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**VIA EMAIL**

January 29, 2020

City of Burlington  
426 Brant Street, P.O. Box 5013  
Burlington, On. L7R 3Z6

Attn: Mayor Meed Ward and Members of Council  
c/o Angela Morgan, Clerk

Dear Mayor Meed Ward and Members of Council:

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

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

- 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.

## **COMMITTEE DIRECTION – JANUARY 14, 2020**

As noted in our letter of January 13, 2020, to the Members of the Community Planning, Regulation and Mobility Committee, all of Emshih's properties are impacted by the Proposed OPA and ZBA. At the public meeting on January 14, 2020, we understand the Committee received submissions (both written and in person) on the Proposed OPA and ZBA and directed staff to review and consider further modifications to the OPA and come back to Council with responses to the submissions. We also understand that the legal department advised they would bring a legal memorandum to Council on January 30, 2020 to address the issue of exemptions from the ZBA.

### STAFF MEMO RECEIVED YESTERDAY

We have now received a copy of a memorandum from planning staff to the Mayor and Members of Council (“Staff Memo”), made publicly available yesterday, which outlines responses to the submissions on the ICB and Proposed OPA and ZBA. The memorandum also includes several modifications to the Proposed OPA, ZBA and Land Use Study. It does not address the issue of exemption from the proposed ZBA.

Given that the Staff Memo was made available only two days in advance of the Special Meeting of Council, we have not had an opportunity to fully review the many proposed changes nor understand the implications for our clients’ lands. We are also not aware at the time of writing this letter of the response from the legal department on the ICB exemption process, as noted would be provided prior to the public meeting.

In our previous submission, we requested that the City press pause on its consideration of the Proposed OPA and ZBA to engage the public on its contents; allow time for public review; establish the required technical information to support changes; and permit us the appropriate time to submit a modified OPA and ZBA for Council’s consideration. At the public meeting, the ICB was noted by staff to be a highly “technical land use study” that had to be completed within a very limited timeframe. It is unclear why staff would state that the reason for no public or stakeholder engagement on the ICB study is because ICB studies are highly technical studies with limited time for completion. It is also concerning that planning staff would respond to Emshih’s and several other delegates’ concerns with the lack of communication, transparency and consultation, by stating that the report was released in December 2019 and a statutory public meeting was held on January 14, 2020.

The ICB process undertaken by the City is not characteristic of ICB studies in most municipalities for a number of reasons. The most uncommon characteristic is the total lack of public and stakeholder engagement and actual detailed analysis. ICB studies are not bound to a public process with only one statutory public meeting. The process for the study and for engagement is one of choice by a municipality and Burlington chose not to engage with the public beyond the one public meeting at the end.

Without any further public consultation since January 14, 2020, the policies and regulations proposed through the ICB study have now been revised and in many cases removed with little or any justification. While we may support some of the proposed changes upon further review, the way in which the Proposed OPA and ZBA are now being put forward for approval is so far removed from any responsible and appropriate planning process, it raises serious concerns on how any decisions on what is proposed are supportable.

### **“MINOR” CHANGES?**

It is also unclear how such substantive changes can be “deemed minor” under the Planning Act and not require any further public notice. Any development application whose proposed zoning by-law was amended from an initial public meeting from one prescribed height limit to another, in the manner proposed by staff, is not minor. This is unacceptable.

### **“PRELIMINARY EXEMPTION”?**

It is unclear what the Regional approval role is in the process. At the public meeting staff confirmed that the decision of Council on January 30<sup>th</sup> would be final unless there was an appeal. Our client’s planner was advised on January 17, 2020 that the Region had not confirmed whether it would be delegating approval of the OPA to the City. The report from staff now conveys the Region have provided a “preliminary exemption” on January 24, 2020, subject to the outcome of the January 30, 2020 Council meeting. I do not know what a “preliminary exemption” means or how any certainty about the process can be known at this time.

### **NEXT STEPS**

Emshih want to continue to work with staff and the City on the many opportunities its properties can provide for the community’s needs. We are working on proposed further modifications to the OPA and ZBA to discuss with staff. We will not have time to prepare the necessary planning input to support these changes in the short time available. We continue to believe additional time to formulate and justify the Proposed OPA and ZBA is required.

At a bare minimum, Council must exempt the following Emshish properties before adopting/passing the proposed OPA and ZBA:

- 2250 Fairview Street (existing medical office);
- 372 to 380 Brant Street; and,
- 433 to 439 Brant Street.

These properties fall outside of the proposed ZBA. If these instruments are appealed, any permissions will be suspended. This cannot be the City’s intent and must be remedied now. To force Emshih to appeal in order to have status to remedy this unintended consequence is not acceptable.

Should Council adopt/pass the Proposed OPA and ZBA in the modified form, we request that Council instruct staff to meet with Emshih immediately on a without prejudice basis in a good faith attempt to address the issues as noted by Emshih in its submissions.

Yours truly,



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Nancy Smith  
ns/l