

On Sun, Apr 19, 2020 at 9:58 AM Tom Betty.muir [REDACTED] > wrote:

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April 18, 2020.

To: Burlington City Council

From Tom Muir, Resident

Subject: Possible Settlement Agreement for 2100 Brant St in Council meeting agenda of April 20, 2020.

Dear Council,

I would like to provide this written delegation of objection to Council on the possible in camera agenda item for April 20 on a settlement agreement for 2100 Brant St. for the record of my interest and engagement in this development. I became aware of this from a story in the Gazette, despite my being a Participant in the Hearing on this development appeal.

Problematically, I looked at all the Committee and Council agendas and minutes related to this item, but there is nothing specifically identifying an item that I suspect is this one, except a note that some litigation will be covered, but nothing else specific.

From this wording people would never know anything had been done or proposed. The Mayors and Get Involved newsletters on the meeting today mentions absolutely nothing about this item.

It appears that it will be confidential and offline.

1. I want to express my opposition to any proposed settlement agreement on this development. I have a Participant standing in this appeal with a scheduled Hearing in July. I have been working on the provision of my Participant evidence and testimony statement. The resident Party to the Hearing has been doing likewise.

If a settlement is arrived at in camera at Council, this will be the third time that I have been subjected to this treatment - previously for 92 Plains Rd and 484-490 Pains Rd in just the last year alone.

2. As Council is aware, this is the same development that this Council voted to rescind a previous settlement proposal approved by the previous Council. At that time the present Mayor said that there would be no more settlements. However, here we are again looking to be doing just such another settlement for the third time since those words were spoken.

3. From these actions, and others appearing in the public eye and the media, It is becoming evident to many citizens that the Mayor and Council and staff are losing credibility on the planning file. The 2100 Brant file is yet another development where a settlement agreement is being hatched in secret, couched in secretive language hidden in meetings, agendas and minutes, with no public acknowledgement of what was being planned, and no delegations or resident attendance. Talk about bad faith, and kicking residents with Party and Participant standing at the Hearing to the curb.

4. In this act of bad faith, advised and led by an acknowledged compromised staff, from their support of the previous settlement that this Council rescinded, and basically the same apparently feckless legal/planning advisory staff, who don't seem to have ever met a development planning appeal case they will try to win.

We were totally misled by the legals in leading us to believe that they would hire an independent lawyer and planner to represent the resident Party's issues and to keep the Hearing honest. They either could not or will not do this, so they are basically trying to give us back the settlement proposal that this Council rescinded. So resident Party members and Participants will not get a contested Hearing so they are heard. This makes a mockery of the so-called citizen engagement process in the city.

5. In this time of COVID, this is one of the last things we should be doing. It's not a necessary or "essential" order of business that the City needs to decide right now.

I think this is the appellant lawyer working business as usual, using the cover of COVID, to get his client out from under the cloud that this virus will change much of everything we know because how we lived and developed before is what brought the virus here, spread it, and will find a hospitable environment to hide in and persist.

One piece of evidence that is emerging from the pandemic is that COVID prevalence is associated with overdeveloped/crowded higher density built form, transit dependence, little green space, deficient amenity area, and other too may to mention decreased standards that are like what this development is about.

COVID is not going away, if ever, in a time frame and impact that can be responsibly eliminated from the policy rationale and basis of long term plans like the Growth Plan and the City OP.

In the Gazette April 19 a story ran the following quote from an Imperial College expert: **"Humanity will have to live with the threat of coronavirus "for the foreseeable future" and adapt accordingly because there is no guarantee that a vaccine can be successfully developed, one of the world's leading experts on the disease has warned."**

Does the Mayor and Council really think this will leave everything unscathed and we just pick up where we left off, with no reconsideration of what citizens want in the OP and what direction we can really go and should go??

Absolutely nothing like this settlement should be done during this pandemic, which, from the evidence, looks more and more like it will require much more time for shutdowns, decision delays, and reorganization of how things are done. We above all need to rethink and reconsider everything.

A real Hearing will not be safe in July. How do you have such a thing by wire? This is not credible, but perpetuates the offensive lie that citizens have any real say in planning, and more so at LPAT.

The real issue here, underlying everything I think, is citizen pursuit of self determination – we want some real say in the conditions, and the changes in these conditions, that we live in. Here, we are talking about how and where and what we build as a city form that we have to live in.

This settlement takes that away. It's another instance of how real meaningful citizen engagement in Burlington planning does not exist.

I am copying a comment below that I submitted to the Gazette in response to John Calvert's message to the Mayor that was published in the Gazette on April 15, in case some of you are not aware of it, and as a part of this for the record objection to any proposed settlement agreement. In this, you can see the basics of how planning is being done in Burlington.

Approving this 2100 Brant St settlement proposal at this time, is in my opinion, an ill considered and thoughtless act that flies in the face of said citizen self determination. The whole City is being turned into a development scene that is inherently going to produce the concerns that undermine your credibility, as people just won't sit quiet and be subjugated just because you dismiss them.

This is a personal thing and that makes it political.

Thank you,

Tom Muir

- Tom Muir [April 15, 2020 at 12:11 pm · Reply](#)

I want to thank John for this from the heart statement of truth to power. I share your sense of betrayal and failed trust, honesty and commitment to promises made, and impressions given.

As noted below by Penny, in the heat of elections, talk and glib promises are cheap and easy indeed. Your delivery to the Mayor hits this right on the mark, and we still hear the hollow promises from her and City.

It may be of interest to readers to hear my experienced opinion on how the City is doing planning these days and for a while. It starts by apparently setting up the planning process so the developers know they should appeal any refusals, and go to LPAT.

Further, it is a no-brainer to go to LPAT when the city fails to decide in the mandated timeline. We have had a lot of those, with 4 recent ones in Aldershot including 2100 Brant, and some Downtown.

In this appeal situation, legal is running the show, due public planning process ends, and citizens are left out. The City legal is apparently weak, and like in the 2100 Brant St appeal, won't or can't get an opposing planner for their case to keep the thing honest.

The appeal then becomes a settlement agreement proposal drafted in camera, in secret with no explanation why, and the developer agrees to settle because the City gives them what they want.

Citizens as Participants don't count. The appellant planner witness(es), if there are any, and they don't have to call any because they "agree", can say anything they want, exaggerate and fib.

The City doesn't let staff say anything at all except to agree with what they have been told to say, the appeal Hearing becomes a farce and waste of time, with possibly no Party witnesses and no documents because they "agree" to settle, and this is "good planning" ..

Participant testimony and evidence is trumped by hired developer lawyer planners, if there are any, anointed as "expert witnesses", who are the only acceptable source of what is acceptably true in planning. The LPAT Chair can repeat the official truth in the Decision.

The Participants arguments and evidence, especially about the untruths, fibs and exaggerations are ignored without recourse to appeal the LPAT decision on the Hearing they were presented at because that appeal option is restricted to Parties.

But the City and developers all agree with the acceptable and speak-able official planning truth and opinion, so it's a done deal like this one at 2100 Brant possibly, but actually at 92 Plains Rd. and 484-490 Plains Rd.

I know this description I provide here to be accurate because I have been given Participant status in all 3 of these appeals, and have done so for what turned out to be settlement agreements where my evidence and testimony was basically ignored except as maybe irritation, but salvaged by the expert opinion that cannot be controverted except by another expert. The two Plains Rd settlement agreements were approved by LPAT.

I expect the same thing will happen at the City-National Homes settlement agreement on 2100 Brant St, despite the Vision 2100 Brant citizens who are registered as Parties, and the same present Council who rescinded a previous settlement agreement. My submission to that one shows the settlement agreement is proceeding like the model I describe above.

The city sets up the appeal, it goes to legal, public planning process ends before even a fully legal statutory meeting, there is no staff recommendation report for transparency and accountability, it then all takes place in camera where a settlement agreement is made.

It agrees to give the developer basically what they want by fiddling with the by-laws It's crafted in camera, there may be no Hearing witnesses for the appellant and it looks like none for the City (like at 92 Plains; and 484 Plains), and the rest of the story goes on to the same arrangement and conclusion as far as I can see from these Plains Rd decisions.

The 2100 Brant St appeal is on the same track. It's at legal, but there is a citizen Party in this one, so that's a curve. However, if City says it can't find an opposing planner to represent an honest opinion reflecting the issues of the citizen Party group, then that can lead to the same end with a legal led in camera settlement agreement proposal. This looks to be happening from what John says.

And the 1085 Clearview proposal was refused by staff and then appealed. It's now off-line the public planning process. I believe staff, in their refusal, and I said this in a written delegation, gave the developer a great basis for the appeal. This looks to be another candidate for a settlement agreement proposal crafted in camera.

I won't go into details, but there are several more candidates on Plains Rd. in early stages of process for this model for taking development applications off-line the due public planning process and into the LPAT decision model that is in camera at legal.

And there are others Downtown in appeal; at 419 Brant St and there is the Amica appeal.

Not so far along are several sprinkled around that are in various stages of application and all look to be candidates for LPAT. They are paused in process by the ICBL, but not paused in developer intent.

The Downtown planning process yielded two concept options that don't change anything, but in fact provide more cement to bake the problem in.

And demonstrating that problem City got 31 or so appeals as soon as Council approved the preferred option.

It seems to me that this is what Planning in Burlington has come to – planning for developer appeals so that the public planning process and decision-making is moved to LPAT, out of reach of citizens and immediate actions and public control by Council, automatically downloaded to legal, no longer led by Planning, and so on and so on.

Not a surprise by any means to me, and I know of others. There is a pattern that is quite evident here.

Is Council and the Mayor ready to take this on to restore some trust and visible honesty?