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July 7, 2016

Via email jo-anne.rudy@burlington.ca

To: City of Burlington
Community and Corporate Services Committee
Attn: Councillor Lancaster, Chair and Members of Committee
426 Brant Street
Burlington, Ontario
L7R 3Z6

Dear Chair and Members of Committee;

**Re: Public Meeting to Consider a Recommendation Report
Concerning Proposed Official Plan and Zoning By-law
Amendments for 4853 Thomas Alton Boulevard
City File Nos. 505-05/15 & 520-08/15
Adi Development Group
Paletta International Corporation
Our File No. 13122**

We are counsel to Paletta International Corporation ("Paletta") in this matter.

On February 16, 2016, we filed written submissions outlining our client's concerns with the proposed amendments. We are attaching those submissions again.

We have reviewed Staff Report PB-63-16. Paletta has no objection to the form of the proposed development nor, generally, to residential intensification. However, as set out in detail in the February, 2016 correspondence, Paletta strongly objects to the City proceeding with significant new residential designations elsewhere when the City has failed to fulfill its obligations to examine our client's property north of Mainway, west of Burloak Drive and south of Upper Middle Road known as Bronte Creek Meadows ("BCM").

It has been almost twelve years since the Board's decision in respect of BCM. It is long past time for the City to fulfill its assurances made to Paletta and the Board that it will review the designation of BCM in the context of a wider review of other lands. The failure of the City to fulfill those assurances to date is the fundamental basis for our client's concerns with respect to the subject applications.

City of Burlington
Community and Corporate Services Committee
Attn: Councillor Lancaster, Chair and Members of Committee
July 7, 2016

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We note that Report PB-63-16 canvasses and responds to the public comments received by Staff. Yet there is no mention at all of our earlier correspondence and concerns. This simply underscores our client's frustration. BCM is a large, vacant, fully serviced site that is under-utilized to say the least.

As always, our client remains ready and willing to meet with staff to discuss its concerns and the future of BCM. In the meantime, we continue to request to be kept on the circulation list for all notices with respect to the subject applications. Please provide all notices to this office and also directly to Paletta International Corporation as follows:

Paletta International Corporation
Attn: Dave Pitblado, Director of Real Estate Development
4480 Paletta Court
Burlington, Ontario L7L 5R2
(email dpitblado@paletta.ca)

Yours truly,



Scott Snider

Cc: Angelo Paletta
Dave Pitblado
Peter Walker

SSnd
Encl.
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February 16, 2016

Via email amber.lapointe@burlington.ca

To: City of Burlington
Community and Corporate Services Committee
Attn: Committee Clerk, Ms. Amber Lapointe
426 Brant Street
Burlington, Ontario L7R 3Z6

Via email jo-anne.rudy@burlington.ca

And To: City of Burlington
Community and Corporate Services Committee
Attn: Committee Clerk, Ms. Jo-Anne Rudy
426 Brant Street
Burlington, Ontario L7R 3Z6

Dear Ms. Lapointe & Ms. Rudy;

Re: Statutory Public Meeting Concerning Official Plan and
Zoning By-law Amendments for 4853 Thomas Alton Boulevard
City File Nos. 505-05/15 & 520-08/15
Adi Development Group
Paletta International Corporation
Our File No. 13122

We are counsel to Paletta International Corporation ("Paletta") in this matter. Paletta has substantial land holdings across the City, including a large site north of Mainway, west of Burloak Drive and south of Upper Middle Road known as Bronte Creek Meadows ("BCM"). BCM has a long history which is known to many Councillors and staff.

We understand that the subject applications propose to essentially double the permitted density for the site on Thomas Alton Boulevard. This would represent a very substantial increase in the number of residential units permitted on the site.

We are attaching detailed correspondence dealing with a proposed re-designation, rezoning and plan of subdivision for lands at Dundas Street and Tremaine Road. This correspondence explains in some detail Paletta's concerns with any substantial increase in residential permissions if this is done without considering the appropriate designations for BCM. In particular, the City provided assurances to Paletta and the Ontario Municipal Board that it intended to review the designation of BCM from time to time in the context of a wider review of all other lands within its boundaries. This has simply not occurred.

Our client is no longer willing to allow significant new residential designations to proceed elsewhere in the City when the City has failed to fulfill its obligations to examine the BCM site. Our client is concerned that substantial new residential designations will simply undermine the potential for development of BCM and result in the continued underutilization of a site that has been fully serviced for decades.

We are requesting to be added to the circulation list for all notices including any Notice of Decision with respect to these applications. Please provide all notices to this office and also directly to Paletta International Corporation as follows:

Paletta International Corporation
Attn: Dave Pitblado, Director of Real Estate Development
4480 Paletta Court
Burlington, Ontario L7L 5R2
(email dpitblado@paletta.ca)

Yours truly,



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Cc: Angelo Paletta
Dave Pitblado
Peter Walker

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Via post & email mike.greenlee@burlington.ca

February 16, 2016

City of Burlington
Burlington Planning and Building Department
Attn: Mike Greenlee, Senior Planner
426 Brant Street
Burlington, Ontario L7R 3Z6

Dear Mr. Greenlee:

Re: Evergreen Community (Burlington) Ltd. ("Evergreen")
Official Plan Amendment, Rezoning and Plan of Subdivision
Applications for 5421, 5453 and 5463 Dundas Street
and 3232 Tremaine Road
City File Nos. 505-06/15, 520-09/15 & 510-03/15
Paletta International Corporation
Our File No. 13122

As you are aware, we are counsel to Paletta International Corporation ("Paletta") in this matter. Paletta has substantial land holdings throughout the City of Burlington, including a site north of Mainway, west of Burloak Drive and south of Upper Middle Road known as Bronte Creek Meadows ("BCM"). BCM has a long history which is known to many councillors and staff.

In 2011, we made submissions to the Community Development Committee with respect to the proposed Tremaine and Dundas Secondary Plan Study for the Evergreen lands. In our submissions at the CDC meeting, and in subsequent correspondence dated September 23, 2011, we highlighted Paletta's concerns with any isolated consideration of residential uses for the Evergreen lands. We made the point in 2011, and reiterate it now, that if the City is considering designating any portion of the Evergreen lands for residential uses, it is duty bound to put that consideration in the proper context of the City as a whole and certainly to consider the relative merits of BCM for residential uses. This is necessary not only because it is good and sensible planning to evaluate all of the City's options when considering the designation of new residential lands, but also based on commitments made by the City to the Ontario Municipal Board in the context of the BCM hearing back in 2004.

Background:

Paletta purchased BCM in 1998/1999. Just as Evergreen is doing now, Paletta made applications for an official plan amendment, rezoning and plan of subdivision for residential uses on the BCM site. These applications were opposed by the City Council at the time for a variety of reasons, with the principle focus of the City being that BCM was required for employment uses over the planning period to the year 2021. Appeals were filed with the Ontario Municipal Board and a hearing was conducted in 2004. Ultimately, the Board refused to approve Paletta's applications.

In considering this outcome, it is absolutely essential to understand the Board's findings and the fundamental basis for its decision to refuse the applications. The Board found that BCM was suitable for either residential or employment uses. The Board noted as follows:

"The developable portions of Bronte Creek Meadows present no constraints to residential development. The site is well serviced by arterial roads and can be integrated into the City's public transit system.

Bronte Creek Meadows is within the City's urban boundary and contains woodlots, valley lands and stream corridors that would provide amenities for residential uses.

Bronte Creek Meadows would be well served with retail uses. A large-scale shopping centre is located at the northwest corner of Upper Middle Road and Appleby Line.

To the north of Bronte Creek Meadows is a residential community of Orchard. Approximately 75% of the lots within Orchard are registered.

To the west is the Sheldon Creek Valley that is a well-treed, incised valley feature. West of that Valley is the Sheldon Creek residential neighbourhood that is planned for semi-detached, street townhouses and low-rise apartments.

East of Burloak Drive is the Bronte Creek Provincial Park, which contains amenities and activities suitable for residential development." (at pp. 3-4)

The Board preferred the evidence tendered by Paletta on the environmental issues, transportation issues and fiscal impact issues finding that none of those matters presented any impediment to the designation of BCM for residential uses.

As you might expect, there was substantial evidence presented dealing with residential and employment land needs. **Significantly, in every employment land needs study conducted by the City, the Region and Paletta, the Evergreen lands were included as part of the City's employment lands inventory.** While the Evergreen lands were designated, as they are today, "Land Use Designation to be Determined", the lands were consistently and repeatedly included

as part of the City's employment land inventory without objection from anyone. This was understandable as the lands abut Hwy 407 and are immediately across the street from Town of Oakville employment lands.

Relying on the evidence of the City and the Region, the Board concluded as follows:

"The Board further finds that the Bronte Creek Meadows lands are required for employment uses and are not required for residential uses over the period to 2021."
(at p. 40)

Given the size of the Evergreen lands, this conclusion would obviously apply equally to the Evergreen lands which, as noted, were consistently included as part of the City's employment land inventory as presented to the Board.

Needless to say, the employment and residential forecasts were hotly contested at the hearing. It is now 2016 and there are only five years remaining in the 2021 planning period. With respect, the ongoing lack of interest in Bronte Creek Meadows for employment purposes and the extremely constrained supply of residential lands in the City strongly suggests that the Board should have preferred Paletta's evidence on those issues.

Be that as it may, it is clear from the Board's decision that it was also strongly influenced by two other factors; namely, a concern that BCM had not been properly marketed for employment purposes and assurances given by the City that the designation of BCM would be reviewed in the future. On the first issue, the Board made a number of comments:

"The Board agrees with the Region's submission that from 1998, the lands were effectively taken off the market for employment land uses, save and accept for the efforts by the City and Paletta to secure a semi-conductor manufacturer on the lands. In November of 1998, the then owner, Richview Investments Limited, filed an official plan amendment application for a residential designation.

Paletta did not list the lands with any commercial brokers nor was the property signed. The message to the market place that these lands were going to be developed for residential land uses..." (at p. 6)

"Paletta moved quickly after it acquired all of the Bronte Creek Meadows lands to seek a re-designation of the site to residential, which the Board takes no issue with, provided that the proposal does not prejudice the public interest and provided it constitutes good land use planning." (at p. 38)

"The Board furthermore does not accept the implication that the City is attempting a land banking exercise by opposing the re-designation of the subject site. Permitting a site to remain idle is contrary to one of the goals of the PPS of promoting the cost effective use of land and infrastructure. The Bronte Creek

Meadows site has up until now, never been considered by the City as a residential site and the Board is of the view that properly marketed, has a reasonable opportunity of attracting employment opportunities...” (p. 39)

In terms of the City’s assurances that the designation of BCM would be reconsidered in the future, the Board reiterated the evidence of the City’s principal planner, Mr. Lehman, as follows:

“Mr. Lehman could see no reason for the City to the risk of running out of employment land and losing the opportunity to foster its economic base. He saw no need to re-designate Bronte Creek Meadows at this time, advising the Board that the issue should be revisited in 5 years time.” (at p. 18)

Most significantly, the concluding paragraph of the Board’s decision was as follows:

“The Board is satisfied the City has put forward a bona fide and a reasonable position that the continued designation of the Bronte Creek Meadows lands for a use other than residential is a valid and appropriate one. The City has assured Paletta that it intends to review the designation of the subject site from time to time, in the context of a wider review of all of the other lands within its boundaries. The Board heard no evidence or suggestion that the City will not do so, when it considers it to be in the public interest.” (at p. 40, emphasis added)

Simply put – this has never occurred. These assurances provided by the City to the Board need to be fulfilled. Since the City is now considering residential uses on a large portion of the Evergreen lands that were consistently included within the City’s employment land inventory as presented to the Board, now is the time to also consider residential uses for BCM as part of a “wider review”.

Paletta is simply asking that the City fulfill its commitment to the Board and to Paletta – a commitment that requires, at a minimum, an evaluation of the competing merits of the Evergreen lands with the BCM lands for residential and employment purposes. In our view, there is simply no doubt that the BCM site is substantially inferior for employment uses and exceptional for residential uses. We invite staff and the City to test these assertions. We do not view this as a controversial suggestion in the slightest. To the contrary, surely it is in the public interest for the City to identify the best lands for residential uses and, contrastingly the best lands for employment uses among the options available to the City. This is one of the functions of good land use planning. Our client welcomes any fair comparison and evaluation of its lands versus other options for residential or employment uses in the City.

We simply cannot imagine that the City would consider designating new residential lands without ensuring that it was making the highest and best use of the limited land resources available to the City within its urban area for both residential and employment uses.

Subsequent Events:

In 2009, the City and Paletta entered into comprehensive Minutes of Settlement dealing with a variety of outstanding land use planning issues. This included Bronte Creek Meadows. One of the fundamental objectives of the Minutes in respect of BCM was to address the concern identified initially by the City and the Region, and accepted by the Board, that the lands had not been adequately marketed for employment purposes. In good faith, assuming the City would fulfill the assurances it made to the Board about reconsidering the BCM designation in due course Paletta agreed to withdraw its appeals of OPA 55 and Zoning Bylaw 2020.205 in respect of a portion of BCM now known as the "Burloak Employment Estates". This is the portion of BCM which immediately abuts Burloak Drive and was considered to have the best potential for employment uses. Paletta also agreed to actively market the Burloak Employment Estates in cooperation with the Burlington Economic Corporation for a period of at least five years.

Paletta has fulfilled its obligations fully. It has actively marketed Burloak Employment Estates for employment uses. It has cooperated fully with the BEDC to advance the development of the lands. Unfortunately, despite years of effort, there has been very little interest of any kind and no sales. The lands sit vacant and underutilized. Quite frankly, this is not surprising because the lands have no access to rail, no visibility to 400 series highways and relatively poor access to 400 series highways. The marketing of the Burloak Employment Estates has continued well beyond the requirements of the Minutes of Settlement, to no avail.

Conclusion:

Paletta has fully complied with its agreement to market the Burloak Employment Estates. It has been almost 12 years since the Board's decision which raised the concern about the lack of marketing of the site and the site remains vacant. It is long past time for the City to fulfill its assurances made to Paletta and the Board that it will review the designation of BCM in the context of a wider review of other lands. It would be fundamentally inconsistent with those assurances to proceed designating new residential lands on lands consistently included within the City's employment land inventory without at the same time also considering the options for BCM.

Our client fundamentally objects to any initiative to designate any portion of the Evergreen lands for residential uses unless it is done so in the context of a wider review which includes BCM. The Evergreen lands have no higher claim to residential status than any other lands in the City simply because they are designated "Land Use to be Determined." The City should apply the most appropriate designations in the context of its other options in the City.

We respectfully request to be added to the circulation list to receive copies of all notices and any Notices of Decision with respect to these applications. We also ask that all such notices be provided directly to Paletta International Corporation as follows:

City of Burlington
Attn: Mr. M. Greenlee
February 16, 2016

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Paletta International Corporation
Attn: Dave Pitblado, Director of Real Estate Development
4480 Paletta Court
Burlington, Ontario L7L 5R2
(email dpitblado@paletta.ca)

We would be happy to meet with Staff to discuss these issues at your convenience.

Yours truly,

A handwritten signature in blue ink, appearing to read "Scott Snider", is positioned above the printed name.

Scott Snider

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Cc: Angelo Paletta
Dave Pitblado
Peter Walker