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**VIA EMAIL**

January 13, 2020

City of Burlington  
Community Planning, Regulation and Mobility Committee  
426 Brant Street, P.O. Box 5013  
Burlington, ON. L7R 3Z6

**Attn: Committee Chair and Members**  
c/o Jo-Anne Rudy, Committee Clerk

Dear Chair Stolte & Members:

**Re: Interim Control By-law Land Use Study and Proposed  
Official Plan and Zoning Bylaw Amendments "Proposed OPA and ZBA"**

We represent Emshih Developments Inc. ("Emshih"). Emshih owns lands that are subject to the current Interim Control By-law ("ICB"):

- 2250 Fairview Street (existing medical office);
- 895 Brant Street (corner of Brant Street and Fairview - Emshih's head office);
- 372 to 380 Brant Street; and
- 433 to 439 Brant Street.

Emshih also owns property not subject to the ICB at 901 Guelph Line.

All Emshih properties are impacted by the Proposed OPA and ZBA.

## OUR ASK

We request that the City press pause on its consideration of the Proposed OPA and ZBA:

- to engage the public on its contents;
- to allow for public review;
- to establish a sufficient technical assessment to support it; and

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- to permit Emshih an opportunity to submit a modified OPA and ZBA for staff and Council's consideration.

## **THE PROCESS**

For over 35 years, Emshih has been an active and productive community participant in City building. Regrettably, the ICB Land Use Study "Section 38 Study" did not engage Emshih and provided it no opportunity for review. This lack of engagement is very unusual for a Section 38 Study. The result, not surprisingly, is a Proposed OPA and ZBA that lacks sufficient technical assessment and evidence to support its significant and negative impact on Emshih's properties.

## **PLANNING REVIEW AND IMPACT**

Enclosed please find correspondence from MHBC Planning Urban Design and Landscape Architecture (Dana Anderson) dated January 13, 2020 ("Planning Review"). Emshih's Planning Review outlines significant deficiencies in the Proposed OPA and ZBA, its implementation of Provincial Policy and the resulting impacts on Emshih's properties including:

- Prescriptive housing policy requirements absent a broader housing strategy;
- Major Transit Station Area "MTSA" restrictions on height that do not reflect appropriate levels of development; and
- Restrictions on boundary adjustments to MTSA's.

The application of these policies will render the redevelopment of some of Emshih's properties unfeasible.

## **NEXT STEPS**

If the City adopts/passes the Proposed OPA and ZBA in its present form, I expect Emshih will instruct me to appeal. As that appeal is processed, other Emshih properties that may not be negatively impacted by the Proposed OPA and ZBA (its planned seniors housing proposal at 2250 Fairview for example) will be caught up in the appeal process. This would be a real, although I expect, unintended consequence.

Again, we request that the City press pause on its consideration of the Proposed OPA and ZBA for the reasons outlined in this letter.

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In the alternative, in the event Council adopts/passes the Proposed OPA and ZBA in its present form, we request that Council instruct staff to meet with Emshih immediately on a without prejudice basis. These meetings should proceed expeditiously in a good faith attempt to address the broader City objectives while addressing the significant and negative impacts on the Emshih properties.

Please put me and MHBC (Dana Anderson) on your mailing list to receive all notices and communications moving forward.

Yours truly,

A handwritten signature in black ink, appearing to read 'N. Smith', written in a cursive style.

Nancy Smith  
ns/l

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TURKSTRA MAZZA ASSOCIATES, LAWYERS

January 8, 2020

Attn: Committee Chair and Members  
c/o Jo-Anne Rudy, Committee Clerk  
City of Burlington  
Community Planning, Regulation and Mobility Committee  
426 Brant Street, P.O. Box 5013  
Burlington, ON  
L7R 3Z6

Dear Chair Stolte & Members:

**RE: Interim Control By-law Land Use Study Report and  
Proposed Official Plan and Zoning By-law Amendments (Staff Report PL-01-20)  
Emshih Developments Inc.  
Our File No. 1583**

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MHBC is retained by Emshih Developments Inc. ("Emshih") in relation to a number of properties located within the City of Burlington that are subject to the current Interim Control By-law.

We understand that Planning Committee will be considering approval of a proposed Official Plan Amendment ("OPA") and Zoning By-law Amendment ("ZBLA") to implement the findings of the Interim Control By-law Land Use Study on January 14, 2020. We have reviewed the Land Use Study and the draft amendments and schedules prepared by staff and have the following comments on behalf of Emshih that apply to the overall process as well as specific comments related to Emshih's properties located within the Interim Control By-law Area.

#### **Comments on the Overall Process**

Emshih has been a long standing member of the City's business community for over 35 years. They have successfully developed a broad spectrum of projects throughout the City including much needed housing for seniors and healthcare facilities. Emshih has always taken an active role as a community stakeholder in the City's planning processes, studies and projects to contribute their experience and expertise in City building.

Over the last several years Emshih has been engaged in the City's Official Plan Review process. Through that process, Emshih provided ongoing input and comments and was actively involved in the most recent Mobility Hub Study for the Burlington GO Station and was supportive of the presentation of the preferred Precinct Plan recommended by staff in July of 2018.

Through the current Interim Control By-law process there has been **no opportunity for public engagement or review** unlike the past Mobility Hub study or the Official Plan Review process. It is not clear why the City would not provide for stakeholder and public engagement as part of the Interim Control By-law Study process, as it is common practice and in the public interest to fully engage the public and stakeholders in land use studies undertaken under Section 38.

In addition to the lack of stakeholder engagement, there is no technical or planning evidence on which the formulated OPA and ZBLA are based. Given the detailed and prescriptive new requirements for design elements such as open spaces and parks, public roads, design, land uses as well as limitations on heights and building locations, one would anticipate a level of technical information to be provided to support the proposed changes to policy and zoning. This would be required by the City for any site specific policy or zoning change for a development site. **The Land Use Study completed with the Interim Control By-law does not include, in our opinion, a sufficient technical assessment or evidence upon which to justify the draft OPA or ZBLA.**

### **Emshih Properties and Impacts**

Within the current Burlington GO Mobility Hub Area, Emshih has two properties:

- 2250 Fairview Street (existing medical office); and,
- 895 Brant Street (corner of Brant Street and Fairview which contains Emshih's head office).

Within the Downtown Urban Growth Centre, Emshih has a number of properties including:

- 372 to 380 Brant Street; and,
- related properties at 433 to 439 Brant Street.

### **Proposed Major Transit Station Area - Special Planning Area Policies**

The proposed OPA adds a number of new development criteria through policies 7.2.2 q) and r) that apply to all of the above-noted properties as they are part of the MTSA Special Planning Area. Many of these are new mandatory policy requirements which were not fully assessed or founded in evidence in the Land Use Study.

There is a new policy for Official Plan Amendments to require affordable and rental housing as part of a proposed development or public service facilities and community space, together with sustainable building design measures. While the objective of providing affordable housing is extremely important, it should be done within the City's housing context and with support as part of a broader housing strategy. The language in this policy is also not clear and is highly prescriptive and specific. Providing additional housing supply inclusive of affordable housing can be achieved through increased supply opportunities especially in forms and locations that warrant tall buildings and greater densities. Prescriptive layering of onerous policy requirements does not serve to meet the affordable housing objectives as set out in the Regional Plan, the Growth Plan or the Provincial Policy Statement.

### **Proposed Burlington GO Major Transit Station Area Policies and Zoning**

As part of the recent Mobility Hub Study for Burlington GO, staff recommended that the corner of Brant Street and Fairview, which includes the property at **895 Brant Street**, be part of the **Central Precinct** which provided for heights of up to **30 storeys**. The property located at **2250 Fairview Street** was

recommended as part of the **Mid-Rise Residential Precinct** and recommended for heights up to **11 storeys**. This preferred plan was presented and received by Council in July 2018 and was to form the basis of the formulation of the Area Specific Plan for the Burlington GO Mobility Hub prior to the Council decision to pause the work on the Mobility Hubs and pass the Interim Control By-law to re-examine the area.

The draft OPA and ZBLA specific to the M-1 area of the Burlington GO MTSA places considerable restrictions on the property located at **895 Brant Street** which is within the B-1 portion of the M-1 Area. The proposed policies and regulations:

- restrict height to 6 storeys within 20 metres of Brant and Fairview Streets;
- restrict height to 11 storeys beyond the 20 metres of Brant and Fairview Streets.

These recommended height limits are no different than the current Official Plan height policies (for the first 20 metres of the site) and when scaled onto a survey, with the site's configuration and additional setbacks related to the creek, restrict the feasible redevelopment of the site. These proposed policies and regulations are also a substantial change in recommendation for this prominent corner of the Burlington GO Mobility Hub from what was recommended by City staff just over one year ago (30 storeys). It is not clear why planning staff would now recommend a substantial change to the land use planning framework for this site within an MTSA which may not be feasible to implement and which is not reflective of the level of transit-oriented development supported within an MTSA as required by the Province and the Region.

While not part of the Interim Control By-law Study area, Emshih also owns property at **901 Guelph Line** for which they will be making additional submissions as part of the Official Plan re-examination process. It should be noted that this property is affected by the policies proposed under the Interim Control By-law draft OPA that restricts adjustments and changes to the Burlington GO MTSA boundaries through the Region's Municipal Comprehensive Review. We do not support this policy as it would further restrict the ability of the City to consider boundary changes through the re-examination.

We trust Planning Committee and Council will carefully consider all comments received on the draft OPA and ZBLA and remove the restrictive policies and provisions at this time, approving only those policies that are general in nature to guide development in the interim. We would also appreciate additional time prior to adoption of the OPA or ZBLA to submit a modified draft OPA and ZBLA for staff and Council's consideration.

Sincerely,  
**MHBC**

Dana Anderson, MA, FCIP, RPP  
Partner

Cc: Dr. Michael Shih, Emshih