70 Townsend Ave.,

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December 10, 2018

To: Burlington Committee of the Whole

From: Tom Muir, Resident.

Subject: 2100 Brant Street prehearing conference (COW-11-18)

Dear Councillors,

I would first like to congratulate you all on your successful candidacies, wish you the best of success in serving residents, and to delegate myself for the first time in this term of office. I look forward to working with you as a fresh slate, and as best I can, being a long time and frequent delegating citizen from Aldershot.

This agenda item is a big deal as we move forward with our renewed ability to control our development process and destiny, and fashion a revised OP and zoning bylaw to a form that has been mandated by the residents in the determinative election that just put you all here.

I don't know how many of you read the Burlington Gazette, so much of what I will say today, toned down a little to respect this Chamber, may be somewhat familiar for some. But since the City government does not directly and publicly respond to stories and comments in the Gazette, given this important agenda item I will provide this record of concerns and comments directly to you.

Late in November I found out from several sources, and from digging around, that the City planning dept. had allowed mandated timelines for Council decisions on several development applications in Ward 1 and predominantly Aldershot to elapse. This inaction had triggered several developer's rights to an immediate appeal to the OMB/LTAP for applications submitted.

Pepper Parr, Publisher of the Gazette got information on *in camera* proposed changes to one of these appeals that pertained to 2100 Brant St. I knew about that appeal and that a prehearing conference was going to be organized for a future time. What I did not know initially was illustrated in the following paragraph that Pepper sent to me and accompanied by a direct question. These are quoted as follows.

"Please also be advised that we will be asking the LPAT to convert this PHC to a SETTLEMENT HEARING to approve the settlement which National Homes (Brant) Inc. and the City of Burlington have reached. The settlement is reflected in the planning instruments (the Official Plan Amendment, Zoning By-law Amendment and Plan of Subdivision), all of which are attached to this letter. If you have a concern with the PHC being converted to a settlement hearing please contact the undersigned prior to Tuesday, December 18, 2018."

The question asked by the Gazette is;

"Is it your position that the community has had no input on these approvals that 2100 and the planners appear to have agreed upon?"

I immediately answered a definite yes. I have been tracking and inquiring about the several outstanding appeals in Aldershot triggered by the City failing to make mandated deadlines. It was alarming to me that this appeared to be a recurring pattern that almost seemed to be a policy, or at least, a policy failure.

I don't know how familiar you all are about what happens in the cases where appeals are justified on the failure to make a decision. Simply said, it means that all the due public process downstream from that point is short-circuited to ground, and to the LTAP.

In the case of 2100 Brant, there was never a Planning staff recommendation report written and presented to Committee, and so all the public comment to that point was effectively buried from further discussion and their normal presentation to Council, and the public, in the usual due process. This means:

There will be no staff reports on important matters such as:

- storm water and groundwater flows in this escarpment location and how they are to be managed to achieve pre-development runoff rates, and to prevent impacts downstream;

- a full staff recommendation report with comments from various City departments and the public on the amendments and 19 or so variances requested;

- a Committee meeting with delegations and debates, possible motions, and a vote;

- a following Council meeting with delegations, debate, possible further motions, and a vote; and then an opportunity for appeal.

All of this democratic process and more is being arbitrarily taken away in this move by a defunct Council. This means a decision was made that lacked

planning evidence and debate - and yet the former Council agreed to the settlement.

The biggest issue is the total disregard for the planning process. This proposed settlement decision was led by a former Councillor for sure as it had to be, and likely by the former Ward 1 Councillor. However, I can't prove that as the evidence is buried in the "in camera" file of the Council meeting where this took place, and the rules that forbid those present from revealing such things.

The appeal itself, now subject to a proposed settlement before you, was filed at a time so it would fall under the rules of the old OMB procedures, rather than the new LTAP rules that such appeal hearings would transition to as of early April 2018.

So my first question was - how can the old OMB key criteria of "good planning" be based on no planning evidence or planning recommendation report or Planning Act due process?

There are so many planning failures and empty information boxes on so many critical things in the OMB/LTAP Notice on 2100 Brant St. that it is in total disrespect of the democratic and due public process of the planning and normal sequence outlined in the Planning Act.

I was told that the planner in charge of the file wrote the basis for the amendments, but there is no signature or otherwise identification to that effect, only a contact. Further, I was told that she agrees with it.

In my opinion, it looks more like it was written by the developer consultant than an objective City planner. It really makes me wonder out loud when a supposedly independent, professional and objective planner, working for the residents of the City, purportedly signs off on such a deficient basis for an approval of all the amendments wanted. The planners responsible for this basis for approval should be called to account and required to explain themselves.

Basically, the only planning justification for what is a demonstrable overdevelopment is the statement that it is consistent with the PPS goals of intensification. That's really all the justifying policy-frame planning evidence cited to justify an OP amendment and to allow around 19 zoning amendments asking for ever more, with no other evidence or argument.

Anything at all built on such a vacant site as this application would meet the PPS targets for intensification, including a reduced build that would address and meet the existing OP and substantial resident comments and submissions suggesting revisions to the application that would satisfy all the PPS and intensification needs.

Recall again that this appeal by the developer was made possible by the City neglect to make a decision on the requested Official Plan amendment within the 180 days' timeline.

This City neglect to make decisions on requested amendments extends also to amendments on zoning by-laws within this timeline of 120 days, on several other applications. It appears to be a policy-like choice that has the effect and consequence of sidestepping the normal democratic public process, described above.

The developers love it as it removes any negative public and planning objections from the process of deciding the application. The public is effectively deprived of any due process, rights of appeal, and the City Council cannot do anything of its own volition without going through the OMB/LPAT. In the end, only one or two LPAT Chairs make the decisions. That's what this agenda item is about.

There is another appeal by National Homes on their 484 and 490 Plains Rd E application for zoning by-law amendments based on the City failure to make a decision within 120 days. Again, this appeal is designed to sidestep the democratic due planning process, which will now not happen as described, and is facilitated by the City planning and legal staff in an apparent careless fashion in ignoring the lapses of the mandated timelines for making decisions.

There is a pre-hearing conference meeting set for December 19, 2018, one day after the meeting for 2100 Brant St. It's the same developer, and similar logic, so it is a logical question as to whether this application can be approved without due process, just like the 2100 Brant St application.

A further instance exists at 92 Plains Rd E with another appeal based on neglect to make a decision on bylaw amendments. As before, all the usual due public process has been stopped, there is no staff recommendation report, to-date public comments and concerns are buried, and no further Committee, Council and public delegations will be done.

In fact, we ought to be concerned that such a planning tactics like these appeals can be used throughout the City planning and development process to undermine public participation in a democratic way of transparent decision-making based on a discussion of the merits and demerits of applications.

And we should definitely be concerned that the existing planning, legal, and senior managers have seemingly organized themselves in such a way as to allow this failure to occur without a seeming care in the world.

All I have heard in my complaints to city planning is a litany of possible things that could have happened to allow such a failure to occur, from inadequate staff for processing applications and studies submitted, to developer aggression.

With the budget coming up you have a chance to review how adequately Planning is staffed to deal with what will be coming their way serving your new agenda, on top of what appears to be an already full plate that previous management has let happen.

This is a management and policy failure that must be fixed right now.

You have an opportunity today to take a first step in that direction.

Thank you,

Tom Muir