PL180331 – 2100 Brant Street

Materials for Settlement Hearing from Tom Muir

Witness qualifications

My name is Tom Muir and I live on Townsend Avenue in Aldershot of Burlington.

I graduated from McMaster University in 1971 with a Master's Degree in Honors Economics. I worked for the Province of Ontario Policy Planning Branch from 1971 to 1974, as a Senior Economist doing economic and intergovernmental affairs policy analysis. This included Municipal-Provincial relations around the original Design for Development Toronto - Centered Region policy report.

From 1974 to 2004 I worked for Environment Canada at the Canada Centre for Inland Water located in Burlington. During that time I worked as an Environmental Economic Scientist working on a wide variety of Great Lakes issues including land use, urban form, sustainable development and other things relevant to my appearance here.

My methods of analysis are trans-disciplinary science applied to evidence and logic-based reasoning. Broadly, this consists of analysis and then synthesis of findings in a logical fact-based manner. In modern parlance I would be referred to as an intelligence analyst. I believe myself to be qualified as an expert analyst across several fields relevant to this Hearing.

Since my retirement in 2004, I have continuously worked as an independent scientific researcher writing and publishing papers and presenting lectures and I continue to do so. I am a member of the International Association of Great Lakes Research since 1983. I have been involved in Burlington and Halton Region development, planning, and economic issues since the early 1990's.

My primary interest in this project lies in the fact of the loss of public due planning process, hearing and accountability. First, because of an apparent city policy that allowed this application (and three others at near the same time, and others since) to go to appeal because of failure to decide in appropriate timelines. This happened despite staff and Councilor public record reassurances that it would not happen.

This was done without any staff accountability in the form of a recommendation report with public review and delegations that were lost on two occasions. And then, subsequent to that, we now have the city asking this Tribunal to approve a settlement proposal that has emerged from this subverted loss of planning process, making this loss of process a terminal one. There is still no transparency and accountability.

This is not the due process expected of the Planning Act or the PPS.

Summary Position on my concerns and opposition to the 2100 Brant Street application and the proposed settlement without modification.

I will not be extensively arguing the legalities or planning technicalities today as I only have maybe 20 minutes at the end of this LPAT Hearing, and according to the Procedural Order the Parties have been scheduled to argue the issues for 12 days.

As a Participant, I get to speak only once, cannot call witnesses, cannot cross examine, cannot make submissions, or make either opening or final remarks. If in this process I find significant problems with the LPAT process or decision I do not have the right to appeal the decision on any grounds. In the scheme of things, there is really very little I can do, and will likely have no import.

Reduced to this minimum, my submission today will be a mix of reflection, first on my experience with planning in Burlington, and how we all come to be here. And to an extent possible I will provide some overview and integration of the planning issues in the Hearing, selected available City and Vision 2100 Brant policy frame planning argument, and my views on how the evidence and argument of Parties should be heard and tested, and if over a 12 day hearing, and how, for a just, fair and honest Hearing, "opinion" experience must be allowed to be entered and equitably weighed from all Parties and Participants.

I am presenting from the perspective of a resident who has been paying attention to what is transpiring here, has been engaged in City planning for almost 30 years, and so has a lot of experience in this regard, and in terms of expertise and competence is an expert intelligence analyst, as I described in my qualifications.

The Subversion of Due Public Planning Process and Good Planning in Burlington

It should be of interest to LPAT to hear my experienced opinion and evidence on how the City is doing planning these days and has done 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. This takes the planning offline and much to the developer's advantage with no public engagement or process, as LPAT decides.

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 and elsewhere.

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 witnesses, if there are any, and they don't have to call any because they "agree" with City, can say anything they want, exaggerate and fib. In 2 Hearings I have recently experienced they are led through their testimony with the use of leading questions by the appellant lawyer.

The City didn't let staff say anything at all except to agree with what they have been told to say. In my professional opinion, the appeal settlement Hearing becomes a mockery of public planning process, and a futile waste of time for citizens.

It is legally possible I'm told that there can possibly be no Party witnesses and no evidence documents, and also because there may be no other Parties to contest the appellant and City – these settlement Parties "agree" to a settlement arrived at in secret, and this is called "good planning".

Fortunately, in this appeal hearing for 2100 Brant St, there is a Party representing the residents and public – the Vision 2100 Brant group – to contest the issues and the settlement, to try to make it honest, however, there are concerns that they will be opposed by the City and appellant lawyer as witnesses, and their qualifications of expertise and competence to bear their witness and present evidence will be challenged.

Another possible challenge is to whether they can be "qualified" as an "expert" witness, and to give testimony and evidence based "opinion" that LPAT will give credence or weight to even if controverted by statements by the lawyers, or witnesses hired to support the developer and settlement proposal.

It is well known that decisions about the policy compliance and/or consistency of developments are often a matter of interpretation. What is allowed to pass for these interpretations are the "opinions" of proponent paid lawyers and professional consultants, who are self- appointed "expert witnesses" and are the only ones allowed to make opinion evidence and testimony saying what these interpretations are, and have them recognized at LPAT as facts.

Over and over, in the end, this "opinion", is just someone's "opinion", and the settlement proposal arguments are from bought and paid consultants, self-qualified as "experts", to support the settlement proposed and the appellant unequivocally in every respect.

Even a planning experienced citizen, using the same logic and planning OP and ZBL rules, that they interpret to say that some amendment(s) that are lesser than asked for still conform to the PPS, and comparatively, the proponent "expert" says it is not enough, and so does not conform to the PPS, the "expert" opinion interpretation will be recognized as uncontroverted by the citizen evidence and accepted as fact at LPAT. Participant testimony and evidence is trumped in the same way.

I believe the Vision 2100 Brant Party has such an opposing argument where they propose an alternative settlement that is consistent with the elements of the policy frame, such as PPS, the city OP and Zoning, and policies on intensification and compatibility in particular. They offer their evidence, planning arguments on the Issues, policy interpretations, and their own "opinions" to support their settlement as also consistent and compliant, but different in some respects from the National Homes settlement proposal.

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

These "expert" opinions are usually the only ones accepted by the OMB/LPAT Chairs as adjudicators. This exclusive domain given to professionals paid to represent developers illustrates the underlying conflict of interest in using "experts" hired by developer lawyers.

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 salved 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 Council on this one shows the settlement agreement is proceeding like the model I describe above.

To review this process of lack of decision, or weak and flawed refusal, as I have seen it operate; The city sets up the appeal with no decision or giving the developer an easy or guaranteed intent to appeal to LPAT. The appeal goes to legal, public planning process ends, perhaps before even a fully legal statutory meeting, and there is no staff recommendation report for transparency and accountability, no Committee meeting for delegations, discussion and public vote, and then no Council meeting for public delegations, further discussion and public vote.

Whatever follows then all takes place in secret or in camera where a settlement agreement is made, then Committee and Council votes on this agreement under a confidential Agenda item that citizens never hear about as they are excluded.

This settlement agrees to give the developer basically what they want by fiddling with the OP designations and Zoning by-laws to provide any number of excessive or reduced development standards that are needed in order to make whatever development has been enabled in this process to fit. It's crafted in camera, at the Hearing there may be no witnesses for the City (like at 92 Plains; and 484 Plains), possibly no qualified "expert planning witness", and the rest of the story goes on to the same arrangement and conclusion as far as I can see from the 92 and 484-490 Plains Rd. appeals based on "no decision or failure to adopt in mandated timeline" and decisions at Hearing.

The 2100 Brant St. ("failure to adopt/decide") 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 for the 2100 Brant appeal.

I have to remind LPAT that the Vision 2100 Brant Party in this Hearing has their competent and expert witnesses, their evidence and argument, and will have presented it to LPAT by the end of this Hearing (scheduled for 12 days), but we don't know about that yet on June 12 2020.

Personally, from existing evidence over the last 2 years, I am in support of Vision 2100 Brant, with what is a proposal and modified settlement that has been presented here with evidence and argument, and that it is consistent with all the aspects of the policy frame, compatible with the existing neighborhood, and has citizen participation in the process and support – this is as an outcome that LPAT is charged with considering, deliberating and deciding.

I say that LPAT has a duty and responsibility to seriously and independently consider and give weight to all evidence and opinions presented, and it is their charge to come to their own interpretation of what is really consistent and compatible and to arrive at their own "opinions". They should not be captives of appellant lawyers and hired consultants, and relying on the word of these self-qualified witnesses, presented as experts, to be the only ones who can give planning "opinion" evidence in LPAT rationalizing their decisions.

If LPAT cannot act in this transparent independent way to arrive at decisions then what is the real purpose of this body and institution?

To go further in showing other instances of this subversion of planning, beyond this 2100 Brant St case and the previous others I mentioned, there are a number of other appeals or candidates for appeal, one from a refusal decision, but more from failures to make decisions in mandated timelines.

The Adi Martha St appeal was enabled by a failure to decide in timeline, and it is known that this was enabled by Adi getting an early look at the staff refusal recommendation, so they appealed before the refusal was presented to Council and publically announced. The City subsequently lost at the appeal Hearing as they were reported to not be able to propose a development successfully at LPAT. Unfortunately, that appeal decision started what has been seen as developers applying for almost everything in excess of the OP and ZBL, then habitually appealing practically everything, whatever the reasoning – refusal or failure to decide in time.

The 1085 Clearview Avenue 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. There was a confidential Agenda item at a Council meeting a couple of weeks ago that likely covered this proposal, however, nothing is public.

The Eagle Heights application has been in appeal for about 20 years due to a city "failure to decide". In this case, the developer received an application approval in 1996, but has not proceeded, and has submitted several alternatives over the years for an increase in the scale and this keeps growing every time. In an early revision application the city failed to decide in some timeline and the developer appealed, and it been there ever since.

There is another at Appleby Mall dating back to 2014 and is at a prehearing stage based again on no decision.

I won't go into details, but there are several more candidates on Plains Rd. in early stages of the application process for this model for applying in excess of OP and ZBL, and eventually taking these 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 Downtown 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 OP review 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 direction to developer appeals so that the public planning process and decision-making is moved to LPAT, out of reach of citizens and immediate actions and publicly transparent 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.

In my opinion, this is a no good model for LPAT decisions about planning to be made within.

This planning practice marginalizes citizens and debases and ignores the value of their expertise. This perpetuates the offensive lie that citizens have any real say in planning and more so at LPAT.

So in fact in this case, and all the others like it, we have the City lawyers and planners appearing to be working with developer lawyers and planners as a "team" in agreeing to settlements in secret, raising questions about whether they represent the residents of the city.

At the actual Hearing for 2100 Brant, since the City legal failed to deliver on a promise of an independent "expert" planner to keep the process honest, citizens not so represented will be up against this developer and city legal team stacked house. Added to this is a possible challenge intended to disqualify them as expert witnesses.

We were misled by the legal 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 previous Council settlement proposal that this Council rescinded. So resident Party members and Participants will or may not get a contested Hearing so that they will be heard. This makes a mockery of the so-called citizen engagement process in the city.

We likely won't hear a word from city planners defending their evidence and subjecting themselves to the citizen Party of Vision 2100 cross examination of this evidence in support of the proposed settlement.

This is standard operating practice. It's a rigged and subverted system, and it's getting worse.

Planning Concerns and Inconsistencies – Issues, process and good planning "opinions" for 2100 Brant St.

I believe that the settlement proposal fails to adequately comply with the policies of the Official Plan regarding compatibility and residential intensification policies, and as such is not consistent with the PPS in this regard and does not represent good planning.

The Planning Act states that all decisions of a municipal council must be consistent with the PPS and those applications for intensification are to be based on appropriate development standards.

The application is not adequately compliant with a number of policies regarding the OP and intensification, and this is reflected in an overly large number of reduced zoning standards which are contradictory to the intent of the PPS.

In Appendix 1 there are Tables from a Havendale Group (Vision 2100 Brant) report, and the City undated report showing comparisons of development standards existing and proposed. Depending on approximate counts by housing type there are any from 12, 10, and 7 in the Havendale data, and 20 in the City data. At this time I have not been in possession of the actual proposed zoning amendments and variances, so these are approximate.

The majority of the observations in these Tables show, for example, unresolved negatives and impacts concerning over-development, traffic, neighborhood character, quality of life, impact on health and safety, significant lack of amenity area (25m2 per bedroom down to 8.25m2 per bedroom), and the excessive number of variances that will be required to existing development standards in order to force fit the wanted proposal to the site.

These standards have been systematically reduced or modified by the city in order to facilitate the proposal, and are rationalized with the language of sweeping staff "opinions", that they are "satisfied", or that the proposed standards are "consistent with" policy, or are "comparable", and very important in the style of the language, "can be considered appropriate", which is a weak support.

It does not say, "is appropriate", but leaves doubt, as "can be" also means "may be" or many other synonyms. This can and should be challenged.

As a further example of this language, in the undated staff report on 2100 Brant Street from Kyle Plas to Blake Hurley, on page 31 in the Conclusion it is stated that, *"the revised applications are consistent with the Provincial Policy Statement, conform to all applicable Provincial Plans, The Region of Halton Official Plan and the City of Burlington Official Plan and have regard for matters of Provincial interest. The applications, as revised, **can be considered compatible** with surrounding land uses, … ."*

Once again, the opinion language states that the application "**can be** considered compatible". Search a thesaurus and you will find synonyms for "can be", such as; maybe, conceivably, perhaps, perchance, possibly, imaginably, it may be, and there are others.

These phrases, particularly the words "can be", mean that this is not authoritative and not a certainty, or beyond doubt, and the "opinion" may be wrong, or inadequate, or biased, and can be legitimately opposed. The opposition can be considering that it is not appropriate or not compatible. Or for that matter, "consistent with" or "complies with", and so on, are also not definite, or certain. It does not say the application **is compatible**.

The staff report does not indicate that the following policy statement below is consistent with and complies with Part III, section 2.5.4 that specifies "compatibility with surrounding area: New infill development **shall** be compatible with surrounding development in terms of height, scale, massing, setting, setbacks, coverage and amount of open space".

As I noted above, the staff report does not say this policy has been upheld as fulfilling a **"shall be compatible"** policy, it only says that, *The applications, as revised, "**can be considered compatible"** with surrounding land uses, ..."* Again, this "can be" is an assertion that is laden with doubt and uncertainty. To be or not to be compatible – that is a question.

It does not say or demonstrate that the application **is** compatible, or **is** considered compatible.

It is important to remember in evaluating these opinions, that they are most often not objective facts, and they are not based on measurements or data, but are in fact paid for subjective assertions of opinion, and subjective opinions cannot be measured or analyzed so as to be confirmed as correct.

It is just an opinion, but there are other equally legitimate opinions on this compatibility, or other aspects, and these other opinions may argue that a modified application could also be more compatible. Declaring some people as having "expert" planning opinions does not give them superior statements that can be taken as facts, but this is what can and does happen.

What if these opinions are factually incorrect but no one is allowed to contradict – controvert is used – the designated "expert" with other facts?

My submission is that the significant systematic reduction of numerous development standards required to facilitate this proposal, plus the failure of the proposal to satisfy the City's Official Plan policies regarding Land Use Compatibility and the Intensification Strategy, result in an application that is not consistent with the PPS.

In addition, OP Part III , Section 5.4.2 states that "proposals for residential intensification shall be evaluated on the basis of the Official Plan and policies of Part III, Section 2.5", which includes 13 criteria intended to evaluate and protect against impacts of intensification proposals within or adjacent to established neighbourhoods.

This proposal is not compatible with the established neighborhood in my opinion.

In these respects can be found my argument that this appeal Hearing must allow the Vision 2100 Brant Party to speak to the Issues from their expertise and competency, on a ground equal to the hired planners and lawyers that represent only the interests of their client, and that have exploited, in my view, the self-anointing step and privilege of granting themselves "expert witness" status, thus giving themselves an elevated and special position to be the only planning witnesses "opinions" recognized by LPAT.

There are 18 Issues listed below from the Procedural Order for information and context of my Participant Witness submission, and for the use of LPAT. These Issues are all raised by the Party Vision 2100 Brant largely because the City and appellant Parties decided to join in a settlement hearing request. Given this, it is essential to good planning and due planning process that Vision 2100 Brant being provided a full contested Hearing to the extent that they wish to provide evidence and argument.

Issues at Hearing

ISSUE	**Party Raising Issue**
Land Use Planning	
1. **Is the proposed Official Plan Amendment, Zoning By-law Amendment and Plan of Subdivision consistent with the 2014 Provincial Policy Statement given the location and context of the subject lands and considering the level of intensification proposed, specifically considering policies 1.1.3.3, 1.1.3.4, 1.5.1, 4.2 *[Vision 2100 Brant alone]* and 4.7?**	**Vision 2100 Brant**
2. **Is the proposed Official Plan Amendment, Zoning By-law Amendment and Plan of Subdivision in conformity with the Growth Plan for the Greater Golden Horseshoe, 2017, given the proposed scale of development and proposed transition of built form to adjacent areas, specifically considering policies 1.2.1, 2.2.1(4) *[Vision 2100 Brant alone]*, 2.2.2 (4), 3.2.2 (2) and (3), 5.2.5(8)?**	**Vision 2100 Brant**
3. **Is the proposed Official Plan Amendment, Zoning By-law Amendment and Plan of Subdivision in conformity with the Halton Region Official Plan, specifically considering policies 44, 78(1), 81(1), (2) and (6), 80 *[Vision 2100 Brant alone]*,86(11), (21), and definition 253.2?**	**Vision 2100 Brant**
4. **Is the proposed Official Plan Amendment, Zoning By-law Amendment and Plan of Subdivision in conformity with the City's Official Plan, specifically considering policies:** - **Part I- 3.0 (d) and (h)** - **Part II- 2.4.2, 3.1, 3.2.1, 3.2.2, 3.3.1, 3.3.2, 6** - **Part III- 2.2.1, 2.2.2, 2.5.1, 2.5.2, 2.9** - **Part VIII- Definitions**	**Vision 2100 Brant**
5. **Does the proposed development represent an appropriate level of density and intensification for the subject lands and does the proposed density and intensification conform with or maintain the intent of the City's intensification strategy as implemented through the City's Official Plan?**	**Vision 2100 Brant**
6. **What is the density of the proposed development and how should it be calculated?**	**Vision 2100 Brant**
7. **Does the proposed development provide for an appropriate transition in built form, height, massing, scale, siting and setbacks that is compatible with, and can be integrated with, the surrounding area given the location and context of the subject lands?**	**Vision 2100 Brant**
8. **Does the proposed Zoning By-law Amendment provide for an appropriate level, and sufficiently regulate matters of built form including height, density, form, massing, bulk, scale, siting, setbacks and spacing having regard for the site and character of surrounding lands?**	**Vision 2100 Brant**
9. **Are the proposed reductions to the zoning standards of the RM3 Zone appropriate for front yard setback, rear yard setback, street side yard setback, lot width, lot area, building height, landscape area and landscape buffer with respect to both Townhouses and Street Townhouses?**	**Vision 2100 Brant**
10. **Does the proposed development provide sufficient amenity area to accommodate the future residents of the development?**	**Vision 2100 Brant**
11. **Is there adequate provision of space for snow removal and storage for the proposed development?**	**Vision 2100 Brant**

12. **If approved by the Local Planning Appeal Tribunal, what are the appropriate conditions of subdivision?**	**Vision 2100 Brant**
13.	
14. **Does the proposed development represent good land use planning?**	**Vision 2100 Brant**
Transportation	
15. **Should a traffic control signal be located at the intersection of Brant Street and the proposed Almonte Drive?**	**Vision 2100 Brant**
16. **Will the absence of a traffic control signal at the intersection of Brant Street and the proposed Almonte Drive result in excessive cut-through traffic in adjacent residential areas?**	**Vision 2100 Brant**
17. **Is the visitor parking as proposed sufficient for the proposed development considering that the proposed parcel fabric of the development provides little opportunity for on-street parking?**	**Vision 2100 Brant**
a)	
Natural Heritage	
18. **(a) Does the proposed amendment to the Burlington Official Plan, as drafted, sufficiently acknowledge and protect all components of the Regional Natural Heritage System on the site, including Key Features, buffers, linkages and enhancements to the Key Features, as such terms are defined in the Regional Official Plan and supporting documents? (Sections 113, 114, 114.1, 115.2, 115.3, 115.4(2), 116, 116.1, 117.1, 118(1)-(3.1), (4), (5)-(7), (11)-(14)(a), 139.11, 139.12, Map 1 and Map 1G of the ROP) and Section 2.1 of the PPS)**	**Vision 2100 Brant**
19.	
OTHER VISION 2100 BRANT ISSUES	
20. **Is there sufficient space in the driveway of Townhouse Unit #68 to accommodate commonly used vehicles?**	**Vision 2100 Brant**
21. **Has the stormwater management system as proposed, as well as the maintenance of the same, been properly evaluated?**	**Vision 2100 Brant**

Reduction of Development Standards is Excessive

Policy 1.1.3.3 in the PPS states that "appropriate development standards should be promoted which facilitate intensification, redevelopment and compact form, while avoiding or mitigating risks to Public Health and Safety. Comprehensive, integrated and long-term planning is best achieved through official plans."

The 2100 Brant Street application represents over-intensification and does not provide adequate setbacks, built form, and amenity space; proposes excessive reductions in lot area and lot width; and increases density not compatible with the surrounding, stable, residential neighbourhood. This significant reduction in development standards conflicts with Policy 1.1.3.3 and results in an application that is not consistent with the PPS.

Section 4.7 of the PPS states that "the official plan is the most important vehicle for implementation of the PPS." The PPS is very clear that the objectives of the policies should be

given contextual consideration, meaning that they need to be examined in the context of the existing Official Plan, and not be interpreted as unrestricted permission to apply the PPS to specific sites and developments.

Burlington city staff agrees that the existing Official Plan is the appropriate context to evaluate this application, as stated in PB-62-17: "At this point in time, development proposals will be required to meet the Official Plan policies that are currently in force and effect."

In addition, Part III , Section 5.4.2 states that "proposals for residential intensification shall be evaluated on the basis of the Official Plan and policies of Part III, Section 2.5", which includes 13 criteria intended to evaluate and protect against impacts of intensification proposals within or adjacent to established neighbourhoods.

Part III, section 2.5.4 specifies "compatibility with surrounding area: New infill development shall be compatible with surrounding development in terms of height, scale, massing, setting, setbacks, coverage and amount of open space".

This proposal can be argued as not compatible with the established neighborhood. It is a force fit. Given the time I have to speak and witness at this Hearing I am unable to elaborate my arguments in this concern.

Hopefully, in the witness and evidence of the Parties scheduled over the next 12 days, there will be a fair and thorough discussion and debate of these matters, as the Hearing Issues are each examined and argued.

Lucid Changes in the Context of Reality Are Not Mentioned Here– The COVID19 Pandemic Changes Everything

I don't think it reasonable to refer to all of the elements of the current Policy Frame as unchanged and constant mandates that have not been severely tested by COVID19, and to not consider these severe economic and public health background changes in the policy frames in the proceedings of Hearings about development form, height and density. I say that this is not thinking about it, because it is clear that COVID19 has changed everything to do with the use and availability of space and spacing, and almost everything was, and very much still is, closed. We have to ask about what is going to work in the new context.

One piece of evidence that is emerging from the pandemic is that COVID19 prevalence is associated with overdeveloped/crowded higher density built form, transit dependence, too little green space, deficient amenity area, and other too many to mention decreased standards that are like what this development is about.

Now here's another emergent impact property of COVID19 as a new globally endemic (will be regularly found around the world) organism that is totally new, very contagious and easily transmitted, sickening in many unfolding ways, and lethal. It is now responsible for more deaths than all the other communicable diseases on earth combined. The US CDC has announced a public health scientific report recommending the use of cars over mass transit.

https://www.businessinsider.com/cdc-cars-over-mass-transit-amid-coronavirus-2020-6

I do not see how this disruptive change in context is being taken into account in the transportation and public transit planning aspects of the Policy Frame and Growth Plan being used and referred to in this Hearing? The basic pillars of the entire policy frame and plans for future development are dependent on aspirations and assumptions about growth, transportation and mass transit. COVID19 has emptied 90% of transit vehicles and more people are driving.

Are we going to unthinkingly dismiss the biggest catastrophe to hit the entire world in 100 years or more, one costing untold trillions and trillions of dollars, hundreds of millions of jobs, countless businesses, almost 400,000 deaths globally, 7800 in Canada, mostly in Quebec and Ontario to date, with no end in sight. It's far from over, and we don't know where it will go or what it will entail in the long run,

I would bet that no witnesses will be giving evidence on the public health aspects of urban planning, and impacts on transportation.

Likewise, in general city planning, and at the larger scale of Region and Province, is this contextual change being considered? I bet not, and from what I see it is not, and is not even mentioned.

Density and intensification made Toronto an epicenter. Transit dependence amplified that. This is a general feature of the disease prevalence. Has anyone thought about the fear of elevators, face to face on subways, crowds, and so on?

How do we save the investment and reverse the growing revenue hole we have in transit, and the dependency of all the plans we are making in the city OP, and the recent Halton growth plan, on transit? Are we assuming a return to business as usual forever? This is what I see being done, and this will likely be how this Hearing evidence and argument will emerge.

As soon as things in the economy really open up, the global and local transportation systems will start to spread virus again around the world. Get serious. Once the world opens up and we try to get back to moving people around again all over, everywhere, the virus will be a passenger too. We have been closed for a while, and this transport has been stalled by restrictions, so we escaped from the real worst for now, but some are unhappy and call us confused.We will have to deal with it.

The planning context should all be treated as defunct, and started again, with public health/urban planning experts added into the mix.

Treating this as business as usual is not realistic or wise.

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 and Regional OPs. It also makes no sense to me to have a PPS that we argue within that is unchanged, but still treated as a credible document without any reconsideration of the practical reality of the policies.

In the Burlington 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.”**

Do the Mayor and Council really think this will leave everything unscathed and we just pick up where we left off? Will the LPAT Members think and deliberate with the same unchanged mindset in this Hearing?

A Short Version of a Science-Based Opinion on this Matter

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?

The context before COVID19 was completely different than now, - with much of the world still shut now, including of course New York City for months. We have a new invisible organism competing with us for dominance, the space and new needed physical spacing distances, and right now they are winning.

I think ignoring this new context to be wishful thinking, and reflect a soft defense and denial of what has really happened to the natural environment and ecology we now have to live in because of the virus. We have to start thinking in the terms of what this situation really is - the virus emerged and we transported it all over the world in 3 or 4 months and it closed us. Ask now, what is the financial and economic half-life of our life-style?

In the language of planetary ecology, the virus is an emergent "hopeful monster" whose interaction with humans has caused what is known as an "extinction event", with rippling out punctuating consequences, many irreversible. It is not an extinction of human "life", although it does thin the herd, but an extinction of a human "life-style".

The planning model and applications are out of step with the way the virus has taken over the ability to use spaces in our urban form. Given this, I am surprised that there are no witnesses at this hearing (or any I know of) that will testify and present

evidence on public health and urban planning in the age of COVID19 where everything seems to be too small or too crowded, and so on.

How we lived before this event, which in effect caused the event, is never going to come back as it was. We haven't even dealt with the first wave of infection, sickness, and death, and deep economic hole we are digging in only very partial compensation.

I agree that many things can be done, and must be done, to reorganize, evolve and to adapt. The suggestions made to open spaces for restaurants to operate in a needed physical distance metric to survive the virus, and economically, are really revolutionary because we will be taking back spaces that have come to represent our city forms and processes.

I think this will be generalized, as in ecology you can never only do one thing. The fundamentally changed use of space metric will have knock-on financial and economic impacts on the rental rate metric, what the market can bare, a large surplus of space that cannot clear at current rents because business cannot survive, equally large losses in asset values on markets, insolvency, bankruptcy, and so on and so on. We are seeing it now.

This is not a prediction of just what new forms will be successful, but rather an expectation that there will be very large changes and humans are very busily trying to figure out what that reorganization must be. Expectation is based on probability of various outcomes, and what I think I see is that the probability of the existing economic structure and system surviving is practically zero, so it's a lousy bet to think it will.

I don't think we can just back up linearly to what we thought was normalcy. All bets are off. This closed and largely silent world does not have an off-on switch.

You can't, except perhaps foolishly, try to restart all the airlines, that moved the virus all over and will again, all at once to everywhere as before. Or get the cruise ships, and transportation ships, and trains and subways, and buses and cabs, the people, and so on, all back on their mixing and mingling schedules in close proximity almost everywhere, as if nothing happened and we just need a reboot. Again, the virus also thrives in our proximity to each other, so this is waiting any attempt at business as usual.

That will not happen in my opinion, and if we wait too long in hopeful trying out aspirations of carefree, close-up vibrancy, we will wait too late. The yawning gap between wishful aspiration and reality will yawn too wide.

We need to rethink, self-reorganize, and evolve new forms of pretty much everything around how we live and work and build. This is a double down because everything is so completely interconnected that you can't only do one thing, and the virus is waiting for a mistake.

That's what evolution really is – change, or mutation, into another form or structure that is better adapted to the new environmental conditions and background so as to survive and successfully reproduce. We can see some adaptive forms appearing and I think these resemble a way forward that we need to consider closely for analogs. We can't go back, only forward.

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 due public process, diligent management, public health, good planning and citizen self-determination, and is bad for city planning and business.

In my opinion, we should not be having LPAT hearings for a longer period. A real Hearing will not be safe in July. How do you have such a thing by wire? This is not a real Hearing by any means. What is the hurry in the new reality?

Appendix 1 – Development Standards Comparison Existing/Proposed

Havendale Group Report

Addendum to Initial Position Paper: Response from the Havendale Advisory Committee to the Resubmission by National Homes for the Development of 2100 Brant Street July 27, 2018

1. Townhouse Blocks (Condominium units located on private roads)

Regulation Existing Minimum Standards RM2
National Homes
June 18, 2018
Lot width 45m 25m
Lot area 0.4ha 0.08ha
Front yard setback to a
dwelling
7.5m 3.0m
Front yard setback to a porch
Not differentiated from above,
therefore 7.5m
2.0m
Side yard setback 4.5m 1.5m
Street side yard setback 6.0m Not provided
Rear yard setback 9m 2.0m **
Maximum height
i) 2 storeys to 11.5m
ii) 2 ½ storeys to 13m
i) 2 storeys to 13.5m
ii) 2 ½ storeys to 14.5m
Maximum Density 40 units/ha 55 units/ha
Amenity area* 25m$_2$/bedroom 8.25m$_2$/bedroom
Building setback abutting a
creek
7.5m; 4.5m if block includes 3m
buffer
2.0m
Landscape area for lots
abutting a street having a
deemed width up to 20m
4.5m 3.5m
Private streets – internal Not specified 6m pavement width
Visitor Parking 0.5 spaces per unit Not specified in by-law
revision***
* Amenity area refers to private yard, porch, balcony, etc.
** In addition, an open stairway may encroach a maximum of 1.5m into required yard
*** Total of 68 visitor spaces provided in the NH plan, which covers City requirement the 26
semidetached
units and 108 condominium townhouses

2. Street Townhouses (Freehold units located on public road)

Regulation Existing Minimum Standards
RM5
National Homes
June 18, 2018
Lot width 6.8m 5.5m
Lot area 200m$_2$ 145m$_2$
Front yard setback 6m 4.0m
Street side yard setback 4m 2.5m
Rear yard setback 9m 6m*; **
Maximum height
i) 2 storeys to 11.5m
ii) 2 ½ storeys to 13m
iii) 3 storeys to 14m
i) 2 storeys to 13.5m
ii) 2 ½ storeys to 14.5m
iii) 3 storeys to 15.5m
Maximum density 40 units/ha Not specified
Minimum density 25 units/ha Not specified
Public Streets (Almonte Dr.) 20m right-of-way 17m right-of-way***
Visitor Parking No visitor parking requirement No visitor parking provided****
* In addition, an open stairway may encroach a maximum of 1.5m into required yard
** In addition, a 2$_{nd}$ storey deck is permitted and may encroach a maximum of 3.5m into required yard
*** Daylight triangles (a traffic safety feature) will not be required for NH street townhouses
**** Possible 25 on-street spaces for visitors with small cars on Almonte **IF** approved by the City; otherwise, no visitor parking available

3. Semi-Detached Dwellings

Regulation Existing Minimum Standards
RM2
National Homes
June 18, 2018
Lot width 9m/unit 7.0m/unit
Lot area 270m$_2$/unit 240m$_2$
Front yard setback 6m 5.5m
Side yard setback, 2 or more
storeys
0m one side; 1.8m on other 1.5m
Street side yard 4m 2.5m
Rear yard setback 9m Not specified
Maximum height
i) 2 storeys to 11.5m
ii) 2 ½ storeys to 13m
i) 2 storeys to 13.5m
ii) 2 ½ storeys to 14.5m

Maximum density 40 units/ha Not specified
Minimum density 25 units/ha Not specified
Private streets –internal Not specified 6m pavement width
Visitor Parking 0.5 visitor spaces per unit Not specified in by-law revision*
* Total of 68 visitor spaces provided in the NH plan, which covers City requirement for the 26 semidetached
units and 108 condominium townhouses

City of Burlington Report – Undated.

Proposed Settlement for 2100 Brant Street - Official Plan and Zoning By-law Amendment and Draft Plan of Subdivision
TO: Blake Hurley, Assistant City Solicitor
FROM: Kyle Plas, Coordinator of Development Review

2.1.6 Zoning By-law 2020
The subject lands are currently zoned 'R2.2' Residential Low Density, which permits single detached dwelling units. The proposed zoning by-law amendment would amend the zone category for the developable area of this property to 'RM3' with site specific exceptions to permit semi-detached, street townhouse and townhouse units and zone requirements that allow for efficient use of the lands.

An overview of the existing and proposed zoning requirements have been broken down and provided in the table below.

Zone Requirements for Townhouses / Semis

Zone Regulation	Townhouse Zone Requirements	Block 14 Proposed	Block 15 Proposed	Block 16 Proposed	Comment
Lot Area	0.4 ha	*0.53 ha*	*1.58 ha*	*1.35 ha*	No changes required
Lot Width	45 m	*15.69 m*	*54.89 m*	*86.95 m*	Staff support the reduction to the lot width of Block 14 given the configuration of the block to allow for efficient use of the lands
Front Yard	7.5 m	*10.75 m (Almonte Dr)*	*5.0 m (Brant St)*	*5.0 m (Brant St)*	Staff support the reduction to front yard setback for Block 15 and 16 as visually the setback will appear to be in keeping with the existing

					setbacks along Brant Street to the south of the proposed development and given the boulevard width to the sidewalk.
Rear Yard	9 m	*6.0 m, (2.09 m corners of southerly townhouse block)*	*2.78 m (Almonte Dr)*	*8.0 m*	Staff support the reduction to the rear yard setbacks as they are in effect adjacent to the natural heritage system or are visually a street side yard.
Side Yard	4.5 m	*6.13 m*	*5.24 m (southerly)* *10 m (northerly-to rear yard of Havendale lots)*	*7.9 m (southerly- to rear yard of adjacent townhouse)* *6.0 m (northerly)*	No changes are required. In most cases these setbacks adjacent to and similar to rear yard setbacks.
Street Side Yard	6 m	*N/A*	*3.0 m*	*3.0 m*	Staff support the reduction to the street side yard for the townhouse units fronting Brant Street as visually similar to the building facade setbacks on Almonte Drive
Yard abutting R1, R2, R3 (EMS property)	9 m	N/A	1.8 m	N/A	Staff support the reduction as it is a side yard setback to the R1, R2, R3 as the reduction is not to a residential use but the EMS station.

Zoning Requirements for Condominium Townhouse / Semi Units

Parcel of Tied Land (POTL) Zone Regulation	**POTL Zone Requirement**	**Proposed POTL Zoning**	**Comment**
Front Yard	3 m	3 m	No change required
Side Yard	1.2 m	1.5 m	No change required
Yard abutting a public street	3 m	2.5 m	Staff support the reduction as it is a minor reduction and applies to the semi-detached dwelling adjacent Almonte Drive where the boulevard width increases. The reduction

			will not impact the street functionally or visually.
Rear Yard	6 m	3 m	Staff support the reduction for the units fronting onto Brant Street which have a dual frontage and is consistent with the POTL front yard requirement.
Driveway Length	6.7 m	6.7 m	No change required

Zoning Requirements for Street Townhouse / Semi Units

Zone Regulation	Street Townhouse Zone Requirement	Street Townhouse Proposed Zoning	Comment
Lot Width	6.8 m	5.5 m (Int) 7.2 m (End)	Staff support the reduction in lot width for the interior lots to maintain a consistent built form with the condominium townhouse units
Lot Area	200 m²	165 m² (Int) 215 m² (End)	Staff support the reduction in lot width for the interior lots to maintain a consistent built form with the condominium townhouse units and for the end units adjacent to Almonte Drive daylight triangle. The lot area still provides for adequate ground level rear yard amenity areas.
Blocks fronting Brant Street	131 m² (Int) 156 m² (End)		Staff support the smaller lot areas for these units that are impacted by a large daylight triangle and result in a different floor plan within these areas.
Front Yard	6m	5.0 m	Staff support the 1 metre reduction to the setback as it provides adequate space for access and landscaping
Rear Yard	9m	7.0 m	Staff support the reductions as they provide adequate separation between units and amenity area
Side Yard	1.2 m	1.5 m	No change required
Street Side Yard	4m	3.0 m	Staff support the 1 metre reduction for the end units as there is adequate area for landscaping and to provide vehicular and pedestrian visibility
Yard abutting a creek block	7.5 m	7.5 m	No change required.

Yard abutting R1, R2, R3	None required	11.2 m	Staff support the addition of this requirement to ensure adequate separation from adjacent existing single detached dwellings fronting onto Havendale Blvd.
Building Height	2 storeys	3 storeys	Staff support the increase in height given the changes in grade throughout the site; some units will have front walkouts that are considered 3 storeys in the ZBL although they would be 2 storeys in height at the rear of the unit.