

February 11, 2019

By E-Mail Only to townclerk@oakville.ca

Mayor Rob Burton and Members of Planning and Development Council
c/o Town Clerk
Corporation of the Town of Oakville
1225 Trafalgar Road
Oakville, Ontario
L6H 0H3

Dear Mayor Burton and Members of Planning and Development Council:

**Re: Information Report – Proposed Town Initiated Official Plan Amendments
Revised Pre-consultation Requirements
Objection filed on behalf of North Oakville Landowners' Group**

We are counsel to North Oakville Community Builders Inc. ("**NOCBI**"), the trustee representative of the North Oakville East Developers Group (the "**Group**") made up of the owners of the majority of the lands located within the North Oakville East Secondary Plan area ("**NOESP**"). Each individual landowner is listed in Schedule "A" to this letter.

The Group has reviewed the "Information Report – Proposed Town Initiated Official Plan Amendments – Revised Pre-consultation Requirements" dated January 21, 2019 from the Planning Services Department (the "**Staff Report**"), which recommends proceeding with Town-initiated Official Plan Amendments (including amendments to the North Oakville East Secondary Plan) to require a two-stage pre-application consultation process (the "**Revised Pre-Application Process**").

We are writing to express the Group's concerns and objections to the proposed Revised Pre-Application Process which include (but are not limited to) the following:

1. The Revised Pre-Application Process circumvents the *Planning Act* by removing an applicant's (i) ability to have a decision made on the completeness of an application within 30 days, and/or (ii) removing the applicant's right to bring a motion to the Local Planning Appeal Tribunal in order to determine whether the information and materials was provided, or whether the information and material requirements was reasonable. The Staff Report states that:

"[p]roposals may advance from stage 1 to stage 2 at such time planning or agency staff are satisfied. Proposals may advance from stage 1 to stage 2 at such time Planning and agency staff are *satisfied* the proponent has

completed drafts of all technical supporting studies in accordance with approved terms of reference to the *satisfaction* of the applicable reviewing agencies and that the supporting studies are of sufficient quality and scope prior to application submission.” [emphasis added].

The Staff Report does not identify any criteria of what would be required to “satisfy” Staff, and, importantly, there is no suggestion of a time limit by which Staff would be required to be “satisfied”. The result will be to circumvent control mechanisms in the *Planning Act* that are meant to ensure that a municipality’s application requirements are not unreasonable and that applications are reviewed and processed in a timely manner.

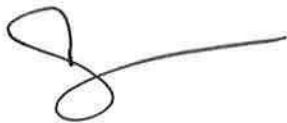
2. The Group has concerns with Staff’s proposal to require that pre-application submissions be posted online and that public meetings be part of the pre-application process before an application is complete. The general purpose of the pre-application process is for a potential applicant to meet with Staff in order to determine the requirements for an application, and to receive preliminary feedback from Staff to determine if a proposal can be improved. It would be difficult to engage in a meaningful dialogue with Staff if public input is sought at the earliest stage, before there is an opportunity to refine the application. This may significantly impact and prejudice the preliminary dialogue and refinement process with Staff.
3. The Group disagrees with the assertion that the Revised Pre-Application Process will “improve efficiencies” and “streamline processing requirements”. The Revised Pre-Application Process will likely require a potential applicant to prepare major technical reports and supporting studies *before* Staff can even be “satisfied” that an application can move forward. This will require an applicant to engage in a highly costly and time consuming process before the point in time when the pre-consultation process with Staff described in paragraph 2 above has had a chance to play out. The result will be wasted costs and efforts, as major reports and studies will have to be undertaken pre-maturely.
4. The Group has also had the opportunity to review the letter being submitted on behalf of the Building Industry and Land Development Association (“**BILD**”) regarding the Staff Report. The Group agrees with and adopts the concerns and objections as set out in the BILD letter.

The Group is supportive of the desire of Staff to improve efficiencies and streamline processing requirements. Unfortunately, the Group believes that the recommendations in the Staff Report will have the opposite effect and be contrary to the requirements of the *Planning Act*.

Therefore, we ask that Council not adopt the recommendations in the Staff Report to proceed with preparing official plan amendments at this time. Instead, the Group would be pleased to undertake meaningful consultation with Staff in order to consider alternative solutions in order to achieve efficiencies in the process.

Kindly ensure that we receive notice of Council's decision in this matter. In the meantime, please do not hesitate to contact us should you have any questions.

Yours truly,
DAVIES HOWE LLP



Daniel H. Steinberg

DHS:SL

Copy: North Oakville East Developers Group

Schedule "A"
North Oakville East Developers Group

HULME DEVELOPMENTS LIMITED
PENDENT DEVELOPMENTS LIMITED
LOWER FOURTH LIMITED
GRAYDON BANNING LTD.
BRESSA DEVELOPMENTS LIMITED
DUNOAK DEVELOPMENTS INC.
404072 ONTARIO LIMITED
1564984 ONTARIO LIMITED
MATTAMY (KAITTING) LIMITED
THE BAR WEST REALTY CORP.
DAVIS-MINARDI HOME CORP.
DOCASA GROUP LTD.
SHERBORNE LODGE DEVELOPMENTS LIMITED
SHIELDBAY DEVELOPMENTS INC.
TRIBADEN INVESTMENTS INC.
TIMSIN HOLDING CORP.
RIVER THAMES BUILDING GROUP CORP.
EVERTON GATES CAPITAL CORP.
FLAVIA HOMES CORP.
RULAND PROPERTIES INC.
ENO INVESTMENTS LIMITED
OAKVILLE 23-2 INC.
STAR OAK DEVELOPMENTS LIMITED
MEL-OAK DEVELOPMENTS INC.
MEL-OAK DEVELOPMENTS (NORTH) LIMITED
GREEN GINGER DEVELOPMENTS INC.
REDOAK G & A INC.
CAPOAK INC.
EMGO (NORTH OAKVILLE I) LTD.
ARGO (WEST MORRISON CREEK) LTD.
1816985 ONTARIO INC.
1816986 ONTARIO INC.
DUNBURN DEVELOPMENTS LIMITED
DUNDAS-TRAFALGAR INC.
SIXTH LINE CORPORATION
DIGRAM DEVELOPMENTS OAKVILLE INC.
BRANTHAVEN BURNHAMTHORPE INC.
TWKD DEVELOPMENTS INC.
TRAFALGAR ROAD (OAKVILLE) DEVELOPMENTS LIMITED
NORTH WEST OAKVILLE HOLDINGS INC.
MARTILLAC ESTATES INC.
NORTH OAKVILLE COMMUNITY PARK INC.

**Distributed at the Planning and Development Council Meeting of February 11, 2019
Re: Item 8 - Information Report - Proposed Town Initiated Official Plan Amendment -
Revised Pre-consultation Requirements**

February 11, 2019

Town of Oakville
1225 Trafalgar Road
Oakville, ON
L6H 0H3

Denise Baker
Partner
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File 16067.00024

Attention: Mayor Burton and Members of Planning and Development Council

Dear Mayor Burton and Members of Council:

**Re: Proposed Town Initiated Official Plan Amendments - Revised Pre-consultation
Requirements**

We are solicitors for the Building Industry and Land Development Association (“**BILD**”) regarding their interest in the Town’s proposed Official Plan Amendments to revise the current pre-consultation requirements and to introduce a two stage pre-consultation process.

BILD has been advised that staff will be bringing forward a report to Council on Monday, February 11, 2019 regarding this matter (the “**Staff Report**”). The Staff Report is recommending that the Planning department proceed with amendments to the Livable Oakville Plan, the North Oakville East Secondary Plan and the North Oakville West Secondary Plan, in order to establish a two stage pre-consultation process.

The Staff Report suggests that the need for a two stage pre-consultation process is a result of the fact that the prescribed process timelines in the *Planning Act* “...commence upon submission of a development application regardless of whether the content and quality of the studies are consistent with the applicable terms of reference.” With respect, if that is actually the concern, there is an easy fix to that problem that does not necessitate the creation of a two stage pre-consultation process.

Background

As you are aware, the current pre-consultation process was introduced into the *Planning Act* in 2006 to allow a municipality to require a wide range of information or material (the “**Studies**”) that Council considers it may need before it will declare an application complete, should the Official Plan contained provisions relating to such requirements.

Generally, but not exclusively, this requirement applies to applications to amend an Official Plan, Zoning By-law, as well as applications for draft plan of subdivision and consents.

Additionally and as you are also aware, Oakville's Official Plan does contain provisions relating to when a pre-consultation is required, and includes a long list of Studies that can be required by Council prior to an application being deemed complete. The intent of this provision was to ensure that municipalities had the necessary Studies that they needed from the outset, to make a decision on an application within the time period set out in the *Planning Act*.

Further, the *Planning Act* allows a municipality to refuse to accept an application if the necessary Studies are not provided, and most importantly, if the necessary Studies have not been provided, the statutory time frame that Council has to make a decision on an application would not start until such time as they are provided.

The only limitation to these entitlements given to the municipality by the Planning Act, is that the municipality has to make a decision within 30 days as to whether or not the necessary Studies have been provided. If so, an application is deemed complete and the time period starts running and if not, the application can be deemed incomplete and the municipality can refuse to process it.

Further, if an application is deemed incomplete or the municipality doesn't make the decision within the 30 day time period, and there is a dispute that arises from such a decision, the applicant can bring a motion to the Local Planning Appeal Tribunal to determine whether the Studies were provided or whether the requirement for the Studies was reasonable. This is the "check" under the *Planning Act* that ensures that a municipalities requirements are not unreasonable or an application is being arbitrarily being deemed incomplete.

It is submitted that what is being proposed in the Staff Report is an intentional and inappropriate attempt to circumvent this statutory "check" in the system by taking away an applicant's ability to have a decision made on the completeness of the application within 30 days, or from unreasonable requirements for submitting an application for which they have a statutory right to file.

Specifically, the proposed two stage pre-consultation process as set out in the Staff Report is designed to prevent an applicant from moving forward with their application until such time that Planning and agency staff are satisfied that the proponent has completed drafts of all technical supporting studies. Such a proposal would allow such staff to arbitrarily prevent an applicant from making an application under the *Planning Act* by simply declaring that they are not

“satisfied”. The Staff Report contains no information as to what could possibly make them “satisfied”. Further, it is unclear whether staff’s “satisfaction” pertains to the Studies compliance with the Terms of Reference, or satisfaction with the particular findings of such Studies.

Additionally, there is no requirement as set out in the staff report as to what the time limit would be for staff or agency staff to be “satisfied” and what would happen if such a time period was not met.

By way of example, under the proposal in the Staff Report, should an applicant file an application to amend the Town’s Zoning By-law and an EIR/FSS was required as part of the application, a draft of that report would be required to be submitted and the Conservation Authority would be permitted an unlimited amount of time to review such a report. Given the typical lengthy time period that it currently takes the Conservation Authority to review any element of an application, an applicant would be delayed in filing the very application that the *Planning Act* permits an applicant to file, directly contrary to the specific time limits that the *Planning Act* sets out for both the determination of a complete application and the amount of time given to a municipality to make a decision on an application.

It is submitted that such an arbitrary and open ended pre-consultation process is the very thing that the *Planning Act* specifically sought to limit by allowing motions to be brought to the LPAT for determination if there was a dispute as to timing or reasonableness as between the applicant and the municipality and the proposed two stage pre-consultation process is seeking to circumvent the protections established through the *Planning Act* pre-consultation process.

Furthermore, the Staff Report is entirely silent on what the requirements of stage 2 of the pre-consultation would be for other than to say that a proponent can advance from stage 1 to stage 2 when staff is satisfied. It therefore remains entirely unclear what the purpose of a two stage pre-consultation process is for, and is as a result premature for staff to be seeking direction from Council to come forward with amendments to the Official Plan and the North Oakville East and West Secondary Plans in the absence of any actual information on the second stage of the process.

Proposed Solution

Given the claim in the Staff Report that the concern that is prompting the introduction of a two stage pre-consultation process is that Studies submitted with applications are not in accordance with the Terms of Reference, it is suggested that there is a much easier solution than introducing a two stage system that is contrary the *Planning Act*. Simply put, the municipality

could amend the Official Plan to require that all Studies submitted with an application are in accordance with the applicable Terms of Reference, and if they are not, the associated application would not be deemed complete. Under this scenario, the municipality would then have the statutory 30 days to evaluate whether the Studies submitted have in fact been prepared in accordance with the applicable Terms of Reference. If the Studies have not been submitted in accordance with the Terms of Reference, then the application would not be complete and would not be processed, subject to the motion rights contained within the *Planning Act*. However, if the studies submitted were in accordance with the Terms of Reference, then the clock would commence and the municipality would have the relevant statutory time period to review the “merits” of each of the studies.

The most important aspect of this proposed solution is that it would solve the Town’s purported problem, without circumventing the checks and balances contained within the *Planning Act*.

Consultation

In addition to the above, we also note that with respect to section of the Staff Report that suggests that there has been consultation to allow input of the development industry through the Oakville Developer Liaison Committee on December 6, 2018. We have canvassed some of those who were in attendance who advise that there was no such consultation where input could be provided, but rather staff presenting a two staged pre-consultation concept as something that they were considering, but that had no details upon which there could be any meaningful input provided.

While a single solution has been proposed above, undoubtedly there are other solutions that could be considered, other than the proposed two stage pre-consultation process. As such, it is our request that a meaningful consultation take place with the development industry, either through the Oakville Developer Liaison Committee, or through the BILD Halton Chapter where the municipality and the members of the development community who would be impacted by such a two stage pre-consultation, could work together to find solutions.

We look forward to working with staff to find meaningful solutions.

Yours truly,

WeirFoulds LLP

A handwritten signature in black ink, appearing to read "DBaker", with a stylized flourish at the end.

Denise Baker

DB/mw

cc Client
Daniel Steinberg, Davies Howe

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