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Delegation correspondence

April 23, 2018

Delivered via email: wanda.tolone@burlington.ca

To: The City of Burlington
Attention: 04/24/2018 Planning & Development Committee

c.c. City of Burlington Mayor Rick Goldring and Council Members
City of Burlington Planning/Development/Culture
City Manager
Region of Halton
Minister of Municipal Affairs
Ministry of Municipal Affairs, Greenbelt Council: David Crombie
Minister of Natural Resources and Forestry

From: Ann Funnell and Roger Funnell
1761 Old Waterdown Road, Burlington, ON L7P 0T2

Re: Notice to City of Burlington: 2018 OP review and update

We hereby provide notification to the City of Burlington and register our objections to the proposed new Official Plan for Burlington, as set forth for adoption, in regard to 1761 Old Waterdown Road, Burlington, Ontario.

The Johnson family represents ownership of privately owned property known as 1761 Old Waterdown Road in Burlington, south of Dundas Hwy 5 and north of the 403, and east of Waterdown Road in 'Aldershot'. We have established agreements over a period of many years including: (1) the NAIR report identifying our potential for future development + zoning; (2) the ruling by the OMB, Grindstone Creek, in the 1990's + mapping + zoning; (3) recent OMB agreement in 2016 with Halton Region (ROPA 38) identifying and correcting boundaries & mappings + zoning as per legal agreement (4) previous correspondence/commitments with the Province/ Municipal Affairs as per Victor Doyle. The above stated four points are but brief references to the *grandfathered agreements* made between the Johnson Family and the City of Burlington, Halton Region and Ontario Provincial Government. Previous agreements with the Johnson Family are legally documented and need to be honoured, respected and upheld by all levels of government. These agreements are documented in the correspondence from SV Law and GPS Group/Planners as submitted to the City on April 23, 2018 + Appendix A, B, C.

The subject Johnson lands comprise approximately 151.74 acres, (not including the adjacent Shih (75 acres) and Walker lands). We have identified through the past regional study, *and* the two current Dougan and McLaughlin Environmental studies, which were accepted by the Region, a possible 21 hectares (approx. 46 acres) of currently 'open' land for prime development capacity, with a further 5-10 hectare fringe pending on additional studies. This allows for 3 'pods' (East, Central and West) for future homes and families. Some additional moderate levelling and anticipated field expansions (legally

allowed under the owners' Crown Grants & Land Patents) could add an additional 5-10 hectares of additional development. To be clear, even with said activities, *at least 50% of the site would still be environmentally preserved, which is among the highest of highest percentage levels of protected lands within any urban development in Halton.* It is anticipated that the remaining lands, comprised of mature woods (class 4: maple, oak, beech, ash) and deep ravines, would continue to provide natural 'park like' settings whilst remaining environmentally friendly.

Of note, over the past 5 years we have completed, at considerable expense, several environmental studies, engineering studies, employed an excellent, reputable planner, engaged in successful legal work with Halton Region ROPA 38, and have received interest and substantial offers from several notable developers interested in this concept. *Hence we have a clear understanding of the potential for our property and its values.*

With respect to the City's Official Plan for these lands, the Johnson Family entered into an agreement with the Region in 2016 to comply with development density and in line with NAIR approved density on their lands, with agreement not to intensify density if development occurs before January 2019. The Region recognized and acknowledged the letter from the Ministry of Municipal Affairs that the policy of the Greenbelt allows for development. As stated above, the environmental studies completed identified a possible 21 hectares for development based on current tree drip lines and valley tops. In the event we have not entered into a new agreement with the Region re plans for development by January 2019, as good citizens, we will conduct our planning, utilizing development densities as defined for urban areas in accordance to the *current Places to Grow Provincial policies*. Appendix A

The subject lands under the old Flamborough planning were identified to be developed in accordance to/with developments in Tyndaga when the city of Burlington annexed Aldershot. These lands have been tied up in red tape going back to the early 1970's based on concerted efforts of municipal/provincial staff and politicians to control and remove their development use, without paying for the "*land value downgrading*" said actions cause.

We, the owners, have been sitting on an estimated 4 million cubic yards of Queenston shale suitable to produce brick. Supreme Court rulings state our Crown grants are already Crown issued permits allowing us to mine the property without need for any additional permits. However, said mining activity has not been our primary aim.

The Johnson family is on record going back to the late 1960's that these lands are destined for development and that the Municipality, Region or Province has no authority from the Johnson Family to take any action to remove these lands from development purposes or to place restrictions on development types. The OMB post NAIR identified the eastern sector development density to allow for potentially 390 units on the lands identified at that time. Those development areas on the Johnson lands were expanded post NAIR report and called for environmental studies to define the development areas. The subsequent studies conducted by the Region, almost doubled the development area Hemson

had identified on the Johnson lands. As such, the numbers identified for potential development would go up as a result of additional development area being identified.

Furthermore, the urban development of the Johnson lands, in combination with the adjacent Shih and Walker lands, for the building of only 260 units, not 390 units (as identified in NAIR), would currently generate approximately 13.5 million dollars of development fees to the City and Region (based on current rates) and approximately 2 million dollars of new tax revenue yearly to the city and region. We would suggest that most taxpayers would object and seriously question any member of council who would fail to capitalize on such a large amount of revenue. Hypothetically, the generated development fees revenue alone would allow the city to freeze residential tax rates in Burlington for 2 years. Developing to current provincial urban development density standards would more than double these numbers.

It is important to note the location of our privately owned land located *south* of Dundas Hwy in context: To the SOUTH we are bounded by prime light industrial (e.g., Ippolito) and prestigious business properties/business parks (e.g., Cumis, Mercedes Benz dealership, etc.) (approximately \$----- per acre) plus extensive forest lands owned by Cumis. In addition, the Aldershot Go Station and slated Mobility Hub – high density project is due south of our property and less than 2 km away, where according to signage, townhomes are offered starting at \$900,000. Lack of parking space at the Aldershot GO station is already a major problem.

To the NORTH we are bounded by extensive recently built homes (Waterdown/Hamilton; i.e. Mountainview Heights) and the imminent advent of the widening of Mountain Brow Road to 4 lanes with stoplights. Also, to the NORTH of our land is the TransCanada Pipeline and the Hydro Corridor running east to west.

To the WEST we are bounded by the scheduled widening of Waterdown Road to 3-4 lanes commencing in 2019, along with the long overdue installation of new larger water mains and sewers, along with the proposed Eagle Heights /Paletta development to the west as approved by the OMB. It is of note that several small roads running West off Waterdown Road are also favoured to be slated for water and sewers; however, Old Waterdown Road running East off Waterdown Road and Rennick Road, just south of Mountain Brow, interestingly enough, are not scheduled to be serviced, but need and should be serviced as part of Aldershot's growth within Burlington in an urban setting south of Dundas Hwy 5. Engineering reports that we have privately commissioned show several feasible ways of servicing Old Waterdown Road, when the new larger water and sewer lines are under construction on Waterdown Road over the next few years. It is timely to do it right and to be inclusive and fair to all citizens living in 'Aldershot', Burlington.

In addition, to the EAST of our property, is the City of Burlington landfill site that has been closed for a period of several years. This begs the question, "What are the City's long range plans for this site?" *All of the above* identify our property at 1761 Old Waterdown Road as very much a potential, special urban inclusion of 'Aldershot' in Burlington, as Burlington develops in the modern age to provide homes

and 'Places to Grow' and live, and where "*available land for homes in Burlington is at a minimum*", to quote Mayor Rick Goldring.

It must be stated publically that the Johnson Family twice approached the City about having the City purchase our lands under favourable terms, for parks, recreational and natural heritage protection uses. Both times the City declined the opportunity to purchase the lands. As the Municipal Act does not give the City any authority to expropriate the land for parkland, the City's refusal to acquire the lands on favourable terms indicates that it has no desire to use these lands for public use or acquire for natural heritage purposes. Accordingly, the City, by its own actions, has no right to interfere with the property owners' use decisions and indeed any such action by the City could be construed as violations of the Municipal Act and indeed potentially a violation as defined in other significant acts and codes.

The provincial government and the municipality seem to have embraced an "agenda" which surreptitiously "steals" property from its citizens by restricting our plan to use our land. And one of the tools being used is the Official Plan and provincial layering. According to the Ministry of Municipal Affairs website, official plans and planning policies are to guide future development. *Nowhere does it say that land use on private property should be controlled.*

We would suggest the City check the Municipal Act of Ontario which does not give the municipality power over private property, as the province has no authority or right to delegate what it does not have. Within the Municipal Act, authority that the Municipality has over private land ownership is severely limited in the Act and indeed requires in almost all cases that the city must expropriate privately owned land to exercise its authority. It is clear that the City bylaws are without effect when they are in conflict with an Act, regulation or instrument [section 14(1) and 14(2)]. The Supreme Court recognizes Crown Grants and Land Patents as Instruments and the Registry Act defines Crown Grants as Instruments. An article written by Michael Polowin, a lawyer with Gowlings LLP, states that "many, if not most official plans across Ontario contain elements that are not consistent with the law, either in the form of decided case law, or on a plain reading of the Planning Act". The development of designations appears to be mostly done by planners and environmentalists *without input from those most affected: the property owner*. It must be stated that our Family have been exemplary good stewards of this land since 1967 and have consciously sought to work with the city and plan to make a portion of this beautiful and unique estate area into a premier location for the future, for families to live and grow and enjoy. *What is needed in Ontario is a tone change when it comes to respect for private property rights*. Indeed, our legal CROWN Grants and Land Patents in our possession are very clear as to our private property rights. The placing of unfair restrictions on our land amounts to *expropriation without compensation* and will require answering to in view of recent Supreme Court rulings in regard to privately owned property.

There is no foundation in law to place the Greenbelt plan restrictions, or any other restrictions, on privately owned lands *where there is a Crown Grant or Land Patent*. Indeed the Crown issued patents clearly state that the province has no authority because the Crown already gave all authority respective to the land to the property owner, with only specific reservations placed in these which the Crown had the right to enforce. Any interference with the owner's Land Patent by any level of government, or

government authorized expropriating authority, attempting to remove any right the owner has, is an act of *expropriation*, as defined in the Expropriation Act of Ontario and that Act is superior to any other Act in the province when it comes to defining expropriation.

As such, a very detailed 'Letter of Notice', dated April 17, 2018, from Donald Johnson in regard to the Official Plan review and update was sent by email to The City of Burlington: Mayor and all Councillors, City Manager, and Acting Director of Planning and Building, with delivery of hard copy to City Halton April 18, 2018. This 'Letter of Notice' was submitted on behalf of the Johnson Family and the Shih Family, who own property adjacent to our property, stating our position of sole and absolute authority in view of our Crown Grants and Land Patents. This identified 'Letter of Notice' from Donald Johnson is included as a part of our submission to the City of Burlington and Planning & Development Committee re the proposed Official Plan, and for public record.

Having said that, we have always been prepared to commit to work with the City, Halton Region, and the Province to discuss as equals the future of the east sector of Aldershot, the goal being to achieve an agreeable plan for our privately owned lands, where a positive outcome and a vision for the future is seriously undertaken for this unique property.

Accordingly, we have had no choice but to register our strong objections to the proposed new Official Plan which incorporates the new provincial layering re Greenbelt and Natural Heritage System designations, as passed February 9, 2018 by the Province, with the implications and restrictions in regard to our privately owned land, land that has Crown Grants and Land Patents, giving us, the assignees, sole and absolute authority over the identified lands. These Crown Grants and Land Patents are legal binding contracts signed by the Crown, giving authority over these lands to the land owner and these authorities are not subject to title interest of the federal, province or any other governmental body.

As a further point of reference, Members of Council and Members of Staff liaised with the Province over the period before the Greenbelt came into legislation in 2005. We quote Victor Doyle, Ministry of Municipal Affairs and Housing: "In regard to the subject property (1761 Old Waterdown Road), the Greenbelt was laid out with the intent of not intruding *into designated (ie. approved) urban areas*. As such, efforts were undertaken to converse with municipalities to ensure the Ministry had *accurate urban area boundaries*. In some cases, given the scale of the Greenbelt, it appears that it inadvertently extended onto lands which were within *approved urban areas*."... "Having discussed and received correspondence on this matter from both Halton Region and Burlington planning staff, it is apparent that they share and/or concur with the Ministry's perspective". Reference Appendix B

It is conceivable and likely that Members of Council and Members of Staff have liaised with the Province in the time leading up to the latest revisions and new expanded mappings as passed February 9, 2018 by the Province, hence the postponement in voting on the Official Plan for Burlington until April. The City and Region are claiming that they are just following the provincial legislation and enacting it into their plans as mandated by the Province; however, it is the belief of many landowners that the City and Region have been an influencing factor at the Province and possibly even a willing participant in

expanding the Greenbelt Natural Heritage System mapping in Burlington and Halton. Why were affected land owners not informed or consulted about the plan for this new provincial layer? We therefore ask the City to identify all staff members that had any contact with regional or provincial Greenbelt planners prior to the February 9, 2018 issuance of the new, expanded and unjustified mapping. Specifically, who at the City was interacting with the Province and why did the city not defend its planning and development revenue streams?

This letter confirms our position re the City Official Plan for any issues that may affect the identified lands owned by the Johnson Family. We reserve the right to contest any plans made by the City for the identified lands owned by us and to defend our legal rights in any venue we see fit should it be that we cannot come to an agreement.

Respectfully submitted,
Ann Funnell and Roger Funnell

NOTE: Included as part of this submission for the 04/24/2018 Planning & Development Committee and The City of Burlington are the following from SV Law + PDF attachments delivered via email on April 23, 2018 to City Clerks for Planning and Development Committee:

Letter of April 23/18 from SV Law, Kevin Thompson, re: proposed City of Burlington Official Plan Update

Appendix A: letter of June 29/17 from GSP Group, Hugh Handy, re: Draft Official Plan

Appendix B: letter of June 4, 2005 from Victor Doyle, Ministry of Municipal Affairs re: Greenbelt mapping relevant to 1761 Old Waterdown Road, Burlington

Appendix C: OMB Minutes of Settlement, March 17, 2016, The Regional Municipality of Halton and Donald Johnson re: mapping designations, agreement

Mapping: Schedule "A" Subject Lands; "B" Map 1G; "C" Map 1; "C" Map 1C; "C" Map 1D; "C" Map 1E; "C" Map 1F

NOTE: The 'Letter of Notice', dated April 17, 2018, as submitted to The City of Burlington from Donald Johnson, via email April 18, 2018, and as delivered hard copy to City Hall, to be included for the 04/24/2018 Planning & Development Committee and for public record.