

April 23, 2018

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Dear Ms. Smith and Ms. Bustamante:

**RE: Comments on the City of Burlington New Official Plan Recommended for Adoption
(April 2018)
Emshih Developments Inc. 433-439 Brant Street, Burlington
OUR FILE: 1583F**

As you may know, MHBC is retained by Emily Shih with respect to the lands located at 433- 439 Brant Street in the City of Burlington (the "Subject Lands"). The Subject Lands are currently developed with one-storey commercial businesses and an outdoor garden centre. The lands at 439 Brant Street were used for a 2 storey commercial building with a restaurant for over 60 years until a fire approximately 20 year ago. Additionally, the Subject Lands are located immediately adjacent to the Council-approved 421 Brant Street redevelopment, which consists of a 23 storey mixed-use development.

We have previously provided comments with respect to the proposed new Official Plan on November 28, 2017, January 22, 2017 and February 26, 2018. Copies of our previous submissions are attached for your reference. Our previous comments outlined the following concerns:

- The identification and requirement for a mid-block connection and/or open space on the Subject Lands;
- The restrictive and detailed policy language related to design and regulatory controls for development along Brant Street; and,
- The extent of the boundary for the Brant Main Street Special Planning Area.

Following the release of the February 7, 2018 draft Official Plan, we met with staff from the Mobility Hub Team on February 16, 2018, to discuss our concerns. Additionally, we provided an oral delegation at the statutory public meeting for the new Official Plan on February 27, 2018. Based on our review of the April 2018 Official Plan Recommended for Adoption, we still have significant concerns as noted herein.

Park Requirements

The February 2018 Draft Official Plan removed the Parks and Promenades designation from the land use schedule for the Downtown Mobility Hub; however, the requirement for the provision of a public pedestrian walkway was included in the body of the Official Plan as a site specific policy. This policy is provided below, for reference:

February 2018 Draft

"8.3.1 (3.7.2) SITE SPECIFIC POLICIES

- a) 433 and 439 Brant Street: As part of any comprehensive development of the properties located at 433 and 439 Brant Street, a public pedestrian walkway between Brant Street and John Street shall be provided which may be in the form of a Privately-Owned Publicly Accessible Space (POPS)"*

As noted at our meeting with Staff, and through our written and oral submissions to Council in February, 2018, we questioned why a site-specific requirement of this nature was imposed on the Subject Lands through the comprehensive Official Plan Review process. We noted that we were not aware of the jurisdiction under the *Planning Act* to require the mandatory dedication of park space (public or private) through the imposition of a site specific policy in an Official Plan. At the time of our previous submission, we understood that staff was not aware that the City's legal department had reviewed this matter in any detail.

On March 8, 2018, we received an e-mail response from Ms. Rosa Bustamante, Manager of Mobility Hubs which stated the following:

"We've been advised that a policy regarding the achievement of a mid-block connection that aligns with the terminus of Ontario St provided either through a POPS or parkland dedication requirement under The Planning Act as part of a comprehensive development is sound. However, the requirement is a broader objective related to transportation and mobility in the Downtown and has therefore been reworded to reflect this and the general location where this midblock connection should be established. The revised policy therefore removes references to specific property addresses subject to the requirement. The policy has also now been moved to the Downtown Transportation section of the new Official Plan to better reflect the intended objective and function of the policy."

On this matter, we note that the April 2018 New Official Plan contains the following new policy:

“8.1.1 (3.17) d) a publicly accessible pedestrian connection between Brant Street and John Street shall be established and located in general alignment with the terminus of Ontario Street at Brant Street. The pedestrian connection may be provided in the form of a Privately Owned Publicly Accessible Space (POPS) and/or as part of a parkland dedication required under the Planning Act in conjunction with a comprehensive development.”

The policy has, for all intent and purpose, remained unchanged since the February 2018 draft and our concerns have not been addressed. The revised policy is still directive and mandatory (“shall”) and requires the provision of a mid-block connection at the terminus of Brant Street and Ontario Street (otherwise known as 433-439 Brant Street). It remains our opinion that inclusion of this type of policy (mandatory requirement) within a comprehensive Official Plan is inappropriate. Without a comprehensive supporting study or justification, how can the City ensure it meets all of the objectives for the City’s Downtown Urban Growth Centre, including those that apply to the Subject Lands?

In our previous submission, we requested further information with respect to the detailed analysis completed to determine if such a walkway was appropriate at this location. We were informed by staff at our meeting on February 16, 2018 that the rationale for inclusion of a mid-block connection was based on a 2005 study of the Downtown. We are unaware of any other parks study or park needs assessment that has been conducted that confirms this mandatory connection is appropriate, needed or required.

It continues to be our opinion that a mid-block connection is not appropriate on the Subject Lands based on general design principles. Based on general urban design principles, mid-block connections should generally be considered every 100 to 130 metres and adjacent buildings should be designed to facilitate a comfortable, safe and lively public realm within a mid-block connection that includes the provision of sufficient lighting, signage and pavement treatment to contribute to a continuous public realm. With respect to site design and mid-block connections, the City of Burlington’s approved Tall Building Design Guidelines (May 2017) state that “publicly-accessible privately owned open spaces should be used to provide mid-block pedestrian connections through the site and create short block lengths (80-120 metres)”.

As identified previously, the entire length of Brant Street between James Street and Maria Street is approximately 150 metres and the Subject Lands are located approximately 65 metres from the intersection of James Street and Brant Street. **Given the proximity of the Subject Lands to the primary block intersection of James Street and Brant Street, as well as the existing connection at Maria Street and Brant Street; and, the metrics for mid-block connections contained in the City’s Tall Building Guidelines, there is no evidence-based need for a mid-block pedestrian connection through the Subject Lands.** This is further rationalized by the smaller size of our client’s lands and the neighbouring approval at 421 Brant Street as well as the existing park space and cenotaph adjacent to City Hall.

It should be further noted that a mandated pathway on the Subject Lands will reduce the developable frontage of the property limiting, if not eliminating, adequate space for access to underground parking at

the rear of the site, accessible entrances to buildings on the site, the accommodation of a hydro transformer and other required functional site features.

We request that Policy 8.1.1 (3.17) d) be removed from the Official Plan or at a minimum, “shall be established” should be replaced with “may be considered” to allow a reasonable approach in meeting the Growth Plan objectives. The revised policy continues to be specific in nature, does not address any previous concerns and is not consistent with present-day urban design standards for the provision of mid-block connections. .

Restrictive Urban Design Metrics

Restrictive urban design metrics continue to be included in the Downtown policies of the April 2018 Official Plan. Urban design guidelines, including a mandatory 45 degree angular plane and mandatory 3 storey minimum height for podiums, have been implemented as required policy without consideration for the local context and without any flexibility.

Placing very specific and prescriptive conditions and limitations such as separation distance, angular plane and podium height is not conducive to good development, and creates constraints to meeting Provincial growth objectives. The policies provided for in the April 2018 Official Plan impede development that still meets the intent of the City’s own design guidelines. Development that meets the intent of the guidelines but not the prescriptive policies of the Plan would trigger the need for an Official Plan Amendment application should a two storey podium be proposed that still meets the 45 degree angular plane or should a slight encroachment be proposed into the angular plane with a three storey podium.

In the case of our client’s lands, **including these specific and prescriptive requirements as mandatory in policy creates significant constraints to development, making redevelopment that is needed to achieve the City’s implementation of Provincial policy almost impossible in a mid-rise form on the site.** This is contrary to the growth objectives of the City and Province respecting intensification within Mobility Hubs and could restrict the very objective of providing well designed buildings that meet the City’s objectives.

Ultimately, each project should be assessed on its own merits and context, which includes existing and future development, and not dictated, by prescriptive policies that are better suited as guidelines. It is our opinion that the mandatory urban design guidelines should be discretionary and we would recommend that the Plan be revised to replace “should” where “shall” is currently provided.

Special Planning Area

We have previously requested clarification with respect to the inclusion of the Subject Lands within the Special Policy Area, which would permit a maximum of 17 storeys. We note that the preamble of the Brant Main Street Precinct Special Planning Area has been modified to provide additional clarity and

specifically identifies properties which are included in the Special Planning Area. The Subject Lands are not identified as comprising the Special Planning Area.

It is not clear why a transition from the approved height at 421 Brant Street, at 17 storeys on the Subject Lands, is now not appropriate. While we appreciate the clarity provided in the Official Plan, we continue to request that our client's lands be included within the Special Policy Area in order to provide an opportunity to explore broader redevelopment options for the site.

Request

We appreciate the opportunity to further comment on the April 2018 Official Plan recommended for adoption and request that staff consider an amendment to the recommendaoitn contained in PB-04-18 to amend the Official Plan to ensure conformity with Provincial policy and address our concerns contained herein.

Yours truly,

MHBC



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Partner



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Planner

cc: Dr. Michael Shih, Emshih Developments
Ms. Nancy Smith, Turkstra Mazza Law