

Calgary Planning Commission Member Comments



For CPC2023-0023/LOC2022-0086
heard at Calgary Planning Commission
Meeting 2023 January 26



| Member | Reasons for Decision or Comments |
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| <p>Commissioner Tiedemann</p> | <p>Comments:</p> <ul style="list-style-type: none"> This was one of the most challenging files that was accompanied the most robust discussion I have seen during my time on CPC. This application seeks to redesignate a site in Hillhurst/Sunnyside from M-C2 to a DC based on M-U1 with a max height of 50m (14 storeys) and a max FAR of 9.0. I will start off by saying that in principle, both administration and the members of CPC showed support for a project of this scale in this location. The initial recommendation of refusal forwarded from administration was based on two key items: 1) insufficient class 1 bicycle stalls accounted for in the DC (the applicant was proposing 0.5 per dwelling unit), and; 2) a disagreement between admin and the applicant on a density bonusing rate. <p>I will first touch on the bicycle parking issue. During the CPC meeting, an amendment to the DC was proposed, and passed, that increased the ratio of class 1 bicycle stalls to 1.0 per dwelling unit. Given the fact that the applicant is proposing zero resident parking stalls, I felt that providing 1.0 class 1 bicycle stalls was a reasonable request, and the applicant agreed. There was also some anecdotal discussion about buildings in the area being oversubscribed for the existing bicycle parking facilities so there is clearly demand for this type of amenity in the community.</p> <p>The discussion about the density bonusing rate was very long and at some times circular. The disagreement over the bonus density rate resulted from the applicant voluntarily offering to pay \$70/m² (and eventually indicating they could go as high as \$90/m²) and administration believing the rate should be set at \$270/m², in line with the Beltline ARP. I believe the crux of the issue comes down to a few key items:</p> <ol style="list-style-type: none"> 1. There is currently a council approved density bonus rate in place for any FAR increases between 2.5 and 5.0. This rate is set at \$19.77/m². 2. The applicant wishes to increase the allowable FAR to 9.0 which is above the ARP maximum of 5.0. |

3. The current bonus density rate contemplated in the ARP is based on funding the Bow to Bluff project which is now fully funded.
4. The existing council approved bonus density rate of \$19.77 is TOO LOW to support community amenity upgrades that are required as associated with applications of this scale. However, there is NO Council direction for density bonus rates above 5.0 FAR.
5. The rate proposed by administration of \$270/m² was taken directly from the Beltline ARP and I do not believe it is applicable in this location. I believe the calculation methodology employed by administration (based on land value), is fundamentally flawed and frankly, incorrect. Any density bonus rate should be tied back to specific community amenity outcomes, the cost of these improvements should be calculated and then the math should be back calculated to determine a community appropriate bonus density rate.

I do not believe that administration and CPC should be negotiating density bonus rates on a case-by-case basis. These rates need to be determined through the ARP/LAP process and they need to be approved at the council level. For this reason, I was happy to support the amended recommendation of APPROVAL for this file with the revised class 1 bicycle parking ratio of 1.0 and the council approved density bonus rate of \$19.77 applied to all additional requested FAR (from 2.5 to 9). Should council wish to revise the density bonus rate at the public hearing, that is their prerogative, but that is the proper arena for the conversation to be held (not during the file review and not at CPC). Again, I believe that the application represents a reasonable scale for the location and these types of projects will add tangible density to the established areas in some of our most desirable communities. It would truly be a shame if this project was halted because of a disagreement on an ad hoc density bonus rate negotiation. We should not be auctioning off density on a project-by-project basis, there should clearly established rates to ensure consistency for administration, communities and applicants.

The main hurdle in this application is the fact that there is no updated, council approved policy with regards to density bonusing above 5.0 FAR in the area. The length discussion we had on this topic lead me to one clear conclusion: **We require an updated, Council approved, density bonus program/policy for the area.** In the absence of this updated policy, any future application in the area requesting above 2.5 FAR will be at risk of facing the same approval challenges.

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| <p>Commissioner Weber</p> | <p>Comments:</p> <p>The subject land use application seeks to amend the Hillhurst/Sunnyside Area Redevelopment Plan and redesignate a parcel in the neighbourhood of Hillhurst/Sunnyside from Multi-Residential – Contextual Medium Profile (M-C2) District to Direct Control (DC) District to accommodate mixed use development, with guidelines.</p> <p>There was lengthy discussion at Commission regarding this application as it was brought forward as a recommendation for refusal by Administration. The two items of contention were regarding offsetting transportation demand management (TDM) measures for zero vehicle parking and bonus density rates.</p> <p><i>TDM Measures</i></p> <p>The parcel is located within 50 metres of the Sunnyside LRT station. The developer is proposing to provide zero parking stalls per dwelling unit and 0.5 bicycle parking stalls – class 1 per dwelling unit. Further TDM measures proposed are that 100% of the visitor parking stalls provided must be capable of charging an electric vehicle and a bicycle repair station will be provided. The Applicant was asked if they intended to provide public vehicle parking in the development (free or pay) and they indicated none would be provided. The only vehicle parking proposed would be visitor parking stalls for the residents in accordance with the proposed Direct Control Land Use. It should be noted that the requirement for visitor parking stalls would be 0.1 stalls per dwelling unit in the proposed Direct Control which matches the MU base general rules from the Land Use Bylaw.</p> <p>Commission found the proposed TDM measures to be insufficient to offset the zero parking proposal and agreed with Administration that the minimum bicycle parking should be 1.0 bicycle parking stalls – class 1 per dwelling unit. I supported the motion to amend the proposed Direct Control Land Use accordingly and recommend that Council uphold the 1.0 bicycle stalls requirement.</p> <p><i>Bonus Density Rate</i></p> <p>A number of members of Commission including myself asked a number of questions of Administration and the Applicant regarding the disagreement between the parties on the Bonus Density Rate. While some Commission members found this tedious – as a technical review body – this was an important exercise on this matter.</p> <p>Ultimately it was concluded that none of; Administration, the Applicant and their Planning Consultant, nor Planning</p> |
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Commission could discern any sound planning rationale for charging a bonus density rate. Administration explained that bonus density rates are charged to mitigate the negative planning impacts of an application. However when asked to detail what those negative impacts were and how they could be mitigated by the payment of a bonus density fee, it was plainly evident that there are no sound planning principals to be applied nor specific examples available. More simply stated; if there is a negative planning impact of a development it should not be approved, there is not a financial remedy available and thus bonus density rates are not related to technical planning outcomes.

Following the foregoing, none of the parties were able to provide a technical basis for the calculation of bonus density rates. There was some assertion that they could be related to land values, but no studies, guides, nor precedents were provided by either Administration or the Applicant to show a technical rationale for determining the bonus density rate.

In light of this, Commission was faced with the difficult task of trying to address a matter with a proposed Direct Control Land Use Bylaw that is not based on any sound planning principals. The determination of when a bonus density rate is applied and what that rate should be is a political decision to be undertaken by Council. Therefore, I supported a motion to amend the proposed DC to the most recent bonus density rate approved by Council in the Hillhurst Sunnyside ARP. This seemed the only rational approach for Commission to take.

This then brings forward the question of if bonus density rates are appropriate within the scope of the Land Use Bylaw – and even further – if they are permitted under the Municipal Government Act (MGA). Administration’s legal council was asked to refer Commission to the specific sections of the MGA that allow the City to charge bonus density rates. Commission was informed that they were unable to do so but that they felt reasonably comfortable such fees could be charged.

I believe that it has been conclusively established that bonus density rates are not a planning consideration nor related to the administration of a land use bylaw. Rather, bonus density rates are a fee decided and implemented at the will of Council, with no basis in sound planning principals.

Furthermore, in examining if a bonus density rate is a levy, I encourage Council to review Sections 647 and 648 of the MGA. Redevelopment levies are established to fund specific park, school, or recreational facilities and off-site levies may only be used to pay for the capital cost of a specified list of

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| | <p>improvements including utilities, roads, and associated land requirements. Commission established that bonus density rate fees are not calculated based on specific improvements, nor deployed by the City in capital improvement projects. The fees are rather sent to community associations for to be deployed at their discretion. Therefore, bonus density rate fees cannot classified as a levy.</p> <p>In addition, in reviewing section 640 of the MGA there is no section that speaks to fees or taxes being applied directly through land use. Rather, fees or taxes are established through other bylaws created by Council as they are not directly related to a land use bylaw. Accordingly, I suggest that Council should not (and perhaps is not legally permitted to) connect bonus density rates to the regulation of land use. Rather, I recommend if Council finds these fees to be appropriate, they should be established though a separate bylaw outside of the planning, subdivision, and development process.</p> |
| <p>Commissioner Hawryluk</p> | <p>Reasons for Approval</p> <ul style="list-style-type: none"> • Schedule-based exactions seem to align more with “orderly and economical development” than negotiation-based exactions (CPC Bylaw 6.a). Therefore, I supported approving this building using the schedule-based rate of \$19.77/m2 throughout the building. <p>Minjee Kim, who compared exactions strategies in Boston and Seattle, finds that, “Though schedule-based exaction programs ensure overall fairness and certainty of the entitlement process, project-by-project negotiation could potentially yield significant public benefits. However, uncertainty can be high in a negotiation-heavy system, which may disadvantage small-scale developers”</p> <p>Complicated systems, such as planning systems with density bonuses, are fragile and cannot respond to changing conditions. Restricting redevelopment, even of the smallest scale, creates an administratively intense planning system, which struggles to update complicated policies, like schedule-based exactions systems and Local Area Plans.</p> <p>It reminds me of Curtis Carlson’s observation that “Innovation that happens from the bottom-up tends to be chaotic but smart. Innovation that happens from the top-down tends to be orderly but dumb.”</p> <p>Rather than layer complicated policies on top of increasingly complicated policies, we should strive to treat the city as a complex, adaptive system. Ecologists attest that complex</p> |

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| | <p>systems are difficult to restore. Yet, we likely need to restore our system to something simpler and better able to respond to an uncertain future if we want a functioning and responsive housing market that can provide adequate amounts of housing at prices that people can afford.</p> |
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