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EMAIL LETTER

To: Jo-Anne Rudy, Committee Clerk, Planning & Development – City of Burlington

From: Nancy Smith

Re: City of Burlington New Comprehensive Official Plan

Inconsistent with Provincial Policy Statements – Section 3(1) of the *Planning Act*
Does not conform/conflicts with Provincial Plans
Does not conform with the Upper-Tier Municipal Plan

Emshih Developments Inc. – 433-439 Brant Street, Burlington

Date: April 23, 2018

INTRODUCTION

We represent Emshih Developments Inc. (“Emshih”), owner of 433-439 Brant Street, Burlington (“the Subject Land”). We object to the City of Burlington’s New Comprehensive Official Plan (“the Comprehensive Official Plan”) in its current form.

OUR CONCERNS

Enclosed please find correspondence dated April 23, 2018 from Emshih’s planning consultants, MHBC. You will note that since November 28, 2017, Emshih through MHBC, has consistently communicated its ongoing concerns to the City. Notwithstanding, the following concerns have not been satisfactorily addressed:

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NANCY SMITH PROFESSIONAL CORPORATION
TURKSTRA MAZZA ASSOCIATES, LAWYERS

- The identification and requirement for a mid-block connection and/or open space on the Subject Lands is not appropriate. The inclusion of this type of mandatory requirement within a Comprehensive Official Plan, without the appropriate study and justification, defeats other provincial, regional and municipal policy objectives
- The restrictive and detailed policy language related to design and regulatory controls for development along Brant Street is inappropriate. The inclusion of this type of mandatory requirement will make redevelopment of the Subject Lands virtually impossible in a mid-rise form. This approach defeats other provincial, regional and municipal policy objectives.
- Not including the Subject Lands in the Brant Main Street Special Planning Area is not appropriate. This omission prevents Emshih from exploring broader redevelopment options for the site. This approach defeats other provincial, regional and municipal policy objectives.

In its present form, the Comprehensive Official Plan is

- Inconsistent with Provincial Policy Statements – Section 3(1) of the *Planning Act*.
- Does not conform/conflicts with Provincial Plans.
- Does not conform with the Upper-Tier Municipal Plan.

THE REMEDY

The following changes will remedy the inconsistency/non-conformity noted above:

1. To remedy the mid-block connection and/or open space concern, remove policy 8.1.1(3.17).
2. To remedy the mandatory design and regulatory controls concern, replace “shall” with “should” in policies 8.1.1(3.7.1) c and d.
3. To remedy the Brant Main Street Special Planning Area concern, amend Schedule D to extend the Special Planning Area to include 433-439 Brant Street.

The changes we request are reasonable and will ensure consistency with Provincial Policy Statements and conformity/no conflict with provincial and regional planning policy.

Yours truly,



Nancy Smith
ns/l

April 23, 2018

Andrea Smith, MCIP, RPP
Manager of Policy and Research
Planning and Building Department
City of Burlington
426 Brant Street, Box 5013
Burlington ON,
L7R 3Z6

Rosa Bustamante, MCIP, RPP
Manager of Mobility Hubs
Planning and Building Department
City of Burlington
426 Brant Street, Box 5013
Burlington ON,
L7R 3Z6

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

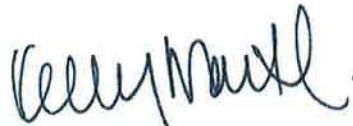
We appreciate the opportunity to further comment on the April 2018 Official Plan recommended for adoption and request that staff consider an amendment to the recommendaoitn contained in PB-04-18 to amend the Official Plan to ensure conformity with Provincial policy and address our concerns contained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

Yours truly,

MHBC



Dana Anderson, MCIP, RPP
Partner



Kelly Martel, M.Pl, MCIP, RPP
Planner

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



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November 28, 2017

Amber LaPointe
Committee Clerk
Planning and Development Committee
City of Burlington
426 Brant Street, Box 5013
Burlington, ON, L7R 3Z6

Dear Ms. LaPointe:

**RE: Comments on the City of Burlington New Official Plan (November 2017 Proposed Draft)
Emshih Developments Inc. 433-439 Brant Street, Burlington
OUR FILE: 1583F**

MHBC is retained by Emshih Developments Inc. to provide comments on its behalf related to the new City of Burlington Draft Official Plan as it pertains to their land located at 433-439 Brant Street ("the Subject Lands").

Site Description and Surrounding Context

The Subject Lands are located on the east side of Brant Street, at the intersection of Brant Street and Ontario Street and are currently developed with one-storey commercial businesses and an outdoor garden centre. The Subject Lands are located immediately adjacent to the Council-approved 421 Brant Street redevelopment, which will allow for the redevelopment of the adjacent lands to include a 23-storey mixed-use development with a maximum of 169 residential apartment units, a minimum of 365 square metres of office space and 900 square metres of commercial retail space.

Presently, our client is considering development options for the Subject Lands within the context of the current and proposed Official Plans with the intent to redevelop the lands.

Current Official Plan Framework

The Subject Lands are currently designated **Mixed Use Centre** (Schedule B) and **Downtown Core Precinct** (Schedule E) in the in-force City of Burlington Official Plan. The current land use structure that applies to the subject lands permits commercial activities, high density residential apartment uses, cultural uses of all types, recreation and hospitality uses, entertainment uses, and community facilities. Developments are permitted to a maximum height of 4 storeys. A maximum height of 8 storeys and 29 metres may be permitted subject to criteria and community benefits. A minimum density of 51 units per hectare and a maximum Floor Area Ratio of 4.0:1 is established (higher FAR may be permitted in conjunction with increased height).

Proposed Official Plan Framework (November 2017)

The Subject Lands are located within the **Downtown Mobility Hub**, which was subject to a separate area-specific planning exercise. The Subject Lands are proposed to be designated **Urban Centre** and **Urban Growth Centre** (Schedule B), **Primary Growth Area** (Schedule B-1), **Downtown Urban Centre** (Schedule C), **Brant Main Street Precinct Special Planning Area** and **Downtown Parks and Promenades Precinct** (Schedule F). In accordance with the notes contained throughout the Official Plan, it is understood that within the various layers of designations applied to lands within the Mobility Hub, additional objectives and/or policies may be added to the Official Plan, subject to the outcome of the area-specific plan process.

The Downtown Parks and Promenades Precinct identifies current and future parks, promenades and green spaces within the Downtown. These lands are primarily to serve the residents and employees of the Downtown as well as provide parks of a scale that will serve as significant destinations for city-wide and regional events and activities. Existing uses may be permitted within the Parks and Promenades designation.

The Brant Main Street Precinct is intended to serve as a unique retail destination. Development is to maintain and enhance the existing traditional main street physical character along Brant Street. Development is to achieve a low-rise form on Brant Street which could also form the podium to a mid-rise development. A variety of uses are permitted within this Precinct, including residential, office, retail and service commercial, hotel, entertainment and recreation uses. Development within the Brant Main Street Precinct are required to contain a minimum of two permitted uses. The built form in this area is proposed to be low-rise or mid-rise. A maximum height of three (3) storeys immediately adjacent to Brant Street and eleven (11) storeys immediately adjacent to John or Locust Streets is proposed. Additionally, developments are required to achieve a terraced built form and not to exceed a 45-degree angular plane measured from the centre of the Brant Street public right-of-way. Within the Brant Main Street Precinct Special Planning Area, a maximum height of seventeen (17) storeys may be permitted, subject to criteria.

Comments on the Proposed Draft Official Plan (November 2017)

Within the limited timeframe available to review the document, we have reviewed the proposed Draft Official Plan, as it applies to our client's lands, and offer the following comments:

- It is unclear how the application of a Parks and Promenades Precinct designation was placed on a portion of our client's lands. As noted above, the lands currently provide a retail and commercial function and include an associated outdoor garden centre which is part of a private business. Was a detailed analysis of open space needs within the Downtown undertaken as part of the background work for the Mobility Hub area-specific planning process? If so, can we be provided with this analysis? We would appreciate further clarity from staff with respect to the rationale behind the application of such a designation on our client's lands.
- The proposed Draft Official Plan contains strong policy language with respect to built form along Brant Street, identifying that a terraced built form shall be achieved and an angular plane of 45-degrees measured from the centre of the Brant Street public right-of-way is required. We understand that the intent of this policy is to ensure the physical character along Brant Street is maintained; however, we note that this angular plane requirement may not be achievable on all sites within the Precinct and may have the effect of sterilizing lands from development. In the case of the Subject Lands, redevelopment of the site is constrained due to parcel size and configuration and terracing back to meet the full 45-degree angular plane requirement may not be feasible. The cumulative impact of applying this policy on the Subject Lands would result in a

poorly designed building, whereas a more flexible approach would yield a better design for the site and the overall aesthetic of Brant Street. It is our opinion that intensification can be achieved through site redevelopment that represents good urban design without the provision of a 45-degree angular plane. We request that the consideration 45-degree angular plane requirement be more flexible for redevelopment of sites along Brant Street.

- Policy 8.1.1 (3.7.1) e) states "Development within the Brant Main Street Precinct shall provide a three (3) storey podium for all portions of a building fronting a public right-of-way". The current built form along Brant Street includes a mixture of 1 and 2- storey commercial buildings, which provides variety in the streetscape. Considering the current built form of Brant Street, a redevelopment proposing a two-storey podium with subsequent storeys stepped back would, in our opinion, maintain the character of Brant Street. This policy is again highly prescriptive and overly restrictive. We suggest it be revised to allow for more flexibility in design should a development proposal contemplate a two storey podium.
- In addition to the Brant Main Street Precinct policies, the proposed Draft Official Plan contains a Special Planning Area, in which a portion of the Subject Lands is included. In accordance with the policies of the Brant Main Street Precinct Special Planning Area, it is understood that lands within this designation may be permitted to develop to a maximum height of seventeen (17) storeys, subject to criteria. Within this policy section, we note that this applies to development "immediately adjacent to the intersection of Brant and James Street". We are unsure of how the City is applying the term "immediately adjacent" in this scenario, as the Subject Lands are not immediately adjacent to the intersection; however, are identified as being within the Special Planning Area on Schedule F. Does this apply only to lands on either corner of Brant and James Street? Or, is it the intent that the City would consider heights up to 17 storeys on the Subject Lands? Clarity on this matter is required. We note that we are generally supportive of increased height permissions and the inclusion of our client's lands within the Special Planning Area.

We appreciate the opportunity to comment on the Proposed New Official plan as it applies to our client's lands and look forward to meeting with you to further outline our comments and requests outlined herein, being that:

- The City provide further information with respect to the background work done to determine parks and open space needs and requirements within the Downtown;
- The Brant Main Street Precinct Special Planning Area designation be applied to the entirety of our client's lands and, in doing so, the portion of these lands which is proposed to be designated 'Parks and Promenades Precinct' be removed unless the City intends to purchase these lands;
- The Brant Main Street Precinct policies are revised to allow greater flexibility for site redevelopment, recognizing the reality of existing constraints within this area and other urban design measures that can be implemented to ensure good building design; and,
- Further clarity be provided with respect to the City's application of the term "immediately adjacent" in the context of the Brant Main Street Precinct Special Planning Area, including clarification that the 17 storey height consideration applies to our client's lands.

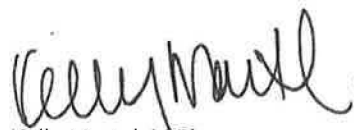
We look forward to working with the City moving forward to facilitate the redevelopment of the Subject Lands. Please do not hesitate to contact me or Kelly Martel of this office with any question or comments on this matter.

Yours truly,

MHBC

A handwritten signature in black ink, appearing to read 'Dana Anderson'.

Dana Anderson, MCIP, RPP

A handwritten signature in black ink, appearing to read 'Kelly Martel'.

Kelly Martel, M.P.I.

CC: Dr. Michael Shih, Jeffrey Kelly- Emshih Developments Inc.
Andrea Smith- City of Burlington
Mary Lou Tanner- City of Burlington



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January 22, 2018

Amber LaPointe
Committee Clerk
Planning and Development Committee
City of Burlington
426 Brant Street, Box 5013
Burlington, ON, L7R 3Z6

Dear Ms. LaPointe:

RE: Comments on the City of Burlington New Official Plan Downtown Mobility Hub Precinct Plan and Supplementary Information and Directions Regarding the Proposed Downtown Mobility Hub Precinct Plan and Proposed Official Plan Policies (PB-11-18)
Emshih Developments Inc. 433-439 Brant Street, Burlington
OUR FILE: 1583F

As you may know, MHBC is retained by Emshih Developments Inc. to provide comments on its behalf related to the new City of Burlington Draft Official Plan as it pertains to their land located at 433-439 Brant Street ("the Subject Lands").

On November 28, 2017, we provided written comments with respect to the proposed Draft Downtown Mobility Hub Precinct plan which highlighted our concerns and questions with the proposed policies (attached). To date, we have not had any response from staff and have not had an opportunity with staff to discuss further.

On January 19, 2018, we received a copy of PB-11-18: Supplementary Information and Directions Regarding the Proposed Downtown Mobility Hub Precinct Plan and Proposed Official Plan Policies. We have reviewed the Supplementary Information and Directions Report (PB-11-18) prepared by staff and note that it does not appear to address the concerns and issues raised by citizens, agencies and landowners (including our client). We appreciate the opportunity to comment further on the Proposed Downtown Mobility Hub Precinct Plan, however, we still have several concerns with respect to background information and inputs into the Area Specific Planning process, including the determination of the Parks and Promenades Designation, in particular, which we would like to discuss with staff before these policies are approved and incorporated into the New Official Plan. We need to better understand how these policies are to be implemented and how parkland is to be acquired. We respectfully request a meeting with staff to discuss these issues, in advance of any formal approval by Council.

Our concerns remain, as summarized below:

1. *Parks and Promenades Designation*

A Parks and Promenades designation has been applied to a portion of our client's lands and it is unclear how this was determined. We noted in our letter that these lands currently provide a retail and commercial function and include an associated outdoor garden centre, which is part of a private business. On this matter, we asked staff whether a detailed analysis of open space was undertaken as part of the work for the area-specific planning process and requested further information with respect to the background work done to determine the parks and open space needs requirements within the Downtown. **We still have considerable concerns with what methodology was used to determine the appropriate land needs and locations for the parks and promenades precinct. We have further concerns and questions around what the City's approach and process will be with respect to obtaining the proposed parks and promenades lands from private owners, where they are not owned by the City, such as is the case with our Client's lands.**

2. *Urban Design and Built Form along Brant Street*

In our previous submission, we highlighted concerns with the inclusion of strong policy language in the Plan with respect to built form, including the required 45-degree angular plane and three storey podiums along Brant Street. It continues to be our position that the physical character along Brant Street can be maintained without the strict requirement of a 45-degree angular plane, which may not be feasible on all sites; and, flexibility in design which would permit development proposals to contemplate two-storey podiums along Brant Street, should that be desired. In our letter, we noted that this rigid policy framework would have the unintended consequence of sterilizing lands from development. Particularly, in the case of the Subject Lands, redevelopment of the site is constrained due to parcel size and configuration and, as a result, terracing back to meet the full 45-degree angular plane may not be feasible. **We continue to request that the Brant Main Street Precinct policies be revised to allow greater flexibility for site redevelopment, in recognition of existing constraints within this area and other urban design measures that can be implemented to ensure good building design.**

3. *Clarification of the Brant Main Street Special Planning Area*

Our November 28, 2017 letter outlined concerns with application and interpretation of language within the Brant Main Street Special Planning Area designation. Primarily, we noted that we were unsure of how the term "immediately adjacent" was being applied within the context of the Special Planning Area. This directly impacts our client's lands, which are identified as being within the Special Planning Area; however, we are unsure how to interpret whether the seventeen (17) storey height maximum applies to these lands or not. **We continue to request that further clarity be provided with respect to the application of the term "immediately adjacent" in the context of the Brant Main Street Precinct Special Planning Area, including clarification that the 17 storey height consideration applies to our client's lands.**

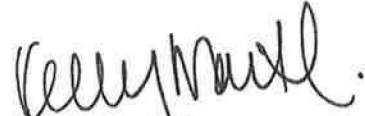
We look forward to meeting with the City moving forward to further discuss our comments and requests in order to facilitate the redevelopment of our client's lands. Please do not hesitate to contact me or Kelly Martel of this office with any questions or comments on this matter.

Yours truly,

MHBC

A handwritten signature in black ink, appearing to read 'Dana', with a stylized, flowing script.

Dana Anderson, MCIP, RPP

A handwritten signature in black ink, appearing to read 'Kelly Martel', with a stylized, flowing script.

Kelly Martel, M.P.I.

Cc: Dr. Michael Shih, Jeffrey Kelly- Emshih Developments Inc.
Ms. Andrea Smith, MCIP, RPP- City of Burlington
Ms. Mary Lou Tanner, MCIP, RPP- City of Burlington
Ms. Rosa Bustamante, MCIP, RPP- City of Burlington

November 28, 2017

Amber LaPointe
Committee Clerk
Planning and Development Committee
City of Burlington
426 Brant Street, Box 5013
Burlington, ON, L7R 3Z6

Dear Ms. LaPointe:

**RE: Comments on the City of Burlington New Official Plan (November 2017 Proposed Draft)
Emshih Developments Inc. 433-439 Brant Street, Burlington
OUR FILE: 1583F**

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Site Description and Surrounding Context

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Presently, our client is considering development options for the Subject Lands within the context of the current and proposed Official Plans with the intent to redevelop the lands.

Current Official Plan Framework

The Subject Lands are currently designated **Mixed Use Centre** (Schedule B) and **Downtown Core Precinct** (Schedule E) in the in-force City of Burlington Official Plan. The current land use structure that applies to the subject lands permits commercial activities, high density residential apartment uses, cultural uses of all types, recreation and hospitality uses, entertainment uses, and community facilities. Developments are permitted to a maximum height of 4 storeys. A maximum height of 8 storeys and 29 metres may be permitted subject to criteria and community benefits. A minimum density of 51 units per hectare and a maximum Floor Area Ratio of 4.0:1 is established (higher FAR may be permitted in conjunction with increased height).

Proposed Official Plan Framework (November 2017)

The Subject Lands are located within the **Downtown Mobility Hub**, which was subject to a separate area-specific planning exercise. The Subject Lands are proposed to be designated **Urban Centre** and **Urban Growth Centre** (Schedule B), **Primary Growth Area** (Schedule B-1), **Downtown Urban Centre** (Schedule C), **Brant Main Street Precinct Special Planning Area** and **Downtown Parks and Promenades Precinct** (Schedule F). In accordance with the notes contained throughout the Official Plan, it is understood that within the various layers of designations applied to lands within the Mobility Hub, additional objectives and/or policies may be added to the Official Plan, subject to the outcome of the area-specific plan process.

The Downtown Parks and Promenades Precinct identifies current and future parks, promenades and green spaces within the Downtown. These lands are primarily to serve the residents and employees of the Downtown as well as provide parks of a scale that will serve as significant destinations for city-wide and regional events and activities. Existing uses may be permitted within the Parks and Promenades designation.

The Brant Main Street Precinct is intended to serve as a unique retail destination. Development is to maintain and enhance the existing traditional main street physical character along Brant Street. Development is to achieve a low-rise form on Brant Street which could also form the podium to a mid-rise development. A variety of uses are permitted within this Precinct, including residential, office, retail and service commercial, hotel, entertainment and recreation uses. Development within the Brant Main Street Precinct are required to contain a minimum of two permitted uses. The built form in this area is proposed to be low-rise or mid-rise. A maximum height of three (3) storeys immediately adjacent to Brant Street and eleven (11) storeys immediately adjacent to John or Locust Streets is proposed. Additionally, developments are required to achieve a terraced built form and not to exceed a 45-degree angular plane measured from the centre of the Brant Street public right-of-way. Within the Brant Main Street Precinct Special Planning Area, a maximum height of seventeen (17) storeys may be permitted, subject to criteria.

Comments on the Proposed Draft Official Plan (November 2017)

Within the limited timeframe available to review the document, we have reviewed the proposed Draft Official Plan, as it applies to our client's lands, and offer the following comments:

- It is unclear how the application of a Parks and Promenades Precinct designation was placed on a portion of our client's lands. As noted above, the lands currently provide a retail and commercial function and include an associated outdoor garden centre which is part of a private business. Was a detailed analysis of open space needs within the Downtown undertaken as part of the background work for the Mobility Hub area-specific planning process? If so, can we be provided with this analysis? We would appreciate further clarity from staff with respect to the rationale behind the application of such a designation on our client's lands.
- The proposed Draft Official Plan contains strong policy language with respect to built form along Brant Street, identifying that a terraced built form shall be achieved and an angular plane of 45-degrees measured from the centre of the Brant Street public right-of-way is required. We understand that the intent of this policy is to ensure the physical character along Brant Street is maintained; however, we note that this angular plane requirement may not be achievable on all sites within the Precinct and may have the effect of sterilizing lands from development. In the case of the Subject Lands, redevelopment of the site is constrained due to parcel size and configuration and terracing back to meet the full 45-degree angular plane requirement may not be feasible. The cumulative impact of applying this policy on the Subject Lands would result in a

poorly designed building, whereas a more flexible approach would yield a better design for the site and the overall aesthetic of Brant Street. It is our opinion that intensification can be achieved through site redevelopment that represents good urban design without the provision of a 45-degree angular plane. We request that the consideration 45-degree angular plane requirement be more flexible for redevelopment of sites along Brant Street.

- Policy 8.1.1 (3.7.1) e) states "Development within the Brant Main Street Precinct shall provide a three (3) storey podium for all portions of a building fronting a public right-of-way". The current built form along Brant Street includes a mixture of 1 and 2- storey commercial buildings, which provides variety in the streetscape. Considering the current built form of Brant Street, a redevelopment proposing a two-storey podium with subsequent storeys stepped back would, in our opinion, maintain the character of Brant Street. This policy is again highly prescriptive and overly restrictive. We suggest it be revised to allow for more flexibility in design should a development proposal contemplate a two storey podium.
- In addition to the Brant Main Street Precinct policies, the proposed Draft Official Plan contains a Special Planning Area, in which a portion of the Subject Lands is included. In accordance with the policies of the Brant Main Street Precinct Special Planning Area, it is understood that lands within this designation may be permitted to develop to a maximum height of seventeen (17) storeys, subject to criteria. Within this policy section, we note that this applies to development "immediately adjacent to the intersection of Brant and James Street". We are unsure of how the City is applying the term "immediately adjacent" in this scenario, as the Subject Lands are not immediately adjacent to the intersection; however, are identified as being within the Special Planning Area on Schedule F. Does this apply only to lands on either corner of Brant and James Street? Or, is it the intent that the City would consider heights up to 17 storeys on the Subject Lands? Clarity on this matter is required. We note that we are generally supportive of increased height permissions and the inclusion of our client's lands within the Special Planning Area.

We appreciate the opportunity to comment on the Proposed New Official plan as it applies to our client's lands and look forward to meeting with you to further outline our comments and requests outlined herein, being that:

- The City provide further information with respect to the background work done to determine parks and open space needs and requirements within the Downtown;
- The Brant Main Street Precinct Special Planning Area designation be applied to the entirety of our client's lands and, in doing so, the portion of these lands which is proposed to be designated 'Parks and Promenades Precinct' be removed unless the City intends to purchase these lands;
- The Brant Main Street Precinct policies are revised to allow greater flexibility for site redevelopment, recognizing the reality of existing constraints within this area and other urban design measures that can be implemented to ensure good building design; and,
- Further clarity be provided with respect to the City's application of the term "immediately adjacent" in the context of the Brant Main Street Precinct Special Planning Area, including clarification that the 17 storey height consideration applies to our client's lands.

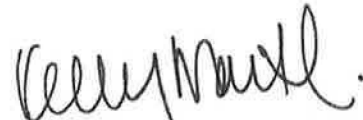
We look forward to working with the City moving forward to facilitate the redevelopment of the Subject Lands. Please do not hesitate to contact me or Kelly Martel of this office with any question or comments on this matter.

Yours truly,

MHBC

A handwritten signature in dark ink, appearing to read 'Dana', with a stylized, flowing script.

Dana Anderson, MCIP, RPP

A handwritten signature in dark ink, appearing to read 'Kelly Martel', with a stylized, flowing script.

Kelly Martel, M.P.I.

Cc: Dr. Michael Shih, Jeffrey Kelly- Emshih Developments Inc.
Andrea Smith- City of Burlington
Mary Lou Tanner- City of Burlington



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February 26, 2018

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Dear Ms. Smith and Ms. Bustamante:

**RE: Comments on the City of Burlington New Official Plan (February 2018 Proposed Draft)
431-439 Brant Street, Burlington
OUR FILE: 1583F**

MHBC is retained by Emily Shih with respect to the lands located as 431-439 Brant Street in the City of Burlington (the "Subject Lands"). The Subject Lands are located on the east side of Brant Street, at the intersection of Brant Street and Ontario Street. 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 years 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 and again on January 22, 2018. Our comments at that time outlined the following concerns:

- The application of the parks and promenades precinct designation on the Subject Lands;
- 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. Based on our review of the most recent draft policies and our discussions with staff, our client still has significant concerns as noted herein.

Park Requirements

We note that the most recent draft of the new Official Plan has removed the Parks and Promenades Precinct designation from the Subject Lands. The policies in Section 8.1.1 (3.3) note that while the schedule has been removed from the Plan, the City will continue to develop a parks and promenades plan as part of the ongoing development of the Area Specific Plan for the Downtown. While the designation schedule has been removed, general policies remain in Section 8.1.1 (3.2) requiring parkland dedication considerations and the following site specific policy has now been added to the most recent draft that is directly applicable to the Subject Lands:

"8.1.1 (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)."*

Firstly, we question why a site-specific requirement of this nature has been imposed on the Subject Lands through the comprehensive Official Plan process when the details of the Downtown Plan are still under development? We are not aware of any analysis of such a walkway through a development review process, nor are we aware of any evidence-based justification of the need for such a walkway.

Subject to further review by our client's legal counsel, we are also not aware of the jurisdiction under the *Planning Act* to require the mandatory dedication of park space (private or public) through the imposition of a site specific policy in an Official Plan. Staff acknowledged that they were not aware that the City's legal department had reviewed this matter in any detail.

Secondly, we don't believe a mid-block connection is required or appropriate on the Subject Lands based on general design principles. Staff noted during our recent meeting that the basis for the requirement was from a 2005 study of the Downtown. The Downtown Mobility Hub workbooks had identified a green connection on the Subject Lands. As noted in our earlier submissions, there is no existing public or publically accessible pedestrian walkway on the Subject Lands. The exiting outdoor area is a private retail space.

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. 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. The adjacent redevelopment of 421 Brant Street proposes a height of 23 storeys. The Subject Lands are currently designated to provide for an 11 storey redevelopment.

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, 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.

The site specific policy, 8.1.1 (3.7.2.a) should therefore be removed from the draft Official Plan. Any policies and mapping related to parks and open spaces in the Downtown should also be properly implemented through the refinement of the Area Specific Plan for the Downtown.

Restrictive Urban Design Metrics

Restrictive urban design metrics continue to be included in the Downtown policies of the draft Official Plan. The urban design guidelines have been implemented as required policy without consideration for the locational context and without flexibility. The design guidelines are imposed through mandatory requirements using the term "shall". Most notably, we have concerns with the following:

- Mandatory requirement that a 45 degree angular plan from the centreline of Brant Street;
- Mandatory requirement that all podiums along Brant street be a minimum height of three storeys; and ,
- Mandatory requirement that all tall buildings have maximum floor plates (750 square metres) and provide a separation distance of 30 metres.

The physical character along Brant Street can be maintained through good urban design without the inclusion of such restrictive policies in an Official Plan. The policies provided for in the February 2018 draft would in fact **impede development** that still meets the intent of the guidelines since it 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 3 storey podium.

Including such rigid requirements in policy creates significant constraints to development and in some cases makes feasible redevelopment almost impossible on some sites, especially in a mid-rise form. Such may be the case for the Subject Lands should a seniors housing development be considered which would not generally provide for a 3 storey podium. Requiring an Amendment to the Official Plan for design related matters is unduly onerous and in fact, as now required under the Planning Act, Official Plan Amendments are not permitted within two years following the Plan's approval. Staff advised that the two year restriction would be a good time period to see how things work or don't work and would allow time for consideration of changes. This constraint and time lag could also restrict the very objective of providing well designed buildings that meet the City's objectives.

With respect to the new mandatory requirement of a 30 metre separation distance between tall buildings, we understand that this has been included as a result of Council direction. The City previously went through an extensive public process to develop tall building guidelines which established 25 metres as the appropriate separation distance between towers of tall buildings. These guidelines were approved in May 2017 and previous drafts of the OP included this separation distance. Again, it is our opinion that these urban design matters should not be included as mandatory policy in the Official Plan and should remain as guidelines within the approved guideline documents. Moreover, we note that the existing conditions in the Downtown would make it impossible for many new developments to meet a 30 metre separation distance. There does not appear to have been any further analysis or public consultation to revise what was otherwise accepted and approved by Council.

The mandatory urban design guidelines should be discretionary and we would recommend the language be amended to "should" where "shall" is currently provided.

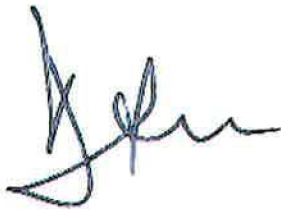
Special Planning Area

We have previously requested that **the entirety of Subject Lands should be included within the Brant Main Street Special Planning Area**, which would allow for the opportunity to explore broader redevelopment options for the site above the current 11-storey height requirement to a maximum of 17 storeys. It continues to be our opinion that the Special Planning Area should extend to these lands and request that the Downtown Mobility Hub Land Use Schedule be revised to include the Subject Lands.

We appreciate the opportunity to comment on the proposed updated draft Official Plan and Downtown Mobility Hub plan and are available to discuss our comments further with staff. We look forward to working with the City moving forward to facilitate the redevelopment of the Subject Lands in an appropriate, fair and reasonable policy framework.

Yours truly,

MHBC



Dana Anderson, MCIP, RPP
Partner



Kelly Martel, M.Pl
Planner

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