
Maximum 4 storeys
 22. Number of building towers Maximum 4
 23. Height of parapets: Maximum 3 metres
 24. Height of mechanical and/or elevator penthouse, rooftop equipment, and stair tower where not wholly enclosed by an architectural feature: Maximum 6 metres
Maximum 10 metres if wholly enclosed
 25. Height of rooftop architectural features, including pitched roofs: Maximum 12 metres
 26. Where any rooftop equipment, mechanical and/or elevator penthouse and stair tower exceed 2 metres in height and are not integrated with the extension of the building's façade, these must be set back a minimum of 4 metres from all edges of the roof and screened by an architectural feature.
 27. Building height for buildings or building towers shall be measured exclusive of any mechanical penthouse, elevator tower, stair tower, and/or parapet, notwithstanding any podium, stepped back and/or terraced portions of the same building which may be below the minimum height.
 28. A step back from a building podium to a building tower that faces a public street is not permitted below a height of 12 metres.
 29. An optional step back to a main wall is permitted above 12 metres and below 31 metres, provided the step back is no greater than 4 metres.
 30. Where a building is taller than 12 storeys in height, the floorplate dimension of the building tower can be no greater than 40 metres in length in any direction, measured from outside wall to outside wall.
 31. Maximum distance between unit entrances for multiple-attached residential units at grade shall be no more than 9 metres, or 12 metres for end units.
 32. Where multiple-attached dwelling units are provided at grade, and share a common wall with an apartment building and/or mixed-use building, the minimum building height shall not apply to the multiple-attached units so long as the tower complies with the height requirements identified in #19 above.
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33. As shown on 'Map UC-2', a main wall (or podium) of no less than 12 metres in height shall be continuous for at least 70% of the length of the lot line it faces.
 34. Where commercial and/or office units are located at-grade, a minimum of one principal building entrance to each unit shall be directly accessible from, and oriented towards, a public street. A maximum of one building entrance to each unit, or a maximum of 2 entrances for an end unit, may be oriented towards a yard other than the public street yard.
 35. Visitor parking associated with a residential use, and client parking associated with a commercial and/or office use, may be provided in any combination of: a parking structure (below and/or above grade), and/or a surface parking area and may be used for any combination of residential, commercial, and/or office uses.
 36. Any awning, canopy and/or similar weather shielding structure, and any restaurant patio, may project to the lot line.
 37. Loading and servicing areas shall not face a public street, and must be screened from the public street, with vehicular access to these areas internal to the site.
 38. Garbage and recycling rooms shall be located internal to the serviced building.
 39. Transformer and telecommunications vaults shall be located internal to the serviced building.
 40. Stairs and air vents associated with an underground or above ground parking structure are permitted in any yard.
 41. Where an urban square is provided, the maximum building setback shall not apply, provided that the urban square is directly accessible from a public street.
 42. Established grade is defined as the finished floor elevation at-grade of the principal entrance.
 43. Notwithstanding section 12 (3) of Zoning By-law 1984-63, balconies and/or open-air terraces are permitted in any yard.
 44. Notwithstanding any severance, partition or division of the lands zoned MU4-SP854, the provisions of that Zone shall apply to the whole of such lands as if no severance, partition or division had occurred.
 45. Zoning by-law compliance for building height above 12 storeys is dependant upon compliance with the terms of this by-law and the terms of an agreement under Section 37 of the *Planning Act*, R.S.O. 1990, c. P.17, providing community
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benefits in the form of one or more of the following:

- i) discounted units for affordable housing;
- ii) discounted space for community uses;
- iii) discounted space for daycare;
- iv) monetary or other contributions to the Town for the purposes of eligible community benefits identified in the Town's Official Plan.

c) The following "Map UC-2" forms part of this special provision:



d) Definitions:

For the purposes of this special provision, the following definitions apply:

1. *Urban Square*: An Urban Square is a publicly-accessible, predominantly hardscaped open space, of at least 300m² in area, with one side at least 10 metres in length.
 2. *Main Wall*: The primary exterior front, rear or side wall of a building, exclusive of permitted projections and indentations.
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3. *Building podium*: The above-ground portion of the base of a building façades which may connect two or more building towers.
 4. *Building tower*: The portion of a building above 4 storeys.
3. By-law 1984-63, as amended, is hereby further amended by adding to Section 90B, a new subsection H36 as follows:

"H36 - 1635058 Ontario Ltd. (Fitzsimmons)

Zoning Designations	Special Provisions	Zoning Map
H36 - MU4	854	91(22)

- a) Permitted Uses (Prior to "H" removal):
For such time as the "H" symbol is in place, these lands shall only be used for existing permitted uses, buildings and structures.
 - b) Regulations (Prior to "H" removal):
For such time as the "H" symbol is in place, these lands shall be subject to the regulations of the Agricultural (A) zone as it read on the day before By-law 2011-022 came into effect.
 - c) Conditions for "H" Removal:
The "H" symbol shall, upon application by the landowner, be removed by way of an amending zoning by-law, from all or part of the lands subject to this provision when the following conditions have been satisfied:
 - i) Halton Region's Commissioner, Legislative & Planning Services, or his or her designate, is satisfied that the owner has submitted an update to the Functional Servicing Report establishing that there is sufficient servicing capacity for water and/or sanitary sewer to service the subject lands;
 - ii) The owner has submitted to Halton Region an update of the Phase I Environmental Site Assessment completed in August, 2007, setting out any subsequent changes on the site and assessing whether any such changes affect the probability of contamination being present on the site, and also has provided to Halton Region a letter of third party reliance for all submitted reports;
 - iii) An agreement under section 37 of the *Planning Act*, R.S.O. 1990, c. P.7, securing the provision of funds and/or other community benefits in exchange for the height in excess of 12 storeys has been executed and registered against title to the property; and,
 - iv) Land and funds required for the extension of Taunton Road (23 m) and Oak Walk Drive (20 m) have been secured to the satisfaction of the Town.
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4. This By-law is enacted to implement a Decision of the Ontario Municipal Board pursuant to Subsection 34(26) of the *Planning Act*, R.S.O. 1990, c. P.13, as amended and comes into force the day the final Board Order is issued.

ORDERED by the Ontario Municipal Board Decision/Order dated: _____, 2011 for file No. PL100549.

Decision Number: _____

MAYOR

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